

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2020

PRONOUNCED ON : 21.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6871 of 2020

and

Crl.M.P.No.3760 of 2020

A.V.Sekar ... Petitioner/Accused

Versus

State through
The Inspector of Police,
Vigilance and Anti-corruption,
Chennai City - II, Detachment,
Nandanam, Chennai-35. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the record in Special C.C.No.1 of 2019 on the file of Chief Judicial Magistrate cum Special Judge, Thiruvallur and quash the same.

For Petitioner : Mr.Sunder Mohan

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

O R D E R

The petitioner is the sole accused in the case in Special C.C.No.1 of 2019 facing trial for offences under Section 13(2) 13(1)(e) of Prevention of Corruption Act, 1988.

2. The brief facts of the case is that the petitioner is an employee of the Chennai Metropolitan Water Supply and Sewerage Department. He joined the Corporation of Chennai as Overseer on 09.05.1978 and thereafter, the State Government created a new department for Water Supply and Sewerage. The petitioner, who was serving in the Drainage Section, was posted in the aforesaid department. During the period from 01.01.1998 to 31.12.2005, he served as Junior Engineer in Chennai Metropolitan Water Supply and Sewerage Board, he was in possession of pecuniary resources of property disproportionate to his known sources of income to the extent of Rs.27,75,884/- and that he could not

satisfactorily account for the same. Hence, the petitioner committed the offence under Sections 13(2), 13(1)(e) of Prevention of Corruption Act, 1988.

3. The FIR in this case was lodged on 07.12.2012 by the respondent police and the final report was filed on 15.03.2018. As stated earlier, the check period in the case was between 1998 and 2005. Nearly 20 years later, the charge sheet is filed. The prosecution sought for sanction originally on 18.09.2014, however, the Department has accorded sanction only during November 2017. The sanction order indicates that there was a final letter from the respondent police to the department on 03.10.2017 and it appears that sanction was granted after this letter on 02.11.2017 by the Managing Director of Chennai Metropolitan Water Supply and Sewerage Board, Chennai.

4. The petitioner further submits that for the same issue, departmental actions initiated against the petitioner for acquiring properties without obtaining prior permission from the Board and he had not adhered to Rule 20 of CMWSSB Employees (Conduct Regulations), 1978 and his act amounted to misconduct under Regulation 6(20) and 6(37) of CMWSSB Employees (Discipline and Appeal Regulations), 1978.

5. Further, the Employee Committee, awarded minor punishment to the petitioner, on the basis of Enquiry report and the same was communicated to the petitioner by the Managing Director of CMWSSB by his proceedings dated 27.03.2017. The findings of the Employment Committee clearly show that any action against the petitioner could only be taken after the approval of the Employment Committee. The petitioner's action was only a technical lapse and that he had the requisite financial capability to purchase the properties mentioned therein. While so, the Managing Director who is not competent to take any disciplinary action against the petitioner independently. Further without the approval of the Employment Committee, had accorded sanction after 3 years after the request made by the respondent without placing the files before the Employment Committee and getting their approval.

6. The petitioner filed a discharge petition before the trial court in CrI.M.P.No.1661 of 2019 and the same was dismissed on 20.01.2020. However, the learned Counsel for the Petitioner submitted that the validity of sanction was not raised in the discharge petition and the petitioner is raising it for the first time before this Court. Further, he submits that under Section 19(1)(c), the sanction has to be accorded by the competent authority to remove the petitioner from service and as per CMWSSB Employees (Discipline and Appeal) Regulations, 1978, Regulation 7 Table VI, the competent authority to remove

the petitioner, who was working as Assistant Executive Engineer, was the Managing Director with the approval of the Employment Committee. The petitioner submits that the sanction order dated 02.11.2017 issued by the Managing Director shows that sanction as such accorded by the Managing Director of CMWSSB alone, is invalid, he alone cannot remove the petitioner. The Managing Director could have issued sanction orders only after getting approval from the Employment Committee.

7. Further, the petitioner relied upon the decision of the Apex Court in the case of State of Goa Vs Babu Thomas reported in (2005) 8 SCC 130 which is similar to the case of the petitioner, in which, the Managing Director besides being competent had not placed files for approval before the Employment Committee and there is nothing in the sanction order to reflect that the prior approval has been obtained from Employment Committee. The petitioner relied upon the following decisions of this Courts:

1. T.S.Ramasamy Vs State of Tamilnadu reported in [1992 SCC Online Mad 414]
2. C.Mathesu Vs The Secretary to Government, Revenue Department, Chennai-9 & others reported in [2013 (3) CTC 369]
3. Nanjappa Vs the State of Karnataka [(2015) 14 SCC 186]

8. The learned Additional Public Prosecutor submitted a case against the petitioner, who is an employee of Metro Water is being prosecuted for offence under Section 13(2), 13 1(e) of PC Act, 1988 for the petitioner's possession of properties disproportionate to his known sources of income to the tune of Rs.27,74,884/-, before the learned Chief Judicial Magistrate, Thiruvallur in Special C.C.No.1 of 2019. The sole ground in this quash petition assailed by the petitioner is that the sanction was granted by an incompetent person and further there was a delay in granting sanction from 18.09.2014 to 03.10.2017. The delay occurred "due to long vacancy in the place of competent authority issuing prosecution sanction".

