

SUPREME COURT OF INDIA

R.Ramachandran Nair

Vs.

The Deputy Superintendent Vigilance Police

Crl.A.No.792 of 2011

(P. Sathasivam and Dr. B.S.Chauhan JJ.)

28.03.2011

JUDGMENT

P. SATHASIVAM, J.

1. Leave granted.

2. This appeal is directed against the impugned judgment and order dated 12.07.2010 passed by the High Court of Kerala at Ernakulam in Criminal R.P. No. 1606 of 2010 whereby the High Court dismissed the petition filed by the appellant herein seeking discharge from the criminal case pursuant to a charge sheet filed in the Court of the Enquiry Commissioner and Special Judge, Thrissur, by the Vigilance Police Department.

3. Brief facts:

(a) The Government of Kerala was trying to establish a Sanskrit University in the State from the year 1972 onwards. On 15.07.1991, the appellant was appointed as Special Officer for creating the first Sanskrit University in the State. On 16.01.1993, the State issued a Government Order directing the District Collector, Ernakulam to acquire the land for the establishment of the University. The entire land of 42.5 acres, so acquired in Kalady (the holy birth place of Sree Sankaracharya) in Ernakulam District which was handed over to the University by the District Collector of Ernakulam for establishing the University consisted of low-lying and water-logged paddy fields and any development work could be started only after it was filled up with earth.

Before starting the work of filling up, the appellant, who was functioning as the Chief Secretary to State Government at the State Headquarters, had consulted several experts in the field including the Chief Engineer of the State Public Works Department (hereinafter referred to as PWD") who was actually brought to the site. The appellant filled 42.5 acres of waterlogged land with earth brought from distance. An amount of Rs.5,925/- was spent for filling up of every one cent of the water logged land.

(b) From 01.01.1994 to 30.06.1996, the appellant was appointed as the first Vice-Chancellor of the University. On 18.12.1996, an FIR being Crime No.9 of 1996 was registered in the Vigilance Police Station, Ernakulam against the appellant and four other persons under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PC Act") and Sections 120-B and 463 of the Indian Penal Code (in short "IPC"). The allegation against the appellant was that the work of filling of earth in the land acquired for the said University was done in an irregular manner and he obtained a pecuniary advantage of Rs. 59,51,543/- with the contractors thereby causing corresponding wrongful loss to the University.

(c) During May-June, 1997 the Vigilance Department examined the site relating to the alleged earth-filling during the years 1993 and 1994. This examination was done after three years and after the occurrence of six monsoons. Due to the impact of rains during six monsoons during that time, the field had got thoroughly consolidated.

(d) On 30.06.2005, a charge-sheet was filed in the Court of the Enquiry Commissioner and Special Judge, Thrissur with a delay of eight and a half years after the F.I.R. and without obtaining the previous sanction of the Syndicate of the University under Section 50(2) of the Sree Sankaracharya University of Sanskrit Act, 1994 (hereinafter referred to as "the Act"). In the FIR, the pecuniary loss caused to the University was indicated as Rs.59,51,543/- whereas in the charge-sheet it has come down to less than 5% of the originally estimated amount, i.e., Rs.2,68,358/-.

(e) In the meanwhile, on 03.04.2006, the Principal Secretary to the State Government directed the Director, Vigilance and Anti Corruption Bureau to withdraw the cases against the appellant. In this communication, the State has admitted that the conduct of the appellant was in good faith and that only because of the speedy actions taken by him, the University had become a

reality within a short period of time and that the appellant is eligible for the protection under Section 50(3) of the Act.

(f) On 19.12.2008, the appellant filed an application under Section 239 of the Criminal Procedure Code (in short "the Code") being CMP No. 2933 of 2008 in CC No. 31 of 2005 in the Court of Enquiry Commissioner and Special Judge, Thrissur for discharge. By order dated 29.08.2009, the Special Judge dismissed the abovesaid application on the ground that the appellant is not entitled to get the protection of Section 50 of the Act as being the Vice-Chancellor, the appellant was a public servant.

(g) Against the said order, the appellant preferred Criminal Revision Petition No. 1606 of 2010 before the High Court of Kerala. By order dated 12.07.2010, the High Court dismissed the revision filed by the appellant herein. The said order is under challenge in this appeal.

4. Heard Mr. K.V. Viswanathan, learned senior counsel for the appellant and Mr. Jaideep Gupta, learned senior counsel for the respondents.

5. The only allegation on the appellant was that while functioning as the Vice-Chancellor of the University he was found guilty for filling of earth in the land acquired for the University in a most perfunctory and irregular manner with ulterior motive by not recording the measurements correctly, showing inflated figures of measurements in the records and thereby committed falsification of accounts and forgery, criminal breach of trust and cheated the Government by corrupt or illegal means and committed misconduct, obtained undue pecuniary advantage of Rs.2,68,358/-, and he being the first accused has committed offence punishable under Sections 13(1) (d) and 13(2) of the PC Act and Sections 409, 468, 477A and 120-B of IPC.

6. Mr. K.V. Viswanathan, learned senior counsel for the appellant, at the foremost, submitted that in view of Section 50(2) of the Act, without the previous sanction of the Syndicate of the University, the prosecution cannot be allowed to proceed against the appellant. He pointed out that Section 50(2) of the Act stipulates "sanction of the Syndicate". He further highlighted that the prosecution, which has been initiated without the sanction of the University, ought not to be allowed to continue against the appellant. He also submitted that inasmuch as even in 2006 the Government of Kerala, Vigilance (B) Department Thiruvananthapuram, after considering all the relevant materials, decided to withdraw the criminal

proceedings against the appellant in the cases i.e. CC No. 21 of 2000 and CC No. 49 of 2000 pending before the Court of Enquiry Commissioner & Special Judge, Kozhikode and CC No. 31 of 2005 pending before the Court of Enquiry Commissioner & Special Judge, Thrissur, with the permission of the respective Courts. He also submitted that even on merits inasmuch as the appellant obtained the approval of the Chief Engineer of the PWD and accepted the lowest tender which was below the amount prescribed by the competent officer of the PWD i.e. Assistant Executive Engineer, there is no loss to the Government hence he cannot be held liable.

7. On the other hand, Mr. Jaideep Gupta, learned senior counsel for the respondents submitted that in view of the materials available, the appellant has not made out a case for discharge and he has to face the trial. He also submitted that the plea of the appellant was considered and rejected by the trial Court as well as by the High Court, therefore, interference by this Court is not warranted.

8. We have carefully considered the rival submissions and perused all the relevant materials.

9. Insofar as the first issue, namely, whether or not a prosecution can be allowed to proceed in the face of Section 50(2) of the Act without the sanction of the Syndicate of the University, it is useful to refer the relevant provision which reads as:-

"50. Protection of acts done in good faith-- (1) XXX

(2) No suit, prosecution or other proceedings shall lie against any officer or other employee of the University for any act done or purported to have been done under this Act, or the Statutes or the Ordinances or the Regulations without the previous sanction of the Syndicate.

(3) XXX"

The headnote makes it clear that any act done in good faith is protected. The appellant, being Vice-Chancellor of the University, is one of the Officers of the University in terms of Section 23 of the Act. In that event, it is not in dispute that Section 50(2) is applicable to the appellant and in respect of any act done under the Act or Statutes or Ordinances or Regulations, no suit or prosecution or other proceeding be initiated against him without the previous

sanction of the Syndicate. Inasmuch as sub-Section 2 used the word "shall", previous sanction of the Syndicate is a pre-condition or mandate before initiating either civil or criminal prosecution. To put it clear, as per Section 50(2) of the Act, no prosecution will lie against the appellant without the previous sanction of the Syndicate. It is important to note that the allegations against him related to actions which he had taken while he was discharging his duties as an Officer of the University, namely, the Vice-Chancellor of the University. A perusal of the FIR makes it clear that there was not even a whisper of an allegation or in the charge-sheet that the appellant had made any personal gain in the transaction. The allegation was only that the contractor who did the earth filling obtained an excess amount of Rs. 2,68,358/-. It is not clear why the prosecution has waited for nearly 81/2 years to file the charge-sheet or waited until the death of the contractor and until the Assistant Executive Engineer who prepared the quotation for the work and in-charge of the work got promoted as Executive Engineer and then as Superintending Engineer and retired from service on superannuation and left the country for working in UAE before filing the chargesheet in the Court.

10. Apart from the above conclusion, in the light of the language used in sub-Section 2 which is mandatory in the absence of previous sanction of the Syndicate of the University, the prosecution cannot be launched or proceeded. It is not the case of the prosecuting agency that they obtained sanction from the Syndicate of the University which is the competent authority to sanction. In the light of the language used in sub-Section 2 and in the absence of previous sanction by the Syndicate of the University, we hold that the prosecution cannot be allowed to proceed, even otherwise, he being a Vice-Chancellor, acted diligently by following the procedure, no action could be initiated after a period of 8 years from the initiation of the complaint.

11. Coming to the second contention, namely, the stand of the Government which is reflected in the proceedings dated 03.04.2006, it is also useful to extract the decision of the Government of Kerala, Vigilance (B) Department which was communicated by Principal Secretary to Government to the Director, Vigilance & Anti Corruption Bureau, Thiruvananthapuram which reads thus:-

"GOVERNMENT OF KERALA

No. 9575/B1/05/Vig. Vigilance (B) Department Thiruvananthapuram

Dated 03.04.2006

From

The Principal Secretary to Government

To

The Director

Vigilance & Anti-Corruption Bureau Thiruvananthapuram

Sir,

Sub: Withdrawal of cases pending against Shri R Ramachandran Nair, former Vice-Chancellor, Sree Sankaracharya University of Sanskrit - Reg.

Ref. 1. Govt. letter of even No. dated 07.10.2005.

