

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 5th OF DECEMBER, 2022

WRIT PETITION No. 25917 of 2021

BETWEEN:-

**SPECIAL POLICE ESTABLISHMENT THROUGH O.I.C.
SANTOSH SINGH BHADORIYA S/O SHRI RAM SINGH,
AGED ABOUT 54 YEARS, OCCUPATION: D.S.P. MOTI
BANGLA, LOKAYUKT OFFICE, INDORE (MADHYA
PRADESH)**

.....PETITIONER

**(BY SHRI VEER KUMAR JAIN - SENIOR ADVOCATE
WITH SHRI VAIBHAV JAIN - ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
CHIEF SECRETARY MANTRALAY, BHOPAL
(MADHYA PRADESH)**
- 2. STATE OF M.P. THROUGH PRINCIPAL
SECRETARY LAW AND LEGISLATIVE AFFAIRS
DEPARTMENT MANTRALAY, BHOPAL
(MADHYA PRADESH)**
- 3. STATE OF M.P. THROUGH PRINCIPAL
SECRETARY PUBLIC HEALTH AND
ENGINEERING DEPARTMENT. MANTRALAY,
BHOPAL (MADHYA PRADESH)**
- 4. RAJKUMAR SONI S/O VRINDAVAN SONI
OCCUPATION: SERVICE R/O 107,**

BHAGYASHREE COLONY, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ANAND SONI - ADDITIONAL ADVOCATE GENERAL FOR RESPONDENTS NO.1 2 & 3 AND SHRI VINAY SARAF - SENIOR ADVOCATE WITH SHRI RIZWAN KHAN - ADVOCATE FOR RESPONDENT NO.4)

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*This petition coming on for admission this day, **Hon'ble Shri Justice Ravi Malimath, Chief Justice** passed the following:*

ORDER

The petitioner is the Special Police Establishment, Indore, namely, the office of Lokayukt, State of Madhya Pradesh. The case of the petitioner is that on a report made to the petitioner that the respondent no.4 has amassed properties and assets beyond the known sources of income, a raid was conducted at his premises. Consequently, an FIR was registered in Crime No.376 of 2014. A report was accordingly prepared. It was submitted before the sanctioning authority seeking sanction to prosecute respondent no.4. The respondent no.3 by the impugned order has rejected the grant of sanction to prosecute respondent no.4. Questioning the same, the instant petition is filed.

2. Shri Veer Kumar Jain, learned senior counsel appearing for the petitioner's counsel contends that the State have committed an error in refusing to grant sanction to prosecute the respondent no.4. That substantial material exists in order to show that sanction for prosecution requires to be granted. That even the grounds stated in the order refusing to grant sanction for prosecution are untenable. He places reliance on a Division Bench judgment of the Jabalpur Bench of this Court in the case of *Special Police Establishment vs. State of M.P.*

reported in 2011 (2) MPLJ 529; a Division Bench judgment of the High Court of Andhra Pradesh in the case of *Sri K. Srinivasulu vs. Government of A.P.* (2010 SCC Online AP 151); and the judgment of the Hon'ble Supreme Court in the case of *Vijay Rajmohan vs. State Represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu* reported in 2022 SCC Online SC 1377, in support of his contention.

3. Reply is filed by the respondents no.1 to 4. They have denied the petition averments. They rely on a Division Bench judgment of the Jabalpur Bench of this Court passed in W.P.No.13776 of 2022 (*State of M.P. vs. Sandeep Kumar Lohani and others*) on 01.07.2022 to contend that the establishment of the Lokayukt could not seek for a mandamus against the State to grant sanction for prosecution. Hence, they pray that this petition be dismissed.

4. Heard learned counsels.

5. In the judgment in the case of *Sandeep Kumar Lohani* (supra), this Court has relied on the judgments of the Hon'ble Supreme Court in the case of *Mohd. Iqbal Ahmad vs. State of Andhra Pradesh* reported in AIR 1979 SC 677 as well as in the case of *State of Punjab Vs. Mohammad Iqbal Bhatti* reported in 2010 Cr.L.J. 1436 and came to the conclusion that the work of the Lokayukt authorities is to investigate into the matter and to submit a report before the Government for seeking sanction. It is for the State Government to analyse the report and it is their discretion and domain to grant or not to grant sanction for prosecution. That sanction is not an idle formality but a solemn and sacrosanct act, which affords protection to the government servants against frivolous prosecutions. Hence, on these grounds the petition

filed by the very Lokayukt was dismissed and the plea of the petitioner therein seeking grant of sanction was declined.