9. Further he submitted that in this case, as per CMWSSB Employees (Discipline and Appeal Regulations) Tabulation, which has been produced with the quash petition as well as by the report filed by the respondent, it is seen that the removal from service of the person in the cadre of the petitioner can be done only by the Managing Director with approval of Employment Committee. The Employment Committee's minutes of the meeting dated 22.04.2015 had been produced, which approved for sanction for prosecution of the petitioner. Further from the minutes, it is seen that the case against the petitioner has been put up to

the Committee with a detailed note and with connected records including FIR, Final Report, Investigation Report.

10. Thereafter, on perusal of the same, the Employment Committee gave their approval and had granted its approval on 06.01.2015. Thereafter, the Managing Director, who is the competent Authority by his proceedings had issued sanction order only on 02.11.2017 under Section 19(1)(c) of Prevention of Corruption Act and the joint minutes approval were produced after furnishing copies to the petitioner counsel.

11. Thus, the learned public prosecutor submitted that the sanction order has been passed by the Managing Director is valid sanction and there is no infirmity error, omission or irregularity as contended by the petitioner and prayed for dismissal of the quash petition. He further submitted that the sanction for prosecution is to protect the Public Servant from vexatious complaints and not to shield the corrupt person. The points raised by the petitioner are to be raised at the time of trial. The petitioner has acquired properties and he could not properly explain his possession after receiving final notice, not satisfied with the explanation, charge sheet was filed. Further, the official lapse has to be considered properly, due to the vacancy in the post of Regular Managing Director. The delay in according sanction was an administrative delay. The sanction order in this case has been issued by the Managing Director, after getting approval from the Employment Committee, who is the competent Authority and hence, there is no irregularity in this case. He further stated that the citation relied the petitioner are not relevant to the facts and circumstances of the case, since the Apex Court clearly held that if there is an invalid sanction on that score alone, the case cannot be quashed.

12. In reply the petitioner submitted that there is a delay in according sanction, the prosecution contention that there was long vacancy in the place of competent Authority and there was no competent authority cannot be accepted, there was four I.A.S Officers during the period who occupied the post of Managing Director during the period of 2012-2018. Hence the respondent's contention is factually incorrect. Further, the prosecution has now introduced a new document the minutes of the Employment Committee allegedly passed in the year 2015, now brought before this Court. This document does not form part of the records under Section 173(2) Cr.P.C.

13. Further, the sanction order dated 02.11.2017, reference to the Employment Committee is not found. The sanction order was not based on the Employment Committee approval. It is seen from the records that the Employment Committee had granted approval

in the year 2015, during that period one Chandra Mohan was the Managing Director and thereafter, the sanction has been granted by one Thiru.Satyabrata Sahoo IAS on 02.11.2017.

14. He further submitted that by proceedings dated 27.03.2017 the then Managing Director Mr.Arun Roy I.A.S. in the departmental proceedings that the petitioner held that only committed technical lapse and it is not a serious offence. This order is based on the Employment Committees approval in the year 2017.

15. In view of the Employment Committee's approval in the year 2017, taking such a stand and thereafter the sanction order for prosecution issued in the year 02.11.2017, based on the Employment Committee approval of the year 2015, is bad in law and hence the sanction order is invalid.

16. The public prosecutor countered and submitted that there is no error or irregularity in granting sanction to take action against corrupt officials. Further, in this case, sanction was accorded as per the Regulation and the sanction accorded is a valid sanction. The Employment Committee minutes which forms part of the sanction, will be produced during the trial, which forms part of the sanction file. The Sanctioning Authority will have to file.

17. Considering the rival submissions and on perusal of the materials, it is seen that the sanction order is from 01.01.1988 and 31.12.2005 and the petitioner is prosecuted for offences under Section 13(2) r/w 13(1)(e) during the check period, the petitioner acquired assests to a tune of Rs.27,75,884/-. The petitioner's on the day of superannuation i.e. on 31.08.2014 was not permitted to retire and his service was freezed. The sanction was accorded on 02.11.2017, the Employment Committee on 06.01.2015 had approved. The copies of the minutes and the communication are produced and perused. There is some delay in the communication, for this reason the sanction cannot be quashed.

18. The minutes of the meeting and communication, forms part of the sanction file. In view of the same, the contention of the petitioner, is not sustainable. The petitioner is at liberty to raise these points before the trial Court.

19. In the result this petition is dismissed. Consequently, connected miscellaneous petition is closed. It is made clear that the observations and findings recorded in this order are only for the purpose of disposal of this quash petition. It is open for the trial Court to decide the pending trial on its own merits, uninfluenced by this order.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

kmm

To

1.The Inspector of Police,
State of Tamilnadu
Vigilance and Anti-corruption,
Chennai City - II, Detachment,
Nandanam, Chennai-35.

2.The Chief Judicial Magistrate Cum Special Judge,
Thiruvallur.

3.The Additional Public Prosecutor,
High Court, Madras.

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