Supreme Court of India
P.L.Tatwal vs State Of M.P on 19 February, 1947
Author: Kurian
Bench: Sudhansu Jyoti Mukhopadhaya, Kurian Joseph

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 456 OF 2014
[Arising out of S.L.P.(Criminal) No. 9999/2011]

P. L. Tatwal … Appellant (s)

Versus

State of Madhya Pradesh … Respondent (s)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. The appellant along with two others were sought to be prosecuted under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act'). The allegations pertain to the irregularities in the award of the contract and construction of administrative building for the Corporation of Ujjain during the period 1991-1993. At the relevant time, the appellant was working as the Assistant Engineer in the Corporation and the Corporation was ruled by an Administrator. In the case of the co- accused Shri D.L. Rangotha, the then Commissioner of the Municipal Corporation and Shri D. P. Tiwari, the then Administrator of the Corporation, the State Government and the Central Government respectively had declined to grant sanction, while they were in service. Since the prosecution was sought to be launched after their retirement, the same was challenged before the trial court and the High Court unsuccessfully. However, by order dated 21.08.2013, in Criminal Appeal No. 1213 of 2013 and Criminal Appeal No. 1214 of 2013, this Court quashed the proceedings for prosecution against Shri D. L. Rangotha and Shri D. P. Tiwari on the ground that once sanction for prosecution is refused by the competent authority while the officer is in service, he cannot be prosecuted after retirement notwithstanding the fact that no sanction for prosecution under the PC Act is necessary after the retirement of a public servant. The order was passed following the decision in Chittaranjan Das v. State of Orissa[1].

3. However, in the case of the appellant herein, sanction was granted by the Standing Committee of the Corporation while he was in service. Though the same was subsequently withdrawn, that order was set aside by the High Court holding that the order on withdrawal was passed without proper application of mind.

4. The appellant has three main contentions:

(i) Since he was appointed in service by the Administrator, sanction for prosecution can be given only by the Administrator and in case, the Administrator is not in position, then the sanction is to be given by the State Government who appoints the Administrator.

(ii) At any rate, there is no proper and valid sanction by the competent authority.

(ii) Since the proceedings for prosecution against his superior officers have been quashed by this Court, proceedings in his case also be quashed since it is not likely in such a situation to have a successful prosecution.

5. It is not in dispute that the appellant was appointed by the Administrator when the Corporation was ruled by the Administrator. Therefore, it is the contention of the appellant that the competent authority to give sanction for prosecution under Section 19 of the PC Act is the Administrator and in case the Administrator is not available, the sanction is to be given by the State Government.

6. We are afraid, the contentions cannot be appreciated as the same do not found any basis in law or logic. Section 19(1) of the PC Act reads as follows:

"19. Previous sanction necessary for prosecution.-(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is 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 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 supplied)

7. The appellant comes under Section 19(1)(c). The competent authority to give previous sanction is the authority competent to remove one from service. No doubt the appointing authority is the authority competent to remove him from service. Under Section 58 of the Municipal Corporation Act, 1956, the Standing Committee is the competent authority for appointment in any post in the municipality having a salary for more than Rs.400/- per month. For easy reference, we may extract the relevant portion from the statement made on behalf of the State Government on a specific query from the court:

> "The Respondent most respectfully submits that (sic) Section 45 and 48 of the Municipal Corporation Act 1956 empowers the Municipal Corporation to establish

> the committees and through Gazette Notification 1977 dated 21.03.1977 whereby Section 58 of the Municipal Corporation Act was amended, power was vested in the Standing committee to appoint any persons on the post of any such municipal post, which has maximum salary of more than Rs.400/-. ... xxx xxx xxx xxx The Respondent most respectfully submits that the above mentioned amendment was made in 1977 and the Petitioner was initially appointed in the Municipal Corporation on 17.12.79 by the Standing committee..."

8. The Administrator is only an ad hoc arrangement made by the Government under Section 424 of the Madhya Pradesh Municipal Corporation Act, 1956 when an elected committee is superseded or dissolved. It so happened that the appointment of the appellant was at a time when the Municipal Corporation was ruled by the Administrator. That does not mean that there should be an Administrator to take any decision with regard to the sanction for prosecution of the appellant under the PC Act.

9. The Statute is very clear that the authority competent to remove an officer from service is the authority to give sanction for prosecution. In the case of the appellant, being an employee having a salary of more than Rs.400/- per month, the authority competent to remove him from service is the Standing Committee. It is the Standing Committee which gave the sanction by its order dated 27.08.1996. Therefore, the trial court and the High Court cannot be faulted in taking the view that there was an order of sanction for prosecution from the competent authority.

