



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO. 126 OF 2020

Shri Tanaji Jyotiram Dhamal ..Applicant
VS.
The State of Maharashtra ..Respondent

Mr. Sachin R. Pawar for the Applicant.
Mr. Y.M. Nakhwa, APP for the State.

CORAM : M. S. KARNIK, J.
DATE : AUGUST 11, 2023

ORAL JUDGEMENT:

1. Heard learned counsel for the applicant and the learned APP for the State.
2. The applicant challenges the order dated 26/12/2019 rejecting the application below Exhibit 17, passed by the Judge, Special Court, under the Prevention of Corruption Act, 1988 (for short "P.C. Act").
3. At the relevant time, the applicant was the Vice Principal of Mangaon Junior College which has a grant-in-aid from the State Government. The accusations against the applicant are under Sections 7 and Section 13(1)(a) punishable under Section 13(2) of the P.C. Act. The sanction

under Section 19 of the P.C. Act was given by the Director of Education. It is the contention of the learned counsel for the applicant that the authority competent to remove the applicant under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "M.E.P.S. Act") is the Management of the institution. The Special Judge came to the conclusion that the Director of Education was competent to grant sanction as the definition of Management under the M.E.P.S. Act includes the department of the State Government, which conclusion is erroneous according to the learned counsel for the applicant.

4. Learned APP on the other hand, relied upon the Government Resolution (G.R.) dated 05/11/2015 issued by the State Government, in support of his submission and in support of the order passed by the Special Judge, which states that the Director of Education (Secondary and Higher Secondary) Maharashtra State Pune is the authority competent to grant sanction under Section 19 of the P.C. Act. It must be mentioned that the said G.R. dated

05/11/2015 was not placed before the Special Judge at the time of hearing of the application below Exhibit 17. Not placing the G.R. for consideration before the Special Judge will hardly be of any consequence for the reasons which follow hereafter.

5. The trap under the P.C. Act was laid on 13/03/2015. The G.R. on which learned APP relied upon is dated 05/11/2015, issued post the trap. Learned counsel for the applicant raised a submission that the G.R. which is issued subsequent to the trap cannot have a retrospective operation. Learned APP submitted that the question of retrospectivity does not arise as the G.R. is only clarificatory in nature and only in support of the plea that the Director is competent to grant sanction under Section 19 of the P.C. Act.

6. The provision relevant, for a decision in the present case, Section 19 of the P.C. Act reads thus:

"(1) No court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]--

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence 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:"

(emphasis mine)

7. In terms of clause 1(c) of the Section 19 of the P.C. Act, in the case of the applicant who was working as a Vice Principal of the Mangaon Junior College seeking grant-in-aid from the State Government, it is the authority competent to remove him from his office who can grant sanction to prosecute the applicant.

8. Rule 38 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "M.E.P.S. Rules") provides for the power to terminate services, etc. which reads thus:

"38. Power to terminate services, etc. - The Management shall not delegate to any subordinate

authority other than the Chief Executive Officer, power to execute the decision of the inquiry Committee in respect of reduction in rank or termination of services.”

9. The term Chief Executive Officer is defined by Rule 2(c) which reads thus:

“(c) ‘*Chief Executive Officer*’ means the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the Management;”

10. The definition of Department under Section 2(4) and ‘Director’ under Section 2(6) of the M.E.P.S. Act, which has a bearing on the controversy is thus:

“(4) “Department,” means the Education Department of the Government of Maharashtra;

(6) “Director,” means the Director of Education or the Director of Technical education or the Director of Vocational Education and Training or the Director of Art, as the case may be, appointed as such by the State Government;”

11. The definition of the Management under Section 2(12) of the M.E.P.S. Act, is relevant in the present context reads thus:

“(12) “Management” in relation to a school, means,—

(a) in the case of a school administered by the State Government, the Department;

(b) in the case of a school administered by a local authority, that local authority; and

(c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school;”

(emphasis mine)

12. According to me, the Special Judge misconstrued the definition of the term “Management” in relation to school. No doubt, the Junior College is receiving a grant-in-aid from the State Government. However, in relation to Junior College, as is the present case, in terms of Section 12(c) of the M.E.P.S. Act, it is a person or body of persons, whether incorporated or not and by whatever name called, administering such school which will be the Management. The definition of “Management” has specifically spelt out, who is the management in case the school is administered by (a) the State Government (b) local authority and (c) in other cases. The finding of the Special Judge that the Management includes the department of the State Government is erroneous. It is pertinent to note that the management had previously refused the sanction but later on, the sanction was given by the Director. As indicated earlier, Learned APP tried to support the order passed by

the Special Judge by placing reliance on G.R. dated 05/11/2015. The G.R. was not placed before the Special Judge when the application below Exhibit 17 was decided. However, in my opinion, nothing much will turn on the G.R. dated 05/11/2015 in view of the decision of this Court in the case of **Pranita Prakashrao Katewale vs State of Maharashtra**¹. This Court observed that the said G.R. is nothing but an executive instruction issued by the State and such executive instructions can certainly not prevail over statutory provisions of the M.E.P.S. Act and Rules. In paragraph No.16 it is observed thus:

"16. Thus, the contention raised on behalf of non-applicant State that the Director of Education was competent to grant sanction for prosecution against the applicant in the present case is wholly unsustainable and it is a fallacious argument raised on behalf of the non-applicant State that as long as the Government Resolution dated 05/11/2018 exists and it is not set aside, the Director of Education is entitled to grant sanction. This is because in no case can an executive instruction like the Government Resolution dated 05/11/2015, prevail over the statutory provisions of the MEPS Act and Rules and the Judgments rendered by this Court. Therefore, it is found that the Court below committed a grave error in rejecting the contention raised on behalf of the applicant regarding defective sanction as ground for discharge."

1 2019 SCC OnLine Bom 1221

13. In this view of the matter, the contention of the learned APP that it is the Director of Education who can grant sanction to prosecute the applicant is without any merit. The Director of Education has no authority to grant sanction under Section 19 of the P.C. Act in the case of the Management in relation to a school which is not administered by the State Government. Merely because the school is in receipt of grant-in-aid from the State Government will not confer an authority on the Director of Education to exercise powers under Section 19 of the P.C. Act thereby virtually overriding the mandate of the M.E.P.S. Act and the rules framed thereunder read in the context of the Section 19 of the P.C. Act. The management of the school competent to grant sanction is specifically prescribed, the sanction granted by the Director of Education is without any authority of law.

14. The Revision Application is accordingly allowed. The impugned order is set aside. The application below Exhibit 17 before the Special Court under the P.C. Act is allowed.

15. The Revision Application stands disposed of in the above terms.

(M. S. KARNIK, J.)