CASE NO.:
Appeal (crl.) 478 of 2004

PETITIONER:
State(Anti Corruption Branch)Delhi & Anr.

RESPONDENT:
Dr. R.C. Anand & Anr.

DATE OF JUDGMENT: 15/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.3964/2003)

ARIJIT PASAYAT, J.

Leave granted.

By the impugned judgment a Division Bench of the Delhi High Court held that the sanction granted by the Governing

Body of All India Institute of Medical Sciences (in short the 'AIIMS') to proceed against respondent no.1-employee was legally not sustainable. Accordingly the proceedings pursuant to the said sanction were quashed. The High Court was of the view that when the President who is the Chairman of the Governing Body had suggested that sanction was not to be granted, it was not open to the Governing Body to pass an order directing grant of sanction. The President had directed the matter to be placed before the Governing Body, it was incumbent upon the latter to examine that question alone and if a contrary view was to be taken, that was subject to passing of a reasoned order showing application of mind. Since that was not done, the order of the Governing Body was vulnerable and deserved to be nullified. Further the order of suspension, which was passed and was continued, was vacated on the ground that same was continuing for a long time without a review of the necessity for continuance thereof.

Since the pivotal question is whether the Governing Body's decision suffered from any infirmity, a brief reference to the factual background would suffice.

On 8.5.1998 a complaint was registered against respondent no. 1 on the basis of allegations made by one Sagir Ahmad Khan who was supplying materials to AIIMS. It was alleged in the complaint that the respondent no. 1 had demanded illegal gratification for reviewing an order of cancellation and for placing orders to make further supplies by renewal of contract. The complainant produced cassettes of tapes containing recorded conversation between himself and the respondent no. 1. The transcript of the same was prepared and placed on record. On 20.7.1998 the complainant

approached the Anti Corruption Branch (for short 'ACB') after fixing the time and the amount of money with respondent No. 1. The complainant produced currency notes of Rs.10,000/- before an officer of the ACB. The investigating officer prepared several memos, recorded the number of notes and applied Phenolphthalein powder on the notes and told the complainant and the panch witnesses about the procedure to be adopted. A remote tape recording system was used to collect additional evidence for laying the trap. On the basis of the conversation recorded and after the acceptance of money by the respondent No. 1, recovery was made and positive tests indicating presence of Phenolphthalein in the colourless solution of sodium carbonate was noted. A positive report from the Forensic Science Laboratory was also received regarding hand wash and pant pocket wash. Though a similar procedure was intended for another person same could not be materialised as the situation at AIIMS turned violent.

By an order dated 29.7.1998 respondent no. 1 was placed under suspension by the AIIMS with effect from 20.7.1998. The appellant No. 1 requested AIIMS for a sanction for prosecuting respondent No.1. AIIMS sought certain clarification from the Ministry of Law and Justice and the Central Vigilance Commission (in short the 'CVC'). They did not recommend grant of sanction to prosecute. The President of AIIMS passed an order on 22.3.2000 revoking the order of suspension, and declining grant of sanction to prosecute subject to ratification by the Governing Body.

On 3.4.2000 the Governing Body passed an order superseding the order of the President dated 22.3.2000 and the respondent No. 1 was consequently placed under suspension.

On 17.4.2000 the respondent no. 1 filed a Criminal Writ Petition under Article 226 of the Constitution, 1950 (in short the 'Constitution') read with Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') for quashing the order dated 3.4.2000 and seeking other reliefs also. The stand of respondent no. 1 was that opinion of Ministry of Law and Justice is binding on the Governing body of AIIMS. Once the President of AIIMS has exercised the power it was not open to be re-considered by the Governing Body and there was non-application of mind on the part of the Governing Body while granting sanction. Since the tape recorded conversation or the transcript of the report of the ACB was not produced before the Governing Body continuance of suspension and grant of sanction was bad. The Delhi Police had no jurisdiction to register a case against the writ petitioner as he was a Central Government employee and the sanction ought to have been routed through Central Bureau of Investigation (in short the 'CBI') as opined by the CVC and the Ministry of Law and Justice.

The present appellants filed reply by counter affidavit, taking the stand that the sanction had been given after due consideration and there was sufficient evidence justifying the sanction. Since charge sheet had also been filed on 28.4.2000 in the Court of the Special Judge Tis Hazari, Delhi and cognizance had been taken, the writ petitioner was not entitled to any relief. It was also further pointed out that ACB has jurisdiction in view of the notification issued by the Ministry of Home Department, Govt. of NCT. The High Court allowed the Writ Application

primarily on the ground that the Governing Body cannot supersede the decision of the President of AIIMS and there was no material for granting sanction since records were not produced before the Governing Body for the purpose of assessing whether it was a fit case for granting sanction.

In support of the appeal, learned counsel for the appellant submitted that the High Court's approach is clearly erroneous. Section 19 of the Prevention of Corruption Act, 1988 (in short 'the Act') refers to the authorities competent to remove the concerned officers. The present case is covered by clause (c) of sub-section (1) of Section 19. By notification dated 25th February, 1999 issued under sub-section (1) of Section 29 of All India Institute of Medical Sciences Act, 1956 (in short the 'Act'), Regulations were brought into operation and the Regulations are called "All India Institute of Medical Sciences Regulations, 1999 (in short the 'Regulations'). In Schedule II, relating to the Appointing Disciplinary and Appellate Authorities for various posts in the Institute, it has been clearly stipulated that for Group 'A' posts other than the "Director", the Appointing Authority is the Governing Body, and the Disciplinary Authority in respect of various penalties are the Governing Body except in respect of penalties (i) to (iv) for which President alone is the concerned Authority. Above being the position, so far as the respondent No. 1 is concerned, it is the Governing Body alone which had the authority to decide on the question of sanction. The High Court proceeded as if the decision was that of the President and it was to be ratified by the Governing Body. There was no question of any ratification because the plenary powers vested with the Governing Body alone and the President has no role to play. With reference to the Central Civil Services Classification Control and Appeal Rules (in short the 'CCA Rules') relating to penalties and disciplinary authorities, particularly Part V it was pointed out that the major penalty was to be imposed on respondent no. 1. Therefore, it was the Governing Body alone which had the jurisdiction to accord sanction. There was no question of recording any reasons for departing from the President's view, as that is not a requirement in law. The concept of the ratification has been wrongly introduced by the High Court.

In response Mr. K. Ramamoorty, learned senior counsel submitted that though the Governing Body had the jurisdiction to accord sanction, the view of the President should not have been brushed aside lightly and as noted by this Court in Mansukhlal Vithaldas Chauhan v. State of Gujarat [1997 (7) SCC 622], the grant of sanction cannot be an empty formality, and an application of mind was imperative.

We find from the judgment of the High Court that it proceeded on the premises that the sanctioning authority is to apply its own independent mind, and it was applied by the President and he sought for ratification by Governing Body. The approach is clearly erroneous. The sanctioning body was not the President and it was the Governing Body. This position is fairly accepted by the learned counsel for the respondent No. 1 and cannot be disputed in the teeth of specific provisions contained in Schedule II to the statutory Regulations. But according to him since the President had expressed his views, for taking different view, reasons should have been indicated. Such pleas clearly

are without any substance. When the Authority competent to accord sanction is the Governing body under the statutory Regulations and that body, as in this case takes a decision there was no necessity for recording reasons to differ from the view expressed by the President who had legally no role to play. The allocation of powers distinctly made by the statutory Regulations earmarking their own fields, subjects and topics cannot be legitimately ignored, on any assumptions or baseless presumptions. As long as the President had no individual role to play in matters exclusively earmarked and allocated to the Governing Body and the decision of the Governing Body as that of any body has to be collective one, neither the President could dictate what and how the Governing Body has to exercise its powers nor the Governing Body is obligated in any manner to deal with and give reasons to differ from the view expressed by the President, which, as noticed above he could not have in the light of the statutory Regulations themselves. There is no justification in law or any principle of construction to import any such restriction on the independent exercise of power by the earmarked Authority on its own under the Regulations. The President cannot impede or foreclose the liberty of the Governing Body by expressing his view or by passing even a provisional order subject to ratification, wherein under the statutory Regulations, he had none, at all.

Ratification is noun of the verb "ratify". It means the act of ratifying, confirmation, and sanction. The expression "ratify" means to approve and accept formally. It means to conform, by expressing consent, approval or formal sanction. "Approve" means to have or express a favourable opinion of, to accept as satisfactory. In the instant case, there was no question of any ratification involved as wrongly assumed by the High Court.

The counter affidavit of the present appellant before the High Court clearly indicated that relevant aspects were noted by the Governing Body before arriving at its decision. High Court seems to have proceeded on the basis that since the basic material, or evidence i.e. alleged tape conversation, was not looked into by the Governing Body to form its own independent opinion to depart from the view of President, the sanction was contrary to law. In Kalpnath Rai v. State (through CBI) (1997 (8) SCC 732), it was clearly observed by this Court that the sanctioning authority is not required to wait for the report of the experts. The sanctioning authority has only to see whether the facts disclosed in the complaint prima facie disclose commission of an offence or not. The actual production of the tapes etc., are matters for proof during trial and not necessarily to be undertaken at this stage. It is true as contended by learned counsel for respondent no.1, grant of sanction is not empty formality.

The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence including the transcript of the tape record have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant

facts were considered by the sanctioning authority. [See Jaswant Singh v. State of Punjab (AIR 1958 SC 124) and State of Bihar v. P.P. Sharma (1992 Supp(1) SCC 222)].

The position was reiterated in Manusukhlal's case (supra). The order dated 3.4.2000 passed by the Governing Body cannot be said to be deficient in any way in meeting the requirements of law. No other point was urged on behalf of the respondent no.1 to justify the High Court's order.

In the aforesaid background the High Court's judgment is indefensible and is quashed. The matter pending before the Special Judge shall now proceed in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case, which relates to the actual proof of the charge before the competent Court during trial.

The appeal is allowed to the extent mentioned above.