SUPREME COURT OF INDIA

State of Punjab

Vs.

Mohammed Iqbal Bhatti

C.A.No.4969 of 2009

(S.B. Sinha and Deepak Verma JJ.)

31.07.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. The short question which arises for consideration in this appeal is as to whether the State has any power of review in the matter of grant of sanction in terms of Section 197 of the *Code of Criminal Procedure, 197*.

3. The basic fact of the matter is not in dispute. Respondent was working as Block Development and Panchayat Officer. A First Information Report was lodged against him on or about 6.9.2001 under Sections 7 and 13(2) of the *Prevention of Corruption Act, 1988*. Upon completion of investigation, the Vigilance Department sought for sanction from the competent authority so as to enable it to prosecute the respondent. By an order dated 15.12.2002, grant of such sanction was refused. The matter, however, was placed before the competent authority once again and on or about 14.9.2004 sanction to prosecute the respondent was granted. Questioning the legality and/or validity of the said order, the respondent filed a writ petition before the High Court of Punjab and Haryana.

> "By reason of the impugned judgment, the said writ petition was allowed opining that the State has no power of review and in any event, the impugned order could not have been passed as the State while passing its earlier order dated 15.12.2003 has exhausted its jurisdiction."

4. Mr. Vivek K. Goyal, learned Additional Advocate General appearing on behalf of the appellants, would urge that the jurisdiction for grant of sanction being an administrative one, the State has the requisite power to review its earlier order. It was urged that it is incorrect to contend that power once exercised stands exhausted.

5. Mr. Jasdeep Singh Gill, learned counsel appearing on behalf of the respondent, on the other hand, urged that the order impugned in the writ petition having been passed by the State on the same material, the said order was wholly illegal.

6. The respondent is a public servant. The Governor of the State of Punjab is his appointing authority. He is, therefore, not removable from his office save by and with the sanction of the Government and in that view of the matter if he is accused in any offence alleged to have been committed by him while acting or purporting to act in discharging of his official duty, grant of prior sanction is imperative in character in terms of Section 197 of the Code of Criminal Procedure, 1973. The power of the State, as is well known, is performed by an executive authority authorized in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power has to be exercised in terms of Article 162 thereof. Once a sanction is refused to be granted, no appeal lies thereagainst.

7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See *Mansukhlal vithaldas Chauhan v. State of Gujarat*[1]]

8. The concerned authority cannot also pass an order of sanction subject to ratification of a higher authority. [See *State (Anti Corruption Branch) Govt. of N.C.T. of Delhi and Anr. v. Dr. R.C. Anand and Anr.*[2]].

9. The High Court called for the entire records. It perused the same. It noticed that several queries were raised but remained unanswered. The Departmental proceeding initiated against the respondent was dropped. The recommendations therefore were made not to grant sanction on the basis whereof the aforementioned order dated 15.12.2003 was passed. A finding of fact has been arrived at by the High Court that no material was placed before the competent authority. Only a communication had been received from the Director, Vigilance

Bureau dated 22.6.2004 wherein reference of the letter dated 26.5.2004 was made. It, according to the High Court, was not a new material. In the aforementioned situation, the High Court, opined: Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible. The Government is expected to act consciously and cautiously while taking such serious decisions. The perusal of the record shows that pointed queries had been raised to be answered by the Vigilance Bureau but no answer was forthcoming nor any had been submitted subsequently which culminated into passing of the later order dated September 30, 2004. We refrain ourselves from mentioning the queries which had been raised but it would suffice to say that the queries were never answered at the relevant time when the order dated December 15, 2003 had been passed nor the same was ever commented upon as no answers were placed before the competent authority for passing the impugned order dated September 30, 2004.

10. The State of Punjab in exercise of its jurisdiction under Article 162 of the Constitution of India framed Rules of Executive Business. Pursuant to Rules 18 and 19 thereof, the Department of Rural Development and Panchayat made Standing Orders.

11. Rules 8 and 9 of the said Rules read, thus:

> "8. All orders or instruments made or executed by or on behalf of the Government of the State of Punjab shall be expressed to be made or executed in the name of the Governor.
>
> 9.(1) Every order or instrument of the Government of the State of Punjab shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary or an Under Secretary or such other officer as may be specifically empowered by the Governor in that behalf and the signature so made shall be deemed to be the proper authentication of such order or instrument..."

12. In terms of the said Rules as also the Standing Order, the Minister of Rural Development and Panchayats is the competent authority to grant or refuse to grant sanction, so far as the respondent is concerned.

13. Before embarking on the rival contentions, we may also place on record that the Government of Punjab, Department of Vigilance had issued guidelines in terms whereof the grant of sanction by the Administrative Department may be refused; some of the provisions whereof read as under:

> "3. The cases should not be delayed at the level of administrative department when sent for prosecution sanction. Generally, the cases should be decided with in two months time from the date, the reference is made by the vigilance department.

