

State of M.P

v.

Ram Manohar Pandey

(Supreme Court Of India)

Criminal Appeal No. 2547 Of 2014 & 2548 Of 2014 (Arising Out Of Slp (Crl.) No. 9809 Of 2013 & 9976 Of 2013) | 09-12-2014

Sudhansu Jyoti Mukhopadhaya, J.

1. Leave granted

2. These appeals have been preferred by the appellant-State of Madhya Pradesh against the common order dated 5th November, 2012 passed by the Division Bench of the High Court of Madhya Pradesh, Bench at Indore. By the common impugned order, the Division Bench allowed the two revision petitions preferred by respondent-Ram Manohar Pandey and quashed the order dated 16th September, 2011 passed by the Special Judge (under Prevention of Corruption Act, 1988), Ujjain in Special Case No. 16 of 2004 with respect to Crime No. 66 of 1993 and Special Case No. 17 of 2004 with respect to Crime No. 67 of 1993.

3. The respondent-who was appointed on the post of a Sub-Engineer w.e.f. 1.7.1972 in the Medical Council, Biaora, District Rajgarh was initially promoted to the higher post of Assistant Engineer and thereafter to the post of Executive Engineer by resolution dated 9th May, 1988. He was placed on deputation with Municipal Corporation, Ujjain from 1991-1993 as City Engineer. While he was working there, certain charges of corruption were made against him. The Dy. S.P, Special Police Establishment Lokayukta, Ujjain filed complaints against the respondent which were registered as Crime Nos. 66 of 1993 and 67 of 1993 for offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

4. In the year 2004, when sanction was sought for prosecuting the respondent and some others, the Municipal Corporation, Ujjain by resolution Nos. 343 and 344 dated 23rd September, 2004 refused to grant sanction. In spite of the same, charge-sheet was filed against the respondent and others before the Trial Court. The charge sheet was challenged by the respondent by filing an application and the same was dismissed by order dated 24th September, 2004.

5. Thereafter prosecution sought sanction from the State Government to prosecute the respondent and some others. But the State Government refused to grant sanction by order dated 22nd August, 2006.

6. As the matter remained pending an application for discharge was filed by the respondent. The Special Judge, Prevention of Corruption Act, Ujjain, by its order dated 9th September, 2009 discharged the respondent with following observation :

"In the case before me, the accused Ram Manohan Pandey was working on the post of Executive Engineer in Municipal Corporation of Ujjain on deputation and at present he has been working as Engineer in Municipal Corporation, Ratlam. Accused Ram Manohar Pandey being a Government Servant (Civil Servant) is a public servant and having transferred from the Municipal Corporation Ujjain, he is now working at Ratlam and he is neither a retired personnel nor attained the age of superannuation and also he has not been discharged, nor was dismissed. In the above situation there is prior need of taking prosecution sanction against Ram Manohar Pandey for his trial in respect of offences under Prevention of Corruption Act. Since, prosecution sanction has not been granted against the accused Ram Manohar Pandey, therefore, cognizance of offence could not be taken against him. Therefore, he is hereby discharged."

7. The aforesaid order was not challenged by the State and, therefore, the order of discharge reached finality.

8. The respondent attained the age of superannuation on 30th September, 2009 and consequently was superannuated from service. Subsequently, a fresh challan was filed by prosecution on 8th December, 2009 against the respondent and some other contrary to the order dated 9th September, 2009. This time when the respondent filed applications for discharge which were rejected by the Trial Court vide order dated 31st March, 2010.

9. Being aggrieved, the respondent filed two revision petition Nos. 802 of 2010 and 803 of 2010 challenging the order of Trial Court dated 31st March, 2010. However, both the petitions were dismissed by the High Court by the common order dated 13th October, 2010.

10. Thereafter, respondent filed applications under Section 19 of the Prevention of Corruption Act before the Special Judge, Ujjain, (Prevention of Corruption Act) in Special Case No. 16 of 2004 and Special Case No. 17 of 2004 with respect to the Crime No. 66 of 1993 and Crime No. 67 of 1993 respectively.

The Trial Court vide its common order dated 16th September, 2011 rejected the applications filed by the respondent.

11. Being aggrieved by the said order dated 16th September, 2011, the respondent filed Revision Petition Nos. 1361 of 2011 and 1362 of 2011 before the High Court of Madhya Pradesh, Bench at Indore. The Division Bench of the High Court by the common impugned order dated 5th November, 2012, allowed both the petitions and quashed the order dated 16th September, 2011 in Special Case Nos. 16 and 17 of 2004 with respect to Crime Nos. 66 and 67 of 1993 respectively with following observations :-

".... As per investigation made by the Lokayukt organisation they admitted that the over payment was made on the basis of running bills submitted by the contractor but no final payment was made in respect of work of Coal-tarring of road during Singhastha (1991-92) . The payment of running bill is like an advance payment and the mistake about the payment can be corrected at the time of preparation of the final bill. They also found that no excess coal tar was supplied to the contractor and all the work was done within the permissible limit of Madhya Pradesh Works Department Manual, the question of pertaining the prosecution to prosecute the present petition after his retirement does not arise."

12. Being aggrieved by the said judgment, the appellant herein filed the instant special leave petitions.

13. Learned counsel appearing on behalf the appellant broadly made the following submissions.

(i) The High Court committed gross error of law while entertaining the Criminal Revision for the same subject matter though the same was barred under Section 397(3) of Cr.P.c.

(ii) The High Court erroneously passed the order in Criminal Revision No. 1362 of 2011 merely on the basis of a verdict given by this Court in another case.

He placed reliance in the decision of this Court in State of Madhya Pradesh v. Sheetla Sahai and Others, 2009(3) R.C.R.(Criminal) 835 : 2009(5) Recent Apex Judgments (R.A.J.) 110 : (2009)8 SCC 617 and Subramanian Swamy v. Manmohan Singh and Another, 2012(1) R.C.R.(Criminal) 720 : 2012(1) Recent Apex Judgments (R.A.J.) 201 : (2012) 3 SCC 64.

14. On the other hand, according to the learned counsel for the respondent sanction was once refused by the State and was not granted before the retirement and therefore the respondent cannot be prosecuted after his retirement. It was further contended that revision petition under Section 397 Cr.P.C. cannot be treated as a petition under Section 482 Cr.P.C. He also relied on the decision of this Court in Chittaranjan Das v. State of Orissa, 2011(3) R.C.R.(Criminal) 512 : 2011(4) Recent Apex Judgments (R.A.J.) 64 : (2011)7 SCC 167, etc.,.

15. We have considered the rival contentions raised by learned counsel for the parties and have perused the record.

16. The alleged complaint was filed against the respondent and others including one D.L. Rangotha. They were prosecuted under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

17. When the respondent and others were in service, the Municipal Corporation, Ujjain by Resolution Nos. 343 and 344 dated 23rd September, 2004 refused to grant sanction for prosecuting the respondent and others. In spite of the same, charge-sheet was filed on the next day i.e. 24th September, 2004 before the Trial Court.

18. It is pertinent to note that the appellant-State also by letter dated 22nd August, 2006 refused to grant sanction to prosecute the respondent who was accused no.4. One of the grounds taken was that the respondent is not an employee of the State Government but as an employee of the Municipal Corporation.

19. We have noticed that Municipal Corporation had already refused to grant sanction by resolution dated 23rd September, 2004 .

20. The co-accused D.L. Rangotha moved before the Madhya Pradesh High Court in Criminal Revision No. 165 of 2005. He brought to the notice of the High Court that the State Government has refused to grant sanction but still charge-sheet was filed. However, the High Court by order dated 2na February, 2009 dismissed the revision petition filed by said D.L. Rangotha and held that fresh challans can be filed after retirement.

21. Against the order dated 2nd February, 2009 the said D.L. Rangotha move before this Court. In Criminal Appeal No. 1213 of 2013-D.L. Rangotha v. State of M.P., this Court having noticed the aforesaid fact that the State Government had already refused to grant sanction under Section 197 of the Code of Criminal Procedure for filing Criminal Case against the said D.L. Rangotha and relying on the

decision of this Court in Chittaranjan Das held that the State of Madhya Pradesh cannot prosecute the said appellant-D.L. Rangotha.

22. In the case of respondent, the Special Judge, Prevention of Corruption Act by order dated 9th September, 2009 discharged the respondent. The appellant had failed to make it clear as to how a fresh challan was filed against the respondent on 8th December, 2009 which is contrary to the order of discharge dated 9th September, 2009 passed by the Special Judge, Prevention of Corruption Act, Ujjain.

23. In the case of Chittaranjan Das, this Court held :-

"14. We are of the opinion that in a case in which sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the public servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility."

24. In the case of Subramanian Swamy v. Manmohan Singh, 2012(1) R.C.R.(Criminal) 720 : 2012(1) Recent Apex Judgments (R.A.J.) 201 : (2012) 3 SCC 64, while dealing with the question of grant of sanction for prosecution of a public servant, this Court observed as follows :

"75. Therefore, in every case where an application is made to an appropriate authority for grant of prosecution in connection with an offence under the PC Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue. without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the Rule of Law and cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty.

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 sanctioning

authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be the factual position in this (sic case) but the general demoralising effect of such a popular perception is profound and pernicious.

79. Article 14 must be construed as a guarantee against un-canalised and arbitrary power. Therefore, the absence of any time-limit in granting sanction in Section 19 of the PC Act is not in consonance with the requirement of the due process of law which has been read into our Constitution by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India*, (1978)1 SCC 248."

25. In view of the aforesaid observation, the Court was of the view that the 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 Prevention of Corruption Act, 1988 for its working in a reasonable manner.

26. In the State of M.P. v. *Sheetla Sahai* this Court deprecated the discrimination between the two sets of officials. In the said case, the prosecution had proceeded against the officials in a pick and choose manner. A few who held office only for a short period or who had retired before the process of the decision making began were proceeded against and a few who were connected with the decision were not proceeded against.

27. However, in view of the facts as noticed above including the fact that the State refused to grant sanction while the respondent was in service and he was discharged by the Court of competent jurisdiction earlier and in view of the decision of this Court in the case of *Chittarajan Das*, we are of the view that it is not a fit case to grant the relief claimed by the State. We find no merit in these appeals, these are accordingly dismissed.