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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 971/2022 & CRL.M.A. 16588/2022**

ARUN DABAS

..... Petitioner

Through: Mr. Aayushmaan Vatsyayana,
Advocate.

versus

STATE GNCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) with Ms. Priyam Aggarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

02.04.2024

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1. This writ petition has been filed on behalf of the Petitioner seeking the following reliefs:-

“(i) Call the record of the case being registered as 78/2019 titled as Arun Dabas Vs Rajeevi Verma & Ors” pending before the Hon'ble Court Ms Kiran Bansal, Ld Special Judge (ACB), Rouse Avenue, Delhi listed for 17.01.2022 for further proceedings;

(ii) Issue a Writ thereby declaring the sanction refusal order dated 30.03.2021 & decision of competent authority of Govt of India dated nill conveyed on 22.3.2022 to petitioner as null and void ab initio;

(iii) Issue a Writ for the Director of CBI to take the investigation and register a case under the relevant provisions of PC Act read with IPC or any other if applicable. Or in alternative;

iv) Direct the SHO PS Anti-Corruption Branch, Delhi to lodge the FIR under relevant provisions of PC Act read with IPC or any other applicable sections.”

2. Factual matrix to the extent relevant is that Petitioner, who is an Advocate by profession, sought sanction for prosecuting the officers allegedly guilty of corrupt practices in the office of Director (Panchayat),



Government of NCT of Delhi as named in the petition, which was rejected by the impugned order dated 30.03.2021. Genesis of this petition is an advertisement dated 10.06.2019 issued by the Office of Director (Panchayat), Delhi, with the approval of Lieutenant Governor, Delhi, inviting applications from interested advocates for constituting a panel for Gaon Sabha, Delhi. The last date for submitting the applications was 28.06.2019 till 05:00 PM and the eligibility conditions were clearly enumerated in the advertisement.

3. Indisputably, Petitioner did not apply for consideration of his candidature for empanelment before the prescribed cut-off date. It is averred in the petition that on 09.07.2019, when Petitioner was attending the Court of Financial Commissioner, Delhi, he was advised by the officers present in Court that he could apply even though the last date for applying was over. Further inquiry into the matter by the Petitioner revealed that till 28.06.2019, only 154 applications had been submitted and several applications were accepted after the cut-off date with the consent of Respondent No. 3. Many counsels were called for interview directly through telephonic calls by the Respondents in connivance with other officials, misusing their official powers. Applications of many favorite advocates were accepted though they did not possess the requisite qualification. Allegations that money exchanged hands during the selection process and many counsels were empanelment who bribed the concerned officials, are also levelled by the Petitioner.

4. It is further averred in the petition that believing that illegal and corrupt practices were adopted during the selection process, Petitioner filed a complaint dated 30.09.2019 before Special Commissioner, Anti



Corruption Branch, Delhi and Director of Vigilance, GNCTD, requesting them to lodge an FIR against the officials involved in the selection and investigate the matter. When no action was taken, Petitioner filed an application under Section 156(3) read with Section 200 Cr.P.C. and the Court vide order dated 07.12.2019 issued notice to PS, Vigilance as well as the concerned ACP to file a report on 18.12.2019. Status report dated 17.12.2019 was filed stating that the written complaint of the Petitioner had been forwarded to Chief Vigilance Officer/Revenue Department as the allegations related to irregularities in the selection of advocates for empanelment on Gaon Sabha panel and there were no allegations of demand and acceptance of bribe by the complainant. Petitioner filed an application dated 24.09.2020 apprising the Court that Respondent No. 2 was holding the charge of Director, Vigilance Department and there was apprehension that he would compromise the pending inquiry and deprive the Petitioner of a fair chance of hearing and thus the Court should appoint the inquiry officer. On 25.09.2020, learned Special Court, passed an order that the Court did not have the power to appoint an inquiry officer.

5. As the chronology goes, Petitioner wrote to the Chief Secretary vide letter dated 06.01.2021 seeking sanction for prosecution against Respondents No. 4 to 6, which was declined by the impugned order dated 30.03.2021 and on 31.03.2021, Court was apprised of this fact. The case was adjourned from time to time thereafter and finally by a detailed order dated 14.09.2022, the application under Section 156(3) Cr.P.C. was dismissed as not maintainable and in default for failure to prosecute the complaint. It is thereafter that the Petitioner approached this Court and filed the present petition.



6. Learned counsel for the Petitioner, in support of his challenge to order dated 30.03.2021, whereby sanction for prosecution of private individuals, required under Section 19 of Prevention of Corruption Act, 1988 ('PC Act'), has been declined, argues that the impugned order is erroneous, arbitrary and illegal. The Competent Authority has overlooked that many applications for appointment on the panel of Gaon Sabha, Delhi were accepted after the cut-off date and some counsels were directly invited for interview through telephonic calls, either because they were known to the officials or had paid bribe for selection and thus sanction ought to have been granted for prosecution of the officials of the concerned department, including Respondents No. 4 to 6.

7. Mr. Sanjay Lao, learned Standing Counsel, *per contra*, submits that the present petition is not maintainable. Petitioner had preferred an application under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. and the complaint case bearing no. 78/2019 was dismissed as not maintainable for want of sanction under Section 19 of the PC Act as well as in default, vide order dated 14.09.2022. Till date, the order is unassailed and has attained finality. Petitioner cannot seek the same relief circuitously by filing the present petition. Moreover, the bar of Section 19(1)(c) would render the present petition, seeking quashing of denial of sanction, as not maintainable. Proviso to Section 19(c) bars any request for sanction from a person who is not a Police officer unless the said person is a complainant. Since the complaint of the Petitioner was dismissed, he is no longer entitled either to seek sanction or challenge denial of sanction.

8. Mr. Lao, further argues that Petitioner did not apply for the panel before the cut-off date and the petition is ill-motivated with the sole purpose



of seeking empanelment by leveling false and frivolous allegations against senior officers involved in the process of selection of eligible advocates. Though not open to question by the Petitioner, order dated 30.03.2021 is legally correct and justified. The Chief Secretary, who is the Competent Authority, had examined the material on record and concluded that the appointment of panel advocates was done on the basis of merit list prepared by the Selection Committee and there was no ground to grant prosecution sanction. In any case, the panel was for a term of 3 years and has lapsed by afflux of time. A civil writ petition being W.P.(C) 9606/2019, filed by some unsuccessful candidates, was dismissed by this Court on 10.11.2022. Mr. Lao also urges that Courts cannot sit in appeal over administrative decisions of the Executive while exercising powers of judicial review and what is open to examination is only the decision-making process. Petitioner is unable to point out any flaw in the process and has only made vague and unwarranted allegations, without any evidence. In this context, reliance is placed on the judgment of the Supreme Court in *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, (1997) 7 SCC 622. It is also argued that Petitioner cannot call upon the Court to substitute the view of Chief Secretary and grant sanction and for this proposition reliance is placed on the judgment of the Supreme Court in *State of Punjab and Another v. Mohammed Iqbal Bhatti*, (2009) 17 SCC 92.

9. Heard counsel for the Petitioner and Mr. Lao for the State.

10. By this petition, Petitioner assails order dated 30.03.2021, whereby the Competent Authority i.e. the Chief Secretary, GNCTD has declined to grant sanction for prosecuting the officers against whom allegations were made by the Petitioner. In my view, Mr. Lao is right in arguing that the



petition is *per se* not maintainable. Petitioner had filed an application under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. seeking registration of FIR against officers involved in the selection process for appointment of advocates to the panel of Gaon Sabha, Delhi. Status report was filed by the Anti Corruption Branch stating that the written complaint of the Petitioner had been forwarded to Chief Vigilance Officer/Revenue Department as the allegations related to irregularities in the selection of advocates for empanelment on Gaon Sabha panel and there were no allegations of demand and acceptance of bribe by the complainant. When the complaint case was listed on 14.09.2022, none appeared for the Petitioner despite the matter being called three times. On the third call, Court proceeded to examine the complaint under Section 200 Cr.P.C. along with application under Section 156(3) Cr.P.C. against the Respondents therein for offences under Section 167/463/464/466/120 IPC read with Section 13(1)(d) of the PC Act. Court was apprised that request of the complainant for grant of sanction against all the Respondents had been declined by the Competent Authority. Based on this fact, the complaint was dismissed as not maintainable in view of Section 19 of the PC Act, which provides that no Court shall take cognizance of an offence punishable under Sections 7/10/11/13 and 15 of the PC Act alleged to have been committed by a public servant except with a previous sanction. Complaint was also dismissed in default. This order has attained finality in the absence of any challenge by the Petitioner and he cannot be permitted to seek the same relief through the present petition. Moreover, as the complaint has been dismissed, this petition cannot be entertained even otherwise on account of the bar under proviso to Section 19(1)(c) as Petitioner is no longer a complainant.



11. Mr. Lao is also correct in his submission that this Court can only examine the decision-making process and cannot act as a Court of appeal when determining the correctness or otherwise of administrative decisions. It is not within the scope and ambit of the power of judicial power of a Court to substitute the decision of an administrative authority, even if two views are possible and this principle goes back to the decision of the Supreme Court in *Tata Cellular v. Union of India*, (1994) 6 SCC 651, re-iterated and re-affirmed by the Supreme Court in *Mansukhlal (supra)*.

12. In view of the fact that the petition is not maintainable, this Court is not entering into the merits of the impugned order dated 30.03.2021. Suffice it would be, however, to note that the order reflects that all documents and material on record were considered by the Competent Authority to come to a conclusion that the selection was based on merit by the Selection Committee constituted under the Chairmanship of Principal Secretary-cum- Divisional Commissioner. Competent Authority has also examined records produced by the Revenue Department in this regard with respect to the allegations against the private respondents herein against whom sanction was sought. Be it noted that some unsuccessful candidates had challenged the selection process in a civil writ petition being W.P.(C) No. 9606/2019, which was dismissed by the Court vide order dated 10.11.2022, finding no flaw in the process.

13. For all the aforesaid reasons, petition is dismissed being devoid of merit. Pending application also stands disposed of.

JYOTI SINGH, J

APRIL 2, 2024/DU/shivam