

Court No. - 13

Case :- APPLICATION U/S 482 No. - 10429 of 2024

Applicant :- Mohd. Abdul Aleem Khan

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.

Counsel for Applicant :- Pranjal Krishna

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard Sri Nandit Kumar Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate, Sri Tanmay Krishna, Sri Ujjwal Maurya and Ms. Shahla Zubair, Advocate, learned counsel for the applicant and Sri Rao Narendra Singh, learned A.G.A.

2. The instant application has been filed by the applicant with a prayer to quash the charge-sheet dated 18.03.2023 and cognizance order dated 23.03.2023 as well as discharge rejection order dated 07.11.2024, and to hold the sanction order dated 20.01.2023.

3. On 16.12.2024, following order was passed:-

"1. Heard Sri Nandit Kumar Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate, Sri Tanmay Krishna, Sri Ujjwal Maurya and Ms. Shahla Zubair, Advocate, counsel for the applicant, Sri Rao Narendra Singh, learned A.G.A. and Sri Raj Kumar Singh, Senior Standing Counsel for Union of India

2. On 12.12.2024 following order was passed:-

"1. Heard Sri Nandit Kumar Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate, Sri Ujjwal Maurya and Ms. Shahla Zubair, Advocate, counsel for the applicant, Sri Rao Narendra Singh, learned A.G.A. and Sri Raj Kumar Singh, Senior Standing Counsel for Union of India.

2. Supplementary affidavit filed by learned counsel for the applicant is taken on record.

3. On 3.12.2024, following order was passed:-

1. On 28.11.2024 following order was passed:-

"1. Heard Sri Nandit Srivastava, Senior Advocate assisted by Ms. Suruchi Tripathi, Advocate & Ms. Shahla Zubair, Advocate, learned counsel for the applicant and Sri Rao Narendra Singh, learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the proceeding of Sessions Trial (Criminal Case) No.590 of 2023 'State Vs. Mohd. Aleem Khan', under Section 13(1)(b) read with Section 13(2) of Prevention of Corruption Case, arisen out of F.I.R. No.1262 of 2019, Police Station Gomti Nagar, District Lucknow.

3. Learned counsel for the applicant submits that applicant is a retired officer of Indian Administrative Services Cadre and prosecution in question was initiated in the most mechanical manner without mentioning the check period for inquiry with the allegation of disproportionate asset. He also submits that inquiry was conducted and F.I.R. was lodged, and thereafter, comprehensive reply was given but same was not considered and charge sheet was filed by the Investigating Officer.

4. It was obligatory on the part of the Investigating Officer to obtain sanction from the appointing authority, i.e., His Excellency, President of India but in the present case the sanction has been given by the State Government, which is not permissible in the eye of law.

5. Learned counsel for the applicant submits that sanction was granted by the State Government on the advice of the Department of Justice, Government of U.P.

6. List this case on 3.12.2024 at 11:30 A.M.

7. On the next date of listing, responsible officer of appointment department as well as Department of Law, State of U.P. shall appear before this Court and explain that whether for prosecution of a officer belongs to Indian Administrative Services Cadre, sanction is necessary from the President of India or Governor of State.

8. It is open to the applicant to make request before the trial court for deferring of the proceeding till the next date."

2. In pursuance of aforesaid order, Mr. Aurnesh Kumar Dwivedi, Joint Secretary, Department of Personnel and Appointment and Mr. Manmeet Suri, Special Secretary, Department of Law, Government of U.P. are present before this Court. Relevant record has been placed by them. They submitted that it is bounden duty of the Investigating Officer to obtain sanction from the Central Government/appointing authority for prosecuting the officer who belongs to All India Service Cadre.

It has been informed that in the present case prior to 20.01.2023 three letters dated 07.12.2021, 04.02.2022 and 03.03.2022 were written to the Central Government for grant of sanction but no reply was given by the Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India. Thereafter, on 20.01.2023 the Investigating Officer was granted permission to submit charge sheet against the applicant for the alleged offence under Section 13 (1) (b) read with Section 13 (2) of Prevention of Corruption Act as amended in the year 2018.

