

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 1-10-2021****Passed on 30-11-2021.****WPCR No. 85 of 2015**

- Jagat Raj Patel S/o Late Shri M.P. Patel Aged About 58 Years R/o R -1, Kanchan Ganga Phase -2 Near Shabri Asharam, Rohanipuram Raipur Chhattisgarh.

---- Petitioner**Versus**

1. Chhattisgarh State Power Holding Company Limited Through Its Managing Director, Sewa Dadan, Dangania, Raipur Chhattisgarh, Chhattisgarh
2. Chhattisgarh State Power Distribution Company Limited Through Its Managing Director Sewa Dadan, Dangania, Raipur Chhattisgarh , District : Raipur, Chhattisgarh
3. State Of Chhattisgarh Through The Secretary, Department Of Energy, D.K.S. Bhawan Mantralaya Raipur Chhattisgarh , District : Raipur, Chhattisgarh
4. Additional Director General Of Police State Of Economic Offences Investigation Bureau And Anti Corruption Bureau, Telibandha Raipur Chhattisgarh , District : Raipur, Chhattisgarh
5. Inspector General Of Police Anit Corruption Bureau, Telibandha Raipur Chhattisgarh , District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Dr.N.K. Shukla, Sr. Advocate with Ms. Deepa Jha, Advocate.
For Respondents No.1 & 2	:	Mr. Abhishek Sinha, Sr. Advocate with Mr. Aditya Pandey and Mr. D.L. Dewangan, Advocates.
For respondent No.3,4,5/State.;	:	Mr. Sudeep Verma, Dy,G.A.

Hon'ble Shri Justice Narendra Kumar Vyas**CAV ORDER**

1. The petitioner has filed this writ petition (Cr) under Article 226 of the Constitution of India, challenging the prosecution and sanction

granted by respondent Chhattisgarh State Power Holding Company vide its order dated 18-3-2013 whereby granting sanction to prosecute the petitioner under Section 19(1)(c) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988" is against the provisions of law.

2. The brief facts as projected by the petitioner are that he was initially appointed as Trainee Graduate Engineer on 15-9-1977 by erstwhile Madhya Pradesh Electricity Board and he was confirmed as Assistant Engineer on 13-9-1978 and was promoted to the post of Superintendent Engineer in January 2006 by Chhattisgarh State Electricity Board and at the time of filing of the writ petition he was working as an Additional Chief Engineer with effect from January 2010 with respondent Chhattisgarh State Power Distribution Company Limited. It is further contended that when the petitioner was posted as Executive Engineer at Jagdalpur with erstwhile Madhya Pradesh Electricity Board, a raid was carried out by the Special Police Establishment, Lokayukta, Bhopal on 16-2-2000 for allegedly owning disproportionate income to his known sources of income and registered FIR vide crime No 21 of 2000 for offence punishable under Section 13(1)(e) read with Section 13(2) of the Act, 1988. It is further contended that after creation of the State of Chhattisgarh, on 1-11-2000, Chhattisgarh State Electricity Board has been constituted on 15-11-2000 and started functioning from 1-12-2000. Thereafter, applying the order of State of Chhattisgarh vide notification No F-1-8/2008/1311 dated 19-12-2008 Chhattisgarh State Electricity Board has been divided into five companies namely (1) Chhattisgarh State Power Generation Company Limited, (2) Chhattisgarh State Power Distribution Company Limited (3) Chhattisgarh State Power Transmission Company Limited (4) Chhattisgarh State Power Trading Company Limited and (5) Chhattisgarh State Power Holding Company Limited.

3. It has been further contended by learned counsel for the petitioner that Special Police Establishment, Bhopal after lapse of three years wrote a letter dated 5-4-2003 to the Chhattisgarh State Electricity Board to grant sanction for prosecution of the petitioner as per provisions of Section 19(1)(c) of the Act, 1988. The Special Police Establishment Lokayukta has also annexed documents of the proceedings to CSEB and would submit that the income of the petitioner was calculated at Rs.22,89,686.82 and the expenditure for Rs.31,15,132.42 has been shown and as such amount of Rs.8,25,546.60 was allegedly computed to be disproportionated to the known source of income for the search period from 20-2-1985 to 15-2-2000. The letter of the Special Police Establishment Lokayukta, Bhopal dated 5-4-2003 was considered in detail by the Chhattisgarh State Electricity Board being the competent authority to consider such grant of sanction or its refusal. The Board asked for certain clarifications from the office of the Special Police Establishment, Lokayukta, Bhopal and thereafter considered the computation of admissible income and reasonable expenditure before taking any final decision in that regard. Finally, the matter was considered by the Board being the competent authority and came to the conclusion that sanction cannot be granted to the Special Police Establishment, Lokayukta which was informed vide letter dated 12-9-2005. It is further submitted that after creation of State of Chhattisgarh, State Bureau of Investigation (Economic offences) was constituted by the respondent State on 1-11-2000, therefore, Criminal case pending against the petitioner was transferred from the Special Police Establishment, Lokayukta, Bhopal to the aforesaid ACB, State of Chhattisgarh, Raipur. Chhattisgarh State Electricity Board also sent a letter dated 12-9-2005 to the respondent Inspector General, ACB, Raipur, he was satisfied with that reply. As such, respondent ACB, sent a letter to State of Chhattisgarh through the Secretary Department of Energy being the parent department exercising

jurisdiction over the Chhattisgarh State Power Holding Company Limited and its other constituent companies. The Energy Department sent a matter along with request of Anti Corruption Bureau along with relevant documents to Department of Law for considering the grant of sanction. The matter was examined by the Department of Law and the opinion was given that once the sanction has been refused by the competent authority, the same cannot be considered/reviewed. Anti Corruption Bureau did not further correspond with the Department of Energy but on the contrary again made correspond with the Department of General Administration of State of Chhattisgarh again insisting to grant of sanction under Section 19(1)(c) of the Act, 1988. Again, it was sent to the Board of Directors of the respondent company for grant of sanction or as it could be considered only by the Board of the respondent company. But most unfortunately, the respondent Chairman of the respondent company without being acquainted with the true facts of the case and even without application of mind as also without having any jurisdiction granted sanction to the ACB for prosecuting the petitioner. Thereafter, in compliance of the order of the Chairman, the Executive Director (HR) of the respondent Holding Company issued the order dated 26-3-2010 granting sanction under Section 19 (1) (c) of the Act, 1988.

4. The petitioner has challenged the grant of sanction vide order dated 26-3-2010 before this court by filing the Writ Petition (CR) No. 1791 of 2010. Hon'ble this Court vide its order dated 24-8-2012 has passed the order and relevant portion thereof is extracted herein-below for ready reference.

“10. Consequently, the writ petition is partly allowed. Sanction order dated 26-3-2010 accorded by G.S. Kalsi, Executive Director (HR), CSPHCL, Raipur, authority not competent to accord sanction, is hereby quashed. Respondents No. 1 to 5 are at liberty to take appropriate steps in terms of Section 19(1)(c) of the Act within six months from today and till then or till the decision of respondent No. 1 to 5 and its communication/production of such

decision before the Special Judge, trial of Special Case No. 02/2010 pending before the Special Judge, under PC Act, Bastar at Jagdalpur shall remain stayed. However, the petitioner is at liberty to challenge the subsequent order/action of the respondents according or refusing to accord sanction”.

5. The petitioner being aggrieved by the said order, has filed present writ appeal before this court. It has been further contended that after filing of writ appeal, during pendency of the writ appeal certain developments took place. They are in brief as under:

This court vide its order dated 4-3-2011 rejected the application filed by the petitioner for extension of time and vide order dated 18-3-2013 the respondent No.1 company has granted sanction to ACB to prosecute the petitioner under Section 19(1)(c) of the Act, 1988. Thereafter, the respondent No.3 has also filed an application on 1-4-2013 for recalling the order dated 4-3-2013 and also for condoning the delay in grant of sanction. On 22-4-2013 the trial court closed the trial against the appellant on the ground that the trial cannot be proceeded in absence of a sanction order which is necessary under Section 19 of the Act, 1988. On 3-5-2013, this court allowed the application for condonation of delay and SLP was filed before the Hon'ble Supreme Court challenging the order dated 3-5-2013 whereby delay was condoned by the petitioner. The said SLP was dismissed by Hon'ble the Supreme Court on 14-8-2014.

