



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

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

WRIT PETITION No. 26941 of 2021

GOVIND SINGH LODHI

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Bhoopesh Tiwari - Advocate for the petitioners.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 25928 of 2021

VIRENDRA AGLECHA

Versus

THE UNION OF INDIA AND OTHERS

Appearance:



Shri Manish Datt – Senior Advocate with Shri Siddharth Datt - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 25931 of 2021

PRAVESH MAHESHWARI

Versus

THE UNION OF INDIA AND OTHERS

Appearance:

Shri Manish Datt – Senior Advocate with Shri Siddharth Datt - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 25941 of 2021

PRAVESH MAHESHWARI

Versus

THE UNION OF INDIA AND OTHERS



Appearance:

Shri Manish Datt – Senior Advocate with Shri Siddharth Datt - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 26050 of 2021

VIRENDRA AGLECHA

Versus

THE UNION OF INDIA AND OTHERS

Appearance:

Shri Manish Datt – Senior Advocate with Shri Siddharth Datt - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 26051 of 2021

VIRENDRA AGLECHA

Versus



THE UNION OF INDIA AND OTHERS

Appearance:

Shri Manish Datt – Senior Advocate with Shri Siddharth Datt - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 26053 of 2021

VIRENDRA AGLECHA

Versus

THE UNION OF INDIA AND OTHERS

Appearance:

Shri Manish Datt – Senior Advocate with Shri Siddharth Datt - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

WRIT PETITION No. 26942 of 2021



GOVIND SINGH LODHI

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Bhoopesh Tiwari - Advocate for the petitioner.

Shri Pankaj Dubey - Advocate for the respondent-Central Bureau of Investigation.

Shri Brian D'Silva - Senior Advocate with Shri Kapil Duggal, - Advocate for the respondents-Punjab National Bank.

Reserved on : 28.08.2024

Pronounced on : 18.09.2024

ORDER

Per: Justice Vivek Agarwal

This bunch of petitions is filed by set of banking officers belonging to the Punjab National Bank. It is submitted that these cases are similar in nature, whereby the competent authority after refusing to grant sanction, under the pressure of Chief Vigilance Commissioner and the Department of Personnel & Training (DoPT) has granted sanction without there being any change in the circumstances or without there being any new material brought on record.



2. For the purposes of reference, facts in the case of W.P. No.26941/2021 (*Govind Singh Lodhi Vs. Union of India and others*) are taken for consideration.

3. Petitioner's contention is that petitioner was working as Manager (Credit) in MMG Scale-II, for which selection was conducted by the respondent-Punjab National Bank. He was declared successful and vide order dated 21.01.2013, he was offered appointment on the said post of Manager (Credit) in MMG Scale-II, where he gave his joining on 18.04.2013. Petitioner upon giving his joining, was posted at Kanthal (Ujjain). Petitioner was initially appointed on probation for a period of two years, as is evident from his appointment order (Annexure P-1).

4. It is submitted that as an employee of the Punjab National Bank, provisions of the Punjab National Bank Officers (Conduct) Regulations, 1977, Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 and Punjab National Bank (Officers) Service Regulations, 1979 and other rules and conditions of service laid down by the Bank from time to time for its officers, were applicable to the petitioner.

5. It is submitted that a complaint was made on 16.01.2018 by one Shri Vijay Kumar Harit, Chief Manager, Punjab National Bank, Assets Recovery Management Branch, Indore, and an FIR was registered against certain persons. It was alleged that the accused officers in connivance with the borrower and the guarantors, sanctioned a Cash Credit Limit (CCL) of Rs.400 Lakhs on 19.07.2013 in favor of one Sohanlal Kothari, who was



proprietor of M/s Jai Jinendra Industries. That cash credit limit was to be used in the business of coal trading. Against the said cash credit limit, borrower along with the guarantors had mortgaged land and building of more than 100%.

6. The allegation is that the sanction of cash credit limit was in blatant violation of the Bank norms and without verifying the required stocks/securities. It was further alleged that the collateral security was overvalued and false, forged and fictitious documents were procured by the borrower for grant of the cash credit limit.

7. The Central Bureau of Investigation (CBI), ACB, Bhopal, lodged FIR under Sections 120-B read with Sections 420, 471, IPC and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity “PC Act”) against the accused persons. The allegation against the petitioner Shri Govind Singh Lodhi is that when he was posted as Manager (Credit) at Branch Kanthal (Ujjain) of the Punjab National Bank, then without verifying and analyzing documents and financial details, forwarded the application of the borrower. Another interesting fact is that initially name of the petitioner was not mentioned in the FIR, but was included in the array of accused in the charge-sheet. Thereafter, the prosecution approached the competent authority of the respondent Bank for the purpose of sanction for prosecution against the petitioner under Section 19 of the PC Act.

