Vijay Rajmohan vs State Represented By The Inspector Of ... on 11 October, 2022

Author: A.S. Bopanna

Bench: Pamidighantam Sri Narasimha, B.R. Gavai, A.S. Bopanna

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____OF 2022
ARISING OUT OF SLP (CRL) NO. 1568 OF 2022

VIJAY RAJMOHAN ...APPELLANT(S)

VERSUS

STATE REPRESENTED BY THE INSPECTOR
OF POLICE, CBI, ACB, CHENNAI, TAMIL NADU ...RESPONDENT(S)

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.J.

1. Leave Granted.

2. Two important questions of law arise for consideration in this appeal. The first question is whether an order of the Appointing Authority granting sanction for prosecution of a public servant under Section 19 of the Prevention of Corruption Act, 19881, would be rendered illegal on the ground of acting as per dictation if it consults the Central Vigilance Commission for its decision. The second question is whether the period of three months (extendable 1 hereinafter referred to as 'the PC Act'.

by one more month for legal consultation2) for the Appointing Authority to decide upon a request for sanction is mandatory or not. The further question in this context, is whether the criminal proceedings can be quashed if the decision is not taken within the mandatory period.

Facts leading to the filing of this Appeal

3. The Appellant challenges the order of the High Court of Judicature at Madras3 allowing a

criminal revision petition filed by the State against an order of the Trial Court4, discharging the Appellant on the ground that the order of sanction under Section 19 of the PC Act, is vitiated due to non-application of mind by the sanctioning authority.

4. The Appellant is an official of the Central Secretarial Service, Government of India. During the period between 01.01.2005 to 31.10.2012, when his official postings were in New Delhi and Bangalore, he is alleged to have acquired assets that were disproportionate to his known sources of income. As of 31.12.2012, he and his relatives were found to be in possession of disproportionate assets to the tune of Rs. 79,17,593/-. An FIR came 2 As per the 2018 Amendment through the 2nd Proviso to Section 19(1) of the PC Act. 3 Criminal Revision Petition No. 349 of 2019 dated 06.01.2022. 4 Criminal Misc. Petition No. 3908 of 2018 in C.C. No. 3 of 2018 dated 13.12.2018. to be registered on 20.11.2012 by the Central Bureau of Investigation5 against the Appellant, his father, and his mother under Section 109 of the Indian Penal Code, 18606, read with Sections 13(1)(e) and 13(2) of the PC Act.

5. On 08.09.2015, the CBI completed investigation and sought sanction from the appointing authority, the Department of Personnel and Training7, for prosecuting the Appellant. As the questions arising for consideration relate to the manner and the time taken for granting sanction for prosecution, the relevant facts will have to be mentioned in detail. They are as follows.

6. About two months after receiving the proposal for sanction, on 26.11.2015, the DoPT examined the facts of the case and sought 23 clarifications from the CBI. A month after that, i.e., on 15.12.2015, the CBI gave clarifications on the same questions. Upon reviewing the clarifications, the DoPT believed that there were many errors in the investigation conducted by the CBI, and therefore sought the opinion of the Central Vigilance Commission8 on 07.01.2016.

5 hereinafter referred to as ‘the CBI’.

6 hereinafter referred to as ‘the IPC’.

7 hereinafter referred to as ‘the DoPT’.

8 hereinafter referred to as ‘the CVC’.

7. CVC followed it up and sought clarification from CBI on 18.03.2016, i.e., two and a half months after the opinion of the CVC. After examining the clarifications tendered by the CBI, the CVC believed that this to be a strong case for grant of sanction subject to the CBI conducting a re-investigation on certain aspects of the case. This opinion was communicated to the DoPT on 01.06.2016.

8. Since the communication dated 01.06.2016 was unclear, the DoPT vide letter dated 26.08.2016 sought to know whether the CVC recommended the grant of sanction or whether the CVC had advised the CBI to re-investigate. A month later, on 20.09.2016, CVC clarified to the DoPT that the CBI should re-investigate the matter and come up with its revised findings. Accordingly, the DoPT

informed CVC on 05.10.2016 that it will treat the proposal for sanction for prosecution of the Appellant as closed until the re- investigation is completed and a new proposal is received from CBI. By this time, thirteen months had passed since the request for sanction was made.