10. It is vehemently contented by the learned counsel for the appellant that there is no proper and valid sanction for prosecuting the appellant. The authority has not applied its mind and has not taken a conscious decision by referring to any of the relevant materials. It is pointed out that the authority has only accepted the recommendations of the Commissioner. But there is nothing to show that the recommendation was before the authority. Still further, it is pointed out that the order of sanction does not indicate reference to any material; however, the enclosures give an indication that the inquiry report of the Special Police Establishment and government letter were before the competent authority. In order to appreciate the contention properly, we shall extract the Resolution of the Standing Committee, which reads as follows:

> "RESOLUTION NO.309 DATED 27-08-1996 OF STANDING COMMITTEE MEETING, UJJAIN MUNICIPAL CORPORATION With regard (sic) to sanction of prosecution in Crime No. 54/93 against Administrator of Municipal Corporation and others, letter of Commissioner Municipal Corporation No.310 dated 22.06.1996 stating that "the Government has sought sanction for prosecution of Shree R.K. Sharma, the then Superintending Engineer, Shree R.K. Bhagat the then City Engineer, Shree P.L. Tatwal, the then Assistant Engineer, who were posted with Municipal Corporation Ujjain. Under section 19(1)(c) (sic) of Prevention of Corruption Act, sanction for prosecution can be accorded by the authority which is competent to remove such public servant from the office. The Standing Committee is the Appointing Authority of the above three officers. That way Corporation is competent to accord sanction for prosecution against them. The factual position

about the three officers is as below. Shree R.K. Sharma the then Superintending Engineer was not from this department and was sent on deputation by the government and is now at presently retired. Shree R.K. Bhagat the then City Engineer has since retired and Shree P.L. Tatwal the then Assistant Engineer is presently posted with Municipal Corporation Ujjain. So please intimate Honourable Mayor about the above factual position and decision about grant of sanction be intimated so that the government may be intimated of the decision.

After discussion, unanimously resolved that as per the recommendation of Municipal Commissioner, sanction is granted to take action to prosecute the concerned officers. Action be taken according to law.

Sd/- (Smt. Anju Bhargav) Chairman, Standing Committee Municiipal Corporation Ujjain Copy:-

Sr. No.:- 1334 Date :- 11-9-

Commissioner, Ujjain Municipal Corporation to take necessary action.

Enclosed :- Government letter and photocopy of enquiry report of Special Police Establishment.

Sd/-
Municipal Secretary
Ujjain Municipal Corporation"

(Emphasis supplied)

11. It may be seen that only the second paragraph of the Resolution speaks about the sanction and that is following the recommendation of the Municipal Commissioner. Whether that formed part of the government letter, it is not clear. The contents otherwise of the government letter are also not clear.

12. The grant of sanction is only an administrative function. It is intended to protect public servants against frivolous and vexatious litigation. It also ensures that a dishonest officer is brought before law and is tried in accordance with law. Thus, it is a serious exercise of power by the competent authority. It has to be apprised of all the relevant materials, and on such materials, the authority has to take a conscious decision as to whether the facts would reveal the commission of an offence under the relevant provisions. No doubt, an elaborate discussion in that regard in the order is not necessary. But decision making on relevant materials should be reflected in the order and if not, it should be capable of proof before the court.

13. In a recent decision in State of Maharashtra through Central Bureau of Investigation v. Mahesh G.Jain[2], the court has referred to the various decisions on this aspect from paragraph 8 onwards. It has been held at paragraph 8 as follows:

> "8. In Mohd. Iqbal Ahmed v. State of A.P.5 this Court lucidly registered the view that (SCC p. 174, para 3) it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out constituting an offence and the same should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (ii) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio."

14. After referring to subsequent decisions, the main principles governing the issue have been culled out at paragraph 14 which reads as follows:

"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.

[pic]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."

15. Though the appellants made a specific objection in this regard before the Special Judge, unfortunately in the order dated 27.12.2004, it is seen that there is no inquiry by the court in this

regard. There is no reference at all to the recommendation made by the Municipal Commissioner. Before the High Court also, though the submissions were reiterated, the only consideration in that regard is available at paragraph 21 of the impugned order which reads as follows:

> "21. It is not a case of the applicant that standing committee of the Municipal Corporation was not competent to grant sanction under section 19 of the Prevention of Corruption Act, 1988. Undisputedly, the competent authority had passed the orders of sanction against all the accused persons concerned. The order of the sanction was passed after considering the whole record of the case and proper application of mind. The applicant failed to demonstrate the order of sanction is suffering from non application of mind."

16. In such circumstances, we are of the view that the trial court should conduct a proper inquiry as to whether all the relevant materials were placed before the competent authority and whether the competent authority has referred to the same so as to form an opinion as to whether the same constituted an offence requiring sanction for prosecution. In that view of the matter, we set aside the impugned order passed by the High Court and also order dated 27.12.2004 passed in Special Case No. 12 of 2004 by the trial court and remit the matter to the Special Judge (P.C. Act, 1988), Ujjain, Madhya Pradesh.

17. Incidentally, we may also refer to the third point raised by the appellant. It is the submission that the proceedings for prosecution in the case of the Commissioner and Administrator, who were the controlling officers of the appellant, having been quashed, there is no point in continuing the trial in the case of the appellant and it would only be an attempt in futility. This subsequent development may also be brought to the notice of the Special Judge which would be considered at the time of consideration of charge, in case the court enters a finding on valid sanction and decide to proceed with the case. The court may also consider the fact that there is no sanction for prosecution in the case of the Superintendent Engineer and the City Engineer, who were the superior officers of the appellant at the relevant time and in whose case, the Standing Committee decided not to give sanction on the ground that they were not in service when the decision on sanction was taken.

18. The appeal is allowed to that extent. Parties to appear before the Special Judge (P.C. Act, 1988), Ujjain, Madhya Pradesh on 05.04.2014.

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA) .....J.

(KURIAN JOSEPH) New Delhi;

February 19, 2014.

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[1] (2011) 7 SCC 167

[2] (2013) 8 SCC 119

REPORTABLE