6. Learned counsel for the petitioner would submit that respondent No.1 has granted sanction to prosecute the petitioner under Section 19(1)(c) of the Ac, 1988 without appreciating the fact that the respondent Board has already refused to grant sanction and subsequently the respondent ACB had not placed/produced any fresh material before the respondent No.1, but respondent No.1 has passed the order mechanically without application of mind. It has been further contended that it is not a case that fresh materials were placed before the sanctioning authority, therefore, without application of mind,

sanction has been granted which is illegal. He would further submit that the respondent Board in a similar matter where ACB asked for grant of sanction under the provisions of the Act, 1988 in the case of one R.P.Thakur, the sanction was refused/denied by the same Board nor it was accepted and would pray that the sanction granted by the respondent No.1 vide order dated 18-3-2013 communicated to the respondent Anti Corruption Bureau may kindly be quashed.

7. Learned counsel for respondents No. 1 and 2 filed their reply and would submit that the petitioner is challenging the grant of sanction order dated 18-3-2013 after lapse of more than two years without any explanation, therefore, the petition is liable to be dismissed on account of delay and laches. He would further submit that averments made in this petition are denied and grant of sanction dated 18-3-2013 is legally valid and passed by the competent authority. He would further submit that the Board being the competent authority, therefore, as of now considered the material and passed the sanction order dated 18-3-2013 after due application of mind, therefore, no case is made out. The averments made in this petition are not relevant as in that case there was a resolution which was recorded in the minutes of book. The grounds urged by the petitioner are not sustainable, therefore, the writ petition being devoid of merits, deserves to be dismissed by this court.
8. Learned counsel for respondents No. 3 to 5/State has filed their return and would submit that an employee of a Power Company/Electricity Board is a public servant within the meaning of Section 21 of the IPC 1860 and as such the provisions of IPC and Prevention of Corruption Act, 1988 are applicable to it. The Managing Director has acted fully in accordance with law according to mandate of Section 19 of the Act, 1988. Therefore, the writ petition being without merit deserves to be dismissed.
9. The petitioner has filed rejoinder to the return contending that the respondents have failed to produce any evidence regarding that the

initial order refusing to grant sanction was based on extraneous consideration. Further, they have failed to provide any provision which empowers it to reconsider the order refusing sanction. The respondents failed to see that the petitioner has made specific averments which shows that the same Board refused to grant sanction to one R.P. Thakur. The sanction was refused/denied by the same Board which was never disputed by Chhattisgarh State Electricity Board or by the ACB.

10. I have heard learned counsel for the parties and perused the record of Criminal Revision No.565 of 2013 (State of CG vs. Jagat Raj Patel) wherein the State of Chhattisgarh has challenged the order dated 5-4-2013 by which charges leveled against the petitioner under Section 13(1) (e) and 13(2) of the Prevention of Corruption Act, 1988 have not been levied and the present petitioner was discharged. This court after hearing hearing the parties has passed the order dated 18-2-2015 by holding that the only reason for discharge was that this court had not granted further extension. As subsequent an order has been passed by this court on 3-5-2013, it will be open for the applicant to take such steps as may be available to it under the law. With the aforesaid liberty, the revision petition is disposed off.
11. Learned counsel for the State would submit that during pendency of the petition total 57 witnesses have to be examined out of which 40 witnesses have already been examined and remaining 17 witnesses have to be examined and next date of hearing was given on 18-8-2021.
12. The point required to be determined by this court is whether the grant of sanction is legal and justified, can be examined by the writ court or can be examined in the trial court by the trial court while conducting the trial under the provisions of the Act, 1988.
13. I have gone through the contents made by the petitioner in his petition. From bare perusal of the documents filed by the petitioner, it is clear that there is a disputed fact with regard to the procedure,

authority, competency of granting sanction to prosecute the petitioner. This has to be ascertained by the trial court as to whether procedure prescribed under the provisions of the Act, 1988 has been followed or not and whether on subsequent stage, some new fresh material is placed or not before granting sanction to prosecute the petitioner, these are the disputed questions which cannot be ascertained by this Court while exercising its writ jurisdiction under Article 226 of the Constitution of India or exercising its inherent power under Section 482 of the Cr.P.C.

