

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.5536/09 & 27896/10

-

-

COMMON ORDER:

-

Since the orders impugned in these two writ petitions are the same and since the contentions raised are also the same, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. The challenge in these two writ petitions is to Memo No.17594/Vig.I/ 1/2001-12 dated 2.1.2009 issued by the 1st respondent-State Government.

3. The petitioners herein worked in the Department of Transport, Roads and Buildings and retired from service on various dates. The petitioners in W.P.No.5536 of 2009 retired from service as Superintendent, Divisional Accounts Officer, Superintending Engineer, Assistant Engineer and Assistant Engineer respectively and the petitioner in W.P.No.27896 of 2010 retired as Executing Engineer.

4. Basing on a report of the Comptroller and Auditor General of India (CAG), the Anti Corruption Bureau (ACB) registered Crime No.14/RCO-VGT/01 under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'the Act'). The Director General, ACB, Andhra Pradesh, Hyderabad by way of letter R.C.No.142/RCO-VGT/2001 dated 20.1.2006 sought permission of the State Government to prosecute the petitioners under the provisions of the Act. The State Government by way of Memo No.17594/Vig.I/1/2001-12 dated 2.1.2009 expressed its decision to prosecute the petitioners in a Court of Law. The 1st respondent further stated that no formal orders of the Government are necessary to prosecute them by ACB except in the case of Sri K.Chandrasekhar Azad i.e. 5th petitioner in W.P.No.5536 of 2009,

who was in service by then. The said memo dated 2.1.2009 is the subject matter in the present writ petitions.

5. While issuing rule nisi, this Court granted stay of prosecution in both the writ petitions.

6. Resisting the averments made in the writ affidavit, counter affidavits have been filed in both these writ petitions by the 2nd respondent-Director General, ACB.

7. Heard Sri P.Gangaiah Naidu, learned Senior Counsel, representing Sri K.Ramalingeswara Rao, learned counsel on record for the petitioners, learned Government Pleader for Roads and Buildings for the State and Sri P.Udaya Bhaskar Rao learned Standing Counsel for Respondent No.2, apart from perusing the material available on record.

8. It is contended by the learned senior counsel, appearing for the petitioners that the impugned memo is highly illegal, arbitrary, unreasonable, null and void and is a result of total non-application of mind. It is further contended that the impugned memo is opposed to the very spirit and object of provisions of the Act. It is also contended by the learned senior counsel that the 1st respondent while issuing the impugned memo, did not consider the report of the Engineer-in-Chief, Roads & Buildings submitted to the State Government vide Letter No.13199/P.A.(R)/A2/2000 dated 29.5.2001. It is also the contention of the learned senior counsel that the observations made by 1st respondent in the impugned memo that as the petitioners herein except Sri K.Chandrasekhar Azad (5th petitioner in W.P.No.5536 of 2009) retired from service, no formal orders are necessary for the purpose of prosecution by ACB, is highly illegal and contrary to the law laid down by this Court in **V.SURYANARAYANA V. STATE**^[1] (Criminal Petition No.5027 of 2014 dated 9.7.2014).

9. On the contrary, it is vehemently contended by the learned Government Pleader, appearing for State and the learned Standing Counsel for Respondent No.2, Sri P.Udaya Bhaskar Rao that the questioned memo is in accordance with the provisions of Prevention of Corruption Act and there is no illegality nor there is any procedural infirmity in the impugned memo, as such, the present writ petitions are not maintainable and the petitioners herein are not entitled for any relief from this Court under Article 226 of the Constitution of India. It is also contended by the learned counsel for respondents that only after considering the entire material available, the State Government issued the impugned memo.

10. In the light of the pleadings, submissions and contentions, now the issue that boils down for consideration of this Court is “whether the impugned memo dated 2.1.2009 issued by the 1st respondent is in accordance with law”.

11. The prevention of Corruption Act, 1988 which repealed the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 received the assent of the President on 09.09.1988 and was published in the Gazette of India on 10.09.1988. Chapter V of the said legislation deals with sanction for prosecution. The provision of law which is germane and relevant for the purpose of adjudicating the issue in the present writ petition is Section 19 of the Act, which reads as *infra*:

“19. Previous sanction necessary for prosecution. — (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, —

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that

Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 —

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any inter-locutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. — For the purposes of this section, —

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

12. In the instant case, in response to the permission sought by the Director General, ACB, Andhra Pradesh, Hyderabad, vide proceedings R.C.No.142/RCO-VGT/2001 dated 20.1.2006, the 1st respondent State Government issued impugned Memo No.17594/Vig.I/1/2001-12 dated 2.1.2009, expressing its decision to prosecute the petitioners herein in a Court of Law. However, in paragraph 2 of the said memo, the State Government also observed that except for Sri K.Chandrasekhar Azad, formal orders of the Government for prosecution are not necessary as the rest of the petitioners retired from service.