8. It is submitted that since petitioner was a probationer, therefore, in terms of the rules and regulations of the Punjab National Bank, he being



the junior-most officer and on probation, still learning the tricks of the trade, was not aware of the intricacies of the cash credit limit and, therefore, he being only a recommending authority and not the sanctioning authority of cash credit limit, he could not have been arrayed as an accused in violation of the provisions contained in the service regulations, especially, the instructions of the Government of India, Ministry of Finance, Department of Financial Services, Vigilance Section vide No.F.14/43/2015/Vig., New Delhi, Dated 15th December, 2015, wherein it is informed by the Director (Vigilance) to the CEOs of all Public Sector Banks/Financial Institutions that "CVC has advised this department to instruct the Public Sector Banks to ensure that newly recruited officers who are under probation or having a service of less than two years are not asked to recommend and process loans, unless it forms part of their learning process." Copy of this order is available in the writ petition as Annexure P-2.

9. Thus, it is submitted that as per Annexure P-2, petitioner being a newly recruited and on probation, was not required to be given work of recommending and processing loans, unless it was part of his learning process. Therefore, it is submitted that if a loan was handled by the petitioner as a part of his learning process, that will provide him with an immunity to not to be prosecuted for minor lapses during the learning process.

10. It is submitted by Shri Bhoopesh Tiwari, learned counsel for the petitioner that on 30.01.2020 vide order in case No.RC0082018A0015-



CBI, ACB, Bhopal, sanction to prosecute the petitioner was refused by the then Zonal Manager on the ground that petitioner was involved in preprocessing of the loan and the main reason for the negligence on his part was that he was newly recruited in the Bank and that was his first posting, he was, therefore, not having any previous experience which caused such mistake. He has already been chargedsheeted and penalty of reduction of two lower stage in the time scale of pay for two years has already been imposed upon him for his lapses. Therefore, taking such a stand, a decision was taken not to prosecute the petitioner in the court of law for the alleged lapses, which were termed to be 'procedural in nature' and not involving any malafides or criminal conspiracy on his part. A copy of this order is enclosed with the petition as Annexure P-3.

11. It is further submitted that, thereafter, again matter was referred to the competent authority, who had passed the order dated 30.01.2020 (Annexure P-3), and vide order dated 02.08.2021, the sanctioning authority/competent authority referring to the letter No.VIG SOP-39/RC-14 dated 16.07.2021 informed that DoPT vide its OM No.118/6/21-AVD-III dated 06.07.2021 agreed with the recommendation of CVC to grant sanction for prosecution in respect of another officer, namely, Virender Aglecha, the then Manager (Credit), Branch Office, Marwadi Road, Bhopal. It was informed that the disciplinary authority by order dated 14.07.2020 has decided not to accord sanction for launching of prosecution against said Virender Aglecha, on whom there was an allegation of processing proposal/application of M/s Sahyog Coal India Private Ltd. and who too had joined the services of the Bank as a probationer on the post of



Manager (Credit) at Marwadi Road, Bhopal in May 2013 and asked the competent authority to re-examine his case.

12. Vide order dated 02.08.2021, the competent authority i.e. the Zonal Manager, referring to the judgment of High Court of Rajasthan in case of **Munish Kumar Sharma Vs. The State of Rajasthan and others** (S.B. Civil Writ Petition No.7156/2007, decided on 10.03.2010), decision of Hon'ble Supreme Court in **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat**, (Criminal Appeal No.000502/1993, decided on 03.09.1997), decision in case of **Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh and others**, AIR 1979 SC 677, judgment of Supreme Court in **State of Bihar and another Vs. P.P. Sharma**, 1991 Cr.L.J 1438 (SC), judgment in case of **Jaswant Singh Vs. State of Punjab**, AIR 1958 SC 12, so also the judgment of Hon'ble Supreme Court in **State of Himachal Pradesh Vs. Nishant Sareen**, (2010) 14 SCC 527, observed that since disciplinary authority had already taken action against the delinquent under the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 (Clause 6) and there was no dishonest or malafide intention on the part of the officer, but the act was due to his inexperience or lack of knowledge or negligence, it would not amount to dishonest misappropriation and on the ground of negligence or shortage alone, he cannot be given sanction for prosecution and, therefore, sanction for prosecution was refused in case of Virendra Aglecha.

13. Petitioner's counsel submits that charge-sheet which issued against the petitioner was under Regulation 8 of the Punjab National Bank Officer



Employees' (Discipline and Appeal) Regulations, 1977 and it was under the head of non-vigilance. Thus, it is pointed out that an action taken against the petitioner under non-vigilance head and for the inexperience of the petitioner to process a credit limit, while being on probation as a part of his learning, cannot entail criminal consequences. Therefore, the petition deserves to be allowed and be allowed.

14. Thus, it is submitted that once sanction was refused, it cannot be thrust upon the officers by changing the concerned officer as is evident from the representation (Annexure P-4) made by the General Secretary of All India Punjab National Bank Officers' Federation on 09.09.2021 vide impugned order dated 28.10.2021, without mentioning any change of circumstances merely on the dictates of the CVC and the CBI, so also at the behest of DoPT.