6.(a) So far as the judgments relied upon by the learned senior counsel appearing for the petitioner's counsel are concerned, in the case of *Special Police Establishment* (supra), reliance is placed on paragraphs 12, 16, 19, 21 and 22, to contend that the Special Police Establishment has *locus standi* to challenge the order refusing grant of sanction. However, while considering the findings with respect to *locus standi* of the SPE to challenge the same, the contents of para 12 of the said judgment would have to be considered. The contention of the State therein was to the effect that the M.P. Government Business (Allocation) Rules were made in exercise of the powers conferred under the Clauses (2) and (3) of the Article 166 of the Constitution of India by the Hon'ble Governor. That the business of sanction for prosecution in the cases investigated by the SPE has been allocated to the Law and Legislative Affairs Department. Therefore, the SPE could not have challenged the order refusing grant of sanction. It is on this question, as stated in para 12 that the Division Bench came to the conclusion that the SPE has a *locus standi* to challenge the order refusing grant of sanction. Hence, the said judgment has no bearing on this case, since that is not the ground urged herein.

(b) The next judgment relied upon is in the case of *Sri K. Srinivasulu* (supra). Reliance is placed on the heading of the discussion "whether the petitioner lacks *locus standi* to file the writ petition in public interest", wherein the Division Bench of the High Court of Andhra Pradesh held that a public interest litigation is maintainable in cases where grant of sanction is refused or not. However, herein the

petitioner has not filed this petition in public interest. It is filed by the Lokayukt. As held in the Division Bench judgment of this Court in the case of *Sandeep Kumar Lohani* (supra), the duty of the Lokayukt is merely to investigate. Its role ends there. It cannot prosecute the proceedings further as a right given to the other stakeholders that are involved here. Therefore, we are of the view that the said decision would not have any bearing on this case.

(c) The next judgment relied upon is in the case of *Vijay Rajmohan* (supra) wherein the Hon'ble Supreme Court in paras 39 and 40 has held as follows:

“39. In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the non-grant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC shall enquire into the matter in the exercise of its powers under Section 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act.

40. The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act.”

However, what has been narrated in paras 39 and 40 by the Hon'ble Supreme Court would have to be taken into consideration. As to what were the questions that were being considered by the Hon'ble

Supreme Court, that could be seen from para 2 of the judgment, which reads as follows:

"2. Two important questions of law arise for consideration in this appeal. The first question is whether an order of the Appointing Authority granting sanction for prosecution of a public servant under Section 19 of the Prevention of Corruption Act, 1988, would be rendered illegal on the ground of acting as per dictation if it consults the Central Vigilance Commission for its decision. The second question is whether the period of three months (extendable by one more month for legal consultation) for the Appointing Authority to decide upon a request for sanction is mandatory or not. The further question in this context, is whether the criminal proceedings can be quashed if the decision is not taken within the mandatory period."

Therefore, what was being considered by the Hon'ble Supreme Court was as to whether an order of the appointing authority granting sanction for prosecution under the Prevention of Corruption Act would be rendered illegal on the ground of acting as per the dictation of the Central Vigilance Commission for its decision. The second question was whether the period of three months extendable by a further period of one month by the appointing authority to decide upon the request for sanction is mandatory or not. We are of the view that both the questions that were considered by the Hon'ble Supreme Court are alien to the facts of this case.

7. In the instant case, the question that would arise for consideration is as to whether the Lokayukt, as an institution has any authority to challenge an order refusing to grant sanction by the State. As held hereinabove, the said question has already been answered by this Court in the judgment in the case of *Sandeep Kumar Lohani* (supra). Every State body has a role to perform. It has to do so within the confines of the power vested in it by statute. The Lokayukt has its

role to play as much as the State Government has its role to perform. The duty of the Lokayukt is to conduct an investigation and thereafter to place it for grant of sanction or otherwise to the Government. The Government, in turn, has the responsibility to go through the material and thereafter to come to a conclusion as to whether sanction is to be granted or not. The grant of sanction is a very important facet in the matter of prosecution of civil servants. It is intended to ensure that there are no frivolous prosecutions that are carried out. It is for this reason that the question of grant of sanction becomes crucial. Therefore, once the Lokayukt has performed its duty of submitting its report to the Government, its role ends. It is the discretion of the Government to grant sanction or not. When such a sanction has been refused, the Lokayukt could not challenge the said order.

8. Hence, for all the aforesaid reasons, we find no good ground to entertain this petition. Accordingly, the writ petition being devoid of merit is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

RJ