

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

W.P.No.36751 of 2012

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Between:

K.Madhu Murthy

...Petitioner

VERSUS

National Institute of Technology,
Warangal, A.P., rep. by its Director
and others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 16.6.2016

SUBMITTED FOR APPROVAL:

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

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

W.P.No.10831 of 2012

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%16.6.2016

K.Madhu Murthy

...Petitioner

VERSUS

\$ National Institute of Technology,
Warangal, A.P., rep. by its Director
and others.

...Respondents

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> HEAD NOTE:

!Counsel for Petitioner: Sri M.P.Chandramouli

^Counsel for Respondent No.1: Sri Aka Venkataramana

^Counsel for Respondent No.3: Sri P.Keshava Rao

^Counsel for Respondent Nos.2 & 4 : Sri B.Narayana Reddy

? Cases referred:

1. (2010) 14 SCC 527
2. 2016(1) LS 59
3. (1997) 7 SCC 622

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

W.P.No.36751 of 2012

ORDER:

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Challenge in the present Writ Petition is to the proceedings Rc.No.NITW/DIR/2011-12/039 4.4.2012 issued by the 1st respondent/ Director, National Institute of Technology (NIT), Warangal.

2. The petitioner herein is a Professor in Mechanical Engineering in the 1st respondent-Institution. In connection with C.C.No.43 of 2012 on the file of the Court of the XII Additional Special Judge for CBI (Central Bureau of Investigation) Cases, Chennai, the 3rd respondent-CBI by way of L.R.No.C2/Rc.47(A)/2009/CBI/AC/CHEN, dated 12.11.2010 sought for grant of sanction for prosecution under Section 19(1) of the Prevention of Corruption Act, 1988 (for short, 'the Act'). Pursuant to the said request, the 1st respondent herein constituted a Committee and the said Committee opined that the sanction sought was unwarranted and when the same was placed before the Chairman, Board of Governors, the Chairman concurred with the opinion of the Committee and the same would be very much evident from the letter No.NITW/D/2011-Vig/4711 dated 23.3.2011 addressed by the 1st respondent to 4th respondent. Subsequently, the 1st respondent also reiterated the same vide Lr.No.NITW/D/2011/2281 dated 17.10.2011. Thereafter, on the basis of D.O. Letter No.C/13011/127/2010-Vig 2.2.2012 of the 4th respondent, the 1st respondent by way of proceedings in Rc.No.NITW/DIR/2011-12/039 dated 4.4.2012 accorded permission for prosecution of the petitioner under the provisions of Section 19 (1) of the Act. The said sanction accorded by the 1st respondent is under challenge in the present Writ Petition.

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3. Heard Sri M.P.Chandramouli, learned counsel for the petitioner, Sri Aka Venkataramana, learned Standing Counsel for 1st respondent, Sri P. Keshava Rao, learned Standing Counsel for 3rd respondent, and Sri B. Narayana Reddy, learned Assistant Solicitor General, appearing for respondents 2 and 4, apart from perusing the material available on record.

4. It is contended by the learned counsel for the petitioner, Sri M.P. Chandramouli that the impugned action of according permission for prosecution of the petitioner is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of the Act. It is the further submission of the learned counsel for the petitioner that the questioned order is totally one without jurisdiction and is completely devoid of any legal sanction. It is also the submission of the learned counsel that the action impugned tantamounts to reviewing the earlier orders of refusing to grant sanction and the 1st respondent has no such power to review his own orders passed earlier. It is also contended that in the absence of any fresh material available on record, it is absolutely not open for the authorities to pass orders afresh. In support of his submissions and contentions, the learned counsel has placed reliance on the decisions in **State of Himachal Pradesh v. Nishanth Sareen**^[1] and **Lakshmi Kanth Shinde @ L.K.Shinde v. State of Telangana & others**^[2].

5. On the contrary, it is emphatically contended by the learned Standing Counsel for 1st respondent, learned Standing Counsel for 3rd respondent-CBI and learned Assistant Solicitor General, appearing for the respondents 2 and 4 that there is no illegality nor there exists any procedural irregularity in the process and in the absence of the same, the present Writ Petition is not maintainable and the petitioner herein is not entitled to any relief under Article 226 of the Constitution of India. It is also submitted that in view of the grave allegations against the petitioner, the petitioner is liable for prosecution and the judgments relied upon by the learned counsel for petitioner would not render any assistance in the facts and circumstances of the present case.

6. In the above backdrop, now the issue that boils down for consideration of this Court is -

“Whether the questioned order dated 4.4.2012 passed by the 1st respondent, in the facts and circumstances of the case, is sustainable and tenable and whether the same is in accordance with the provisions of the Prevention of Corruption Act, 1988”?