2. Your letter No. C5/SJK/16465/2000 dated 03.12.05 & 18.02.06.

I am directed to invite your attention to the references cited and to inform you that a further examination of facts in respect of the three cases viz. (CC No. 21/2000 and CC No. 49/2000) of the Court of Enquiry Commissioner & Special Judge, Kozhikode and CC No. 31 of 2005 of the Court of Enquiry Commissioner & Special Judge, Thrissur it is found that steps were taken by the University Centres at the earliest possible date and it was due to such speedy action that the University which was being contemplated for a very long time became a reality within such a short period of 1994-1996. As the former Vice-Chancellor had acted in good faith in the discharge of the functions imposed on him under the University Act, he is fully eligible for the protection of Section 50(3) of Sree Sankaracharya University of Sanskrit Act, 1994, which read as follows:- 50(3) "No Officer or other employee of the University shall be liable in respect of any such act in any civil or criminal proceedings if the act was done in good faith and in the course of the execution of the duties or in the discharge of the functions imposed by or under this Act." As the action taken by the former Vice-Chancellor was "in good faith" in all three cases, it is decided that prosecution shall be

withdrawn in CC 21/2000 and CC No. 49/2000 of the Enquiry Commissioner & Special Judge, Kozhikode, and CC No. 31/2005 of the Enquiry Commissioner & Special Judge Court, Thrissur.

Hence, I am to request you to take urgent action to withdraw the cases in CC 21/2000 and CC No 49/2000 pending before the Court of Enquiry Commissioner & Special Judge, Kozhikode and CC No. 31/2005, before the Enquiry Commissioner & Special Judge, Thrissur, with the permission of the respective courts.

The action taken in matter may be intimated to Government immediately.

Yours faithfully

Sd//-

K.A. Bhagavathy Ammal

Additional Secretary

For Principal Secretary to Government"

12. Perusal of the above communication at the highest level makes it clear that on examination of the entire facts in the 3 cases, namely, CC Nos. 21 and 49 of 2000 and CC No. 31 of 2005 which are pending before the Special Judge, Kozhikode and Thrissur respectively and the sincere and speedy action taken by the appellant as Vice-Chancellor of the University and also acted in good faith in the discharge of the function imposed on him under the Act, the Government requested the Director Vigilance, Anti-Corruption Bureau to take action to withdraw all the 3 cases pending before the respective Courts. It is not clear, in spite of such decision at the highest level, namely, Chief Secretary to Government, no follow up action was taken before the concerned courts seeking permission to withdraw the criminal proceedings pending against the appellant. In terms of Section 114 of the Evidence Act, 1872 this Court may legitimately draw a presumption that the Government had taken a conscious decision exonerating the appellant even in 2006 and there is no reason to doubt the integrity of the appellant.

13. Apart from the legal issues which are in favour of the appellant, even on merits, prosecution cannot be allowed to proceed against the appellant. When the

appellant was asked to take required steps for formation of the University under the Act, the Government allotted 42.5 acres of land which was water logged and any development work could be started only after it was to be filled up with earth. It is also available from the records that the estimate was prepared by the Assistant Executive Engineer and based on which tenders were called for and it is not in dispute that the appellant accepted the lowest tender which is of lesser amount than the one prescribed by the Engineer. It can also be seen that before the work was started, the appellant had consulted several experts in the field including the higher officials of the State and actually brought them to the site regarding the filling up of the earth. Further, though in the FIR, the complainant had claimed that the appellant had obtained a pecuniary advantage of around Rs. 59,51,543/- whereas in the charge- sheet filed by the prosecution in the Court, it has come down to less than 5 per cent of the original estimate, nearly, Rs. 2,68,358/-, admittedly, there is no mention in the chargesheet about the huge difference in the calculation of the loss between the FIR and the chargesheet. Further, when the Government of Kerala decided to establish a University exclusively for Sanskrit in its State two decades ago, admittedly, nothing came out for a long time and only in the year 1991 the appellant was appointed as Special Officer for creating a University. It was pointed out that within two years the mission was completed and Sri Sankaracharya University of Sanskrit was created and started functioning in November 1993 and in the next month i.e. in December 1993, the Government appointed him as the first Vice-Chancellor of the University and he assumed charge of the post with effect from January 1, 1994. He continued in the post for a period of 21/2 years i.e. till 30.06.1996. All these factual details clearly show that even on merits the respondents are not justified in continuing the criminal proceedings. Though all these legal and factual details have been projected before the Trial Court as well as the High Court, the same were not correctly appreciated and both the courts committed an error in dismissing his petition filed for discharge. With the abundant materials and in view of the non-compliance of statutory provisions mentioned above, we accept the claim of the appellant. For all these reasons, we are satisfied that the appellant has made a case for discharge from the criminal proceedings.

14. In these circumstances, the orders passed by the Enquiry Commissioner and Special Judge, Thrissur dated 29.08.2009 in CMP No 2933 of 2008 and CC No. 31 of 2005 and order of the High Court dated 12.07.2010 in CrI. RP No. 1606 of 2010 are set aside, consequently, the appellant is discharged from all the allegations leveled against him. The appeal is allowed.