> 4. Although the grant or refusal of prosecution sanction is a matter within the sole discretion of the competent authority. However, the authority can refuse to grant prosecution sanction for reason such as..."

14. The First Information Report was lodged in 2001. The proceeding for grant of sanction was initiated in that year. Several queries were made to the Vigilance Department. Such queries had to be made as the respondent herein made a representation that he had been falsely implicated at the instance of some of the officers of the Vigilance Department who had set up a tout therefor.

15. The Hon'ble Minister noticed the said representation and by an order dated 15.12.2003 refused to grant sanction, stating: 3. After minutely going through the averments made in the representation submitted by the said officer the Hon'ble Minister issued order for submitted the file. After scrutinizing the file by Hon'ble Minister it was found that the Vigilance Department has been unable to provide the clarification with regard to certain points as asked by the Panchayat Department from the Vigilance Department from which it is cleared that they did not want to submit the clarification and want the true facts remain hidden and not come to the fore. Therefore, in this situation, the sanction to prosecution Sh. Bhatti by the Vigilance Department is refused. The said order was signed by the Special Secretary, Government of Punjab.

16. Before us, however, it was contended that requisite clarification was made by the Deputy Superintendent of Police, Vigilance Bureau on 17.12.2002 stating: Besides this Sh. Hans Raj Golden has no link with Vigilance Department. It is false that he is a tout of Vigilance Department.

17. However, it is stated that with the change in the Government and after more than nine months of the said refusal to grant sanction, the Vigilance Department again approached the concerned Secretary for grant of sanction by a letter dated 16.05.2004. The Deputy Secretary, Government of Punjab, Village Development and Panchayat Department by a letter dated 30.09.2004 addressed to the Deputy Secretary, Vigilance Bureau, stated as under:

> "On the above mentioned subject this department vide letter memo no. 6/37/2001-3 RDE-3/ 9925 dated 15.12.2003 had refused to grant sanction for prosecution of Sh. Mohammed Iqbal Bhatti.
>
> 2. Vide your letter under reference you had again requested to grant sanction for prosecution of the concerned official in the case and after reconsidering the case, sanction for prosecution Sh. Mohammed Iqbal Bhatti, District Development and Panchayat Officer is granted..."

18. The Governor of Punjab in his order of sanction dated 14.09.2004 recorded the prosecution case presumably as contained in the First Information Report and opined:

Therefore, after perusing the above case police file, documents, challan and attached all the documents minutely the Rajya Pal Ji has become fully satisfied that the above Mohd. Iqbal D.D.P.O. Ferozepur during the tenure of his service/ posting, have committed an offence u/s 7, 13(2) 88 P.C. Act. The said order was also signed by the Secretary, Government of Punjab, Rural Development and Panchayat Department.

19. The contention of the learned Additional Advocate General for the appellants is that Rule 8 of the Rules of Business shall apply whereas according to the learned counsel for the respondent, Rule 9 thereof shall apply. In terms of Clause (3) of Article 166 of the Constitution of India all orders of the government must be issued in the name of the Governor. Such orders, however, may be signed by any authorities specified in Rule 9 of the Rules of Business. By reason of either Rule 8 or Rule 9 of the Rules of Business, no substantive power is conferred. The Rules of Executive Business inter alia provided for three authorities before whom the records are to be placed, viz., Minister of the Department, Chief Minister and Cabinet. It has not been contended that in terms of the Rules of Executive Business read with the Standing Order, the Minister of the Department concerned could not have refused to grant sanction. What is contended before us is that Rule 8 of the Rules of Business should have been complied with.

20. It is now well-known that in the event it appears from the order and the records produced before the court, if any occasion arises therefor that even if a valid order is not authenticated in terms of Clause (3) of Article 166 of the Constitution of India, the same would not be vitiated in law. Failure to authenticate an executive order is not fatal. The said provision is directory in nature and not mandatory. [See *I.T.C. Bhadrachalam Paperboards and Another v. Mandal Revenue Officer, A.P. and Others*[3].] From a perusal of the order dated 15.12.3003, it is evident that before the Hon'ble Minister all the relevant records were produced.

21. The Vigilance Department did not contend that the Hon'ble Minister did not have any jurisdiction. It accepted the said order. It was not challenged. Only when a new government came in, a request was made for reconsideration of the earlier order, as would be evident from the memo of the Secretary of the Department.

22. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.

23. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise.

24. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

[1]*(1997) 3 SCC 622*
[2]*(2004) 4 SCC 615*
[3]*(1996) 6 SCC 634*