7. There is absolutely no controversy with regard to the realities that the 1st respondent constituted a committee to look into the aspect of according permission for prosecution based on the material provided by CBI and the Committee so constituted, after examining the material in detail, submitted its report on 25.2.2011 and found that the sanction of permission was unwarranted. The Chairman, Board of Governors concurred with the said opinion of the committee and the same would be very much evident from the letter No.NITW/D/2011-Vig/4711 dated 23.3.2011 addressed by the 1st respondent to 4th respondent. It is also very much clear from the material available on record that subsequently also the 4th respondent addressed a D.O. letter No.C.13011/127/2010-Vig dated 22.6.2011 requesting for sanction of prosecution against the petitioner once again. In response to the same, the Director of 1st respondent sent a reply dated 17.10.2011, refusing to grant prosecution while concurring with the views already expressed earlier. Now responding to the D.O. Letter bearing No.C.13011/127/2010-Vig dated 2.2.2012 addressed by the 4th respondent, the 1st respondent, by way of impugned proceedings dated 4.4.2012, accorded permission for prosecution under Section 19(1) of the Act. According to the learned counsel for the petitioner, the said permission accorded by the 1st respondent is unsustainable and untenable.

8. The provision of law, which is germane and relevant for the purpose of resolving the present issue is Section 19 of the Prevention of Corruption Act, 1988, which reads as under:

“19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under

section 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 or 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 interlocutory order passed in any 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.”

9. According to above provision of law, previous sanction of the competent authority is mandatory. It is a matter of common knowledge that a mere allegation and accusation of corruption cripples the morale of the individual and undoubtedly it undermines the reputation in the society.

The prosecution under the provisions of the Act would badly and severely affects and disturbs the social life of an individual. Therefore, unless the sanctioning authority comes to a conclusion that there is a substantial material to launch prosecution, permission for prosecution cannot be accorded in a routine, unreasonable and arbitrary manner. The grant of sanction is not a mere formality. There is a solemn and sacred duty cast on the sanctioning authority to exercise power with great care, caution and circumspection. The authorities vested with the power of according permission for prosecution cannot loose sight of the aspect that the discretionary power conferred by the statute is also a safeguard for innocent employees and it is a sword is in the hands of sanctioning authorities to prevent frivolous complaints also.

10. In **Mansukhlal Vithaldas Chauhan v. State of Gujarat**^[3], 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)IILLJ696SC ; 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."

11. It is also a settled law that it is obligatory on the part of the sanctioning authority to thoroughly examine and assess the evidence

available before granting permission for prosecution. In this context, it may also be appropriate to refer to the judgment of the Hon'ble Apex Court in *State of Himachal Pradesh v. Nishanth Sareen* (1 supra), wherein the Hon'ble Supreme Court at paragraphs 12 to 15 held as under:

“12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

14. Insofar as the present case is concerned, it is not even the case of the Appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the Respondent which, in our opinion, is clearly impermissible.

15. By way of foot-note, we may observe that the investigating agency might have had legitimate grievance about the order dated November 27, 2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the

same materials.”

12. In the instant case also, it is not the case of the respondents that fresh material was collected by the investigating agency and placed the same before the sanctioning authority for reconsideration/review of the earlier order, refusing to grant sanction nor the investigating agency challenged the order of sanctioning authority passed earlier, declining to grant permission for prosecution.

13. A perusal of the impugned order passed by the 1st respondent does not disclose the availability of any fresh material for according sanction. Therefore, this Court finds absolutely no justification on the part of the 1st respondent in according permission for prosecution. It is also significant to note, as submitted by the learned counsel for the petitioner, that in respect of Convenor of the Committee, one Mr.Venkateshwar Rao, permission was refused for sanction and the said issue was not pursued by CBI. It is also brought to the notice of this Court that as against another member of the committee, one Dr.Nagin Chand, the CBI laid charge sheet vide C.C.No.13 of 2012 on the file of XII Additional Special Judge for CBI Cases at Chennai and the said Court vide judgment dated 27.5.2014 acquitted him of all the charges.

14. Therefore, in the above background, this Court finds no scintilla of hesitation nor traces any doubt to hold that the impugned action is unreasonable and preposterous and cannot stand for judicial scrutiny.

15. For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings Rc.No.NITW/DIR/2011-12/039 4.4.2012 issued by the 1st respondent/Director, National Institute of Technology (NIT), Warangal. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 16.6.2016
DA/KH

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

W.P.No.36751 of 2012

16.6.2016

[\[1\]](#) (2010) 14 SCC 527

[\[2\]](#) 2016(1) LS 59

[\[3\]](#) (1997) 7 SCC 622