

PETITIONER:
PARMANAND DASS

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT 15/09/1978

BENCH:
KAILASAM, P.S.
BENCH:
KAILASAM, P.S.
SINGH, JASWANT

CITATION:
1978 AIR 1745 1979 SCR (1) 792
1978 SCC (4) 32

ACT:

Sanctioning authority for the purposes of Section 6 of the Prevention of Corruption Act under the Hyderabad Municipal Corporation Act, 1955 as amended by Act II of 1970—Whether subsequent sanction is invalid since an earlier sanction was held to be invalid.

HEADNOTE:

The prosecution of the appellant, who was charged for having received an illegal gratification was held to be bad by the Special Judge, since the sanction for the prosecution under Section 6 of the Prevention of Corruption Act was granted by the Commissioner instead of the Standing Committee of the Hyderabad Municipality. He was, therefore, reinstated in service and when the Commissioner wrote again for the sanction, the Standing Committee recorded on 17-6-70 to drop the case on the ground that it was an old case and the appellant had already been reinstated in service.

The Hyderabad Municipal Corporation (Amendment) Act II of 1970 came into force on 27-6-70, under which a provision was made for the appointment of a special officer to exercise the powers, to perform the duties and discharge the functions of (a) the Corporation (b) the Standing Committee and (c) the Commission under the Act. This provision was to be in force for a period of two years with effect from 3-8-70 with a further provision that it shall not be extended beyond 31-10-75.

After Act II of 1970 came into force, on 29-7-72 a memorandum was submitted in the nature of a note to the Standing Committee to take a fresh decision on the issue of prosecution of the appellant and for granting sanction to prosecute the appellant. On 15-5-73, the Standing Committee by its resolution authorised the special officer to sign the sanction order and to send it to Anti-Corruption Bureau, Hyderabad. In pursuance of the resolution, a sanction order was passed on 16-6-73. On 29-11-73 the appellant was placed under suspension and on 11-12-75, the special judge dismissed the petitioner's objections to the validity of the sanction. The appellant filed the appeal by special leave, as the High Court dismissed his criminal revision petition.

Allowing the appeal, the Court

HELD : 1. There can be no legal bar to the sanctioning authority revising its opinion before the sanction order is placed before the Court. The validity of the sanction can only be considered at the time when it is filed before the Special Judge. Subsequent sanction having been given, in the present case, by the competent authority, the plea that the Standing Committee again considered the question but decided to drop the proceedings on the ground that it was an old case and the appellant had already been reinstated in service cannot be accepted. [794D-F]

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2. The validity of the sanction cannot be upheld, as the special officer who is entitled under the Hyderabad Municipal Corporation Act, 1955 as amended by Act II of 1970, has not given the sanction as a special officer or by himself exercising the powers of the Standing Committee, but issued the sanction order in pursuance of the sanction given by the Standing Committee by its resolution dt. 15-5-1973. [796C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 482 of 1976.

Appeal by Special Leave from the Judgment dated 20-1-1976 of the Andhra Pradesh High Court in Criminal Revision Case No. 18 of 1976.

R. V. Pillai and H. K. Puri for the Appellant.

P. Parmeshwara Rao and G. N. Rao for the Respondent.

The Judgment of the Court was delivered by

KAILASAM, J. This appeal is by special leave against the judgment of Andhra Pradesh High Court, in Criminal Revision No. 18 of 1976 holding that the sanction order given for prosecuting the appellant is valid and dismissing his Revision Petition.

The appellant Parmanand Dass, was appointed as a clerk in Hyderabad Municipal Corporation on 15-1-1951 in the scale of Rs. 40-50 and was promoted to the scale of Rs. 50-105 on 1-9-1956. A charge of having received an illegal gratification of Rs. 15/- was brought against him and he was suspended on 22-9-1966. On 27-5-1967, the Commissioner of the Municipal Corporation gave sanction for prosecution under section 6 of the Prevention of Corruption Act. The appellant questioned the validity of the sanction on the ground that the Commissioner was not the competent authority to grant the sanction. The Special Judge accepted the contention and found that the Standing Committee of the Municipality alone can give sanction and as the Commissioner had no powers, the sanction was not valid. Soon after on 4-5-1970, the appellant prayed for his reinstatement, and on 12-6-1970, the appellant was reinstated. The Commissioning on 17-6-1970 again wrote to the Standing Committee seeking for a fresh sanction. On 27-6-1970, the Standing Committee resolved to drop the case on the ground that it was an old case and that the appellant had already been reinstated in service.

On 27-6-1970, Act II of 1970 came into force. The Act provided that the special officer appointed under the Act will exercise the powers of the Standing Committee of the Municipal Corporation. After the Act came into force on 29-7-1972 a memorandum in the nature of a

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note to the Standing Committee was prepared requesting the Standing Committee to take fresh decision on the issue of

prosecution of the appellant, and for granting sanction to prosecute the appellant. On 15-5-1973, the Standing Committee by its resolution authorised the Special Officer to sign the sanction order and to send it to the Anti-corruption Bureau, Hyderabad. In pursuance of the resolution, a sanction order was passed on 16-6-1973. On 29-11-1973, the appellant was placed under suspension. On 11-12-1975, the Special Judge dismissed the petitioner's objection to the validity of the sanction. The appellant filed Criminal Revision No. 18 of 1976 before the High Court against the order of Special Judge and the High Court dismissed the Revision Petition on 20-1-1976, and this appeal by special leave is against that order.

It was submitted that having once declined to grant sanction, a subsequent Standing Committee cannot grant sanction on the same facts. It was contended that the grant of sanction by the Special Officer was not bona fide and was due to ulterior motive. We do not see any merit in any of these submissions. Sanction given by the Commissioner was rightly rejected by the Special Judge on the ground that the Commissioner was not competent to grant the sanction. This could not prevent a subsequent sanction being given by the Competent Authority, but the plea of the learned counsel was that the Standing Committee again considered the question but decided to drop the proceedings on the ground that it was an old case and the accused had already been reinstated in service. There could be no objection to the Standing Committee again reconsidering its decision. The validity of the sanction can only be considered at the time when it is filed before the Special Judge. We find that there could be no legal bar to the sanctioning authority revising its own opinion before the sanction order is placed before the Court.

On a consideration of the record which ultimately resulted in the order of the sanction, we find however that the sanction order cannot be held to be in accordance with the law. It was on 27-6-1970, the Standing Committee resolved to drop further proceedings. On the same day, Act II of 1970 came into force. Under section 2 of the Hyderabad Municipal Corporations (Amendment) Act, 1970, which came into force on 27th June 1970, it was provided that notwithstanding anything contained in the Hyderabad Municipal Corporation Act, 1955, there shall be appointed by the State Government, by notification in the Andhra Pradesh Gazette, a Special Officer to exercise the powers, to perform the duties and discharge the functions of-

(a) the Corporation;

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(b) the Standing Committee; and

(c) the Commissioner.

This provision was to be in force for a period of two years with effect from 3rd August, 1970, with a provision that it shall not be extended beyond 31st October, 1975. It is not disputed before us that the Amendment Act was not extended to cover the period in question. After the introduction of the amending Act, a Special Officer was appointed by the State Government by notification in the Andhra Pradesh Gazette. The Special Officer was to exercise the powers and perform the duties and discharge the functions of the Standing Committee. After the date of coming into force of the Amending Act, the Special Officer can himself give sanction as he is empowered to discharge the functions of the Standing Committee. What happened in this case was that on 29-7-1972 a note was prepared and submitted to the Standing Committee which is signed by one M. Narsing Rao,

for Special Officer. The note requested the Standing Committee to take a fresh decision on the issue for prosecuting Shri Parmanand Dass for accepting illegal gratification under Section 6(1) (c) of the Prevention of Corruption Act 1947. The Standing Committee on 15-5-1973, after stating that the Standing Committee of the Municipal Corporation of Hyderabad is the authority to remove Parmanand Dass from his office and that after fully considering and examining the materials placed before it, it was of the view that the appellant should be prosecuted in a court of law for the said offence, accorded sanction under section 6(1) (c) of the Prevention of Corruption Act 1974. A draft sanction order was signed by the Special Officer, Municipal Corporation of Hyderabad with a note that he is the officer authorised by the Standing Committee of the Municipal Corporation of Hyderabad to sign the sanction order. After the coming into force of Act II of 1970, the Special Officer is entitled to exercise powers, perform the duties and discharge the functions of the Standing Committee. If the Special Officer acting as the Standing Committee had given the sanction there would have been no flaw in the procedure but in this case what we find is, that a note is prepared for the Standing Committee by one Narsing Rao signing on behalf of the Special Officer and the Standing Committee purporting to act as the Standing Committee, granting sanction on 16-6-1973. When asked to explain as to what was the procedure that was adopted by the Special Officer and the Standing Committee, and whether the Standing Committee was functioning apart from the Special Officer, Mr. Parmeshwar Rao, learned counsel appearing for the State of Andhra Pradesh, submitted that the Special Officer is himself the Standing

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Committee and that the note was sent to the Standing Committee that was Special Officer himself and that he, as the Standing Committee, gave the sanction. We find it difficult to accept this explanation, for, the High Court proceeded on the basis that by the resolution dated 15-5-1973, the Standing Committee accorded sanction under section 6(1)(c) of the Prevention of Corruption Act and authorised the Special Officer to sign the order according sanction and accordingly the Special Officer issued the order dated 16-6-1973. It appears, before the High Court, the parties proceeded on the basis that the Standing Committee accorded sanction on 15-5-1973 and authorised the Special Officer to sign the order and accordingly the Special Officer issued the sanction order. The draft order of the Standing Committee which is signed by the Special Officer states that he is the officer authorised by the Standing Committee. The plea of the learned counsel for the State that the Standing Committee and the Special Officer are one and the same is difficult to accept in the circumstances. As the Special Officer who is entitled under the Act has not given the sanction as a Special Officer or by himself exercising the powers of the Standing Committee but issued the sanction order in pursuance of the sanction given by the Standing Committee, we are unable to uphold the validity of the sanction. On this ground we accept the appeal, set aside the order of the High Court and hold that the sanction granted by order dated 16-6-1973 is not valid in law.

S.R.

Appeal allowed.

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