



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.535 of 2019

1.M.Rajendran

2.M.Prema

... Petitioners/Petitioners/Accused 2 to 5

Vs

The State of Tamilnadu,
Rep. by the Inspector of Police,
Vigilance and Anticorruption Police Station,
Madurai, Madurai District. ... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the order dated 15.02.2019 made in Crl.M.P.No.358 of 2018 in Special Case No.1 of 2018 on the file of the Special Judge for Vigilance and Antic Corruption Court, Madurai and set aside the same and consequently, allow the criminal revision petition.

For Petitioners : Mr.E.V.N.Siva

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

The revision petitions herein have been named as A2 and A5 in Special S.C.No.1 of 2018 on the file of the Special Judge for trial cases under the Prevention of Corruption Act.

2.The petitioners herein filed Crl.M.P.No.358 of 2018 before the learned Special Judge for discharging them from the case itself.

3.The primary ground urged by the petitioners before the Special Court was that they are teachers employed in an aided Private College and that, it was only the College Committee that is competent to remove them from service. Therefore, sanction for their prosecution must have been obtained from the College Committee. In this case, the sanction was not accorded by the College Committee, instead, it is the Secretary to Government, Higher Education Department, who had granted sanction, vide G.O.Ms.No.51 (Higher Education E2 Department),dated 10.03.2018.

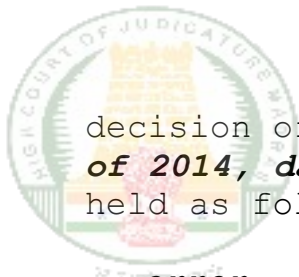
4.According to the petitioners, the Special Court erred in taking cognizance of the case on the strength of the sanction accorded by the Government. In as much as, sanction was not given



by the Competent Authority, the petitioners deserve to be discharged from the case itself. The prayer made by the petitioners was opposed by the prosecution who filed a detailed counter. After hearing both the case, the learned Special Judge, by order dated 15.02.2019, dismissed the petition for discharge filed by the petitioners herein. Challenging the same, this revision case came to be filed.

5.The learned counsel appearing for the revision petitioners reiterated the contentions set out in the memorandum of grounds. He took me through the provisions of the Tamilnadu Private Colleges (Regulation) Act, 1976 and contended that the Government has no power to dismiss the petitioners from service. It is only the College Committee that has the power to take disciplinary action against the staff of the Private College. He drew my attention to Section 14(1)(c) of the Tamilnadu Private Colleges (Regulation) Act, 1976, in this regard. He also placed reliance on the Full Bench decision of the Madras High Court reported in **2006 (4) CTC 471 (K.M.Valliapan Vs. Joint Director of School Education)**. In paragraph 12 of the said decision, it was held that the disciplinary control vested with the School Committee cannot be delegated. The principle enunciated by the Hon'ble Full Bench is equally applicable to the Tamilnadu Private College (Regulation) Act, 1976. He would also contend that the sanction issued by the Government in this case is non est in law. He relied on the decision reported in **2008 (7) SCC 748 (Deepak Agro Foods Vs. State of Rajasthan and others)** for the proposition that where an Authority making order lacks jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter. He also referred to few other unreported decisions of this Court to contend that the position of a teacher working in an aided private college is rather unique and that, it is not for the Government to assume jurisdiction over them.

6.Per contra, the learned Additional Public Prosecutor would submit that as per Section 19 of the Tamilnadu Private College (Regulation) Act, 1976, staff in an aided private college can be terminated only with the prior approval of the competent authority. The expression competent authority is defined in Section 2(3) of the very same statute. It is true that the competent authority in this case is the Regional Joint Director of the Collegiate Education and the Appellate Authority is the Director of Collegiate Education. But then, in this case, the Secretary to the Government is a higher authority and that therefore, sanction accorded by the superior Authority cannot be said to be illegal or invalid. His primary focus was on Section 19(3) of the Prevention of Corruption Act, 1988. He would contend that unless the accused can demonstrate a failure of justice, mere error or omission or irregularity in the sanction order cannot be a ground for seeking discharge from the criminal proceedings. In this regard, he placed reliance on the



decision of the Hon'ble Supreme Court made in **Criminal Appeal No. 708 of 2014, dated 31.03.2014 (State of Bihar Vs. Rajmangal Ram)**. It was held as follows:-

"7. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in *State by Police Inspector Vs. T. Venkatesh Murthy* wherein, it has been *inter alia* observed that, 14. Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the Court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."

