



WEB COPY



W.P(MD)No.26573 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	25.07.2024
Pronounced on	:	29.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.P(MD)No.26573 of 2022

and

W.M.P.(MD).Nos.20764 and 20766 of 2022

S.Nagaraj

... Petitioner

Vs.

1.The Secretary,
The Union of India,
Department of Agriculture,
New Delhi.

2.The Principle Secretary,
State of Tamil Nadu,
Department of Agriculture,
Fort St. George,
Chennai.

3.The Director,
Directorate of Seed Certification,
Coimbatore.

4.The Assistant Director (Agriculture),
Block,
Ottapidaram,
Thoothukudi District.



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5. The Assistant Director,
Department of Seed Certification,
Thoothukudi.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari to call for the records of the second respondent in his proceeding in G.O.Ms.No.104 (Agriculture (AA2) Department, dated 03.03.2016 and quash the same.

For Petitioner	:Mr.K.P.S.Palanivelrajan Senior Counsel for Mr.K.Prabakaran
For Respondents	:Mr.M.Siddharthan Additional Government Pleader

ORDER

The Writ Petitioner has filed this writ Petition challenging the sanction order accorded by the second respondent in G.O.Ms.No.104 (Agriculture (AA2) Department, dated 03.03.2016, to the Vigilance Department to prosecute him for the offences under Sections 167, 409, 420, 468, 472 and 477-A of IPC r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.



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2.The Petitioner was working as a Seed Certification Officer, Kovilpatti. During his tenure, he and other accused were said to have committed certain malpractice, which resulted in misappropriation of the subsidy amount allotted for the National Food Security Mission and National Agriculture Development Programme scheme, and the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Thoothukudi, registered a case in Crime No.4 of 2013 for the offence under Sections 409 r/w 109 of IPC and 13(1)(c) and (d) r/w 13(2) of Prevention of Corruption Act, 1988, and investigated the matter and after obtaining sanction from the second respondent in G.O.Ms.No.104 (Agriculture (AA2) Department, dated 03.03.2016, filed the final report. The same was taken on file in Spl.C.C.No.5 of 2016 by the learned Chief Judicial Magistrate cum Special Judge, Thoothukudi, and the matter is pending trial. Challenging the same, the present petition has been filed.

3.The learned Senior Counsel appearing for the writ petitioner submitted that there was no application of mind in the said order and absolutely no material is available against him to accord the sanction under Section 19 of the Prevention of Corruption Act, 1988. Without any material and without summoning any material available on record from



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the Parent Department, the second respondent committed error in according the sanction to prosecute him only on the basis of the report of the investigating officers. He further submitted that if there was non-application of mind, the same amounts to miscarriage of justice and hence, he seeks for setting aside the same.

4.This Court considered the rival submissions made by the learned counsel appearing for the petitioner and perused the materials available on record.

5.Admittedly, the petitioner is arraigned as A3 and final report was filed. After filing the final report, cognizance was taken in Spl.C.C.No.5 of 2016 on the file of the learned Chief Judicial Magistrate cum Special Judge Court, Thoothukudi. After taking cognizance in Spl.C.C.No.5 of 2016, the writ petition filed by the petitioner is legally not maintainable. It is settled principle that the petitioner/accused has no right to file a writ petition challenging the impugned sanction order. The same was repeatedly held by the Honourable Supreme Court in the case of ***Devinder Singh and others Vs. State of Punjab*** reported in **2016 12 SCC 87** and also this Court in the case of ***Dr.J.Jayalalitha Vs.***



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Dr.M.Channa Reddy and others reported in **1995 1 LW 525**. In view of the above, writ petition itself is not maintainable.

6. The learned senior counsel would submit that the sanctioning authority accorded sanction without application of mind. Whether, the sanctioning authority accorded sanction with application of mind or not is a question of fact. Therefore, this Court in all good sense expressed its difficulty to discuss the said factual aspect in this writ petition on the ground that the same would affect the petitioner's case before the trial Court during the course of the trial. But the writ petitioner insisted this Court to render a finding on the said fact of non application of mind. Therefore this Court without any other option delves into the question whether the sanctioning authority accorded the sanction with application of mind.

6.1. The allegation against the writ petitioner is that he is seed certificate officer and he conspired with other officers namely A2 Assistant Agriculture Officer, A3 another seed certification officer to defraud the subsidy amount for Rs.12,01,950/- under the scheme the “National Food Security Mission” and “National Agriculture



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Development Program” and prepared a false indenture form and created records with forged signatures of farmers as if 45 farmers raised 71 seed farms with false particulars and with intention of causing it to be believed that those documents were true and A1 prepared a false inspection report as if he visited those seed farms. The investigating agency collected materials documents and produced before the sanctioning authority.

7. Before Further elaboration on submission of petitioner regarding non application mind while according sanction, this Court has a duty to find out the meaning of “sanction” and precedents relating to the accord of sanction. The word ‘sanction’ has not been defined in the Code of Criminal Procedure or in Prevention of Corruption Act.

<i>Dictionary</i>	<i>Meaning</i>
<i>Webster's Third New Internal Dictionary</i>	<i>Explicit permission or recognition by one in authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.</i>
<i>The New Lexicon Webster's Dictionary</i>	<i>Explicit permission given by some one in authority.</i>



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<i>The Concise Oxford Dictionary.</i>	<i>Encouragement given to an action etc., by custom or tradition; express permission, confirmation or ratification of a law etc; authorize, countenance, or agree to (an action etc.)</i>
<i>Stroud's Judicial Dictionary</i>	<i>Sanction not only means prior approval; generally it also means ratification.</i>
<i>Words and Phrases—</i>	<i>The verb 'sanction' has a distinct shade of meaning from 'authorize' and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of authority.</i>
<i>The Law Lexicon by Ramanath Iyer</i>	<i>Prior approval or ratification.</i>
<i>Rameshwar Bhartia Vs. State of Assam reported in 1952 2 SCC 203, the Hon'ble Supreme Court has stated that</i>	<i>Sanction is in the nature of permission.</i>

7.3.In ***Om Prakash v. State of U.P., 2001 SCC OnLine All 818*** at page 1248. Hon'ble Mr.Justice G.P.Mathur (as he then was) made detailed discussion on this aspect and finally has held that

6..... The word 'sanction' has been used as a “verb” and therefore it will mean to assent, to concur or approval.



7.4. Therefore, in the considerable opinion of this Court, sanction is the independent act of sanctioning authority with due application of mind over the material forwarded by the investigating agency to prosecute the accused before the Court of law under the penal provision constituting the offence.

7.5. The Hon'ble Supreme Court in ***State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119*** after considering the earlier various decisions of the Hon'ble Supreme Court reported in ***AIR 1958 SC 124, AIR 1979 SC 677, 1995 6 SCC 225, 2005 4 SCC 81, 2006 12 SCC 749, 2007 11 SCC 273, 2011 1 SCC 491***, has expounded the following detailed principles of law governing the validity of sanction:

“14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the



sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity.”

8. In this case, the operative portion of the sanction order is as follows:

“9. AND WHEREAS, the aforesaid act of Thiru. S.Nagaraj, constitute the offence punishable under section 120 –B, 467, 471, 420, 409 read with 109 of the said Indian



penal code, 1860 and clauses (c) and (d) of sub section (1) of section 13 read with sub section (2) of section 13 of the said prevention of corruption Act 1988.

10. AND WHEREAS, the director, vigilance and Anti – Corruption has sought the sanction for the prosecution of the said Thiru.S.Nagaraj.

11. AND WHEREAS the government of Tamil Nadu being the authority competent to remove the said Thiru.S.Nagaraj, formerly seed certification officer, kovilpatti, after fully and carefully considering the materials such as copy of first information report (FIR), statement of witnesses, and other relevant records of this case and the report of the director of vigilance and anti-corruption, Chennai in regard to the said allegation, satisfied that Thiru.S.Nagaraj, formerly seed certification officer, kovilpatti should be prosecuted in the Court of law for the said offences.

