

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 84 of 2015

1. Pramod Kumar Sharma S/o Late Shri Rajaram Sharma Aged About 55 years Presently Working As Chief Executive Officer, Zila Antyavasayi Vitta Evam Vikas Nigam Maryadit, Composite Building, Collectorate, District Bilaspur (Chhattisgarh); R/o House No. 44, Guruvihar Colony, Sarkanda, Bilaspur (Chhattisgarh)
2. Ganga Prasad Tamrakar S/o Late Shri Saheb Lal Tamrakar Aged About 51 Years Presently Working As Executive Officer, Zila Antyavasayi Karya Vikas Samiti, Collectorate, Raipur (Chhattisgarh); R/o B- 21, Kanchan Ganga Phase 2, Deen Dayal Upadhyay Nagar, Raipur (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary Department Of Law And Legislative Affairs, Mantralaya Mahanadi Bhawan, New Raipur, District- Raipur (Chhattisgarh)
2. Additional Secretary, Department Of Law And Legislative Affairs, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
3. Secretary Department Of Tribal And Scheduled Caste Development, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
4. Chhattisgarh Rajya Antyavasayi Sahakari Vitta Avam Vikas Nigam, Maryadit, Through Its Managing Director, Devendra Nagar, Raipur (Chhattisgarh)
5. Station House Officer, P.S. Rajpur, District- Balrampur (Chhattisgarh)

---- Respondents

For Petitioners	Shri B.P. Sharma, Advocate and Shri Adil Minhaj, Advocate
For Respondent/State	Shri P.K. Bhaduri, Govt. Adv.
For Respondent No.4	Ms. Naushina Afrin Ali, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

07/07/2015

1. Petitioners herein have called in question the legality and validity of the order passed by the Law and Legislative Affairs Department, Government of Chhattisgarh on 28.02.2015 according sanction to prosecute five persons including the petitioners in relation to offence registered as crime No.73/2013, Police Station Rajpur, District Balrampur for offence under Sections 420 & 471 of Indian Penal Code (for short 'the IPC') and Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act').
2. Shri Sharma, learned counsel appearing with Shri Minhaj, learned counsel for the petitioners, would strenuously urged that the Commissioner, Scheduled Caste/ Scheduled Tribes Development Department having refused to accord sanction on 28.02.2015 and before that

by the Managing Director of the Chhattisgarh State Antyavasai Sahkari Vitta Evum Vikas Nigam Limited (for short 'the Nigam') on 21.11.2012, the impugned order is apparently illegal and arbitrary. Shri Sharma would further submit that the Nigam having its own rules and bye laws and the petitioners having been appointed by the Managing Director sanction can only be granted by the said Managing Director of the Nigam. In support of his contention, learned counsel placed reliance upon the decisions rendered in **State of Himachal Pradesh v. Nishant Sareen¹**, **State of Punjab and Another v. Mohammed Iqbal Bhatti²**, **Ram Krishan Prajapati v. State of U.P.³**, and **Ashok Baijal v. M.P. Government⁴**.

3. Per contra, Shri Bhaduri, learned counsel appearing for the State would submit that under the rules of business of the State Government, the authority to accord sanction *in presenti* lies with the Law Department, therefore, the sanction is in accordance with law. He would further submit that the Nigam is not authorized to grant sanction,

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(2010) 14 SCC 527

2 (2009) 17 SCC 92

3 (2000) 10 SCC 43

4 1998 Cri. L.J. 3511

therefore, its earlier order refusing to grant sanction has no legal basis or sanctity. Thus, the subsequent order passed by the Law Department would not amount to review of the earlier decision. In addition, he would rely on **S.S. Dhanoa v. Municipal Corporation, Delhi and Others**⁵ to urge that the petitioners being the employees of an undertaking of the Government of Chhattisgarh, no sanction is needed to prosecute them.

4. In disputably, the petitioners are the employees of the Nigam, which is a Government of Chhattisgarh undertaking, ST, SC, OBC and Minority Department. Thus, the State has complete control over the affairs of the Nigam. Although under the rules of the Nigam the Managing Director may be appointing authority but the Nigam itself being under the control of a particular department of the State Government, in view of the law laid down by the High Court of Madhya Pradesh in **Sunderlal Shivana v. State of Madhya Pradesh**⁶, the sanction granted by the Department of Law and Legislative Affairs is valid and lawful. In the said decision, the Full Bench of the Court has held thus :

5 AIR 1981 SC 1395

6 AIR 1988 MP 70 FB

11. Therefore, our answer is as under :--

(1) That the sanction given by the Law and Legislative Affairs Department for prosecution of the appellant under Section 161, I.P.C. And Section 5(l)(d) read with Section 5(2) of the Prevention of Corruption Act, is a valid sanction, although the appointing and removing authority is the revenue department, since under the Business Allocation Rules, then in force, it was the Law and Legislative Affairs Department, which alone could give sanction; and

(2) the appellant could raise objection that the sanction is not valid, as it has not been given by the authority authorised under the Business Allocation Rules. But, here, the sanction being given by the appropriate authority, the objection has no merit.

5. In so far as, the submission that the Managing Director having refused sanction, the same could not have been reviewed by the State Government is concerned, once it has been held that under the rules of business, the competency to decide the question of sanction lies with the Law Department, the Managing Director would have no jurisdiction or authority to take up the issue. Thus, the previous order passed by the Managing Director lacks any legal sanctity and the subsequent order of the Law

Department would not amount to review of the earlier order because the earlier order was passed by an incompetent authority.

6. Moreover, in view of the law laid down by the Supreme Court in **S.S. Dhanoa** (supra) and **Mohd. Hadi Raja v. State of Bihar and Another**⁷ the petitioners otherwise being the employees of the Nigam, a registered Cooperative Society, sanction to prosecute may not at all be needed.
7. *Ex consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri