* **THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(CRL.) NO. 72/2012**

Date of Decision: 06.02.2012

RAVINDER KUMAR CHANDOLIA …… PETITIONER

Through: Mr. Vijay Aggarwal with Mr. Gurpreet Singh, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION & ORS.

……RESPONDENT

Through: Ms. Sonia Mathur, Advocate with IO Rajesh Chahal.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present petition is against the order of the trial court dated 29/07/2011 whereby the trial court dismissed the application of the petitioner for dropping of proceeding on the ground that the sanction accorded was illegal and without application of mind.

2. The instant case was registered on 21/10/2009 against unknown officials of Department of telecommunication (hereinafter referred to as "DOT"), government of India, unknown private persons/companies and others for

the offences punishable under section 120-B IPC read with 13(2) r/w 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the "PC Act"), on the allegations of criminal conspiracy and criminal misconduct, in respect of allotment of Letters of Intent, Unified Access Services (UAS) Licenses and spectrum by the DOT.

3. After investigation, the CBI filed a chargesheet against twelve accused person including the present Petitioner, a public servant of the Joint Secretary level.

4. Facts, as far as the same are relevant for the disposal of the present petition, are that receipt of applications for new UAS licenses in DOT has been a continuous process; the applications were processed in the order in which they were received. However after A. Raja took over as Minister of Communication & Information Technology in May 2007, there was manipulation in the processing of these applications for UAS licenses by DOT.

5. It is alleged that during this period the Petitioner, was PS to Minister of Communication & Information Technology and was an active participant in the alleged criminal conspiracy hatched by A. Raja, MOC&IT. He had been continuously monitoring the status of the receipt of the applications in Access Services (AS) Cell of DOT. He was continuously updating himself with the status of the applications and

names of applicant companies. On 24/09/2007, he enquired from the concerned officer of AS Cell if the application of Unitech Ltd. for new UAS licences has been received and directed that no application should be accepted after the receipt of the application from M/s Unitech Ltd., which were expected to be received on the same day. When informed that receipt of application should be stopped arbitrarily, the DDG (AS-I) was asked to put up a note in this regard. A note dated 24/09/2007 was put up by the AS Cell mentioning that if the receipt of applications is to be discontinued, the public should be informed by way of a press release and proposed that 10/10/2007 as the date till which applications may be received.

6. It is alleged that the accused A. Raja in furtherance to the conspiracy to ensure better prospects for his favoured companies, cut short the last date of receiving applications to 01/10/2007. A press release was issued to this effect on 24/09/2007 itself, which appeared in newspapers on 25/09/2007. It is further alleged that even though the cut off date was announced in the press release as 01/10/2007, accused A. Raja in conspiracy with other accused persons, had already taken a view to keep the cut off as 25/09/2007, as earlier conveyed to the AS cell by the Petitioner. This was also manifest when he approved an amended draft letter to be sent to the ministry of Law & Justice, wherein the alternatives proposed mentioned that only the application received up to 25/09/2007 would be considered to wrongly benefit the other accused

persons/companies. Accused A. Raja approved the issue of this letter, even though, his attention was drawn by the DOT officials to para 3.1.1 of NTP 99 which mandates adequate availability of spectrum for allocating new licenses and TRAI's repeated recommendations about giving new licenses subject to availability of spectrum for existing operators and for new operators. Accused A. Raja, however, decided to send this letter to the ministry of Law & Justice for its opinion on the various options indicated for allocation of new licenses.

7. Accused A.Raja in conspiracy with the Petitioner wrongly benefited accused Sanjay Chandra, MD, M/s Unitech Ltd, M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech companies later merged into it), accused Shahid Balwa, accused Vinod Goenka, M/s Swan Telecom Pvt. Ltd by accommodating applications of M/s Unitech group of companies and M/s Swan Telecom Pvt. Ltd into consideration zone for all circles applied for, despite inadequate availability of spectrum in many circles including Delhi (one of the most lucrative) ahead of the other companies standing in queue for these UAS licenses.

8. It is alleged that, accused A. Raja received a letter dated 02/11/2007 from the office of the Hon'ble Prime Minister in late evening. The response to this letter was drafted by accused A. Raja and the Petitioner, his PS at accused A. Raja's camp office at his residence on the intervening night of 02/11/2007 itself. However the aforesaid letter

received from the PMO was concealed by the accused A. Raja which is evident from the fact that, the aforesaid letter which required serious consideration by the DOT in terms of policy issues, was not even dealt with in the files of the DOT.

9. It is further alleged that in furtherance to the criminal conspiracy, procedure was manipulated by accused A. Raja in conspiracy with accused Sidharth Behura (Telecom Secretary w.e.f. 01/01/2008) and the Petitioner and was redefined to benefit the aforementioned accused persons/ companies which is manifest in the letter dated 26/10/2007 sent by DOT to Secretary, Ministry of Law & Justice. This letter mentioned that, "In the present scenario the number of applications are very large and spectrum is limited and it may not be possible for the government to provide LOI/License/Spectrum to all applicants at all if the existing procedure is followed. Moreover the existing procedure of sequential processing will also lead to inordinate delays depriving the general public of the benefits which more competition will bring out."

10. It is alleged that in furtherance of the conspiracy, the Petitioner, in conspiracy with the accused Sidharth Behura, designed a scheme and directed the DOT officials to implement it in which the LOIs were to be distributed so as to favour their desired companies as contrary to the practice of first-come first-served basis. Accused Sidharth Behura approved the scheme. This ill-conceived design included establishing 4

counters to distribute LOIs, in the committee room of Sanchar Bhawan, 2nd Floor, subverting the system of first-come first-served in letter as well as spirit. In this design, the accused persons deliberately did not ensure that only after the first batch of 4 applicants had been issued LOIs, the second batch be called. The manner in which the counters were placed, priority of the applicants as per date of application and the number of LOIs/ Letters that were to be distributed at each counter, is as mentioned below:

S.No.	**Counter 1**	**Counter 2**	**Counter 3**	**Counter 4**
1.	M/s. By Cell (Priority: 1) (1 rejection letter only)	M/s Tata Teleservices (Priority:2) (3 LOIs + 1 In-Principle approval for Dual Technology	M/s. Idea Cellular. (Priority:3 (9 LOIs)	M/s.Spice Communications (Priority:4) (4 LOIs)
2	M/s. Swan Telecom (Priority :5) (13 LOIs)	M/s. HFCL Infotel (Priority : 6) (Rejection Letter)	M/s. S. Tel (Priority : 7) (6 LOIs)	M/s. Parsvnath. (Priority:8) (1 rejection letter only-absent)
3	M/s. Datacom Solutions (Priority:9) (22 LOIs)	M/s. Loop Telecom (Priority:10) (21 LOIs)	M/s. Allianz (Priority:11) (A letter)	M/s. Unitech Group. (Priority:12) (22 LOIs)
4	M/s. Shyam Telelink (Priority:13) (21 LOIs)	M/s. Selene Infrastructure (Priority:14) (Rejection Letter)		