15. Reliance is placed by the learned counsel for the petitioner on the following judgments:-

(i) Judgment of Hon'ble Supreme Court in **Nagaraj Shivarao Karjagi Vs. Syndicate Bank, Head office, Manipal and another, (1991) 3 SCC 219;**

(ii) Judgment of Hon'ble Supreme Court in **Satyendra Chandra Jain Vs. Punjab National Bank and others, (1997) 11 SCC 444;**

(iii) Judgment of High Court of Madhya Pradesh in **Gagan Gupta Vs. The State of Madhya Pradesh, 2016 SCC OnLine MP 8968;**



(iv) Judgment of High Court of Madras in **M.S. Vijayakumar Vs. The Chairman and Managing Director, Indian Overseas Bank, 2010 SCC OnLine Mad 6237**;

(v) Judgment of High Court of Kerala in **Ramesh Chennithala Vs. State of Kerala, (2018) SCC OnLine Ker 14261**;

(vi) Judgment of High Court of Madras in **Ravikumar and another Vs. State, Rep. by Deputy Superintendent of Police, SPE/CBI/ACB/Chennai, as reported in 2012 (2) MWN (Cr.) 141**;

(vii) Judgment of Himachal Pradesh High Court in **Nishant Sareen Vs. State of Himachal Pradesh, 2009 SCC OnLine HP 956**; and,

(viii) Judgment of Allahabad High Court in **Giri Raj Sharma Vs. State of Uttar Pradesh Through CBI/ACB/LKO, in case under Section 482/378/407 No.3274 of 2018 decided on 17.12.2021**.

16. Thus, referring to aforesaid judgments, it is submitted that the subsequent order of sanction being not based on any fresh material collected by the investigating agency, is not sustainable in the eyes of law.

17. Shri Manish Datt, learned Senior counsel appearing for the petitioner in connected matter, submits that in his case, sanction was refused for the first time on 02.03.2020 and then again it was refused on 03.08.2020. On 16.08.2021, it was again refused, but on 28.10.2021, it was granted. He places reliance on the judgment of Hon'ble Supreme Court in case of **Vijay Rajmohan Vs. State, Represented by the Inspector of Police, CBI,**



ACB, Chennai, Tamil Nadu, 2022 SCC OnLine SC 1377 and judgment of High Court of Judicature at Bombay **Central Bureau of Investigation Vs. R. Bhuvaneshvari W/o C.N. Venkataraman and another** (Criminal Revision Application No.297 of 2023 and Criminal Application No.246 of 2019, decided on 09th January, 2024).

18. Shri Kapil Duggal, learned counsel appearing for the respondent-Bank, in his turn, submits that he would be fair in admitting that no fresh material was considered. He further submits that previous order declining sanction i.e. order dated 30.01.2020 (Annexure P-3) is not an order, but a decision taken in the note-sheet and, therefore, the provisions of the Vigilance Manual will be applicable. It is further submitted that Regulation 19 of the Regulations of 1977, provides for consultation with Central Vigilance Commission (CVC). It is provided that the Bank shall consult the Central Vigilance Commission wherever necessary in respect of all disciplinary cases having a vigilance angle. Thus, it is pointed out that the consultation with the Central Vigilance Commission was mandatory before passing an order.

19. It is further submitted that Clause 7.15 of the Vigilance Manual, 2020 issued by the Vigilance Department of the respondent- Bank states that in case where there is a difference of opinion between the competent authority and the CBI on the issue whether the sanction for prosecution in respect of the officer employees' should be granted or not, the opinion of Chief Vigilance Commissioner is binding and the matter is required to be referred to the Commission for its advice irrespective of the level of the



officer involved and the authority will take further action after taking into consideration the advice of the Commissioner. The matter is required to be referred to the Commission through CVO of the Bank and where the administrative authorities do not propose to accept the advice of the Commission for grant of sanction for prosecution, such cases should be referred to DoPT for a final decision. Thus, it is submitted that since there was a difference of opinion between the competent authority and the Central Bureau of Investigation, the matter should have been referred to the Vigilance Commission and, thereafter, the aspect of sanction should have been processed and, in case, the disciplinary authority was not willing to accept the recommendations of the CVC, then matter was mandatorily required to be referred to the DoPT, whose advice is binding.

20. Shri Pankaj Dubey, learned counsel appearing for the respondent-CBI, in his turn, submits that there is an element of criminal conspiracy, indulging in which the petitioner not only violated the prescribed procedure of the Bank, but made the Bank to suffer a huge loss due to his non-performance and not adhering to book of instructions. It is submitted that the High Court of Chhattisgarh at Bilaspur in **Dilip Kumar Sharma Vs. State of Chhattisgarh**, (W.P. (Cr.) No.355/2017 decided on 06.04.2018), after considering several judgments of Hon'ble Supreme Court has held that an order passed under Section 19 of the Act of 1988 by the sanctioning authority can be reviewed / reconsidered on the following circumstances, namely, (i) Where fresh materials have been collected by the investigating agency and if on that basis, the matter can be



reconsidered; and, (ii) When the authority has failed to take into consideration a relevant fact or took into consideration an irrelevant fact.