12.NOW, THEREFORE, under clause (b) of sub section (1) section 19 of the prevention of corruption Act, 1989 (central Act 49 of 1988 the governor of Tamil Nadu hereby accords sanction for the prosecution of Thiru.S.Nagaraj formerly seed certification officer, kovilpatti for the said offences committed by him and for taking cognizance of the said offence by a Court of competent jurisdiction”.



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8.1.A bare perusal of sanction order would show that sanctioning authority has applied his mind regarding the offence under Sections 120(B), 467, 471, 420, 409 read with 109 of the said Indian Penal Code, 1860 and Clauses (c) and (d) of Sub Section (1) of Section 13 read with sub section (2) of section 13 of the said prevention of corruption Act 1988.

9. From the above contents of the sanction order, this Court finds no merit in the submission of the learned senior counsel that the sanctioning authority accorded sanction without application of mind. There is specific allegation against the petitioner that he had prepared the false inspection report. Therefore, the sanctioning authority has correctly accorded sanction on the basis of the material produced by the investigating agency with the following finding:-

....After fully and carefully considering the materials such as copy of first information report (FIR), statement of witnesses, and other relevant records of this case and the report of the director of vigilance and anti-corruption, Chennai in regard to the said allegation, satisfied that Thiru.S.Nagaraj, formerly seed certification officer, Kovilpatti should be prosecuted in the Court of law for the said offences.



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9.1. From the above, this Court finds that the sanction order itself is eloquent about the fact that sanctioning authority has applied his mind to the fact that the petitioner was involved in the submission of the false inspection report. After obtaining the above sanction order, the investigating agency filed the final report with the following allegation against the petitioner and other persons :-

“2. A1 in the capacity of seed certificate officer, Kayathar and Ottapidaram, A2 in the capacity of Assistant Agriculture officer i/c. Assistant seed officer, ottapidaram. A3 in the capacity of seed certification officer, Kovilpatti along with A4 and A5 entered into a criminal conspiracy and agree to do an illegal act of committing the offence of cheating, creating false records as well as misappropriation by illegal means so as to get the amount sanction to the “National Food Security Mission” and “National Agriculture Development Program” scheme and by creating false and bogus records and thus conspired together for the said purpose and each one did their best in one way or other to achieve their common design and thus cheated the government and that thereby A1 to A5 would appear to have committed the offence of criminal conspiracy punishable under section 120 – B of I.P.C.

3. The A2 dishonesty and fraudulently prepared a false



indenture form and created records with forged signatures of farmers as if 45 farmers raised 71 seed farms with false particulars and with intention of causing it to be believed with those documents were proved and A1 prepared a false inspection report as if he visited and those seed farms and they claimed government subsidy amount granted under “National Food Security Mission” and “National Agriculture Development Program”, the subsidy amount for Rs. 12,01,950/- and handed over all the cheques to A4 and A5 instead of giving it to the farmers and they credited those cheques in their account and en-cashed the cheque in the bank and that thereby A1 to A3 appear to have committed to offence of forgery (which they later converted as valuable security) punishable under section 167 and 467 of I.P.C.

4. In the course of the same transaction and at the same period and place and in pursuance of the said criminal conspiracy A1 to A5 with an intention of absorbing the amount allotted to subsidy under “National Food Security Mission” and “National Agriculture Development Program”, during the year 2010-11 committed forgery with the help of one another for the purpose of cheating the government so as to make wrongful gain to them and that thereby A1 to A5 appear to have committed the offence of forgery for the purpose of cheating punishable under section 408 of I.P.C.”



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9.3. Therefore, this Court prima facie feels that there is application of mind in the order. Hence, the submission of the learned senior counsel that the sanctioning authority accorded sanction without application of mind is misconceived one and this Court finds no merit in the writ petition.

10. Accordingly, this Writ Petition is dismissed with a direction to the learned Chief Judicial Magistrate-cum-Special Judge, Thoothukudi, to dispose of the case in Spl.C.C.No.5 of 2016, on its file within a period of nine months from the date of receipt of a copy of this order. There shall be no order as to costs.

29.11.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/ No
tta/sbn



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4. The Assistant Director (Agriculture),
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Thoothukudi District.
5. The Assistant Director,
Department of Seed Certification,
Thoothukudi.
6. The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN.J.,

tta/sbn

Order made in
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