7. His further contention is that the prosecution is all about commission of grave illegalities in the matter of making appointments of non teaching staff in the College in question. In fact, the first accused is none other than the Secretary and Correspondent of the College itself. Therefore, in such a case, it would be futile to insist for obtaining sanction from the College Committee. When the Committee itself stands accused of having indulged in illegalities, he wanted this Court to invoke the doctrine of necessity and sustain the impugned sanction order.

8. I carefully considered the rival contentions. Section 19 of the Prevention of Corruption Act, 1988 (in its pre amended form) reads as follows:-

"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."

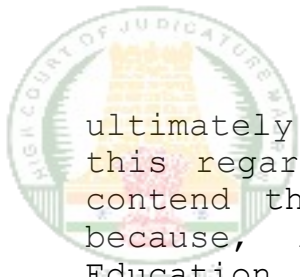
9. Three categories of persons are contemplated by the statute.

(I) the first category deals with those persons who cannot be removed from their office with the sanction of the Central Government; that is not the case here.

(II) the second category deals with those person who are not removable from their office except by the order or the sanction of the State Government; that is also not the case here.

The petitioner's counsel would state that the case on hand would fall within the scope of Section 19(1)(c) of the Prevention of Corruption Act, 1988. Now the question that arises for consideration is who would be the Authority Competent to remove the petitioners from their post. The petitioners' counsel would claim that the College Committee is alone competent to remove them from their post. It is true that as per Section 14(1)(C) of the Tamilnadu Private College (Regulation) Act, 1976, the College Committee shall have the power to take disciplinary action against the petitioners. But then, they cannot on their own remove the petitioners. As per Section 19(1) of the Taminadu Private College (Regulation) Act, 1976, prior permission of the competent authority is obviously imperative. In other words, if the Regional Director of the Collegiate Education, does not accord his prior approval, the services of the petitioners cannot be terminated. Therefore, I do not agree with the petitioners' contention that without sanction from the College Committee, the petitioners cannot be prosecuted. The case of teaching staff in an aided Private College is rather unique. Provisions have been incorporated in the statute, so that, they are not hurriedly dismissed based on the whims and fancies of the management. Therefore, this Court has to necessarily reject the petitioner's contention that non-obtaining of sanction from the College Committee is fatal to the prosecution and that therefore, on the ground of non-obtaining of sanction from the College Committee, they will have to be discharged.

10. I would take inspiration from the language found in Sections 19(1)(a) and 19(1)(b) of the Prevention of Corruption Act, 1988. Section 19(1)(a) states that if a person is not removable from his office except with the sanction of the Central Government, the Central Government's sanction is required for taking cognizance. So is the case with the State Government. The case of the petitioners is also to the effect that they cannot be removed except with the sanction of the competent authority. Sanction from the competent authority is therefore, more than enough. In this case, the sanction has come from the highest official. In other words, the Government itself has accorded sanction in this case. As rightly argued by the learned Additional Public Prosecutor, it is



ultimately the failure of justice should matter to this Court in this regard. By no stretch of imagination can be the petitioners contend that the failure of justice has been occasioned, merely because, instead of the Regional Director of the Collegiate Education, Secretary to Government himself has given sanction. Of-course the petitioners' counsel would claim that if the disciplinary action is initiated against them, they would be seriously prejudiced. But then, it would be a different cause of action altogether. I find no ground to interfere in this revision case. It stands dismissed.

Sd/-

Assistant Registrar (Cr1 Side)

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Sub Assistant Registrar(CS)

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To

1.The Special Judge for Vigilance and Antic Corruption Court,
Madurai.

2. The Inspector of Police,
Vigilance and Anticorruption Police Station,
Madurai, Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai. (2 C)

+1 CC to M/s.E.V.N.SIVA, Advocate (SR-81030[F] dated 09/08/2019)

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