21. Shri Pankaj Dubey also places reliance on the judgments of Hon'ble Supreme Court in **State of Bihar Vs. Rajmangal Ram, (2014) 11 SCC 388** and **P.L. Tatwal Vs. State of Madhya Pradesh, AIR 2014 SC 2369**. Thus, placing reliance on these judgments, it is submitted that there is no estoppel from reconsidering the earlier decision of refusal to grant sanction for prosecution. Shri Pankaj Dubey also takes an objection that trial is already underway and no useful purpose is going to be served, even if the petitions are allowed at this stage.

22. Shri Manish Datt, learned Senior Counsel submits that petitions are filed against the order of cognizance, a fact which is admitted by Shri Pankaj Dubey and, then it is submitted that charges were framed after filing of the petition, another fact admitted by Shri Pankaj Dubey. Thus, pendency of petitions cannot prejudice the interest of the petitioners.

23. Though Shri Pankaj Dubey submits that trial court is only required to see whether the sanction is there or not and draws attention to the Explanations below Section 19 (4) of the Prevention of Corruption Act, 1988 and placing reliance on the judgment of a coordinate Bench of this High Court in **Shashikant Mishra Vs. Union of India (M.Cr.C. No.49651 of 2023, decided on 23rd January, 2024)**, it is submitted that in para 36 of the said order, various aspects have been considered and since order dated 30.01.2020 (Annexure P-3) was never communicated to the CBI, that cannot be said to be an order and, therefore, that order being



confined to note-sheets as submitted by Shri Kapil Duggal, case of the CBI will be squarely covered by the decision of the coordinate Bench in **Shashikant Mishra** (supra).

24. After hearing learned counsel for the parties and going through the record, first and foremost issue is that whether order dated 30.01.2020 (Annexure P-3) is an order or a decision taken in the note-sheet which was never formalized as an order? Whether that order was ever communicated to the CBI or not?, and what will be the impact of the decision of coordinate Bench in **Shashikant Mishra** (supra)? Another issue which emerges is that what will be the impact of the procedure given in Clause 7.15 onwards in the Vigilance Manual, 2020?

25. As far as first issue is concerned, though Shri Kapil Duggal has vehemently submitted that order dated 30.01.2020 (Annexure P-3), cannot be treated as a formal order and it was only a decision confined to the note-sheet. But, it is equally true that even on our asking, Shri Kapil Duggal, learned counsel appearing for the Bank did not produce the original file to show that order dated 30.01.2020 (Annexure P-3) was never issued by the authority and it was only confined in the note-sheet, as a decision of the authorities. We are constrained to note that order dated 30.01.2020 (Annexure P-3) was given by the Punjab National Bank under the Right to Information Act, 2005, and such endorsement is available in the order itself.

26. In the Principles of Statutory Interpretation, by Justice G.P. Singh, Former Chief Justice of High Court of Madhya Pradesh, 13th Edition, 2012,



LexisNexis, Butterworths Wadhwa Nagpur, in Chapter XII, under the heading of "Delegated Legislation", forms of delegated legislations have been dealt with. Quoting from Allen: Law and Order, Second Edition, p.112, it is noted that "The expression 'regulation' should be used to describe the instrument by which the power to make substantive law is exercised, and the expression 'rule' to describe the instrument by which the power to make law about procedure is exercised. The expression 'order' should be used to describe the instrument of the exercise of (A) Executive power, (B) The power to take judicial or quasi judicial decision.

27. As far as procedural requirements in regard to delegated legislation are concerned, by referring to the decision of the Hon'ble Supreme Court in **I.T.C. Bhadrachalam Paper Boards and another Vs. Mandal Revenue Officer, A.P. and others (1996) 6 SCC 634**, where (d) typed formula was used, made the following general observations:-

"Where the parent statute prescribes the mode of publication or promulgation that mode has to be followed and such a requirement is imperative and cannot be dispensed with".

28. In case of 'orders', the following formula has been adopted:-

"An order made shall -

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual -



- (i) by delivering or tendering it to that individual, or
- (ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report there of shall be prepared and witnessed by two persons living in the neighbourhood."

