

**HIGH COURT OF MADHRA PRADESH AT JABALPUR**  
**DIVISION BENCH**

***PRESENT : Hon'ble Shri Justice Shantanu Kemkar.***  
***Honb'e Shri Justice N.K. Gupta.***

**M.Cr.C.No.17339/2015**

***Naimuddin Siddiqui S/o Late Shri Azimuddin***

***Versus***

***The State of M.P.***

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*Dr. Anuvad Shrivastava, learned counsel for the petitioner.*  
*Shri Pankaj Dubey, learned counsel for respondent/Lokayukt.*

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**ORDER**

**(Passed on this 15<sup>th</sup> day of October, 2015)**

**Per : Shantanu Kemkar, J.**

By filing this petition under Section 482 of Code of Criminal Procedure the petitioner has challenged the order dated 19/09/15 (Annexure P/13) passed by Special Judge (Prevention of Corruption Act), Bhopal in Special Case No.16/13 whereby his application filed under Section 19 of the Prevention of Corruption Act (for short 'the Act') has been rejected. He has also challenged the order dated 30/08/2013 (Annexure P/6) passed by Secretary, Law Department, Government of Madhya Pradesh, Bhopal granting sanction for prosecution under Section 19(1)(b) and (c) of the Act against the petitioner under Section 7, 13(1) (d) read with Section 13(2) of the Act.

2. Brief facts necessary for disposal of this petition are that the petitioner was working on the post of Executive Engineer in the Public Works Department of Government of M.P. at Bhopal. A complaint was made against him by a contractor to the respondent that in order to

release the payment of his outstanding bills, the petitioner is demanding Rs.1,00,000/- from him. On the basis of the said complaint, a trap was organised and the petitioner was caught red handed while accepting the bribe amount. After the sanction for prosecution was granted by the Secretary, Law Department, vide order dated 30/08/13 (Annexure P/6) a charge-sheet was filed against the petitioner.

3. Before the trial Court the petitioner filed an application under Section 19 of the Act on the ground that as his parent department had refused to grant the sanction, the procedure prescribed in the Business Rules in the case of difference of opinion between the two Government Departments was required to be followed and as the same has not been followed, the impugned order of grant of sanction by the Law Department is vitiated. However, the trial Court rejected the application vide order dated 19/09/2015. Feeling aggrieved the petitioner has filed this petition.

4. Dr. Anuvad Shrivastava learned counsel for the petitioner submits that in view of the **Rule 10(t) of Business Rules In Regard To The Coordination Cases**, when there was difference of opinion between the Parent Department and the Law Department, the matter ought to have been referred to the Minister-In-Charge and then by Secretary of the department it should have been submitted to the Chief Minister for approval through the Chief Secretary **OR** as per circular of State Government dated 21/04/1997 it should have been placed before Sub-Committee of the Council of Ministers. He submits that the trial Court has not appreciated the aforesaid Rule 10(t) of the Business Rules and the circular dated 21.4.1997 in its correct perspective. He has further argued that the order passed by the Law Department granting sanction is illegal and has been passed without taking into consideration the correct facts available on record. In the circumstances, he has prayed for setting aside

the said order also.

5. On the other hand Shri Pankaj Dubey, learned counsel for the respondent has supported the impugned orders.

6. We have considered the submissions made by learned counsel for the parties and perused the impugned orders.

7. On going through the **circular dated 21/04/97 (Annexure P/4)** which deals with grant of sanction of prosecution of the Government Employees and Officers we find that it provides for placing of the matter before the Council of Minister in case of difference of opinion between the Law Department and the Parent Department about grant of sanction for prosecution. However, we find that immediately after issuance of the said circular **vide order dated 10/07/97 (Annexure P/5)** the said condition that in case there is difference of opinion between the Law Department and the Parent Department about grant of sanction for prosecution the matter be placed before Sub-Committee of Council of Ministers, has been **deleted**. Thus, since at the time when the sanction was sought and granted, the said condition mentioned in the circular was already deleted by the State Government, there was no question of placing the matter before the Sub-Committee of Council of Ministers on difference of opinion. Therefore, the submission of learned counsel for the petitioner on the basis of circular dated 21/04/1997 is of no merit.

8. The reliance of the petitioner on Business Rules In Regard To The Coordination Cases (Annexure P/3) is also misplaced. The relevant portion which is in regard to Direction issued under Rule 10 of the said Business Rules reads thus:-

under rule 10 of the Business rules, the Governor of Madhya Pradesh is pleased to issue the following directions for the submission to the Chief Minister of matters with respect to the business of the Government:-

The following cases, and cases shown in Direction 3 of Part-III of these Rules, shall be submitted for approval to the Chief Minister through the Chief Secretary, by the Secretary of the department concerned, after consideration by the Minister-In-Charge .-

(a) to (s) ..... not relevant.