9. Meanwhile, on 27.09.2016, CBI submitted a revised explanation to the seven questions posed by the CVC. Satisfied with the same, the CVC advised DoPT on 25.11.2016 to grant sanction. Responding to the proposal, DoPT, by its letter dated 16.12.2016, sought to know if the CBI had completed the re- investigation, to which the CVC responded on 09.02.2017, stating that it was satisfied with the proposal of the CBI. Finally, on 24.07.2017, DoPT granted sanction for prosecution. Thus, the proposal requesting the sanction for prosecution made by the CBI on 08.09.2015 was given by the sanctioning authority on 24.07.2017, after about one year and ten months. Before the Trial Court:

> 10. The Appellant filed a discharge application under Section 227 of the Cr.P.C. before the Principal Special Judge for CBI. This application was filed on the ground that the sanction order was passed without application of mind. The Trial Court by its order dated 13.12.2018, allowed the application and discharged the Appellant. The reason for allowing the application for discharge was that the DoPT failed to apply its mind and merely relied on the advice tendered by the CVC.

Before the High Court:

> 11. Against the above-referred order of the Principal Special Judge for CBI, the State filed a Criminal Revision Petition under Section 397 of the Cr.P.C., which was allowed by the High Court of Judicature at Madras. The High Court held that under Section 8(1)(g) of the Central Vigilance Commission Act, 20039, one of the functions of the CVC is to tender advice to the Central Government on the matter of grant of sanction. Thus, it was opined that the advice of CVC could not be treated as irrelevant material. The High Court also held that the DoPT, in addition to the advice of the CVC, had taken into account all the relevant material and had independently applied its mind before granting sanction to prosecute the Appellant. It is this order of the High Court which is impugned before us.

Submissions of learned counsels:

> 12.1 Shri Mahesh Jethmalani learned Senior Counsel, and Shri P.V. Yogeswaran, AOR, appearing on behalf of the Appellant, made two submissions. Firstly, Shri Jethmalani submitted that the grant of sanction by DoPT dated 24.07.2017 is without application of an independent mind. He argued that the sanction for prosecution was hit by non-application of mind as DoPT had acted on dictation by the CVC, and for this purpose, the said sanction order must be set aside. In support of this submission, he relied 9 hereinafter referred to as 'the CVC Act'.

on the decision of this Court in Mansukhlal Vithaldas Chauhan v. State of Gujarat10.

12.2 The second submission of Shri Jethmalani is about the delay in granting the sanction for prosecution. While the CBI requested for sanction on 18.09.2015, the order of sanction came to be passed on 24.07.2017, after almost two years. According to Shri Jethmalani, this delay is fatal, the consequence being that the proceedings against the Appellant must be quashed. For this purpose, he relied on the decision of this Court in Vineet Narain & Ors. v. Union of India & Anr.11 followed by Subramanian Swamy v. Manmohan Singh & Anr.12 as per which this Court has set an outer limit of three months for granting sanction.

13.1 Shri S.V. Raju, learned Additional Solicitor General for India would submit that the DoPT, while granting sanction for prosecution, merely called for and considered the report of the CVC and had, in fact applied its independent mind. He took us through the correspondence between the CBI, CVC, and DoPT to make his point good.

10 (1997) 7 SCC 622 11 (1998) 1 SCC 226 12 (2012) 3 SCC 64 13.2 Replying to the second submission made by Shri Jethmalani, the learned ASG submits that this issue was never raised at any point. For that matter, even the Special Leave Petition does not contain any ground to this effect. However, as the Court heard submissions on the ground of delay, he clarified that the time period is merely directory and not mandatory. He would further submit that, as per the above referred decisions of this Court, the consequence of non-grant of sanction within three months would only be deemed sanction, rather than quashing the criminal proceedings.

14. Having heard the parties in detail, we formulate two issues for our consideration. While the first issue pertains to whether the order of sanction is illegal due to non-application of mind by the DoPT for acting as per dictation of CVC, the second issue pertains to whether the criminal proceedings could be quashed for the delay of about two years in the issuance of the sanction order. We will answer both issues.