Mr. Aurnesh Kumar Dwivedi has conceded the fact that Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India informed vide letter No.107/14/2022-AVD.I/C.2 dated 23.06.2023 in response to letter No.

612/2-5-2023-22/(24)/2019 dated 19.05.2023 that in the case related to Babu Ram IAS (retired) for grant of sanction to prosecute him, the guidelines outlined at para 4 of DOP&T letter no.107/8/99-AVD-I dated 27.10.1999 regarding sanction for prosecution against a retired IAS Officer has been superseded by the Prevention of Corruption Act, 1988 as amended in the year 2018 and observed that Members of All India cadre who have ceased to hold the office during which the offence is alleged to have been committed or who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed, sanction is necessary from the Government of India. Thereafter all the matters of the officials belong to All India Service Cadre are being referred to the Central Government for proper sanction.

3. List this case on 12.12.2024.

4. By the next date of listing, Mr Raj Kumar Singh, learned counsel appearing for Union of India shall seek written instructions from the Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India that why the response to the letters dated 07.12.2021, 04.02.2022 and 03.03.2022 has not been given related to the prosecution sanction of the applicant.

5. Mr. Aurnesh Kumar Dwivedi, Joint Secretary, Department of Personnel and Appointment shall again appear along with relevant record before this Court.

6. Mr. Manmeet Suri, Special Secretary, Department of Law, Government of U.P. need not appear unless called for.

7. It is open to the applicant to move deferment application before the court concerned. In case any such application is filed, the proceedings shall be deferred by the court below till decision of the present case.

4. Sri Rajkumar Singh, Senior Standing Counsel for Union of India placed a letter dated 10.12.2024 written by Mr. Pijush Mohanta, Under Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Govt. of India and informed that never any request for grant of prosecution sanction was received from the State Government. He also informed that in pursuance of the letter dated 7.12.2021 issued by the Government of U.P., reply was given through a letter dated 5.5.2022.

5. List this case on 16.12.2024 at 11:30 A.M."

6. On the next date, Principal Secretary, Department of Appointment, Government of U.P. shall appear before this Court and explain the procedure to accord the sanction for prosecution in relation to the officials belongs to All India Cadre."

3. In pursuance of earlier order, Mr. Desh Raj, Principal Secretary, Department of Appointment, Government of U.P is present.

4. Mr Raj Kumar Singh, learned counsel appearing for Union of India has placed a policy for grant of sanction in respect of public servant belongs to All India Cadre dated 18.10.2024, which is taken on record.

5. List this case on 18.12.2024 at 11.30 a.m.

6. By the next date, the Principal Secretary shall file his personal affidavit explaining the manner for according the sanction for prosecution of officials belong to All India Cadre under the provision of P.C. Act.

7. The officer present today need not appear unless called for."

4. In pursuance of aforesaid order, counter affidavit filed by Sri Rao Narendra Singh, learned A.G.A. duly signed by Mr. M. Devraj, Principal Secretary, Department of Personnel and Appointment, Government of U.P., Lucknow is taken on record.

5. Having perused paragraph nos. 13 and 15 of the aforesaid counter affidavit, it is admitted by the Principal Secretary, Department of Personnel and Appointment, Government of U.P., Lucknow that only Government of India is competent authority to give sanction for prosecution in relation to the officials who belong to All India Service Cadre. However, the sanction is granted by State Government in the present case.

6. Considering the contents of aforesaid counter affidavit, it is evident that the sanction granted by the State Government is *non est*. Therefore, this application is **allowed** and the sanction order dated 20.01.2023 is hereby **quashed**.

7. However, it is open to the applicant that in case any sanction is granted by Government of India, then same can be agitated before this Court.

Order Date :- 18.12.2024

Arpan