11. It is alleged that accused A. Raja in conspiracy with accused Sidharth behura, and the Petitioner and other accused persons allocated spectrum to M/s Swan Telecom Pvt. Ltd. in Delhi circle unreasonably depriving M/s Tata Teleservices Ltd. and M/s Spice Communications, which were having priority over M/s Swan Telecom Pvt. Ltd., in terms of the Dual Technology approvals and seniority of new applicants as per date of application, respectively. Also M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into one) got spectrum in many circles ahead of M/s Loop Telecom, M/s Tata Teleservices (dual technology), M/s S. Tel and M/s Swan Telecom. In some circles M/s Unitech group got spectrum in full and in some circles got partial spectrum ahead of other companies which had applied for UAS licenses prior to M/s Unitech group. The allocation of new UAS licenses and spectrum, in this manner, was in stark violation of the TRAI recommendations dated 20/02/2003 and 27/10/2003 and NTP-99, which mandated that applications for CMTS/ UAS licenses could be considered only if sufficient spectrum was available for existing operators as well as new applicants. Had this principle been followed, in most of the aforementioned telecom circles M/s Unitech Wireless (Tamilnadu) Pvt. Ltd. (representing all the 8 Unitech group companies later merged into one) would not have got any license at all and M/s Swan Telecom Pvt. Ltd would not have got UAS license for Delhi service area. After accused A. Raj demitted the office of MOC&IT, DOT has now admitted

the case of priority of TTSL/TTML for spectrum over new UAS licensees.

12. It is alleged that during the said conspiracy, A. Raja, in conspiracy with Sidharth Behura also forged his own note dated 07/01/2008 and used the same to wrongly project & justify that the proposed amendment in press release had the concurrence of the Law officer, with an intent to fraudulently allocate UAS licenses and valuable spectrum to the accused private companies on priority.

13. It is alleged that thus the aforementioned public servant, accused A. Raja MOC&IT, accused Sidharth Behura, then Secretary (Telecom) and the Petitioner, PS to the then MOC&IT in abuse of their official position and in connivance with other accused persons/companies have caused wrongful loss to the government of India and wrongfull gain to themselves constituting commission of offences, during 2007-2009, punishable u/s 120-B, 420, 468, 471 IPC and also punishable u/s 13(2) r/w 13 (1)(d) of the PC Act, 1988 against accused persons, viz. A. Raja, then MOC&IT; Sidharth Behura, then Secretary (Telecom); R.K. Chandolia, then PS to MOC&IT; Shahid Usman Balwa, Director M/s Swan Telecom Pvt. Ltd; M/s Swan Telecom Pvt. Ltd. (now Etisalat DB Telecom Pvt. Ltd) through its director; Sanjay Chandra, Managing Director of M/s Unitech Ltd; M/s Unitech wireless (Tamilnadu) Private Ltd through its director; Sh. Gautam Doshi, Group Managing Director,

Reliance ADA Group, Sh. Hari Nair, Senior Vice-President of Reliance ADA Group; Sh. Surendra Pipara, Senior Vice President of Reliance ADA Group and M/s Reliance Telecom Ltd. Through its director.

14. It is alleged that based on growth in Adjusted Gross Revenue (AGR) per MHz per year during the years 2002-03 to 2007, which grew by 3.5 times during this time, additional revenue of around Rs. 22, 535.6 crores in respect of entry fee of new UAS licenses granted by accused A. Raja to various applicants and Rs. 8, 448.95 Crores in respect of Fee paid by Dual Technology users, totaling to Rs. 30, 984.55 Crores could have accrued to the government exchequer.

15. The challenge to the impugned order is mainly on three counts. Firstly, the sanction order under Section 19 of PC Act shows non-application of mind as the sanctioning authority did not consider the role of the applicant, documents, statement of witnesses etc. Secondly, no sanction under Section 197 of the Code of Criminal Procedure for prosecution of the petitioner was obtained and thirdly, the investigation was bad as it was without permission under Section 6A of the Delhi Special Police Establishment Act.

16. As regards the first submission regarding the non-application of mind by the sanctioning authority, it was submitted by the learned counsel for the petitioner that the entire material, which was voluminous was not placed before the sanctioning authority and if at all, it was placed before

him, it was extremely impossible for him to have gone through and apply his mind in a short duration of one to two days.

17. I have gone through the sanction order, which runs into three pages and the competent authority has referred there the documents considered by it. That apparently shows the application of mind by the competent authority. The sanction is only an administrative decision and the competent authority is at liberty to consider all the relevant documents, which form the crux of the allegations. It is not required to consider each and every document himself. The sanctioning authority was only required to take a prima facie view whether there was sufficient material against the accused on record to grant sanction or not. It is because the provisions are meant to protect the honest government servants and not to prevent the prosecution in a bona fide case. The order of sanction apparently disclosed that the competent authority had considered the evidence and other material placed before it. This court in its powers in the present proceedings was neither sitting in appeal nor revision against the sanction order. The law in this regard is well settled by various pronouncements of the Supreme Court as well this court. The reference is made to the decision of the Division Bench of this court in **Kushal Kumar Vs. CBI and Another,** 2009 I AD (Delhi) 599. In this case, similar contention was raised and it was held thus:

> *"10. The order of sanction in a given case must ex facie disclose that the sanctioning authority had considered the evidence and the material placed before it. The court is not required to sift and weigh*

evidence collected by the investigation officer during investigation of the case to know if the sanction order was valid and was neither unmindful nor was passed in a mechanical manner. Relevancy of evidence collected is an aspect which has to be examined by the court at the stage of trial and no this court for invalidating the sanction. Therefore it cannot be said that the impugned sanction was granted in a mechanical manner. The sanction was granted vide a detailed order wherein all the facts and evidence collected by the Investigation Agency during the investigation against the Petitioner has been discussed."

12. Officer signing the sanction order is not required to state that he had personally scrutinized the file and had arrived at the required satisfaction. The allegations made in the First Information Report (FIR) and the order granting sanction if true, would clearly establish that the accused was rightly prosecuted and was guilty of a criminal misconduct. The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption. Therefore, it cannot be presumed that there was no application of mind when the sanction of the Government was obtained."

18. In the case of Kushal Kumar (supra), reliance was placed on the under-mentioned observations of the Supreme Court in the case of **State of Bihar Vs. P.P.Sharma, IAS,** 1992 Supp (1) SCC 222, which reads thus:

"It is equally well settled that before granting sanction the authority or the appropriate government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and the appropriate government would apply their mind to those facts. The order of sanction is only an administrative order and not a quasi-judicial one nor is a lis involved. Therefore, the order of sanction need not contain detail reasons in support thereof as was contended by Shri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the

reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended by the respondents does not arise. Proper application of mind to the existence of prima facie evidence of the commission of the commission of the offence is only a pre-condition to grant or refuse to grant sanction. When the government accorded sanction, section 114 (e) of the Evidence Act raises presumption that the official acts have been regularly performed…."

19. Having noted the law on the point as above, it may be reiterated that what is required to be established is that the sanction was given in respect of the facts constituting the offence with which the accused is proposed to be charged. It might be desirable that the facts should be referred to in the sanction order itself, but if they do not appear on the face of it, the prosecution can establish the same by adducing the evidence that those facts were placed before the sanctioning authority. Having examined the sanction order, it is evidently clear that not only the evidence has been discussed and taken care of by the sanctioning authority, but it has also referred to the facts leading to the prosecution of the petitioner. Further, as per Section 114(e) of the Evidence Act, there was an existing presumption of sanction of prosecution of the petitioner by the sanctioning authority in the discharge of his regularly performed officials acts.

20. The next contention of the learned counsel for the petitioner that there was no sanction under Section 197 CrPC is also untenable. The learned counsel for the petitioner has relied upon the cases of **State of**

M.P. Vs. Sheetla Sahai, 2009 (VIII) AD (SC) 603, **C.P.Thakur Vs. CBI,** 2009 (4) AD (Delhi) 477 and **Shreekantiah Ramayya Munipalli Vs. State of Bombay,** (1955) 1 SCR, 1177 to contend that the prosecution was bad in the absence of sanction under Section 197 CrPC. In the case of Kushal Kumar (supra), this court considered a large number of decisions holding that when sanction has been granted under Section 19 of the P.C.Act, no sanction under Section 197 CrPC is required.

21. It is settled law that irrespective of the nature of charge, it was to depend upon the facts of each case as to whether the sanction was required or not under Section 197(1) CrPC. The Supreme Court in the case of **Amrik Singh Vs. State of Pepsu,** AIR 1955 SC 309 very categorically held that "if the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) CrPC would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

22. Likewise, in the case of **P.Arulswami Vs. State of Madras,** AIR 1967 SC 776, the Supreme Court, after discussing various decisions on the subject held thus:

> *"….A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office..".*

23. The sum and substance is that it is not every offence committed by public servant having done by him while he is actually engaged in the performance of his official duties that would require sanction for prosecution under Section 197(1) CrPC. However, if the act complained of is directly connected with his official duty, so that it could be claimed to have been done by virtue of his office, then the sanction would necessarily be required. In other words, if the offence is entirely unconnected with the official duty, there can be no protection but, if it is committed within the scope of the official duty or in excess of it, then the protection is certainly available.

24. In view of the law noted above, the reliance placed by the petitioner on the cases of State of M.P. Vs. Sheetla Sahai (supra), C.P.Thakur (supra) and Shreekantiah Ramayya Munipalli (supra) is highly misplaced. All these cases are on their peculiar facts. The acts complained of in these cases were done in discharge of the official duties and thus, required sanction under Section 197 CrPC.

25. Now, applying the test of the dictum of the law in the instant case, it would be noted that there is sufficient material against the petitioner to demonstrate that acts complained of were not part of his duty as a public servant. It is alleged that the petitioner, in conspiracy with other co-accused persons played an active role in determining the cut off date for the applications for the issue of UAS licences received up to 25.9.2007 in order to give undue favour to M/s. Swan Telecom Pvt. Ltd. and M/s. Unitech Limited. There are also allegations against him having assisted the co-accused A.Raja in drafting the letters to the Prime Minister incorporating substantial changes in the existing policy for grant of UAS licences. He was also allegedly instrumental in determining the methodology of distribution of letters of intent to the applicants and also that he had pressurized the officials of the department for allocation of spectrum to the aforesaid companies. All these allegations are prima facie substantiated from the testimonies of PW1 Avdesh Kumar Srivastava and PW20 R.P.Aggarwal. In addition to the testimonies of these two witnesses, there are also testimonies of incriminating nature of PW6 N.M.Manickam, PW7 K.Sridhara and PW103 Aseervatham Achari, pointing the finger of guilt of mala fide decisions on the part of the petitioner. The testimonies of these witnesses, by any means, do indicate that the alleged acts were committed by him while acting in his official capacity as P.S. to the Minister of Communication & Information Technology.

26. With regard to the contention that there was no permission under Section 6A, DSPE Act, it may be noted that prima facie, no approval was required at the first instance since the FIR was registered on 21.10.2009 against unknown officials of the Department of Telecommunication and also unknown private persons/companies and others. In this regard, it was submitted by the learned Special P.P. that when involvement of the petitioner came on record in the statement of PW1 A.K.Srivastava, the matter was considered and immediately thereafter, approval was sought and granted on 7.12.2010. Therefore, I do not find any further merit in the submission of the learned counsel for the petitioner with regard to this issue. It may again be reiterated that the purpose of this Section is also to protect the honest decision makers and not to defeat the bona fide investigation or trial.

27. From all this, I am of the view that no sanction under Section 197 CrPC was required in the instant case as the alleged acts of the petitioner did not fall within the scope of his official duties. The FIR was initially registered against the unknown persons and so, there was no initial permission required under Section 6A DSPE Act. In any case, the permission was obtained under Section 6A DSPE Act after the involvement of the petitioner came to be known. There was prima facie incriminating material against the petitioner and the sanctioning authority had granted sanction of prosecution under Section 19 of P.C. Act after due application of mind.

28. In view of my above discussion, I do not find any merit in the present petition. It is accordingly dismissed.

M.L. MEHTA, J.

FEBRUARY 06 , 2012/akb