Re: Issue No. 1 - Whether the order of sanction is illegal due to non-application of mind and acting as per dictation if the appointing authority, the DoPT refers and considers the opinion and advise of the CVC?

15. At the outset, we will take note of the ratio in Mansukhlal (supra) relied on by Shri Jethmalani. Relevant portion of the judgment holding that “if the sanctioning authority is under an obligation or compulsion to grant sanction, the order will be bad for the reason that the discretion is taken away”, is extracted hereinunder:

> “18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

> 19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other.

Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under

> an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

16. The decision in Mansukhlal (supra) was rendered in the year 1997, when the legislative changes to the Code of Criminal Procedure, 197313, were not made. Further, the decision was prior to the enactment of the CVC Act and also the amendments to the PC Act. The submission of Shri Jethmalani therefore overlooks the march of law, which we have endeavoured to explain hereinunder.

17. Sanction for prosecution of an employee of the Union under the PC Act would involve invocation of specific provisions of the Cr.P.C., the Delhi Special Police Establishment Act, 194614, the PC Act, and the CVC Act, all of which constitute a unified scheme. The legal regime that encompasses the above-referred statutes for matters concerning preliminary inquiry, investigation, sanction, and prosecution are well integrated and can be recounted as under:

> I. Section 197 of the Cr.P.C. provides a mandatory requirement of sanction for the prosecution of judges, 13 hereinafter referred to as 'the Cr.P.C.'. 14 hereinafter referred to as 'the DSPE Act'.

magistrates, and public servants. While interpreting this provision, this Court has identified two principles, which are that, (a) there must be relevant material placed before the sanctioning authority before it takes a decision; and (b) the decision of the sanctioning authority must itself indicate that it had applied its mind before granting sanction15. It is in this context that the judgment of this Court in Mansukhlal (supra) must be understood [Section 197, Cr.P.C.].

II. Section 19 of the PC Act also provides for a requirement of sanction before prosecution. The requirement of law for having relevant material placed before the sanctioning authority, as well as the independent application of mind by the said authority, applies with equal vigour to sanction under the PC Act16 [Section 19, PC Act].

III. For the purpose of assisting the sanctioning authority in arriving at a decision, the Government, through a 1997 resolution, constituted a body under the Ministry of Home Affairs referred to as the CVC. An Independent Review Committee (IRC), constituted by the Government of India, also suggested conferring statutory status to the CVC. This recommendation became compelling after the decision of this 15 State of Punjab & Anr. v. Mohd. Iqbal Bhatti, (2009) 17 SCC 92; Romesh Lal Jain v. Naginder Singh Rana & Ors, (2006) 1 SCC 294. 16 State (Anti-Corruption Branch) v. R.C. Anand (Dr.), (2004) 4 SCC 615; C.S. Krishnamurthy v. State of Karnataka, (2005) 4 SCC 81; State of Karnataka v. Ameerjan, (2007) 11 SCC 273; CBI v. Ashok Kumar Aggarwal, (2014) 14 SCC 295. In fact in Vivek Batra v. Union of India this Court has held that:-"12. ..... the opinion of the CVC, which was reaffirmed and ultimately prevailed in according the sanction, cannot be said to be irrelevant for the reason that clause

(g) of Section 8(1) of the Central Vigilance Commission Act, 2003 provides that it is one of the functions of the CVC to tender advice to the Central Government on such matters as may be referred to it by the Government." Court in Vineet Narain (supra). These directions resulted in the promulgation of three ordinances for giving statutory status to the CVC, and eventually, in 2003, the Parliament enacted the CVC Act.

IV. The preamble to the CVC Act states that the Commission is constituted to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988. Section 8 of the CVC Act evidences the interplay of powers and duties of the three agencies, being the sanctioning authority (Union Government), the prosecuting agency (the CBI), and the advisory body (the CVC), all subserving the same public interest of ensuring integrity in governance. The following provisions evidence the same.

