

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8117 OF 2017

Maharashtra State Public Prosecutors
Association,
Through its President,
Sanjay Purushottam Deshmukh
Age : 55 years, occu.: service
R/o Nanded.

Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Director of Prosecution,
State of Maharashtra,
Church Gate, Mumbai.

Respondents.

Mr. P.R. Katneshwarkar, Advocate for the petitioner.
Mr. N.T. Bhagat, A.G.P. for the State/respondent No.1.

**CORAM : S.V. GANGAPURWALA &
SUNIL K.KOTWAL,JJ.**

Reserved on : 10th July 2018.

Pronounced on : 24th August 2018.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. Rule. Rule is made returnable forthwith and with the consent of learned Counsel for the parties, the petition is taken up for final disposal at this stage.

2. By filing this Writ Petition, the Maharashtra State Public Prosecutors' Association has sought quashment of the Government Resolution dated 12.05.2015, imposing condition that the Assistant Public Prosecutor, whose rate of conviction is less than 25% of the cases handled by him, is not entitled to promotion,.

3. Respondent No.1 is the State of Maharashtra and respondent No.2 is Director of Prosecution.

4. Heard strenuous arguments submitted by Shri P.R. Katneshwarkar, learned Counsel for the petitioner and learned A.G.P. for the State and Special Counsel for respondent No.2.

5. Learned Counsel for the petitioner submits that the impugned Government Resolution, specially Clause Nos.4 and 7, mandating the Assistant Public Prosecutors in Maharashtra State to secure minimum 25% conviction in criminal cases for getting promotion, is unreasonable, contrary to the provisions of Criminal Procedure Code and decision of Supreme Court as well as decision of the High Court.

6. Learned Counsel for the petitioner submits that the Public Prosecutor, who represents the State in the criminal trial, is not expected to assure the State that in any case he would secure the conviction. On other hand, being officer of the Court it is the duty of Public Prosecutor to place before the Court every material

collected by the Investigating Officer fairly, irrespective of the fact whether it supports the prosecution case or not.

7. Learned Counsel for the petitioner submits that the result of criminal trial depends on quality and quantity of evidence collected by the Investigating Officer and not on the performance of the Public Prosecutor. There is no nexus between the performance of Public Prosecutor and conviction or acquittal.

8. His last submission is that the impugned Government Resolution being irrational and against the law of the land, deserves to be quashed. He placed reliance on the case of **“S.B. Shahane and others Vs. State of Maharashtra and another”**, [1995 Supp (3) Supreme Court Cases 37] and **“Sushil Hiralal Chokhani Vs. State of Maharashtra”**, [(2005) All M.R. (Cri) 2673].

9. Learned Counsels for the respondents submit that in the Maharashtra the rate of conviction in criminal cases is less which compelled the Government to take policy decision and to pass the impugned Government Resolution for improvement in conviction rates, which is neither bias nor *malafide*, and therefore, the Court cannot interfere with the same. They submit that the conviction rate in Maharashtra State has dropped drastically as compared to the other States, which affects the public at large and sends a wrong signal to the society. The impugned Government

Resolution was passed as a policy decision for achieving greater conviction rate and such sincere act of the State cannot be interfered by the Court.

10. Learned Counsels for the respondents submit that the respondents conduct seminars and workshops for the Public Prosecutors with sole object to help them to become competent and achieve higher conviction rate.

11. Respondents placed reliance on the case of Delhi **“Science Forum Vs Union of India”**, [1996 (2) SCC 405] wherein it is held that, “the Courts have their limitation as these issues rest with the policy makers of the nation. No direction can be given or is expected from the Courts while implementing such policies, unless there is a violation or infringement of any of the constitutional or statutory provisions” and **“Tamil Nadu Education Department Vs State of Tamil Nadu”**, (1980 Vol 3 SCC 97) wherein it is held that, “What was regarded as administratively impractical might, on later thought and activist reconsideration, turn out to be feasible and fair. The Court cannot strike down a Government Order or a Policy merely because there is a variation or contradiction. Life is sometimes a contradiction and even consistency is not always a virtue. What is important is to know whether mala fide vitiates or irrational and extraneous factors foul”.

12. In fact, after going through the affidavit filed by respondent No.2, it reveals that the respondent No.2 has not played any role for passing the impugned Government Resolution and it was the policy decision of Government of Maharashtra. Our attention was drawn to the case of **“Brij Mohanlal Vs Union of India and others”**, [(2012) 6 SCC 502] wherein while considering when the Court should or should not interfere in the policy decision of the State, the following parameters are laid down :

- (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
- (II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.
- (III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.
- (IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.
- (V) It is dehors the provisions of the Act or legislations.
- (VI) If the delegate has acted beyond its power or delegation.

13. No doubt, after going through the data placed on record by the respondents, it is clear that conviction rate in Maharashtra State is dropping down. Now the question arises whether to enhance the conviction rate the Public Prosecutors, who represent

the State in the criminal trial, can be compelled to get conviction at least in 25% cases handled by them.

14. In the case of “**S.B. Shahane and others Vs State of Maharashtra**” (supra), while giving directions to the Government to separate Prosecution Department from Police Department, the Apex Court considered 14th Law Commission Report. The relevant paragraphs of that report are reproduced as under :-

"Para 12. - Police Prosecutors and their functioning -

It is obvious that by the very fact of their being members of the Police Force and the nature of the duties they have to discharge in bringing a case in court, it is not possible for them to exhibit that degree of detachment which is necessary in a prosecutor. It is to be remembered that a behalf prevails amongst the Police Officers that their promotion in the Department depends upon the number of convictions they are able to obtain as prosecuting officers. Finally, the only control or supervision of the work of these prosecuting officers is that exercised by the Department Officials."

"Para 15. - Suggested remedial measure -

We therefore suggest that as a first step towards improvement, the prosecuting agency should be completely separated from the Police Department. In every district a separate prosecution department may be constituted and placed in charge of an official who may be called a 'Director of Public Prosecutions'. The entire prosecution machinery in the District should be under his control. In order to ensure that he is not regarded as a part of the Police Department he should be independent official directly responsible to the State Government. The departments of the machinery of the Criminal Justice, namely, the Investigation Department and the prosecuting department should thus be completely separated from each other."

15. After considering the above observations of the Law Commission, the Apex Court found that the Police Prosecutors who

were functioning under the administrative and disciplinary control of the superior officers of the police force, were not able to exhibit needed degree of detachment expected of Prosecutors because their promotions to higher post in Department depended on the number of conviction they were able to obtain from the Court in the prosecutions conducted by them. Therefore, it was felt that the Prosecution Department should be beyond the control of police administration.

16. The Apex Court, in the case **“State of Bihar-Vs-Ramnaresh Pandey and another”** reported in (AIR 1957 SC 389) observed that the Public Prosecutor is an officer of the Court and he is bound to assist the Court with his fairly considered view and Court is entitled to have the benefit of the fair exercise of his function. Following this view the Division Bench of this Court in the case of **“Sushil Chokhani”** (supra) also held that the duty of Public Prosecutor is not merely to secure the conviction of and imposition of punishment to the accused. It is his primary duty to place before the Court all the evidence collected by investigating agency whether it be in favour or against accused for consideration thereof by the Court. Utmost fair and impartial attitude and conduct is expected in that regard from the Public Prosecutor.

17. Thus, it is clear that Public Prosecutor being an officer of the Court, is not expected to only grab the conviction, but is

expected to act fairly before the Court and his performance should be only in the form of assistance to the Court for arriving at proper conclusion regarding conviction or acquittal of the accused. Considering such impartial duty to be performed by the Public Prosecutor, the State cannot set target before the Public Prosecutors to get conviction at least in 25 % criminal cases handled by them. What is expected by the State of Maharashtra from the Public Prosecutor is totally against law as discussed above. In other words, by passing the impugned Government Resolution, the State Government cannot fix bench-mark for the Public Prosecutors to secure at least 25% conviction in the criminal cases handed by them, to get promotion.

18. The conviction or acquittal in criminal trial depends on various factors and mainly on the quality of material collected by the Investigating Officer. If the Investigating Officer has collected good quality of material as evidence against the accused and if he has taken necessary precaution while sealing and forwarding the important Muddemal articles to Chemical Analyst, certainly such case may result into conviction, provided that material witnesses stand constant at the stage of evidence. For conviction, the credit goes to Investigating Officer and witnesses. The conviction in criminal trial is not merely related with performance of the Public Prosecutor, but as discussed supra depends upon various factors.

19. Therefore, issuance of the impugned Government Resolution mandating achievement of 25% conviction in criminal trial is only as a result of above-said misconception. If any negligence has been committed by the Public Prosecutor while conducting the case, that cannot be ascertained only from conviction or acquittal, but it can be ascertained only on examination of the record of that particular case. Therefore, we hold that the condition of particular conviction rate to be achieved by Public Prosecutors, embodied in the impugned Government Resolution is definitely unreasonable.

20. Thus, the impugned Government Resolution is irrational, unreasonable and against the law of the land. Therefore, in view of the parameters laid down by the Apex Court in the case of “**Brij Mohan Lal**” (supra), this Court can definitely quash the impugned Government Resolution. It follows that this Writ Petition deserves to be allowed.

21. The Writ Petition is allowed. The impugned Government Resolution dated 12.05.2015 is quashed.

22. Rule is made absolute in the above-said terms. Parties to bear their respective costs.

(**SUNIL K. KOTWAL**)
JUDGE

(**S.V. GANGAPURWALA**)
JUDGE