29. Order dated 16.08.2021 passed in case of Shri Virendra Aglecha clearly makes a mention of the fact that earlier orders passed by the disciplinary authority on 02.03.2020 and 03.08.2020 deciding not to accord sanction for launching of prosecution against Virendra Aglecha, were taken to the CVC and on the recommendation of the CVC, DoPT had agreed with the recommendations of the CVC to grant sanction for prosecution. Language of the order clearly reveals that the matter was within the knowledge of the CBI and it never raised any issue in regard to non-communication of the orders of refusal to grant sanction for prosecution. Though CBI has taken a ground that order of refusal of sanction was passed on 30.01.2020, but it was never forwarded to the answering respondent for which prosecution sanction was sought vide their letter dated 23.12.2019 and then they were made to write another letter dated 18/21-09-2020 to the CVO, Punjab National Bank for expediting the sanction qua the petitioner, in response to which vide letter dated 06.11.2020 Deputy General Manager, Punjab National Bank had conveyed the order of denial of sanction dated 31.08.2020, but none of these correspondences have been enclosed by the CBI. Even Punjab National Bank has not enclosed copy of the communication received from the CBI



and the letter sent by the Deputy General Manager. They have also not categorically stated as to whether the order refusing the sanction was sent to the CBI or not, as that order has been passed on the basis of the communication made by the CBI.

30. In fact, the issue is that whether the order refusing sanction, is an order? and once an order is passed, then without there being any new material or further investigation, can there be review of the decision as has been done by the disciplinary authority?

31. Clause 7.9 of the Vigilance Manual, 2020 deals with sanction of prosecution. Clause 7.10 prescribes the timelines and authority responsible for according/declining sanction of prosecution. It provides that "The competent authority shall after the receipt of the proposal requiring sanction for prosecution of a public servant endeavour to convey the decision on such proposal within a period of three months from the date of its receipt. Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month." It is also provided that CBI normally sends its report to the CVO seeking sanction of prosecution who in turn, forwards the same to DA/competent authority for further necessary action. On receipt of reply from DA, CVO forwards the same to CBI.

32. In the present case, as mentioned by the CBI, they had sent a communication through letter dated 23.12.2019, copy not enclosed so to make out as to whom this letter was addressed, and then it is mentioned



that another letter was sent on 18/21-09-2020, whereas as per Clause 7.10, the outer time limit was four months and, therefore, it is evident that CBI itself was responsible for causing delay and not following the timeline, given under the Vigilance Manual, 2020.

33. Clause 7.12 of the Vigilance Manual, 2020 provides guidelines for the Sanctioning Authority (Disciplinary Authority/Competent Authority) to be followed while processing such requests. Clause 7.12 reads as under:-

"7.12 Guidelines for the Sanctioning Authority :

The guidelines to be followed by the Sanctioning Authority (Disciplinary Authority / Competent Authority) while processing such requests are summarized hereunder :-

- a. Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt.
- b. The question of giving opportunity to the public servant to submit his / her defence at this stage does not arise. The sanctioning authority has only to see whether the facts would prima facie constitute the offence.
- c. The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the E.O. to offer his/her comments or to further investigate the matter in the light of representation made



by the accused person or by otherwise holding a parallel investigation / enquiry by calling for the record / report of his Department.

d. When an offence allegedly committed under the Prevention of Corruption Act has been investigated by the SPE, the report of the IO is invariably scrutinized by the DIG, IG and thereafter by DG (CBI). Then the matter is further scrutinized by the concerned Law Officers in CBI. When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinized so many times at such high levels, there will hardly be any case where the Government would find it difficult to disagree with the request for sanction.

e. The accused person has the liberty to file representations when the matter is pending investigation. When the representation so made has already been considered and the comments of the IO are already placed before the Competent Authority, there can be no need for any further comments of IO on any further representation.

f. A representation subsequent to the completion of investigation is not known to the law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.

g. However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains



any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

h. The prosecution must send the entire relevant record to the sanctioning authority including the FIR disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material / document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

i. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

j. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

k. The order of sanction should make it evident that the authority had been aware of all relevant facts / materials and had applied its mind to all the relevant material.



1. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

34. Thereafter, Clause 7.14 requires the sanctioning authority to apply its mind to all the facts and circumstances of the case before according its sanction. Clause 7.14 reads as under:-

"7.14 Application of Mind while dealing the cases of Prosecution:

The sanction represents a deliberate decision of the competent sanctioning authority. The Courts expect that a sanction should ex-facie indicate that the sanctioning authority had before it all the relevant facts on the basis of which prosecution was proposed to be launched and had applied its mind to all the facts and circumstances of the case before according its sanction. No particular form or set of words has been prescribed in which the sanction of prosecution is given. However, since the grant of sanction or refusal for prosecution is an administrative function performed in a quasi – judicial manner, it should always be in the form of a speaking order. Reasons for not granting sanction for prosecution should also be recorded by the competent authority in the form of a speaking order while communicating the same to CBI."



35. Thereafter, Clause 7.15 deals with difference of opinion with CBI, which reads as under:-

"7.15 Difference of Opinion with CBI

In case of difference of opinion between the CBI and the Bank i.e. in the cases where the Disciplinary Authority does not propose to accord the sanction should for by the CBI, or other investigating agency, as the case may be, the case will be referred to the Commission for its advice irrespective of the level of the official involved and the authority will take further action after considering the Commission's advice. The case is to be referred to the Commission through CVO of the Bank.