(t) **Cases concerning different departments in which the departments concerned are not in agreement;**

(u) to (z) ..... not relevant.

9. To our mind the Rule 10(t) of the aforesaid Business Rules will not attract in the case of grant of sanction for prosecution as at the relevant time the Legal Remembrance Branch of the Law Department was specifically empowered to grant the sanction of prosecution under Section 19 of the Prevention of Corruption Act, 1988 vide Part-A Sub-Clause 4 of the M.P. Government Business Allocation Rules as amended till 01/01/2009, which reads thus:-

भाग अ - विधि परामर्श शाखा ४. (एक) दण्ड प्रक्रिया, जिसमें भारतीय दण्ड संहिता, १८६० (१८६० का सं. ४५) की धारा १५३-क, १५३ ख तथा २६५-क के अधीन अभियोजन के लिए धारा १६६ के अधीन पूर्व मजूरी तथा अपराधियों की परिवीक्षा को छोड़कर दण्ड प्रक्रिया संहिता, १९७३ के अन्तर्गत आने वाले समस्त विषय सम्मिलित हैं, और (दो) **भ्रष्टाचार निवारण अधिनियम, १९८८, की धारा १६ के अधीन अभियोजन की मजूरी.** (तीन) पासपोर्ट, अधिनियम, १९६७ (१९६७ का सं. १५) की धारा १५ की धारा १५ के अधीन अभियोजन की मजूरी. (चार) विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम अधिनियम, १९६७ (१९६७ का सं. ३७) की धारा १७ के अधीन अभियोजन की मजूरी.

10. In furtherance of the specific power given to it under the Madhya Pradesh Government Business Allocation Rules the Principle Secretary / Secretary / Additional Secretary (Law) was conferred with the power to grant the sanction for prosecution vide order dated 16/07/2009, which reads thus:-

“२. आरोपीगण के विरुद्ध अभियोजन की स्वीकृति प्रदान करने में मध्यप्रदेश शासन सक्षम है एवं भारत के संविधान के अनुच्छेद १६६ के खण्ड (२) तथा (३) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राज्यपाल द्वारा बनाये गये म.प्र. शासन कार्य नियमों के

नियम.१३ के अधीन अनुपूरक भाग पांच के अनुदेश क्रमांक.-२ (क) के प्रावधानों एवं म.प्र. शासन कार्य आबंटन नियम की अनुसूची-२१ के भाग-अ. में, अनुक्रमांक-४ के खण्ड (१) व (२) के अनुसार प्रमुख सचिव/सचिव / अतिरिक्त सचिव, (विधि) शासकीय सेवकों के अभियोजन की स्वीकृति से संबंधित मामलो का निपटारा करने के लिए राज्य शासन की अधिकारिता के प्रयोग में सक्षम हैं।”

**11.** In view of the aforesaid clear empowerment of exercise of jurisdiction in regard to grant of sanction of prosecution in favour of the Principle Secretary/Secretary/Additional Secretary (Law) the refusal to grant the sanction by the parent department of the petitioner has no bearing as it will not come within the purview of Clause (t) of Rule 10 of the Business Rules which deals with the cases concerning different departments in which in regard to the business of the Government they are not in agreement. The matter relating to powers regarding grant of sanction for prosecution cannot be termed as disagreement in regard to the business of the Government between the Parent and the Law Department. When at the relevant time the competence to grant the sanction was with the Legal Remembrance Branch of the Law Department and specific authorization was in favour of the Secretary, Law Department the sanction order passed by him cannot be said to be in violation of the provisions of the said Business Rule. Moreover in regard to the opinion of the Parent Department it is well settled that the opinion of the parent department is not of binding effect on the Law Department. *[See: Omprakash Vs. State of M.P. & Others, ILR 14 MP 1753 & 2014(3) MPLJ 717 and M.P. Chaturvedi Vs. M.P. State Economic Offence Bureau, Bhopal (Cr.R.No.1856/12) decided on 18/03/13.]*

**12.** We have also gone through the order dated 30/08/2013 (Annexure P/6) passed by the Secretary, Law Department and we find that the same is a self contained speaking order passed after due application of mind taking into consideration the material collected and

brought before him. In the circumstances no infirmity is noticed in the impugned sanction order. This Court cannot sit over the findings recorded by the Sanctioning Authority as an Appellate Court nor is supposed to go into the minute details of the allegations and to comment upon the merits of the case.

**13.** As a result, we find no ground to interfere into the impugned order dated 19/09/2015 (Annexure P/13) and the sanction order dated 30/08/2013 (Annexure P/6).

**14.** Hence, the petition fails and is hereby dismissed.

(Shantanu Kemkar)  
JUDGE

(N.K. Gupta)  
JUDGE

*as*