14. Hon'ble the Supreme Court has already considered the issue and held that grant of sanction can be examined by the trial court. Hon'ble the Supreme Court in **Station House Officer, CBI/ACB/Bangalore vs. B.A, Srinivasan and another reported in 2020 (2) SCC 153** has held in para 14 and 15 which are extracted herein-below.

“14. Again, it has consistently been laid down that the protection under Section 197 of the Code is available to the public servants when an offence is said to have been committed ‘while acting or purporting to act in discharge of their official duty’, but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. The statements of law in some of the earlier decisions were culled out by this Court in *Inspector of Police and another vs. Battenapatla Venkata Ratnam and another*, reported in (2015) 13 SCC 87 as under:-

“7. No doubt, while the respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been committed by them “while acting or purporting to act in discharge of their official duty”. That question is no more *res integra*. In *Shambhoo Nath Misra v. State of U.P.*, reported in (1997) 5 SCC 326 , at para 5, this Court held that: (SCC p. 328)

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds, etc. in furtherance of or in the discharge of his official

duties. The official capacity only enables him to fabricate the record or misappropriate the public fund, etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the 9 (2015)13 SCC 87 10 (1997) 5 SCC 326 Criminal Appeal No. 1837 of 2019 (@ SLP(crl.)No.6106 of 2019) Station House Officer, CBI/ACB/Bangalore vs. B.A. Srinivasan same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.”

8. In Parkash Singh Badal v. State of Punjab, reported in (2007) 1 SCC 1 at para 20 this Court held that: (SCC pp. 22-23)

“20. The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant’s own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity.”

and thereafter, at para 38, it was further held that: (Parkash Singh Badal case¹¹, SCC p. 32)

“38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage.”

9. In a recent decision in Rajib Ranjan v. R. Vijaykumar, reported in (2015) 1 SCC 513 at para 18, this Court has taken the view that: (SCC p. 521)

“18. ... even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, 11 (2007) 1 SCC 1 12 (2015) 1 SCC 513 Criminal Appeal No. 1837 of 2019 (@ SLP(crl.)No.6106 of 2019) Station House Officer, CBI/ACB/Bangalore vs. B.A. Srinivasan such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted.” (emphasis already supplied)

15. It has also been observed by this Court that, at times, the issue whether the alleged act is intricately connected with the discharge of official functions and whether the matter would come within the expression 'while acting or purporting to act in discharge of their official duty', would get crystalized only after evidence is led and the issue of sanction can be agitated at a later stage as well. In *P.K. Pradhan vs. State of Sikkim* represented by the Central Bureau of Investigation, reported in (2001) 6 SCC 704, this Court stated:-

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence 13 (2001) 6 SCC 704 Criminal Appeal No. 1837 of 2019 (@ SLP(crl.)No.6106 of 2019) *Station House Officer, CBI/ACB/Bangalore vs. B.A. Srinivasan* establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial".

15. This Court cannot lose sight of the fact that the 57 witnesses have to be examined in this Court out of which 40 witnesses have been examined and the trial is at the verge of conclusion. As such also, no direction for quashing of the prosecution at this stage can be granted. Even otherwise, if we see the pleadings of the petitioner, material placed on record, it would be quite clear that the petitioner has raised the question about the validity of the sanction on the ground that proper procedure or material has not been considered by the authority while granting sanction. Therefore, in the light of the judgment rendered by Hon'ble Supreme Court, it is clear that the writ petition (cr) challenging the validity and correctness of grant of sanction is not maintainable as disputed facts are involved with regard to procedure for grant of sanction. This can be examined by the learned trial court where the trial is going on. As such, the writ petition is not maintainable and liable to be disposed of by this Court with granting liberty to the petitioner to raise all these objections before the trial Court, where the trial is going on with regard to the validity of the sanction granted by respondent No.1 and in turn the trial court shall examine the validity and correctness of sanction granted by the respondent No.1, in accordance with law.
16. With the aforesaid observations, the instant petition is disposed of.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju