

A.F.R.

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Court No. - 45

Case: CRIMINAL MISC. WRIT PETITION No. - 14702 of 2023

Petitioner: Amit Kumar

Respondent: State Of U.P. And 2 Others

Counsel for Petitioner: Shiv Sagar Singh

Counsel for Respondent: G.A., Sanjay Kumar Yadav

AND

Case : CRIMINAL MISC. WRIT PETITION No. - 14706 of 2023

Petitioner: Parmod Kumar

Respondent: State Of U.P. And 2 Others

Counsel for Petitioner: Shiv Sagar Singh

Counsel for Respondent: G.A., Sanjay Kumar Yadav

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Manish Gupta along with Shri Shiv Sagar Singh, learned counsel appearing for the petitioners, Shri Gyan Prakash, learned Senior Counsel assisted by Shri Sanjay Kumar Yadav, learned counsel appearing for the CBI.

2. Pursuant to the issuance of the impugned Sanction Order¹ (hereinafter referred to as the 'impugned order'), the petitioners have filed the present writ petition under Article 226 of the Constitution of India, seeking to quash and set aside the impugned order granting sanction for the petitioners' prosecution in the case registered as RC/DST/2015/A/004/STB/DLI by the Central Bureau of Investigation (CBI) upon the High Court's direction.

3. In order to decide the contentions raised in these petitions, succinct facts are imperative to arrive at a just and reasonable

¹ Sanction for Prosecution bearing No.5107(1)/77/4/23-27N/20T.C, Lucknow dated 24.8.2023 issued by the Special Secretary, Government of Uttar Pradesh

conclusion within the given factual context. For the sake of convenience, the salient facts are delineated as follows:

4. The core of the accusations emanates from the initial FIR registered on 13.1.2012 as Case Crime No.280 of 2012, invoking sections 409, 420, 466, 467, 469, 471 and 120-B IPC read with sections 13(1)(d) & 13(2) of Prevention of Corruption Act, 1988 at P.S. Sector- 39 NOIDA, Gautam Budh Nagar, Uttar Pradesh by the local police. Subsequently, the case was transferred to the Crime Branch- Criminal Investigation Department (CBCID), Meerut, for an impartial and unbiased investigation; upon completion of the investigation, the CBCID submitted its final report before the court of learned Special Judge (SC/ST), Gautam Budh Nagar, which was accepted on 27.11.2014.

5. The closure report was challenged before the High Court and in pursuance to the order dated 16.7.2015 passed by the Lucknow Bench of this Court in Misc. Bench No.12396 of 2014, the STF Branch of CBI re-registered an FIR bearing Case No. RC/DST/2015/A/004 on 30.7.2015 against Yadav Singh, the then Chief Engineer, NOIDA/Greater Noida and Yamuna Express Authority and other unknown persons, under section 120-B IPC read with sections 409, 420, 466, 467, 469 and 471 IPC read with section 13(2) & 13(1)(d) of Prevention of Corruption Act, 1988. The CBI was directed to conduct an investigation into the allegations of corruption and illicit accumulation of money to Rs. 954 Crores by Yadav Singh, other accused persons and entities connected thereto in the award of contracts.

6. Against this backdrop, the CBI took over the investigation and concluded the first phase of investigation on 15.3.2016, and accordingly filed the charge-sheet against Rajeev Kumar (JE), R.D. Sharma (JE), Ompal Singh (JE), Devi Ram Arya (Assistant Project

Engineer), Jashpal Singh (Assistant Project Engineer), Ramendra (Project Engineer) and Yadav Singh (Chief Mechanical Engineer) and other private accused persons for commission of offences under section 120-B read with sections 420, 109, 468, 471 IPC and section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The CBI concluded the investigation with the finding *“that the further investigation in the instant case is still continuing”, and if any new evidence emerged against any of the above-mentioned accused persons or **any other**, a supplementary charge-sheet along with the additional list of witnesses and/or documents, if any, will be filed in due course with the permission of this Court.”*

7. The investigation culminated with the revelation that Junior Engineers, within their respective jurisdictions, prepared rough estimates by quoting exorbitant rates against the department's interests. The Project Engineer and Assistant Project Engineer knowingly transmitted these rough estimates to higher authorities, contravening the Central Public Works Department (CPWD) manual for financial gain. Yadav Singh, the then Chief Mechanical Engineer (CME), approved inflated preliminary and detailed estimates without conducting a market survey. Tender norms were consistently compromised at each stage to favour contractors unduly. The compromise extended to the quality of work, selection of unauthorized firms, intentional disregard for poor work quality, flouting established procedures to favour contractors, and the acceptance of substantial kickbacks.

8. During the investigation, it was disclosed that contractors commenced work even before contract awards, and in pursuance of a criminal conspiracy, private contractors orchestrated tender proceedings by forming a cartel.

9. Furthermore, the prosecution asserts that Yadav Singh, while serving as CME in Noida, unduly favoured M/s Gul Engineers Co. by awarding 31 electrical work contracts amounting to Rs.37.99 crores during the period 2007-2012. This alleged favouritism transpired in criminal conspiracy with other officers/officials of the Noida Authority and Javed Ahmed, Proprietor of M/s Gul Engineers Co., who was a longstanding friend of Yadav Singh. It is alleged that M/s Gul Engineers Co. did not meet the eligibility criteria for work experience and was engaged in the cartelization of bidders. Yadav Singh, in conspiracy with others, awarded contracts at exorbitant rates, causing a wrongful loss of approximately Rs.2.2 crores in the contracts under question in this petition.

10. Consequently, the CBI has sought sanction for the prosecution of the accused companies concerning a batch of contracts. Given the number of companies, contract details, nature of work, and assigned areas, the CBI has sought sanction for prosecution on a Contract Bond-wise. During the inquiry, it was *prima facie evident that five firms/companies associated with friends and family members of Yadav Singh were unduly favoured, resulting in gross violations of tender norms and procedures*, and causing illegal losses to the Noida Authority. These entities include: (1) M/s Gul Engineers Co., Proprietor Javed Ahmed, (2) M/s SMP Technology Pvt. Ltd., Directors Sai Raju, Manish Kumar, and Prem Pradeep, (3) M/s Abu Infracon Pvt. Ltd., Directors Kumar Saurav and Prem Pradeep, (4) M/s Sanjay Electricals, Proprietor Sanjay Kumar Gupta, and (5) M/s Shakambari Projects, Ranchi, Proprietor Sanjay Kumar Sharma.

11. The petitioners assailed the impugned sanction order dated 24.8.2023, on the following grounds:

11.1 The CBI has previously taken a stand before the coordinate Bench in Criminal Misc. Writ Petition No.12437 of 2022, titled Javed Ahmad v. CBI and others, that the investigation in the impugned charge-sheet has already concluded regarding two contracts awarded to the accused company. The said petition is pending disposal before this Court. Considering the fact that the investigation is concluded, the CBI is precluded from seeking fresh sanction for the petitioners' prosecution.

11.2 The sanction order dated 24.8.2023 was mechanically issued without due application of mind, and additionally, it contravenes section 13(1)(d) of the Prevention of Corruption Act, 1988, repealed on 26.7.2018.

11.3 The sanctioning authority failed to consider that the impugned sanction was sought seven years after registration of the FIR, despite the petitioners not being implicated in any of the charge-sheets filed on 15.3.2016, 31.5.2017, and 6.10.2021.

11.4 The investigation into contracts awarded to M/s Gul Engineers, an accused company, mentioned in RC/DST/2015/A/004, constitutes an abuse of investigative power, aiming to harass the petitioners.

11.5 Out of 67, the trial court has examined 40 witnesses so far and allowing further investigation would be an unending prosecution against the petitioners.

11.6 Initiating a *de-novo* investigation into alleged contract awards would defy the rule of law, the prosecuting agency's role is not to perpetuate investigations endlessly but to unearth the unvarnished truth, in line with constitutional

rights guaranteed under Articles 20 and 21 of the Constitution of India.

11.7 The investigating agency's biased and tainted approach, as evident in this case, is impermissible, and this Court's intervention is necessary to uphold justice and preserve the sanctity of the rule of law.

12. *Per contra*, Shri Gyan Prakash, learned Senior Counsel for the CBI states that there are serious allegations of systematic corruption against the accused persons, who, by holding government positions in connivance with contractors and private individuals, were involved in large-scale corruption. The conspiracy to do corruption was meticulously planned and executed by the accused, making the investigating agency invest a lot of effort and time, and the petitioners did not approach this Court with clean hands. The petitioners have not stated the correct facts before the Court, and the source of receipt of the impugned order has not been disclosed in the petition. Such concealment has been done to achieve an ulterior purpose, which amounts to abuse of the process of court. The concealment of material facts is impermissible to the litigants and such petitioners are required to be dealt with for contempt of court for abusing the process of the court.

13. To fortify his contentions, learned Senior Counsel has extensively relied upon two orders. Firstly, an order dated 17.6.2022, issued vide letter No.2243/RC/DST/2015/A/0004/STB/DLI, wherein the sanctioning authority was formally approached to accord sanction for the prosecution against the petitioners. It is noteworthy that the request letter was marked as "**confidential**", explicitly indicated at the top right corner of the letter under the heading "**confidential**". The pertinent excerpt from the letter dated 17.6.2022, is reproduced herein below:

*“CENTRAL BUREAU OF INVESTIGATION
SPECIAL TASK BRANCH*

*5 B, CGO Complex, Lodhi Road,
New Delhi-110003
Phone No. 011-2436857 (Fax No. 011-24368662)*

Confidential

No. 2243/RC/DST/2015/A/0004/STB/DLI

Dated 17.06.2022

To,

*The Chief Executive Officer,
New Okhla Industrial Development Authority (NOIDA)
Sector-6, NOIDA*

Sub- Forwarding of CBI Report and Model Selection Orders in RC/DST/2015/A/0004/STB/DLI.

CBI Report sent herewith may please be treated as a confidential document and no reference to it may be made, while pursuing the matter further or any other action initiated upon it. In case any applicant seeks copy of the Report or part thereof under RTI Act, view of CBI should be ascertained as per section 11 of RTI Act, 2005 before deciding the matter.

It is therefore, requested that Sanction Order U/s 10 of the PC Act- 1988 & PC(Amendment) Act-2018 may be accorded by the Competent Authority for prosecution of the above public servants of NOIDA as required under the law and may please be sent to this office in duplicate as early as possible, so that charge sheet can be filed in the Court of Law.

*Sd/-
Superintendent of Police
CBI, STB, New Delhi”*

14. In response to the letter dated 17.6.2022, the Government of Uttar Pradesh, through Letter No.5107/77-4-23-27 N/20CT dated 24.8.2023 granted sanction for the prosecution against the petitioners. At that time, the petitioners held the position of Junior Engineer (Electrical/Mechanical) in the NOIDA Authority. The impugned order reached the petitioners’ possession before the Central Bureau of Investigation (CBI) obtained a copy of the said sanction order. It is pertinent to note that the model sanction order was issued by the CBI on 17.6.2022 against the petitioners and other co-accused persons. The government accorded sanction on 26.8.2023, the petitioners challenged the said sanction order

through the present petition on 3.10.2023, and the CBI received the impugned sanction order on 6.10.2023 *via* post. In summary, the petitioners gained access to the impugned order illegally and unauthorisedly before the prosecuting agency contrary to the confidentiality clause of the document, and they obtained the impugned order, a document they could only acquire after the filing of the charge-sheet or during trial.

15. In response to the arguments fortified by Shri Manish Gupta, learned counsel for the petitioners, Shri Gyan Prakash, learned Senior Counsel, submits that the charge-sheet no.2/16 in RC No.DST/2015A/004, was filed concerning **Contract Bond No.375/AO/E** in C/E & M-II/11-12, dated 8.12.2011; **Contract Bond No.376/AO/E** in C/PE(E&M)-II/11-12, dated 8.12.2011, and **Contract Bond No.382/AO/E** in C/PE/(E&M)-II/11-12, dated 9.12.2011 against accused Yadav Singh, Ramendra, Ravi Ram Arya, Rajeev Kumar, Jai Pal Singh, R.D. Sharma, Om Pal Singh, Kusum Lata, Vinod Kumar Goel, Pradeep Garg, Pankaj Jain, and M/S Tirupati Constructions- through its representatives. Additionally, supplementary charge-sheet no.7/17 was filed against Babita Devi wife of Ramendra on 31.5.2017.

16. In supplementary charge-sheet no.6/17, dated 31.5.2017, pertaining to **Contract Bond No.24/ENC/PE (E&M-III)/ 2011-12**, dated 24.10.2011, and **Contract Bond No.31/ ENC/PE (E&M-III)/ 2011-12**, dated 16.11.2011, Yadav Singh, Vimal Kumar Manglik, Sushil Kumar Agarwal, Rajesh Kumar Sharma, Pankaj Jain, and M/S JPS Constructions Company- through its legal representatives, have been arrayed as accused.

17. Supplementary charge-sheet no.5/21, dated 6.10.2021, was filed concerning **Contract Bond No.133/SFAO/CDE/PE-II/CCD-IV-11-12**, dated 23.12.2011. The accused in this charge-sheet

included Yadav Singh, R.K. Johri, R.K. Jain, S.K. Gupta, Sant Ram, Deepak Kumar, A.C. Singh, Anil Sharma, Santosh Kumar Srivastava, Davendra Kumar Gangal, N.U. Khan, and M/S Anand Buil Tech Pvt. Ltd.- through its Director Davendra Kumar Gangal.

18. The impugned sanction for prosecution order is sought with respect to the tenders awarded to **i) M/s Gul Engineers under Contract Bond No.405/E&C/AO-E&M-I/2011-12**, dated 15.12.2011, for work related to shifting 11 KV feeder of Yamuna Pushta from village Gadhi to village Nagli Noida; **ii) M/s Gul Engineers under Contract Bond No.416/E&C/AO-E&M-I/2011-12**, dated 16.12.2011, for work related to the conversion of 33 KV, 11 KV, and LT Electric Lines into an underground system coming from both sides of Kailash Hospital Road between Sector-26 and 27, Noida; and **iii) the tender awarded to M/s NKG Infrastructure Ltd. under Contract Bond No.994/E&C/AO-E&M-I/2011-12**, dated 22.12.2011, for work related to providing a 33 KV Double Circuit Line from 220 KV Station Base-II, Noida.

19. Consequently, the CBI requested the State Government to accord sanction under Section 19 of the Prevention of Corruption Act, 1988 (as amended by Act No.16 of 2018) against Yadav Singh, Chief Maintenance Engineer (JAL), NOIDA; A.C. Singh, Finance Controller (FC); Santram, CPE, E&M-II Division; Pramod Kumar, Junior Engineer, E&M-I, NOIDA; Dr. Nizamuddin, Assistant Project Engineer, E&M-I Division; S.K. Gupta, Project Engineer, E&M-I Division; Ramendra, PE, E&M-II Division; J.P. Singh, APE, E&M-II Division; Amit Kumar, Junior Engineer, E&M-II Division; P.K. Dixit, Accounts Officer, regarding Contract Bonds awarded to M/S Gul Engineering, and similarly against Yadav Singh, A.C. Singh, Santram, R.P. Burman, S.K. Gupta, Dr. Nizamuddin, and Pramod Kumar regarding Contract Bonds awarded to M/s NKG Infrastructures Pvt. Ltd.

20. Amit Kumar, Junior Engineer, E&M-II NOIDA, and Pramod Kumar, Junior Engineer E&M-I NOIDA, are before us, seeking to quash the impugned sanction for prosecution.

21. Shri Gyan Prakash, learned Senior Counsel has cited and referred to various authorities, including *Kanhaiya Lal Saraswati v. State*²; *Vijay Rajmohan v. State represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu*³; *A. Sreenivas Reddy v. Rakesh Sharma and another*⁴; *State of Chhattisgarh v. Aman Kumar Singh*⁵; *State of Karnataka v. S Sube Gauda*⁶; *Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi)*⁷, and a judgment and order dated 3.9.2020 passed by a co-ordinate Bench of this Court in Criminal Misc. Writ Petition No.7707 of 2020 titled Man Singh v. Central Bureau of Investigation.

22. Speaking for *A. Sreenivasa Reddy case (supra)*, *J.B. Pardiwala, J.* stated that the word “sanction” is not defined in the statute. The dictionary meaning of the word “sanction” is as under:

“42. The word “sanction” has not been defined in CrPC. The dictionary meaning of the word “sanction” is as under:

“Webster’s Third New Internal Dictionary: Explicit permission or recognition by one in Authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.

The New Lexicon Webster’s Dictionary: Explicit permission given by someone in Authority.

The Concise Oxford Dictionary: Encouragement given to an action, etc. by custom or tradition; express permission, confirmation or ratification of a law, etc. authorize, countenance, or agree to (an action, etc.)

Stroud’s Judicial Dictionary: Sanction not only means prior approval; generally it also means ratification.

Words and Phrases: The verb ‘sanction’ has a distinct shade of meaning from ‘authorize’ and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of Authority.

² (2021) LE (ALL) 149 DB

³ 2022 LivLaw (SC) 832

⁴ (2023) 8 SCC 711

⁵ (2023) 6 SCC 559

⁶ 2023 Law Suit 750

⁷ (2020) 2 SCC 88

The Law Lexicon by Ramanatha Iyer: Prior approval or ratification.

In 78 Corpus Juris Secundum at p. 579, different meanings have been given to the word as a noun and as a verb. As a noun, it means penalty or punishment provided as a means of enforcing obedience to a law and, in a wider sense, an authorisation of anything, and it may convey the idea of authority. As a verb “sanction” is defined as meaning to assent, concur, confirm or ratify. In United States v. Tillinghast [United States v. Tillinghast, 55 F 2d 279 (DRI 1932)], it was held that where legal rights are involved it is doubtful whether it should be construed as requiring less than an unmistakable expression of approval.”

23. For the ready reference, the relevant portion of sub-sections 1, 3 and 4 of Section 19 of the Prevention of Corruption Act are reproduced herein:

“(1) No court shall take cognizance of an offence punishable under 2[sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 3[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]-

(a) in the case of a person 4[who is employed, or as the case may be, was at the time of commission of the alleged offence 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 4[who is employed, or as the case may be, was at the time of commission of the alleged offence 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: [Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless- (i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding: Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

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.

Explanation.- For the purposes of sub-section (1), the expression "public servant" includes such person-

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is 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.

24. In *B. Saha and others v. M.S. Kochar*⁸, a 3-judge Bench of the Supreme Court emphasized the requirement of a reasonable connection between the act and the discharge of official duty. The Court held that the act must bear a substantive relation to the duty, allowing the accused to make a reasonable but not a pretended or fanciful claim that the act was performed in the course of official duty.

25. In *Pukhraj v. State of Rajasthan and another*⁹, the Supreme Court delved into the object, nature, and scope of according sanctions. The Court recognized the legislative intent behind this provision, aiming to shield public servants from unnecessary harassment. The Supreme Court, outlined the test of the scope of official duty, as under:

“The test appears to be not that the offence is capable of being committed only, by a public servant and not anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty, nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the "capacity in which the act is performed", "Cloak of office" and "professed exercise of office" may not always be appropriate to describe or delimit the scope of the section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty.”

26. In the case of *Nanjappa v. State of Karnataka*¹⁰, the Supreme Court extensively addressed the stage at which the validity of a sanction accorded under Section 19(1) of the Act could be challenged. The Court carefully navigated through the intricacies of

8 (1979) 4 SCC 177

9 (1973) 2 SCC 701

10 (2015) 14 SCC 186

Section 19(1), as well as Section 19(3) and 19(4) of the said Act, elucidating when the question of the validity of sanction could be raised and outlined the powers of sub-section (3) of Section 19 of the court in appeal, confirmation, or revision.

27. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding the validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid, the court can discharge the accused, relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of the law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution¹¹.

28. It would be apt to reproduce the relevant extract of *Najappa's case (supra)* hereinunder:

“23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, “error includes competence of the authority to grant sanction”. The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or

¹¹ Para-22 of *Nanjappa v. State of Karnataka case (supra)*

irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher court and not before the Special Judge trying the accused.

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.”

29. The Supreme Court revisited the issue in hand in the case of the *State of Karnataka, Lokayukta Police v. S. Subbegowda*¹². In this case, the State of Karnataka, Lokayukta Police, through an appeal, challenged the judgment and order passed by the High Court of Karnataka at Bangalore in Criminal Petition No.4463 of 2018. The High Court had discharged the accused from offences charged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, asserting that the sanction granted by the government to prosecute the accused was illegal and lacked jurisdiction. After the examination of 17 prosecution witnesses, in the midst of the trial, the accused filed an application under Section 227 of the Criminal Procedure Code (Cr.P.C.), contending that the State Government had no jurisdiction to accord the sanction for prosecution under Section 19(1) of the said Act. The Supreme Court thus held that:

“15. As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable. Once the cognizance was taken by the Special Judge and the charge was framed against the accused, the trial could neither have been stayed nor scuttled in the midst of it in view of Section 19(3) of the said Act. In the instant case, though the issue of the validity of sanction was raised at an earlier point of time, the same was not pressed for. The only stage open to the respondent-accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.”

30. Shri Gyan Prakash, learned Senior Counsel for CBI further drawn the attention of the Court to the fact that the impugned order has been obtained by the petitioner illegally and unauthorizedly which is also apparently reflected from the records. At the outset, we would say that the petitioner has approached this Court under Article 226 of the Constitution of India invoking writ jurisdiction which ought to be exercised judiciously and circumspectly by the courts, with a primary focus on serving the ends of justice rather than causing harm to the legally prescribed procedural framework.

¹² (2023) SCC OnLine SC 911

31. Before delving into the arguments and submissions, it is imperative to underscore that the impugned order is enveloped in a confidential clause, the verbatim content of which is articulated herein: "*CBI Report sent herewith may please be treated as a confidential document, and no reference to it may be made while pursuing the matter further or any other action initiated upon it. In case any applicant seeks a copy of the Report or part thereof under the RTI Act, the view of CBI should be ascertained as per section 11 of the RTI Act, 2005, before deciding the matter.*" Additionally, the letter dated 17.06.2022 was explicitly ascribed as "**confidential**," prominently indicated at the top right corner of the letter under the heading "**confidential**."