V. The CVC shall exercise superintendence over CBI in relation to the investigation of offences under the PC Act [Section 8(1)(a), CVC Act.]. The CVC shall also give directions to CBI in the discharge of its functions under Section 4(1) of the DSPE Act [Section 8(1)(b), CVC Act].

VI. The CVC shall inquire on a reference made to it by the Central Government (DoPT) about an alleged offence committed by a public servant under the PC Act [Section 8(1)(c), CVC Act]. The CVC shall also inquire into any complaint against a public servant alleged to have committed an offence under the PC Act [Section 8(1)(d), CVC Act]. VII. The CVC shall review the progress of the investigation by the CBI for offences under the PC Act [Section 8(1)(e), CVC Act].

VIII. The CVC shall tender advice to the Central Government on such matters as may be referred to it [Section 8(1)(g), CVC Act].

IX. The CVC shall exercise limited superintendence over vigilance administration of various Ministries of the Central Government [Section 8(1)(h), CVC Act].

X. The Lokpal and Lokayuktas Act, 201317, enacted to subserve the same purpose of maintaining integrity concerning certain public functionaries, makes further amendments to the four statutes we have dealt with hereinabove, further integrating them with each other. The Lokpal Act amended

Section 8 and also inserted Sections 8A and 8B to the CVC Act [Section 8A and 8B CVC Act].

XI. After a preliminary inquiry relating to corruption of public servants belonging to Group C or Group D, if the CVC comes to a prima facie opinion of violation of conduct rules relating to corruption under the PC Act, the CVC shall (a) direct the CBI to investigate, or (b) initiate disciplinary proceedings; or (c) close these proceedings and proceed under the Lokpal Act [Section 8A(1), CVC Act]. If the CVC decides to direct an agency (including the CBI) to investigate, it can direct an expeditious investigation within a time frame, and the CBI shall submit an investigation report to the CVC 17 hereinafter referred to as 'the Lokpal Act'. within that timeframe [Sections 8B (1) and 8B (2), CVC Act].

On consideration of the report, the CVC may decide to (a) file a chargesheet or closure report; or (b) initiate departmental proceedings [Section 8B (3), CVC Act].

XII. In furtherance of a decision to direct prosecution, CVC exercises its powers under Section 8 to review the progress of applications pending with competent authorities for sanction of prosecution under the PC Act. [Section 8(1)(f), CVC Act] XIII. The appropriate Government or the competent authority is obligated, under the 2018 amendment to the PC Act, to endeavour to convey the decision on the proposal for sanction within three months with an extended period of one more month when legal consultation is required. For this purpose, guidelines may be prescribed. The CVC has, in fact, issued necessary guidelines in furtherance of this duty. [Proviso to Section 19(1) of PC Act]

18. It is evident from the above referred formulation that the position of law and the legal regime obtained by virtue of the five legislations on the subject of corruption, operates as integrated scheme. The five legislations being the Cr.P.C, DSPE Act, PC Act, CVC Act, and Lokpal Act, must be read together to enable the authorities to sub-serve the common purpose and objectives underlying these legislations. The Central Vigilance Commission, constituted under the CVC Act is specifically entrusted with the duty and function of providing expert advice on the subject. It may be necessary for the appointing authority to call for and seek the opinion of the CVC before it takes any decision on the request for sanction for prosecution. The statutory scheme under which the appointing authority could call for, seek and consider the advice of the CVC can neither be termed as acting under dictation nor a factor which could be referred to as an irrelevant consideration. The opinion of the CVC is only advisory. It is nevertheless a valuable input in the decision-making process of the appointing authority. The final decision of the appointing authority must be of its own by application of independent mind. The issue is, therefore, answered by holding that there is no illegality in the action of the appointing authority, the DoPT, if it calls for, refers, and considers the opinion of the Central Vigilance Commission before it takes its final decision on the request for sanction for prosecuting a public servant.

19. Returning to the case facts, we have examined the correspondence and the long-drawn communications between the CBI, the DoPT, and the CVC. We found that the inquiry made by the appointing authority, the DoPT, was only for soliciting further information, and particularly the opinion given by CVC is also advisory. The sanction order of the DoPT dated 24.07.2017 is an

independent decision of the department that was taken based on the material before it. Under these circumstances, we are not inclined to accept the first submission made on behalf of the Appellant that the order of sanction suffers from illegality due to non-application of mind or acting under dictation. Re: Issue No. 2: Whether the criminal proceedings could be quashed for the delay in the issuance of the sanction order?

20. The public policy behind providing immunity from prosecution without the sanction of the State is to insulate the public servant against harassment and malicious prosecution. It is for this very reason that good faith clauses18 are incorporated in statutes extending protection to officers exercising statutory duties in good faith. This protection is only to ensure that a public servant 18 For example, Section 74 of Indian Forest Act, 1927 or Section 88 of the Food Safety and Standards Act, 2006 provide as under: -

> Section 74. Indemnity for acts done in good faith — (1) No suit, prosecution or other legal proceedings shall lie against any public servant for anything done in good faith or omitted to be done likewise, under this Act or the rules or orders made thereunder.
>
> (2) No Court shall take cognizance of any offence alleged to have been committed by a forest officer while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Government of Union territory of Jammu and Kashmir.

Section 88. Protection of action taken in good faith- No suit, prosecution or other legal proceedings shall lie against the Central Government, the State Government, the Food Authority and other bodies constituted under this Act or any officer of the Central Government, the State Government or any member, officer or other employee of such Authority and bodies or any other officer acting under this 60 Act for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder. serves the State with courage, confidence, and conviction. It is apt to recall the speech of the then Home Minister, Shri Sardar Vallabhbhai Patel, during the Constituent Assembly Debates19, also referred to by H.M. Seervai in his commentary on the Constitution while dealing with the Services under the State20:

> “To-day, my Secretary can write a note opposed to my views. I have given that freedom to all my secretaries. I have told them ‘If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary.’ I will never be displeased over a frank expression of opinion. (C.A.D. Vol.10, P.51).”

> 21. Statutory provisions requiring sanction before prosecution either under Section 197 Cr.P.C. or under Section 97 of the PC Act also intend to serve the very same purpose of protecting a public servant. These protections are not available to other citizens because of the inherent vulnerabilities of a public servant and the need to protect them. However, the said protection is neither a shield against dereliction of duty nor an absolute immunity against corrupt practices. The limited immunity or

bar is only subject to a sanction by the appointing authority.

19 Constituent Assembly Debates, Volume No. 10, Page 51 20 H.M. Seervai, Constitutional Law of India, 4th Edition, Volume 3, pg. 2987

22. Grant of sanction being an exercise of executive power, it is subject to the standard principles of judicial review such as application of independent mind; only by the competent authority, without bias, after consideration of relevant material and by eschewing irrelevant considerations. As the power to grant sanction for prosecution has legal consequences, it must naturally be exercised within a reasonable period. This principle is anyway inbuilt in our legal structure, and our Constitutional Courts review the legality and proprietary of delayed exercise of power quite frequently. In Mahendra Lal Das v. State of Bihar & Ors.21 and Ramanand Chaudhary v. State of Bihar & Ors.22 this Court found 21 (2002) 1 SCC 149 "7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay.....

8. This Court in Ramanand Chaudhary v. State of Bihar quashed the investigation against the accused on account of not granting the sanction for more than 13 years. The facts of the present case are almost identical. No useful purpose would be served to put the appellant at trial at this belated stage.

9. Keeping in view the peculiar facts and circumstances of the case, we are inclined to quash the proceedings against the appellant as permitting further prosecution would be a travesty of justice and a mere ritual or formality so far as the prosecution agency is concerned, and unnecessary burden as regards the courts." 22 (2002) 1 SCC 153 "5. It is not necessary to go into the legal points raised by Mr. Jain as we are inclined to quash the prosecution against the appellant in the peculiar facts and circumstances of this case. After the raid no action was taken by the prosecution for six years. The Public Prosecutor consistently opined that no criminal case was made out against the appellant. The Commissioner on independent consideration refused to grant the sanction but later on at the asking of the DIG (Vigilance) he changed his view. The Prosecution against the appellant is pending for over a period of thirteen years and it would be a travesty of justice to permit the prosecution at this stage which would mean that the appellant would suffer the trial/appeal for another decade. In view of the facts and circumstances of this case we quash the prosecution pending against the appellant....." it expedient to quash the criminal proceedings due to the abnormal delay in granting a sanction for prosecution.

23. Noticing that there is no legislation prescribing the period within which a decision for sanction is to be taken, this Court, in Vineet Narian (Supra), sought to fill the gap by setting a normative prescription of three months for grant of sanction.

"58. (I)(15) Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."

24. Legislative reforms for expeditious grant of sanction for prosecution started with the enactment of the CVC Act, whereunder Parliament has expressly empowered the CVC under Section 8(1)(f) of the CVC Act to review the progress of applications for sanction23.

25. While exercising the powers under Section 8(1)(f), the CVC has been issuing guidelines and instructions to various departments for expeditious disposal of requests for sanction. Despite these legislative changes and administrative guidelines, 23 "Section 8: Functions and Powers of the Central Vigilance Commission- (1) The Functions and powers of the Commission shall be to –

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988." delay in granting sanctions continued. In Subramanian Swamy's case, this Court suggested that Parliament may consider prescribing clear time limits for the grant of sanction and to provide for a deemed sanction by the end of the period if no decision is taken.

"81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:

> (a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.
>
> (b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.
>
> (c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit."
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> 26. Yet another legislative development took place in 2018 when the Parliament, by way of an amendment to the PC Act, inserted the following provisos to Section 19 of the PC Act;
>
> "19. Previous sanction necessary for prosecution. –

> (1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013] -

(a) in the case of....

(b) in the case of....

(c) in the case of....

Provided further that.....

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

> Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:
>
> Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary....."
>
> 27. The new proviso to Section 19 mandating that the competent authority shall endeavour to convey the decision on the proposal for sanction within a period of three months can only be read and understood as a compelling statutory obligation. We are not inclined to accept the submission of the learned ASG that this proviso is only directory in nature. In the first place, the consistent effort made by all branches of the State, the Judiciary24, the Legislative25, and the Executive26, to ensure early decision-making by the competent authority cannot be watered down by lexical interpretation of the expression endeavour in the proviso.
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> 28. The sanctioning authority must bear in mind that public confidence in the maintenance of the Rule of Law, which is fundamental in the administration of justice, is at stake here. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny, thereby vitiating the process of determination of the allegations against the corrupt official27. Delays in prosecuting the corrupt breeds a culture of

24 Commencing from the concerns expressed in Vineet Narain case in 1998, followed by the decision in Subramanian Swamy.

25 The passing of the CVC Act in 2003, and the Lokpal and Lokayuktas Act amending the provision of PC Act and CVC Act and also the 2018 amendments to the PC Act. 26 The various instructions issued by the CVC from time to time from 2003. 27 Supra- Subramanian Swamy impunity and leads to systemic resignation to the existence of corruption in public life. Such inaction is fraught with the risk of making future generations getting accustomed to corruption as a way of life. Viewed in this context, the duty to take an early decision inheres in the power vested in the appointing authority to grant or not to grant sanction. In fact, the statement of object and reasons for the 2018 amendment of Section 19 clearly explain the purpose as under: -

> "2(i) ...Further, in the light of a recent judgment of the Supreme Court, the question of amending section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in section 19 of the Act."28
>
> 29. The intention of the Parliament is evident from a combined reading of the first proviso to Section 19, which uses the expression 'endeavour' with the subsequent provisions. The third proviso mandates that the extended period can be granted only for one month after reasons are recorded in writing. There is no further extension. The fourth proviso, which empowers the Central Government to prescribe necessary guidelines for ensuring the

28 Bill No. LIII of 2013, GOI (Ex.) Part II Sec 2 No. 31 dated 19.8.2013 (amendment implemented in the year 2018) mandate, may also be noted in this regard. It can thus be concluded that the Parliament intended that the process of grant of sanction must be completed within four months, which includes the extended period of one month.

30. If it is mandatory for the sanctioning authority to decide in a time-bound manner, the consequence of non-compliance with the mandatory period must be examined. This is a critical question having no easy answer. In Subramanian Swamy, this Court suggested that Parliament may consider providing deemed sanction if a decision is not taken within the prescribed period. The Appellant herein contends the very opposite that the criminal proceedings must be quashed if the decision is not taken within the prescribed period.

31. In the first place, non-compliance with a mandatory period cannot and should not automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of public interest having a direct bearing on the rule of law29. This is also a non-sequitur. It must 29 Subramanian Swamy v. Manmohan Singh and Anr, (2012) 3 SCC 64

76. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of the Rule of Law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecutions and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official

as a quid pro quo for services rendered by the public official in the past or may be in the future and the also be kept in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically quashed. At the same time, a decision to grant deemed sanction may cause prejudice to the rights of the accused as there would also be non-application of mind in such cases.

32. It is in between these competing interests that the Court must maintain the delicate balance. While arriving at this balance, the Court must keep in mind the duty cast on the competent authority to grant sanction within the stipulated period of time. There must be a consequence of dereliction of duty to giving sanction within the time specified. The way forward is to make the appointing authority accountable for the delay in the grant of sanction.

33. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.

sanctioning authority and the corrupt officials were or are partners in the same misdeeds.....

77. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right.....

34. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between “duty bearers” in authority and “right holders” affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 201530 and is also recognized as one of the six principles of the Citizens Charter Movement31.

35. Accountability has three essential constituent dimensions.

(i) responsibility, (ii) answerability and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken32. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for 30United Nations General Assembly Resolution 70/1 dated 25 th September, 2015 31Citizens Charter adopted by the Government in the ‘Conference of Chief Ministers of various States and Union Territories’ held in May 1997 in New Delhi, available from https://goicharters.nic.in/public/website/home. 32 See: Office of United Nations High Commissioner for Human Rights, Who will be Accountable? Human Rights and the Post-2015 Development Agenda, available from

http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.

36. Accountability, as a principle of administrative law, when applied to the issue that we are dealing with, translates in this manner. Responsibility for grant of sanction for prosecution of a public servant under Section 19 of the PC Act is always vested in the appointing authority. Identification of appointing authority is always clear and straightforward. The 2018 amendment specifically obligates the appointing authority to convey the decision within three months and to provide for the reasons to be recorded in writing for the extended period of one month. This amendment, in fact, evidences legislative incorporation of answerability, the second constituent of accountability. For enforceability, Parliament has expressly empowered the Central Vigilance Commission under Section 8(1)(f) of the CVC Act to review the progress of the applications pending with the competent authorities, and this function must take within its sweep the power to deal with the consequences of failure of the competent authority to comply with its statutory duty. This power and responsibility of CVC is clear from the provisions of the statute and decipherable from functions entrusted to it.

37. In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the non- grant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC shall enquire into the matter in the exercise of its powers under Section 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act.

38. The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act.

39. Returning to the facts of the present case, we have noticed that the CBI made the application for sanction for prosecution on 08.09.2015, and the same was granted on 24.07.2017, i.e., after one year and ten months. As the Appellant did not question the legality of the delay either before the Trial or the High Court but chose to confine the challenge only to the appointing authority acting under the dictation of the CVC, there was no occasion for CBI to respond to the submission of delay. The submission was raised for the first time before this Court. Though the learned ASG submitted that this plea should not be permitted to be raised, without standing on a technicality, we would have proceeded to examine the matter if the necessary material were on record of the case. As there is no material placed on record to examine the accountability of the appointing authority for not deciding the request for sanction within time, we leave it to the Appellant to seek appropriate remedy based on principles that we have laid down hereinabove.

40. For the reasons stated above, we dismiss the Criminal Appeal arising out of SLP (Crl) No.1568 of 2022 arising out of the Judgment of the High Court of Madras in Criminal Revision Petition No. 349 of 2019 dated 06.01.2022. We permit the petitioner to raise and seek such remedies as are permissible in law on the basis of principles laid down by us.

41. The parties shall bear their own costs.

……J. [B.R. GAVAI] ……J. [PAMIDIGHANTAM SRI NARASIMHA] NEW DELHI;

OCTOBER 11, 2022