IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 2nd OF JANUARY, 2024

WRIT PETITION No. 30261 of 2023

BETWEEN:-

M/S INFRA DEVELOPERS (A PARTNERSHIP FIRM) THROUGH PARTNER BALMUKUND SHARMA, S/O SHRI SHANKARLAL SHARMA, AGED 45 YEARS, OCCUPATION: BUSINESS, R/O CHATRI ROAD, SHIVPURI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRASHANT SHARMA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF HOME, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **SPECIAL POLICE ESTABLISHMENT, LOKAYUKT ORGANIZATION, THROUGH ITS DIRECTOR GENERAL, F-BLOCK SULTANIA RD, OLD SECRETRATE, SBI BANK SQUARE, BHOPAL, MADHYA PRADESH 462001**

3. **SUPERINTENDENT OF POLICE (LOKAYUKT), GWALIOR DIVISION, GWALIOR (MADHYA PRADESH)**

4. **SUPERINTENDENT OF POLICE (LOKAYUKT), SHIVPURI (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ANKUR MODY - ADDITIONAL ADVOCATE GENERAL FOR RESPONDENT NO.1/STATE)
(SHRI SANKALP SHARMA - ADVOCATE FOR RESPONDENTS NO. 2 TO 4/LOKAYUKT)

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This petition coming on for hearing this day, ***Justice Rohit Arya*** *passed the following:*

ORDER

Petitioner, a civil contractor, is before this Court for following relief(s) :

> "i- That, Respondent department may kindly be directed to appoint Special Public Prosecutor as per Rule 7 of the M.P. Vishesh Nyayalya Niyam, 2012 for Special Courts under Prevention of Corruption Act at Gwalior (M.P.).
>
> ii - That, Ld. Trial Court may kindly be directed to expeditiously decide the application Annexure P/5 pending adjudication in case no.MJCR-910/2020 before the Ld.15th Additional Session Judge (Special Judge PC Act), Gwalior (M.P.)
>
> Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be granted."

Shri Prashant Sharma, learned counsel for petitioner submits that despite closure report being filed by respondent No.2 after investigation conducted for offences under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, petitioner's application for returning the articles seized during investigation filed under Section 451, 457 of Cr.P.C has been kept pending in the Court below since 2020 under the pretext that the Public Prosecutor is not available. It is submitted that petitioner has a legal right for decision on his pending application. The same cannot be kept pending *sine die* for reasons that none has appeared on behalf of the State before the Court below.

Under such circumstances, the aforesaid two-fold prayers have been made.

Shri Ankur Mody, learned counsel for State and Shri Sankalp Sharma, learned counsel for Lokayukt, submit that repeated letters have been issued to

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the concerned department for appointment of Public Prosecutor but so far, no appointment has been made.

As a matter of fact, at the instance of the petitioner, relief No.1 cannot acceded to. However, if the State Government is not represented in the Court below, the application pending before the Court below cannot be kept in abeyance. Every citizen has a right for consideration of proceedings initiated in law pending before the Court of competent jurisdiction. If the State Government chooses not to be represented in the Court below, the Trial Court is always free to pass suitable orders conforming to legal and judicial discipline instead of keeping the applications or proceedings, as the case may be, pending *sine die*.

With the aforesaid observations and directions, the Writ Petition stands **disposed of**.

However, before parting with the case, it is appropriate to observe that the concerned department of the State shall be well advised to ensure appointment of Public Prosecutors with promptitude to avoid any prejudicial order against the State in a given proceeding.

(ROHIT ARYA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

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