



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 806 OF 2023

Dhanraj S/o Atmaram Nandagawli,
aged about 59 years, Occupation : Service,
R/o 407, Kukday Layout & Post Bhagwan
Nagar, Nagpur

...Petitioner

// VERSUS //

1. State of Maharashtra, through Police Station Officer, Police Station, Sadar, Nagpur
2. Anti Corruption Bureau through its Additional Director General, having its Office at Sir Pochkanwala Marg, Worli, Mumbai
3. Account General (Accounts and Entitled) II, Maharashtra, Nagpur, Civil Lines, Nagpur

... Respondents

Shri R.R.Vyas, Advocate for the petitioner.

Shri A.R.Chutke, APP for the respondent no.1 and 2/State.

Shri S.A.Chaudhari, Advocate for the respondent no.3.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATED : 4th JULY, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Heard Shri Shri R.R.Vyas, learned advocate for the petitioner, Shri A.R.Chutke, learned Additional Public Prosecutor for the respondent no.1 & 2/State and Shri S.A.Chaudhari, learned advocate for the respondent no.3 and also perused the record.

3. Admittedly, petitioner is a Government Servant. He was appointed on the post of Divisional Accountant by the respondent no.3 in December, 1995.

4. Home Department of Government of Maharashtra had ordered an open inquiry in respect of Irrigation Projects undertaken by Vidarbha Irrigation Development Corporation, by letter dated 18th February, 2015. Anti Corruption Bureau was directed by letter dated 26th March, 2015 to carry out the inquiry. Upon the inquiry, Pramod Panjubrao Choudhari, Police Inspector attached to Anti Corruption Bureau, Gondia lodged the First Information Report on 12th December, 2017 alleging that while granting tender to the contractors pertaining to the work of various canals under the jurisdiction of Vidarbha Irrigation Development Corporation, the accused persons (including petitioner) had shown undue favour, increased the cost of the tender and thereby caused loss to the Government.

5. Learned advocate for the petitioner submits that as regards allegations against the petitioner is concerned, it is stated in the First Information Report that though a joint venture was not registered in the office of Registrar, petitioner allowed said joint venture to participate in the bid. But the authority concerned i.e. informant has failed to note that petitioner is not the employee of Vidharbha Irrigation Development Corporation and could not have played any role in allowing any party to participate in the bid or to allot the work to a person. The act done by present petitioner was only to issue blank form to said joint venture.

6. It is further submitted that after completion of investigation, matter was sent to the competent authority for obtaining sanction to prosecute the accused. Such proposal was sent to the respondent no.3 for according sanction to prosecute petitioner. After considering all the material and allegations, the respondent no.3 refused to accord sanction by order dated 7th December, 2018. It was specifically observed that there is no *prima facie* evidence to establish charge justifying offence. However, surprisingly the respondent no.2 gave letter to the respondent no.3 on 5th January, 2019 with request to reconsider the decision of refusal to accord sanction. That letter was received by the respondent no.3 on 16th January, 2019 and within no time i.e. next day 17th January, 2019, the respondent no.3 granted the sanction. In fact, there was absolutely no fresh evidence /additional evidence forwarded with letter dated 5th January, 2019 by the respondent no.2. On the basis of same material, which was considered earlier by the respondent no.3, the respondent no.3 has reconsidered or reviewed his own decision. This act is illegal and therefore said order deserves to be set aside.

7. Learned advocate for the petitioner relies on the decision of this Court in Chandan S/o Tulsiram Jibhakate Vs. State of Maharashtra and others; 2021 ALL MR (CRI) 1089, wherein reliance was placed on State of Himachal Pradesh Vs. Nishant Sareen (2010) 14 SCC 527.

8. Per contra, learned Additional Public Prosecutor submits that the refusal to accord sanction was not proper and therefore, it was pointed

out to the respondent no.3. Now, the sanction to prosecute is given after proper application of mind.

9. We have considered the allegations in the First Information Report and both orders of the respondent no.3. We have also considered the letter issued by Investigating Officer, for grant of sanction with material supplied to the respondent no.3. All the necessary documents appear to have been put before the respondent no.3 on the first occasion. After going through all those documents, the respondent no.3 had come to the conclusion that the said material is not sufficient to prosecute petitioner and then refused to give sanction. Order to that effect was passed on 7th December, 2018. Then all of sudden, it appears that the respondent no.2 gave letter dated 5th January, 2019 to the respondent no.3 with a request to reconsider the matter. Perusal of said letter dated 5th January, 2019 would clearly show that no new material was placed before the respondent no.3 so that he can review his earlier decision. The respondent no.3 has no power to review his own decision, which he had earlier taken on the basis of same material.

10. In Nishant Sareen (supra) where it was observed thus:

“ In this case, the Supreme Court has held that whenever there is a refusal to grant sanction, it would not be open to the competent authority to review such an order on same materials because power of review conferred upon the authority is not unbridled and unrestricted and putting of some fetters on it's power of an exercise.”

11. It will not be out of place to mention that decision in Chandan S/o Tulsiram Jibhakate (supra) was in respect of similarly placed employee and in his case also by order 17th January, 2019, the respondent no.3 had reviewed his earlier order. This Court observed thus :

“The competent authority passed five such orders separately for each of the five crimes but they were passed on the same date of 17.01.2019 in an identical manner. All these orders manifestly show absence of consideration of any fresh material or evidence discovered after the earlier orders were passed and as such, would be the orders adversely hit by the law laid down by the Supreme Court in the case of Nishant Sareen [2011 ALL SCR 2408] (supra).”

12. When review powers are not given by statute to a competent authority then such authority cannot review its own order on the basis of same material. Therefore, the order dated 17th January, 2019 passed by the respondent no.3 is illegal. It deserves to be set aside. Accordingly, we pass the following order.

- i. The writ petition stands allowed in terms of prayer clause (ii)
- ii. Rule is made absolute in aforesaid terms.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]