

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR.JUSTICE B.A. PATIL

WRIT PETITION NO.736/2018 (GM-RES)

BETWEEN:

Sri Lakshman Rao Peshve
S/o P.L.Narayana Rao
Aged about 54 years
Residing at B-201
Mantri Pride Apartments
1st Block, Jayanagar
Bengaluru-560 011.

...Petitioner

(By Sri M.S.Bhagwat, Advocate)

AND:

The Karnataka Lokayuktha Police
Represented Deputy Superintendent of Police
M.S.Building, Dr. Ambedkar Veedhi,
Bengaluru-560 001.

...Respondent

(By Sri B.S.Prasad, Spl. Public Prosecutor)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India r/w Section 482 of Cr.P.C praying to quash the charge sheet in Spl.C.C.No.327/2015 pending on the file LXXVI (CCH-78) Additional City Civil and Sessions Court and Special Court, Bengaluru vide Annexure-A and all proceedings vide Annexure-C including the impugned order dated 23.12.2017 rejecting the application for discharge filed by the petitioner vide Annexure-B.

This Writ Petition coming on for order this day, the Court made the following:

ORDER

This petition is filed by petitioner/accused No.1 praying this Court to quash the charge sheet in Spl.C.C. No.327/2015 pending on the file of LXXVII Additional City Civil and Sessions Court and Special Court, Bengaluru.

2. I have heard Sri.M.S. Bhagwat, learned counsel for petitioner/accused No.1 and Sri. B.S. Prasad, learned Special P.P. for respondent – Lokayuktha.

3. The brief facts of the case are that the petitioner/accused No.1 was appointed as an Assistant Executive Engineer in Public Works Department, Government of Karnataka during the year 1992 and he was promoted to the post of Chief Engineer during the year 2007. Subsequently, Deputy Superintendent of

Police - Lokayuktha prepared a source report against petitioner/accused No.1 alleging that he has amassed wealth disproportionate to his known sources of income by illegal means. On the basis of the said report, after investigation, the charge sheet has been filed.

4. It is the submission of the learned counsel for petitioner/accused No.1 that the proceedings initiated against the petitioner is arbitrary, illegal and liable to be quashed. It is his further submission that accused No.2-wife of the petitioner filed a Criminal Revision Petition No.814/2015 and this Court quashed the order taking cognizance and issuance of process insofar as accused No.2 is concerned. In the said order it has been held that it was permissible for the Income Tax Assessee to submit returns after making corrections in terms of Income Tax and if the said finding has not been questioned, then under such circumstance, the same benefit ought to have been extended to

petitioner/accused No.1. It is his further submission that the respondent – Lokayuktha has not properly and fairly investigated the case and the fact findings has not been properly done in accordance with law. Further it is submitted that in order to prosecute the petitioner/accused No.1, as per Section 19 of the Prevention of Corruption Act, 1988 (hereinafter referred as ‘the Act’) the sanction is necessary but in the instant case, the sanction has been accorded by the concerned minister. But it is not placed before the cabinet as per the Karnataka Government (Transaction of Business) Rules, 1977 (hereinafter called as ‘the Business Rules’). It is his further submission that as per Section 19 of the Act, the sanction to prosecute the accused is to be by the State Government, if the transaction is in connection with the affairs of the State and as per Section 19(c) of the Act, in case of any other person of the authority competent to remove him from his office to issue the sanction. It is his further submission that as

per the first schedule of the Rules, Rule 23 prescribes that the removal shall be by the Government if the accused is holding the post in the cadre of Group – A or Group – B of employee. It is his further submission that admittedly the petitioner/accused was Group – A employee and as per the Karnataka Civil Services Rules, Appendix – I, the Government has made the list of Officers and declared to be heads of the Department and the Chief Engineer is construed to be the head of Public Works Department. Admittedly, he was working as a Chief Engineer and in pursuance of Rule 23, it is the cabinet which has to give the sanction. It is his further submission that even as per the third schedule Rule 9, the proposal for reduction in rank or removal or dismissal from the service of the heads of department and special officers having the same status has to be done by the Ministers of Cabinet. It is his further submission that the definition of State Government has been given in Mysore General Clauses Act, 1899