32. The revelation that the petitioners obtained access to the impugned sanction orders before this reached the prosecuting agency's office, despite the explicit presence of a confidential clause in the official communication, is a matter of profound concern. The petition, however, fails to elucidate the source of this information and the method by which the petitioners acquired access to the impugned sanction order. The legal principles governing this scenario are succinctly encapsulated as follows:

33. In *Oswal Fats and Oils Limited v. Additional Commissioner (Administration), Bareilly Division, Bareilly and others*¹³, the Supreme Court has held that it is settled law that a person who approaches the court for a grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts that have a bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or that he could have known by exercising the diligence expected of a

¹³ (2010) 4 SCC 728

person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.

34. The relevant excerpt from *R. v. Kensington Income Tax Commissioner*¹⁴, case is reproduced herein below wherein His Lordship Cozens-Hardy, MR aptly held:

“The Court, for its own protection, is entitled to say:

‘We refuse this writ ... without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us.’

Warrington, L.J. was also of the same opinion. In a concurring judgment His Lordship observed: (Kensington case [(1917) 1 KB 486 (DC & CA)] KB p. 509)

“... It is perfectly well settled that a person who makes an ex parte application to the Court—that is to say, in absence of the person who will be affected by that which the Court is asked to do—is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him.”

35. In *State of Haryana v. Karnal Distillery Co. Ltd.*¹⁵; *Vijay Kumar Kathuria (Dr.) v. State of Haryana*¹⁶; *Welcom Hotel v. State of A.P.*¹⁷; *G. Narayanaswamy Reddy v. Govt. of Karnataka*¹⁸; *S.P. Chengalvaraya Naidu v. Jagannath*¹⁹; *Agricultural and Processed Food Products v. Oswal Agro Furane*²⁰; *Union of India v. Muneesh Suneja*²¹; *Prestige Lights Ltd. v. SBI*²²; *Sunil Poddar v. Union Bank of India*²³; *K.D. Sharma v. Steel Authority of India Limited and*

14 (1917) 1 KB 486 (DC & CA)

15 (1977) 2 SCC 431

16 (1983) 3 SCC 333

17 (1983) 4 SCC 575

18 (1991) 3 SCC 261

19 (1994) 1 SCC 1

20 (1996) 4 SCC 297

21 (2001) 3 SCC 92

22 (2007) 8 SCC 449

23 (2008) 2 SCC 326

*others*²⁴; *G. Jayashree v. Bhagwandas S. Patel*²⁵; and *Dalip Singh v. State of U.P.*²⁶, the Supreme Court and different High Courts have repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance.

36. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim²⁷.

37. The aforementioned principles have been acknowledged and consistently adhered to in our legal system. In *K.D. Sharma case (supra)*, the Supreme Court observed that the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation, even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and

24 (2008) 12 SCC 481

25 (2009) 3 SCC 141

26 (2010) 2 SCC 114

27 Para-34 of *K.D. Sharma v. Steel Authority of India Limited and others case (supra)*

exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows the law but not facts²⁸”.

38. In *Suo Motu Proceedings against R. Karuppan, Advocate*²⁹, the Supreme Court underscored the imperative need to uphold the sanctity of affidavits submitted by parties, emphasizing the dual responsibility of preserving and protecting their integrity. Simultaneously, the Court expressed its disapproval of the submission of incorrect statements devoid of accuracy, emphasizing the necessity to discourage such irresponsible filings. The Supreme Court's excerpts from the case are reproduced hereunder: (SCC p. 293, para 13)

“13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.”

39. In the same fashion, the Supreme Court in *Muthu Karuppan v. Parithi Ilamvazhuthi*³⁰, expressed the view that giving false evidence by filing a false affidavit is an evil that must be effectively curbed with a strong hand. The prosecution should be ordered when it is considered expedient in the interest of justice to punish the

28 Para-38 of *K.D. Sharma v. Steel Authority of India Limited and others case (supra)*

29 (2001) 5 SCC 289

30 (2011) 5 SCC 496

delinquent, but there must be a prima facie case of “*deliberate falsehood*” on a matter of substance, and the court should be satisfied that there is a reasonable foundation for the charge, it is noteworthy that this observation was made in the context of contempt of court proceedings, but the view was expressed to perverse the purity of judicial proceedings.

40. Refocusing on the present issue, the instant case can be narrowly delimited in two distinct facets: firstly, regarding the question of maintainability, and secondly, concerning the substantive merits of the case.

41. So far as the issue of maintainability is concerned, it has already been discussed in presiding paras that the request for sanction was issued vide letter dated 17.6.2022 in which there was a confidential clause that expressly states to treat the CBI report as a confidential document and no reference to it to be made while pursuing the matter further or any other action initiated upon the same. It was also indicated that if the applicant seeks a copy of the report or part thereof under the RTI Act, the view of CBI be ascertained as per Section 11 of the RTI Act. It is noteworthy that the request letter was marked as “*confidential*”, explicitly indicated at the right corner of the letter dated 17.6.2022 under the heading “*confidential*”.

42. Upon scrutinizing the case record, it conspicuously lacks any indication of the circumstances or manner in which the petitioner acquired a copy of the contested sanction order. The affidavit accompanying the petition is notably silent on both the origin of the information and the reliability of the impugned order's contents. It is imperative to note that the affidavit, as per Rule 12 of Chapter IV of the Allahabad High Court Rules, 1952, is non-compliant. This rule explicitly mandates that the facts asserted in the affidavit

should be within the deponent's personal knowledge or, if from another source, such source must be disclosed. Regrettably, the petitioner has neither disclosed the information source nor elucidated on the means by which the impugned order came into their possession.

43. The person who does not disclose all material facts has no right to be heard on the merits of his grievances³¹. He must disclose all material facts without any reservation, even if they are against him. The petitioner must disclose all facts having a bearing on the relief sought without any qualification. The Court knows the law but not the facts³²; an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “*soil hands*³³”; the sanctity of affidavits filed by parties has to be preserved and protected, and at the same time, the filing of irresponsible statements has to be discouraged³⁴. The submission of incomplete affidavits and the failure to disclose the source of information in affidavits must be strongly discouraged to uphold the integrity and purity of judicial proceedings.

44. Recentring back to the issue before us, pursuant to the High Court's directive, the CBI took up the matter and re-registered the FIR as RC/DSP/2015/8/004 under Section 409, 420, 466, 467, 469, 471, and 120B IPC, along with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, focusing on corruption and the illicit accumulation of Rs.954 crores by Shri Yadav Singh, other accused individuals, and connected entities in the award of contracts.

45. Following the investigation, the CBI filed the charge sheet and supplementary charge sheets on 15.3.2016, 31.5.2017, and

31 *Oswal Fats and Oils Limited case (supra)*

32 *K.D. Sharma case (supra)*

33 *Kensington Income Tax Commissioner case (supra)*

34 *Suo Motu proceedings against R. Karuppn Advocate case (supra)*

6.10.2021, respectively, against numerous accused persons related to different Contract Bonds, securing prosecution sanction. The petitioners, Amit Kumar and Pramod Kumar, both served as Junior Engineers in E&M-II Division and E&M-I Division at NOIDA, respectively. According to the CBI Report and the Model Sanction Order dated 17.6.2022, there is sufficient evidence to launch prosecution against the petitioners for offences under Section 409, 420, 466, 467, 469, 471, and 120B IPC, along with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (as amended by Act No.16 of 2018), and the substantive offences thereof concerning Contract Bonds awarded to M/s Gul Engineering Company and M/s NKG Infrastructure Pvt. Limited.

45.1 Further examination of the impugned sanction order reveals substantial evidence against petitioner Amit Kumar in M/S Gul Engineering Company, which obtained the contract for Project No. 416 through the creation of forged and fabricated documents, and was found involved in corruption. Similarly, the involvement of petitioner Pramod Kumar was identified in the award of contracts related to Project No.405 (awarded to M/S Gul Engineering Company) and Project No.494 (awarded to M/S NKG Infrastructure Pvt. Limited).

45.2 The petitioners were not charge-sheeted in the earlier charge sheet and supplementary charge- sheets. Their involvement has come to light during the investigation concerning Project No. 416, 405, and 494, awarded to M/S Gul Engineering Company and M/S NKG Infrastructure Pvt. Limited, respectively. In connection with the order dated 28.9.2022, passed in Criminal Misc. Writ Petition No.12437 of 2022 on behalf of the accused, Javed Ahmad, seeking the quashing of the impugned FIR where the CBI has sought an impugned sanction order, it is imperative to examine the

relevant portion of the order dated 28.9.2022 before delving into Shri Manish Gupta's, submissions. The relevant portion is reproduced as follows;

“on specific query, learned counsel appearing for CBI submits that though notice was received on 22.08.2022, but, till date no instruction has been received.

“learned counsel for CBI prays for and is granted four weeks time to file counter affidavit. Rejoinder affidavit, if any, be filed within two weeks thereafter.

List on 09.11.2022.

Till the next date of listing, petitioner shall not be arrested pursuant to impugned FIR. The CBI to justify as to how they are proceeding with the investigation in the impugned FIR when the matter has already been closed”

45.3 The aforementioned petition was first time listed on 28.9.2022 and has since been not listed before this Court. As apparent from the record, the observations recorded by the coordinate Bench of this Court in the last three lines of the order were based on the contentions raised by the petitioner's counsel. The order dated 28.9.2022 grants four weeks' time to file a counter affidavit to the CBI, and it is noteworthy that, in the opening line, the CBI counsel explicitly stated that no instructions were received in his office on the date of the order. Given these facts, the petitioners cannot presume that the investigation is concluded with respect to FIR as RC/DSP/2015/8/004 under Section 409, 420, 466, 467, 469, 471, and 120B IPC read with Section 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. The contention that the investigation qua petitioners is concluded, who were not party to Criminal Misc. Writ Petition No.12437 of 2022 is factually incorrect; therefore, the argument is misconceived and rejected.

45.4 The petitioner's next contention is that even after the repeal of Section 13(1)(d) of the Prevention of Corruption Act 1988 with effect from 26.7.2018, the competent authority, in

utter disregard of the law, mechanically issued a sanction order to prosecute the petitioners under Section 13(1)(d) of the Prevention of Corruption Act 1988. The sanction pertains to Contract Bond No.405, 406, and 494, which were awarded to M/S Gul Engineers and M/S NKG Infrastructure Pvt. Limited on 15.12.2011, 16.12.2011, and 22.12.2011, respectively, much prior to the repeal of Section 13(1)(d) of the Prevention of Corruption Act, 1988. The argument on this point is legally incorrect and thus rejected.

45.5 Lastly, the petitioner's counsel argued that the commencement of the trial would frustrate the purpose of a speedy trial, as 40 out of 67 witnesses have already been examined by the trial court. It is emphasized that the petitioners were not named as accused in the previous charge sheets filed on 15.3.2016, 31.5.2017, and 6.10.2021. Therefore, the trial against the petitioners could be initiated concerning distinct and separate Contract Bonds, and it would not be vitiated under the law. There are enough procedural safeguards in the Code of Criminal Procedure in this regard.

45.6 In essence, the petitioners have not approached this Court with clean hands, and no disclosure of facts has been made as to how the impugned order reached their hands before the prosecuting agency. Serious allegations of corruption are levelled against the petitioners, and no illegality or arbitrariness has been observed in the impugned order. Since the petitioners were not named as accused in the previous charge sheets, The contracts in question were bestowed in December, 2011, and it is pivotal to note that Section 13(1)(d) of the Prevention of Corruption Act, 1988, was rendered inoperative as of 26.7.2018. Consequently, initiating prosecution under Section 13(1)(d) of the

Prevention of Corruption Act, 1988, does not render trial vitiated.

46. That there is no question of the annulment of the impugned sanction for prosecution order at this decisive stage of the investigation, especially when the investigation is in its early stages and has brought to light the involvement of the petitioners in the award of Contract Bond Nos.405, 406, and 494 in defiance of CPWD Manual, besides other intentional irregularities for illegal pecuniary gain supported by substantive evidence gathered by the CBI. Such interference would be deemed unwarranted at this critical phase of the investigation. The petitioners do not meet the criteria for rare exceptional circumstances where non-interference by the constitutional court would occasion a failure of justice. The court's leniency would undermine the very essence of Section 19 of the Prevention of Corruption Act, 1988, leading to a substantial detriment to the interests of justice.

47. The petition in Criminal Misc. Writ Petition No.14702 of 2023 and Criminal Misc. Writ Petition No.14706 of 2023 is misconceived and devoid of merits and, therefore, *dismissed*, and alternative prayer sought, on the ground of parity with the order dated 28.9.2022 passed by co-ordinate Bench of this Court in Criminal Misc. Writ Petition No.12437 of 2022, is misconceived and, hence *dismissed*. The observations made herein are expressly confined to the disposition of the instant petitions and hold no relevance or impact on the ongoing investigation or any other proceedings of the case.

48. The conspicuous acquisition of the impugned sanction order by the petitioners, notwithstanding its confidential designation, raises serious apprehensions for the country's foremost investigative agency. We defer to the discernment of the Central

Bureau of Investigation (CBI) to introspect and scrutinize their internal operational procedures. It prompts contemplation on the adequacy of measures in place to avert such breaches within the ambit of the agency or competent sanctioning authority. Should there be a dearth of systematic protocols to address such contingencies, it is suggested that comprehensive guidelines be formulated and integrated into the CBI Crime Manual for future reference if not in existence.

49. The Registrar (Compliance) is instructed to dispatch a copy of this order to the Chairman, Central Vigilance Commission, New Delhi, and the Director, Central Bureau of Investigation, New Delhi. Their attention is drawn to the observations outlined in the preceding paragraph for their necessary action and consideration.

Order Date: 13.12.2023
Anil K. Sharma

(Vinod Diwakar, J.) (Vivek Kumar Birla, J.)