13. It is an undisputed fact that the Engineer-in-Chief-3rd respondent herein vide Letter No.13199/P.A.(R)/A2/2000 dated 29.5.2001, after thoroughly and meticulously considering various aspects submitted a report, stating that the Government did not suffer any loss and made a request to the Government to request the Accountant General to drop relevant paragraph in the report of the CAG, which formed the basis for initiating the present prosecution. In the impugned memo, the State Government did not choose to refer to the said report and reasons for the same are not forthcoming and there is absolutely no plausible explanation forthcoming. No counter affidavit has been filed by the 1st respondent-State even though the petitioners herein filed the present writ petitions long back.

14. With regard to the observations of the State Government that for the retired employees, no formal orders of the Government are necessary for prosecution, it is to be noted that this Court in *V.Suryanarayana v. State* (1 supra), at paragraphs 21 and 24 held as under:

“21. The learned Senior Counsel for the petitioner submitted that the prosecution is in respect of the alleged misconduct on the part of the petitioner while the petitioner was discharging duties as a public servant and that the sanction is sine qua non before the Court can take cognizance of the offence. The learned Senior Counsel for the petitioner placed reliance upon *G. Sagar Suri v. State of U.P.* 2000 (1) SCR 417 as well as in *Parkash Singh Badal v. State of Punjab* [Appeal (civil) 5636 of 2006] in

support of his contention. In these cases, the Supreme Court observed that whether a public servant retired from service or is in service, to prosecute such a public servant under the provisions of the P.C. Act, there shall be sanction under Section [19](#) of the P.C. Act if the alleged offence was committed by an employee during the course of his employment.

24. Further, in view of the latter view of the Supreme Court in Raj Kumar Jain (supra), I agree with the contention of the learned Senior Counsel for the petitioner that the sanction under Section [19](#) of the P.C. Act is necessary before the petitioner is prosecuted.”

Therefore, the said reason assigned by the Government in the impugned memo is neither sustainable nor tenable in the eye of law. At this juncture, it may be appropriate to refer to certain judgments on the issue.

15. In ***MANSUKHLAL VITHALDAS CHAUHAN V. STATE OF GUJARAT***^[2], the Hon’ble Apex Court at paragraphs 9, 14, 17, 18 and 19, held as under:

“9. This Section places a bar on the Court from taking cognizance of the offences specified in Sub-section (1) against Public Servants unless the prosecution for those offences has been sanctioned either by the Central Government, if the person who has allegedly committed the offence, is employed in connection with the affairs of the Union Government and is not removable from his office except with the sanction of the Central Government, or by the State Government if that person is employed in connection with the affairs of the State Government. But if the "public servant" is not an employee of either the Central Government or the State Government, sanction, is to be given by the authority competent to remove him from the office held by him.

14. From a perusal of Section 6, it would appear that the Central or the State, Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that "public servant" is to be prosecuted or not. Since the Section clearly prohibits the Courts from taking cognizance of the offences specified therein, it envisages that Central or the State Government or the "other authority" has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and

sacrosanct act which affords protection to Government Servants against frivolous prosecutions. (See: Mohd Iqbal Ahmed v. State of Andhra Pradesh : 1979CriLJ633). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also: Jaswant Singh v. : (1957)ILLJ696SC ; State of Bihar & Am. vs P.P. Sharma : 1991CriLJ1438 .

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

16. In **SRI K. SRINIVASULU V. GOVERNMENT OF ANDHRA**

PRADESH AND OTHERS ^[3], a Division Bench of this Court at paragraphs 10 to 15, held as under:

"10. The requirement of obtaining sanction is to ensure that no public servant is unnecessarily harassed. Such protection is, however, not absolute or unqualified. While a public servant should be not subjected to harassment, genuine charges and allegations should be allowed to be examined by the Court. (**Krishanchand Khushalchand Jagtiani** : (1996) 4 SCC 472 : AIR 1996 SC 1910).

The object of the provision for sanction is also that the authority giving the sanction should be able to consider for itself the evidence before it comes to the conclusion that the prosecution, in the circumstances, be sanctioned or forbidden. (**Jaswant Singh v. State of Punjab** : 1958 SCR 762 : AIR 1958 SC 124).

11. Sanction lifts the bar for prosecution. Grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act. (**Mohd. Iqbal Ahmed v. State of A.P.** : AIR 1979 SC 677). It is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent, not a shield for the guilty. (**Mansukhlal Vithaldas Chauhan** : 1997 (7) SCC 622).

12. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required to be passed should always be borne in mind. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. (**State of Karnataka v. Ameerjan** : (2007) 11 SCC 273).

13. Before sanction is granted, under Section [19](#) of the Prevention of Corruption Act, the competent authority should peruse the concerned documents and come to a definite conclusion that it is a case for prosecution or otherwise. It will be a futile exercise if the sanction order is passed in a routine manner. (**Mohd. Jaffrullah Khan v. State** : 2000 (4) ALD 665). The authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. The Legislature has conferred on the authority, competent to remove the public servant from office, the power to grant sanction for the reason that he is competent to judge whether, on the facts alleged, there has been an abuse or misuse of the office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether, *prima facie*, it has been so done. (**R.S. Nayak** : (1984) 2 SCC 183 : AIR 1984 SC 684).

14. What is material at the time of grant of sanction is that the necessary facts, collected during investigation, constituting the offence are placed before the sanctioning authority and it has considered the material. (**Deepak Chowdhary** : (1995) 6 SCC 225 : AIR 1996 SC 186). Consideration implies application of mind. Ordinarily the order of sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it. (**Jaswant Singh** : 1958 SCR 762 : AIR 1958 SC 124; **State of West Bengal v. Mohammed Khaliti** : AIR 1995 SC 785; and **State of Bihar v. P.P. Sharma** : 1992 Suppl (1) SCC 222; **Mansukhlal Vithaldas Chauhan** : 1997 (7) SCC 622).

15. The sanctioning authority must accord or refuse sanction with reference to the facts on which the proposed prosecution is to be based. It is desirable that these facts appear on the face of the sanction order. (**The State of Rajasthan v. Tarachand Jain** : AIR 1973 SC 2131; **Gokulchand Dwarkadas Morarka v. The King** : 75 Ind App 30 : AIR 1948 PC 82). The order of sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it. (**State (Anti-Corruption Branch) v. R.C. Anand (Dr)** : (2004) 4 SCC 615). While the order of sanction need not contain detailed reasons, the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. Proper application of mind to the existence of a prima facie case regarding the commission of the offence is a precondition for the grant or the refusal to grant sanction. (**P.P. Sharma** : 1992 Suppl (1) SCC 222)."

17. The judgments referred to above and the principles laid down therein are squarely applicable to the facts of the present writ petitions. In the considered opinion of this Court, there is absolutely no justification on the part of the State Government in not considering and totally discarding the report of the Engineer-in-Chief submitted to the State Government vide Letter No.13199/P.A.(R)/A2/2000 dated 29.5.2001.

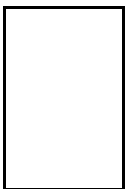
18. It is a matter of common knowledge that a mere allegation and accusation of corruption cripples the morale of the individual and undoubtedly undermines the reputation in the society. The prosecution under the provisions of Prevention of Corruption Act, 1988 is an extreme action which badly and severely affects and disturbs the social life of an individual. Unless the Government comes to a conclusion that there is a substantial material to launch prosecution, the permission for prosecution cannot be accorded in a routine, unreasonable and arbitrary manner. In the instant case, except the request of the ACB, the State Government did not independently consider the issue nor considered any other material including the report of the Engineer-in-Chief. A perusal of the impugned memo vividly shows that there is absolutely no application of mind at all. The grant of sanction is not a mere formality

and there is a solemn and sacred duty cast upon the sanctioning authority to exercise this power with great care, caution and circumspection and it cannot be lost sight of that this discretionary power given to the State is a safeguard for innocent employees and is a sword in the hands of the sanctioning authorities to prevent frivolous complaints. The attempt of the respondents, justifying the impugned action by way of filing counter cannot be permitted in view of the law laid down by the Hon'ble Apex Court in **MOHINDER SINGH GILL AND ANOTHER v. THE CHIEF ELECTION COMMISSIONER**^[4] wherein the Hon'ble Apex Court at paragraph 8 categorically held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The Apex Court further held that otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out.

19. In the facts and circumstances of the case, this Court finds no scintilla of hesitation nor any traces of doubt to hold that the impugned memo cannot stand for judicial scrutiny. For the aforesaid reasons and having regard to the principles laid down by the Hon'ble Apex Court and this Court in the judgments referred to *supra*, both the writ petitions are allowed, setting aside the Memo No.17594/Vig.I/ 1/2001-12 dated 2.1.2009 issued by the 1st respondent-State Government. However, it is open for the respondents herein, if so advised, to pass appropriate orders afresh, in accordance with law and in the light of the observations made *supra* and in the light of the law laid down in the above referred the judgments. Pending miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 1.5.2015
DA



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

W.P.Nos.5536/09 & 27896/10

-
-
-
-
-

1.5.2015

`DA

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.5536/09 & 27896/10

Date: 1.5.2015

-

-

Between:

V.Babu Rao & others.
2009

... Petitioners in W.P.No.5536 of

S.Purnachandra Rao
2010

.. Petitioner in W.P.No.27896 of

and

State of Andhra Pradesh,
Transport, Roads & Buildings Department,
represented by its Principal Secretary,
Secretariat, Hyderabad & others.

... Respondents in both W.Ps.

[\[1\]](#) 2014(2) ALD (CrI.) 617

[\[2\]](#) (1997) 7 SCC 622

[\[3\]](#) 2010 (3) ALD 452 (DB)

[\[4\]](#) AIR 1978 SC 851 (1)