therein, Section 3(38-c) defines the State Government and the State Government shall mean the Governor of State of Karnataka. It is further submitted that as per Article 153 of the Constitution of India each State must have a Governor as per Article 163 of the Constitution of India, it is the counsel of Ministers that they will advise the Governor. In that light, it is his submission that as and when the sanction has to be issued in this behalf, then under such circumstance, it is the cabinet of Ministers, who has to issue the sanction. It is his further submission that Article 166 of the Constitution of India mandates that all the orders of the Government shall be expressed in the name of Governor and the Chief Secretary on behalf of Government, he has to place the material before the Ministers of Cabinet or the Government and thereafter the sanction ought to have been issued. But in the instant case, the sanction has been issued by the Ministers of Public Works Department and the said sanction is not as

contemplated under the law. It is his further submission that as per the Rules, all the executive action contemplated under the constitution has to be done in consonance of Article 166(3) of the Constitution of India. But in the instant case, no such method has been adopted while issuing the sanction. It is his further submission that the Government has adopted a step-motherly attitude in issuing the sanction. During the year 2013, similar situation came up before the Government of Karnataka in the case of **G. Guruprasad**, Chief Engineer and while issuing the sanction, the same has been placed before the Cabinet and the same came to be rejected. It is his further submission that the method adopted by the Government while issuing the sanction is not in accordance with law. It is his further submission that no *prima facie* case has been made out as against petitioner/accused No.1 and the learned Sessions Judge, without application of mind and without taking

into consideration of the above said facts and circumstances of the case, has taken the cognizance and the same is liable to be set aside. On these grounds, he prayed to allow the petition and to quash the proceedings.

5. *Per contra*, learned Special P.P. vehemently argued and submitted that as per Section 19(1)(b) of the Act in the case of a person who is employed in the State Government, it is the State Government which has to issue the sanction but in the instant case, it is the Minister of the concerned Department has issued the sanction. It is his further submission that as per first schedule Rule 23, it is only for dismissing, removed or compulsorily retiring of the persons who are holding Group - A or Group - B, then under such circumstances, the matter has to be placed before the Cabinet but in the instant case on hand, it is not for the purpose of removal but it is for issuance of the sanction.

Taking into consideration of the said facts and circumstances of the case, the concerned Minister has issued the sanction. It is his further submission that while examining the competent authority to accord sanction shall be in the case of Government Servant if it is satisfied the sanction as contemplated under Section 19(1)(b) of the Act, then under such circumstances, further examination of the Business Rules of the Government is not necessary. In order to substantiate his said contention, he has relied upon the decision of a Co-ordinate Bench in the case of **Sri. Theerthira N. Appachu @ Titira N. Appachu Vs. State of Karnataka rep. by Police Inspector, Karnataka Lokayukta** reported in **ILR 2018 KAR 4459**. It is further submitted that the similar issue came up for consideration of the co-ordinate bench in the case of **Dr. H.C. Sathyan Vs. The State of Karnataka, by Police Inspector, Karnataka Lokayukta, Mysuru** reported in **ILR 2017 KAR 3531** therein, the Court has come to

the conclusion that the Secretary of Department at his own responsibility without placing the matter before the Minister or by placing the matter before the Minister, he can issue the sanction. It is his further submission that looking from any angle the sanction issued is in accordance with law. It is his further submission that the file has been placed through the proper channel and the concerned Minister by application of mind has fully satisfied and thereafter the sanction has been granted. It is his further submission that the trial Court after taking into consideration of the above said facts and circumstances of the case, has come to the right conclusion and has rightly taken the cognizance. It is his further submission that the petitioner has not pleaded any failure of justice for having accorded the sanction. In the absence of any such pleadings, the said petition is not maintainable in law. On these grounds, he prayed to dismiss the petition.

6. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for both the parties and perused the records.

7. It is the contention of the learned counsel for petitioner/accused No.1 that the State Government is the competent Authority to remove the petitioner/accused from his post through the Government, who are the competent Authority for issuing of sanction order as contemplated under Sections 19(1)(b) or 19(1)(c) of the Prevention of Corruption Act, 1938. For the purpose of brevity, I quote Section 19 of the Act, which reads as under:

“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.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section

(1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution

shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

8. On close reading of the above said Section, it indicates that in case of person who is employed in connection with the affairs of a State, then under such circumstances, he can be prosecuted only with the sanction of the State Government and as per Section 19(1)(c) of the Act, in the case of any other person, of the Authority competent to remove him from his office. The main question, which has been raised by the learned counsel for the petitioner is that in order to issue the sanction whether the material has to be placed before the Cabinet of Ministers or the Governor for issuance of sanction order. It is his specific contention that as per the Business Rules, the said material has to be placed before the Cabinet of Ministers as the petitioner/accused is holding a post of Group – A employee and he was working as a Chief

Engineer as per The Karnataka Civil Services Rules -- Appendix – I it has made list of Officers declared to be head of Department and it is not in dispute that the Chief Engineer of PWD is considered to be a head of Department. As per Section 19(1)(b) of the Act, the sanction has to be accorded by the State Government. As per Mysore General Clauses Act, 1899, Section 3(38-c) reads as under:

“(38-c) "State Government"-

(a) as respect anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean the (Governor) of the State of Mysore;

(b) as respect anything done [x x x] after the commencement of the Constitution (Seventh Amendment) Act, 1956, and before 1st November, 1973] shall mean the Governor of the State of Mysore;

(c) as respect anything done or to be done after 1st November, 1973 shall mean the Governor of the State of Karnataka.”

9. On close reading of the said Section, it indicates that all the transactions of the State

Government have to be done by the Governor of the Karnataka. This issue came up before the Co-ordinate Bench in the case of K. Chandrashekara Reddy in Criminal Appeal No.2573/2013 dated 16.08.2014 and in the said decision, it has been observed that Article 166 of the Constitution of India contemplates that all the executive action of the Government of a State shall be expressed to be taken in the name of Governor and as sub-clause (2) of Article 166 of the Constitution of India further reads that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in the Rules to be made by the Governor in that context, the Business Rules have been authenticated and passed. Under the said Rule which authorized that some of the officers to authenticate the order passed in the name of Governor of Karnataka. When it is specified that the Government which is competent Authority to issue sanction order, then under such

circumstance, it goes to show that the cabinet of the council of ministers, who have to pass an order for the purpose of sanctioning permission for prosecution. As per Rule 12 of the Business Rules, it provides that a committee of council of Ministers to be called the cabinet which shall consist of the cabinet ministers. Sanction or refusal to sanction it is finding made by the cabinet and that has to be authenticated by an Officer under Rule 19(1) of the Business Rules. But the power is vested with the Government or Governor is competent to do it, only the Government could do it through its cabinet Ministers and the said orders have to be authenticated by the officers referred in Rule 19.

10. On close reading of the order of sanction admittedly, the said order has been issued by the Ministers of Public Works Department and it is not placed before the Cabinet or before the Governor for perusal and sanction. It is brought to the notice of this

Court that in earlier occasion during the year 2013, the matter in respect of **G. Guruprasad**, who worked as head of Department of Public Works Department came up for consideration who was also working as a Chief Engineer, in that case the matter has been placed before the Cabinet in pursuance of Rule 20(1)(b) of the Business Rules for the purpose of sanction, under such circumstances, the contention taken by the learned counsel for respondent – Lokayuktha that it is the concerned minister, who is the competent Authority to issue the sanction is not acceptable.

11. I gone through the decisions in the case of **Dr. H.C. Sathyan (quoted supra) and Sri. Theerthira N. Appachu @ Titira N. Appachu (quoted supra)**. The facts therein and facts in the present care are different. In that light, they will not come to the aid of the respondent.

12. Taking into consideration of the above said facts and circumstances of the case, I am of the considered opinion that the sanction which has been accorded by the concerned Minister is not in accordance with law and as such, the same is going to the route of the case and if the sanction is not properly accorded, then the continuation of the proceedings as against the accused is not contemplated under the law. However, it has been made clear that if the respondent – Lokayuktha intends to prosecute the petitioner/accused in accordance with law then, can obtain a fresh sanction as contemplated under the law and thereafter it can proceed in accordance with law.

13. Taking into consideration of the above facts and circumstances of the case, petition is **allowed** and the proceedings initiated in Spl. C.C. No.327/2015 pending on the file of LXXVII Additional City Civil and Sessions Court and Special Court, Bengaluru for the

offences punishable under Sections 177, 193, 465, 468 and 471 of IPC and also under Sections 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 are hereby **quashed**. However, it has been made clear that after placing the said material before the competent Authority to issue the sanction, the respondent can prosecute in accordance with law.

In view of the disposal of the main petition, I.A. No.1/2019 is allowed.

**Sd/-
JUDGE**

VBS