The cases where the administrative authorities do not propose to accept the advice of the Commission for grant of sanction for prosecution, such cases should be referred to DoPT for a final decision."

36. In the present case, firstly disciplinary authority does not propose to accord sanction sought for by the CBI, or other investigating agency, as the case may be, case will be referred to the Commission for its advice irrespective of the level of the officer involved, the case is to be referred to the Commission through CVO of the Bank.

37. In the present case, firstly disciplinary authority had not proposed to accord the sanction, but had passed an order denying sanction and, secondly, admittedly the file was not referred to the CVC through the CVO



of the Bank, but order was communicated through CVO of the Bank to the CBI and, therefore, it is not a case of difference of opinion with the CBI, but a clear case of denial of sanction by the competent authority. And, once the prosecution sanction was denied, then there was not occasion for the CVC or DoPT to thrust upon their will on the disciplinary authority.

38. Hon'ble Supreme Court in case of **Nagaraj Shivarao Karjagi** (supra) has held that consultation with and acceptance of advice of the Central Vigilance Commission is not binding on the Bank. Disciplinary authority as well as the appellate authority are entitled to apply their minds having regard to the particular fact situation while deciding the punishment to be awarded. Hon'ble Supreme Court in case of **Satyendra Chandra Jain** (supra) again held that the disciplinary authority to take decision on the basis of the recommendations made by the Chief Vigilance Officer, is not binding. In case of **Gagan Gupta** (supra), Division Bench of this High Court, relying on the judgment of Supreme Court in **Nagaraj Shivarao Karjagi** (supra) and in the subsequent decision of the Supreme Court in case of **State Bank of India and others Vs. S.N. Goyal, (2008) 8 SCC 92**, held that merely on the basis of the report submitted by the Vigilance Commission, Inquiry Officer as well as the Disciplinary Authority will not be absolved to record independent opinion, keeping in mind the entire record which comes before it during inquiry.

39. High Court of Madras in **M.S. Vijayakumar** (supra) in para 34 noted that "It is seen that it is because of the joint sitting of the CBI, CVC along with the Indian Overseas Bank (Sanctioning Authority), the Sanctioning



Authority has changed its view. It is not the case of the bank that these materials which are insisted by either the CBI or CVC were not available on earlier two occasions when the order declining sanction of prosecution was passed" and in view of that matter, quashed the orders of the sanctioning authority, granting sanction.

40. In the present case also, subsequent order of sanction as contained in Annexure P-6 dated 28.10.2021, is an order not mentioning that what were the changed circumstances or which was the new material, which was brought to the sanctioning authority, which was not available when the sanction was declined at the earlier point of time.

41. In case of **Ramesh Chennithala** (supra), High Court of Kerala too dealt with the aspect of the extent of the vigilance authority and held that VACB cannot make recommendatory directions to the Government as was done in this case by the Inspector. Legislation is a sovereign function. Executive actions of the Government in carrying out the decisions of the Cabinet will also come within the purview of sovereign functions.

42. High Court of Madras in case of **Ravikumar** (supra) held that the guidelines available in the Vigilance Manual having no statutory force, but are only directory and not mandatory. It is also held that CBI instead of challenging the order of the competent authority, refusing to grant sanction, approached different authority to get the sanction order based on the same materials. The Chief Commissioner of Income Tax without application of mind, accorded sanction, and that order of sanction was held to be illegal and invalid. It is also held that order granting sanction cannot



be subjected to judicial review by the High Court under Article 226 of the Constitution of India, since such an order of sanction can be tested at the time of trial. It is also held that the sanctioning authority is expected to apply his mind and analyse the materials available on record. Mechanically accepting materials and granting sanction, is not proper.

43. High Court of Himachal Pradesh in **Nishant Sareen** (supra) held that "By now it is well settled that the appropriate authority i.e. the competent authority, granting the sanction who on consideration of all the material facts has refused to accord the sanction to prosecute a government servant has no power on reconsideration to review the said order and thereby according sanction to prosecute on the same material." It is further held that however, the matter would be different, if additional/fresh/new material is brought before the competent authority.

44. Allahabad High Court in case of **Giri Raj Sharma** (supra) noted that in case of **Gopikant Choudhary vs. State of Bihar and others, (2000) 9 SCC 53, State of Punjab and another Vs. Mohammed Iqbal Bhatti, [2009 (67) ACC 350] (SC) = JT 2009 (13) SC 180** and **Nishant Sareen** (supra), so also considering the judgment of Bombay High Court in **Romesh Mirakhur Vs. State of Maharashtra, 2017 SCC OnLine Bom 9552**, held that advice of the CVC is recommendatory/advisory, which is not binding upon the competent authority. It has, thereafter, quoted the observation of Lord Denning that "If the decision-making body is influenced by considerations which ought not influence it; or fails to take into account matters which it ought to take into account, the Court will



interfere: see, Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997" to hold that sanction order being passed on review without there being any fresh material, is not a valid sanction order.

45. In **Central Bureau of Investigation Vs. R. Bhuvaneshwari** (supra), referring to the decision of the Supreme Court in **Mohd. Iqbal Bhatti** (supra), it is held that "Once the Government passes the order under Section 19 of the Act or under Section 197 of the Code of Criminal Procedure, declining the sanction to prosecute the concerned official, reviewing such an order on the basis of the same material, which already stood considered, would not be appropriate or permissible." and accordingly, it held that the decision in **Central Bureau of Investigation (CBI) etc. Vs. Mrs. Pramila Virendra Kumar Agarwal and another, (2020) 17 SCC 664**, is distinguishable on the facts that the present is not a case regarding invalidity on account of non-application of mind or the accused are picking holes the manner in which the sanction is granted or claim that the same is defective which obviously are matters to be considered in the trial. The present is a case where thrice the sanction was refused by the Competent Authority and for the fourth time on the same materials, on the insistence of CBI the earlier refusal of sanction is sought to be reviewed in the absence of any fresh materials. In view of such facts, criminal application No.246/2019 filed by the Central Bureau of Investigation was dismissed and writ petitions bearing No.4812/2022 and 4811/2022 filed by the petitioners were allowed.



46. In case of **P.L. Tatwal** (supra), the facts were different. In that case, three issues were raised, namely, since he was appointed in service by the Administrator, sanction for prosecution can be given only by the Administrator and not by anybody else. Then, it was contended that there was no proper and valid sanction by the competent authority, and the third ground which was raised was that since the proceedings for prosecution against his superior officers were quashed, proceedings in his case should also be quashed. But, none of the similar facts obtained in the present case, and therefore, this judgment will be of no assistance to the CBI.

47. Similarly, Hon'ble Supreme Court in **State of Bihar Vs. Rajmangal Ram** (supra) allowing the petition filed by the State of Bihar and quashing the orders of the High Court, dealing with another issue, namely, that whether mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. It also took into consideration a three Judge Bench in **State of Madhya Pradesh Vs. Virender Kumar Tripathi, (2009) 15 SCC 533**, while considering an issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, and the Supreme Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge



but only after the trial has commenced and evidence is led. But in the present case, facts are different. Here the matter is not within the realm of Sub-section (3) of Section 19, which provides for non-interference in the finding, sentence or order passed by a Special Judge by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

48. In the present case, the challenge was put before the commencement of the trial as admitted by different stakeholders that after refusal of the sanction by the competent authority merely by changing the competent authority and bringing pressure on it to pass an order of sanction, is not sufficient to treat it to be a valid sanction and such sanction being not a valid sanction, cannot be the basis for trial. This view has found support from the judgment in cases of **Giri Raj Sharma** (supra), **Gopikant Choudhary** (supra), **State of Punjab and another Vs. Mohammed Iqbal Bhatti** (supra), **Nishant Sareen** (supra) and **Romesh Mirakhur** (supra).

49. As far as law laid down in case of **Dilip Kumar Sharma** (supra) is concerned, para 18 of the said judgment only says that sanctioning authority can review/reconsider an order passed where fresh materials have been collected by the investigating agency and if on that basis, the matter can be reconsidered or when the authority has failed to take into consideration the relevant fact or took into consideration and an irrelevant fact. Both the aspects have not been brought on record either by the Punjab



National Bank or the CBI. What was the fresh material after a decision was taken refusing to grant sanction and in another case, even after refusing to review the order resulting in passing of a third order of sanction with the change of the disciplinary authority and which of the relevant facts were not considered by the earlier authority and, therefore, the judgment of Chhattisgarh High Court in **Dilip Kumar Sharma** (supra) will be of no assistance to the respondents.

50. Judgment in case of **Shashikant Mishra** (supra) is also on a different premise. Emphasis is placed on para 36 of the said judgment. On careful perusal of the judgment, it is mentioned that until and unless the refusal is communicated to the investigating agency, the inability to grant sanction may be treated as internal comments or opinion. It is not a case wherein clinching evidence is available on record that on earlier occasions the refusal of sanction was communicated to the investigating agency and the investigating agency based on same material, once again reagitated the matter before the concerning department. In the present case, even if it is hypothetically accepted, though there is no material to form such opinion and, therefore, we refrain to form such opinion that order refusing to grant sanction was not communicated to the CBI, but CBI has admitted in its reply that it had written a communication to the CVO of the Bank in November, 2020 and then had taken up the matter with the CVC, etc. But, the question is that after getting the copy of the order of refusal in November, 2020, what fresh material was brought to the notice of the disciplinary authority or which relevant material was not considered by the



disciplinary authority, is the issue involved in the present case and that is the distinguishing factor in the present case.

51. Judgment of a coordinate Bench of this Court in **Shashikant Mishra** (supra) is distinguishable on another aspect that in that case, no order of refusal of sanction was brought on record. It was the sanctioning authority, namely, Smriti Ranjan Das, who has in her deposition as PW-1, stated that orders of refusal of sanction was passed on 31.12.2021 and 04.04.2022, but those orders were not on record and, therefore, in absence of those orders being brought on record, it could not have been said that there was any review of the earlier order of sanction. That is a distinguishable feature in the present case. Thus, in absence of orders dated 31.12.2021 and 04.04.2022 being exhibited through sanctioning authority, may be another distinguishing factor, making the case of that petitioner Shashikant Mishra to fall within the four corners of the law laid down by the Supreme Court in **State of Bihar Vs. Rajmangal Ram** (supra), But in the present case, there is on record an order refusing to grant sanction and no fresh material could be produced to seek change of the opinion of the sanctioning authority or to point out that some relevant fact was not considered. Therefore, the judgment of coordinate Bench of this Court in **Shashikant Mishra** (supra) is distinguishable on its own facts.

52. Another distinguishing factor is that there is a difference between proposal and order. The order of the disciplinary authority refusing to grant sanction as contained in Annexure P-3 is different from the opinion of the disciplinary authority to not to grant sanction. For that, we had



categorically asked the learned counsel for the Bank to provide us a copy of the complete set of the order of refusal and also the note-sheet in which that order was processed, but none of that sort has been produced before us to persuade us that the order refusing to grant sanction as contained in Annexure P-3, was not an order, but only an opinion to not to grant sanction. Once an order refusing to grant sanction has been passed, then except for two contingencies, that is, the new material being brought on record and omission to consider some relevant fact which ought to have been considered by the disciplinary authority, there could not have been any review and, therefore, the opinion of the CVC or the DoPT will not bind the Bank. Thus, in opinion of this Court, facts of the case of **Shrikant Mishra** (supra) being different, are not having any applicability to the facts of the present case.

53. As far as law laid down in case of **Vijay Rajmohan** (supra) is concerned, Hon'ble Supreme Court has held that time limit for deciding application is mandatory and sanction request must be decided within four months time limit stipulated under Section 19. It is evident that CBI despite lapse of four months time, which expired somewhere in April 2020, in response to its request for grant of sanction in December 2019, did not take any action and, thereafter, if it had woken up from its slumber and decided to seek opinion, etc., from CVC or obtain a copy of the sanction order, then in para 20, the Supreme Court has held that opinion of the CVC is only advisory. It is held that it may be necessary for the appointing authority to call for and seek opinion of CVC before it takes any decision on the request of sanction for prosecution. The statutory scheme under



which the appointing authority would call for, seek and consider the advice of the CVC can neither be termed as *acting under dictation* nor a factor which could be referred to as an irrelevant consideration. It may be a valuable input, but the final decision of the appointing authority must be of its own by application of independent mind.

54. In the present case, when we peruse the impugned order of grant of sanction as contained in Annexure P-6, then, we find that there is no independent application of mind. It is nowhere mentioned that how the earlier order refusing sanction was lacking in consideration of relevant facts or how that authority had failed to apply itself to the fact situation and now what were the changed circumstances, entitling the changed Zonal Manager to accede to the demand of the CBI to grant sanction and when tested on such touchstone, then impugned orders granting sanction for prosecution having been passed without application of mind and without existence of twin conditions of some new material on the basis of new investigation or some fact being not considered by the disciplinary authority and, therefore in absence of the twin requirements to reconsider an order of sanction, impugned orders of sanction, cannot be sustained in the eyes of law, without doing injustice to the petitioners, especially, when there is a specific provision contained in Annexure P-2 to the effect that Government of India, Ministry of Finance, itself had directed the public sector banks to ensure that newly recruited officers who are under probation or having a service of less than two years are not asked to recommend and process loans, unless it forms part of their learning process. Which means that no independent assessment could have been



made by a probationer of having less than two years service and even if it was a part of his learning process, that should have been under the guidance of an experience hand and, therefore, a person to be blamed for any lapse, is the person under whom the petitioners were under probation and not the petitioners themselves.

55. In view of above, impugned orders of sanction dated 28.10.2021 (Annexure P-6 in W.P. No.29641/2021), 28.10.2021 (Annexure P-1 in W.P. No.26050/2021), 28.10.2021 (Annexure P-1 in W.P. No.25928/2021), 28.10.2021 (Annexure P-1 in W.P. No.25941/2021), 28.10.2021 (Annexure P-1 in W.P. No.26051/2021), 28.10.2021 (Annexure P-1 in W.P. No.25931/2021), 28.10.2021 (Annexure P-1 in W.P. No.26053/2021) and 28.10.2021 (Annexure P-6 in W.P. No.26942/2021) are hereby quashed. Petitions are allowed and disposed of.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE