

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK KUMAR SINGH

&

HON'BLE SHRI JUSTICE AJAY KUMAR NIRANKARI

ON THE 04th OF FEBRUARY, 2026

WRIT PETITION NO.16338 of 2023

ANIRUDDHA NAGAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance :

Shri Abhishek Arjaria - Advocate for the petitioner.

Shri Piyush Jain – Government Advocate for the respondent-State.

*Ms. Rajnandini Saxena and Ms. Aditi Singh Thakur - Advocate for the
respondent No.3/Lokayukta.*

AND

WRIT PETITION NO.17378 of 2024

ARUN KUMAR YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance :

Shri D.K. Tripathi - Advocate for the petitioner.

Shri Piyush Jain – Government Advocate for the respondent-State.

Reserved on : 16/01/2026

Pronounced on : 04/02/2026

ORDER

Per : Justice Vivek Kumar Singh

Regard being had to the similitude of the facts and question of law involved in both the writ petitions, they are being heard and decided analogously by this common order. However, for the sake of convenience, facts of W.P. No. 16338 of 2023 are being taken for reference.

2. The W.P. No.16338 of 2023 has been filed under Article 226 of the Constitution of India assailing the order dated 30.05.2023 passed by respondent No.1 to set aside the order of refusal of sanction by President-in-council, Municipal Council, Ashta and the order dated 17.07.2023 for granting sanction under Section 323(2) of Madhya Pradesh Municipalities Act, 1961 (for brevity 'Act of 1961') to prosecute the petitioner in connection with Crime No.229/2015 for the offence registered under Sections 7, 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 (in short 'PC Act, 1988') on the ground that the impugned order was passed by respondent No.1 without jurisdiction, contrary to the provisions contained under Section 323 of the Act of 1961 and also against the direction issued vide circular dated 05.09.2014 (Annexure P/4) passed by General Administration Department, Govt. of M.P. (hereinafter referred to as 'GAD').

3. Shorn of unnecessary details, the facts germane to the institution of the present petition, are as under :-

(i) The petitioner is working as Assistant Grade-II in the Municipal Council, Ashta and an F.I.R. was registered on 26.10.2018 against him for the offences under Section 7, 13(1) (b) and 13(2) of the Prevention of Corruption Act, 1988 registered at Crime No. 229/2018.

(ii) The Investigating Agency sought prosecution sanction from the competent authority i.e. President-in-council (for short 'PIC'), Municipal Council, Ashta and the same has been refused vide order dated 12.10.2022 (Annexure P/1), exercising the power under Section 19(3) of the PC Act, 1988. The said order of refusal was *suo moto* set aside by Urban Administration and Development Department, State of Madhya Pradesh, Bhopal vide impugned order dated 30.05.2023 (Annexure P/3) and during the pendency of the present petition, the Commissioner, Urban Administration and Development Department, Bhopal granted prosecution sanction vide impugned order dated 17.07.2023 (Annexure P/5) by exercising the power of amended Rule 51 of the Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 which was amended only on 15.12.2022.

(iii) This Court vide order dated 23.09.2025 requested the Principal Secretary of the Department to file an affidavit giving the details as to "whether the decision of Mayor-in-council can be over-turned if it suffers from bias of non-application of mind and also with regard to that once one of the authority exercising concurrent power i.e. the Mayor-in-council has already exercised its authority in rejecting the sanction then whether the

Commissioner, Urban Administration and Development Department was competent to grant sanction *de horse* the rejection made by Mayor-in-Council?”

3. Learned counsel for the petitioner succinctly submits that once the order was passed by the PIC, Municipal Council, Ashta refusing the sanction for prosecution for the aforesaid offences then the State authorities or its functionaries do not have any power to set aside the same under Section 323 of the Act of 1961. It is further submitted that according to a circular issued by General Administration Department, Govt. of Madhya Pradesh dated 05.09.2014, the Department Law and Legislative Affairs, Govt. of Madhya Pradesh is competent authority for giving its opinion *vis-a-vis* the prosecution sanction rejected by PIC, Municipal Council, Ashta on 12.10.2022 and the Urban Administration & Development Department has passed the impugned order without jurisdiction and contrary to the aforesaid circular since the State Government itself has sent the said matter to the Municipal Council, Ashta for adjudication with regard to sanction against the petitioner.

4. Learned counsel for the petitioner relentlessly submits that the circular dated 05.09.2014 issued by the GAD prescribed a procedure pointing out that in case prosecution sanction was rejected by the Administrative Department and the Department of Law and Justice was of the contrary opinion then the matter has to be referred again to the same authority to reconsider it afresh. The said circular also points out that if there is a conflict of opinion, even after the reviewed order, the matter has to be placed before the Cabinet of Ministers for its adjudication. However, in the present case, respondent No.1 while passing the impugned order

dated 30.05.2023 and setting aside the resolution passed by the President-in-Council recorded his reasoning on the merits and referred it to the Commissioner, Urban Administration & Development Department for the prosecution sanction in an illegal manner.

5. Further, learned counsel for the petitioner seamlessly contends that the proviso to Section 323 clarifies that the State shall not revise, modify or confirm any order without giving the Council reasonable opportunity of showing cause against the order and thus, the impugned order dated 30.05.2023 passed by the respondent No.1 is in utter violation of the provisions contained in Section 323 of the Act of 1961. It is further submitted by him that there is no provision of *suo moto* revision of any appeal against the order passed by competent authority under Section 19(1) of the PC Act, 1988. However, the respondent No.1 vide order dated 30.05.2023 set aside the order dated 12.10.2022 passed by PIC, Municipal Council, Ashta without having the jurisdiction and further directed the Commissioner, Urban Administration and Development Department to pass an order granting sanction afresh. This procedure is completely unknown under the PC Act, 1988 as once the competent authority has refused to grant the sanction, the same cannot be revised or set aside by any authority in absence of any statutory provision.

6. In support of his submissions, learned counsel for the petitioner has placed reliance on certain judgments of the Hon'ble Supreme Court rendered in the cases of **State of Himachal Pradesh vs. Nishant Sareen** reported in (2010) 14 SCC 527; **State of Punjab vs. Mohd. Iqbal Bhatti** reported in (2009) 17 SCC 92 and **Gopikant Choudhary vs. State of Bihar** reported in (2000) 9 SCC 53.

7. *Per contra*, learned counsel for the respondent-State has opposed the submission put forth by learned counsel for the petitioner and placed reliance on the amendment made in the Madhya Pradesh Municipal Corporation (Appointment and Service of Officers and Servants) Rules, 2000 wherein the Rule 51 has been amended and apart from PIC, the Commissioner, Directorate of Urban Administration and Development Department has also been given the powers of granting sanction under Section 94(3) of the Act of 1961 and also under Rule 49 of the said Rules. It was further submitted that when the orders dated 30.05.2023 and 17.07.2023 were passed for granting sanction for prosecution, the said amendment/notification was enforced and therefore, it cannot be said that the Commissioner, Urban Administration and Development Department was not having the statutory power to grant the sanction for prosecuting the petitioner. To bolster his submissions, learned counsel for the respondent-State has placed reliance on the order of this Court passed in ***W.P. No.7818/2021 (Sabit Khan vs. State of M.P.)*** reported in **ILR (2021) MP 1871 (DB)** wherein it has been laid down that the act of granting sanction is an administration function and while passing the said order, the sanctioning authority must apply his mind.

8. Learned counsel for the SPE-Lokayukta also opposed the arguments advanced by learned counsel for the petitioner and placing reliance on various decisions of Apex Court rendered in the cases of **Bachhittar Singh vs. State of Punjab and anr.** reported in **AIR 1963 SC 395** and **Sethi Auto Service Station vs. DDA** reported in **(2009) 1 SCC 180**, contended that on the basis of the aforesaid judgments of the Supreme

Court, the submissions put forth by learned counsel for the petitioner is ill-founded and deserves to be repelled being devoid of merit and substance.

9. No other point is pressed by the parties.

10. Heard learned counsel for the parties and perused the record.

11. In view of the aforesaid submissions made by learned counsel for the parties, in the conspectus of facts and circumstances of the case and on perusal of record, the moot question for consideration before this Court is as under :-

Whether the decision of Mayor-in-Council can be over-turned if it suffers from bias of non-application of mind and also with regard to that once one of the authority exercising concurrent power i.e. the Mayor-in-Council has already exercised its authority in refusing grant of sanction then whether the Commissioner, Urban Administration and Development Department was competent to grant sanction *de horse* the rejection made by Mayor in Council ?

12. It is pertinent to note that Mayor-in-council was the competent authority to remove the petitioner in terms of Section 19(1) of the PC Act, 1988 which is a central legislation and in view of the judgments relied upon by the learned counsel for the petitioner, it is apposite that the authority empowered under Section 323 of the Act of 1961, does not have any power to review the order passed earlier while refusing to grant prosecution sanction. It is also to be noted that Prevention of Corruption Act, 1988 is a special act dealing with matters related to the corruption and other similar offences by public servants and any order passed under Section 19(3) of the PC Act, 1988 cannot be over-turned by exercising the

power under Section 323 of the Act of 1961 which is a state legislation. For ready reference, it is apt to reproduce Section 323 of the Act of 1961 which is as under :-

323. Power to suspend execution of orders, etc., of Council-(1) If in the opinion of the Divisional Commissioner, the Collector, or any other officer authorized by the State Government in this behalf, the execution of any order or resolution of a Council, or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf of the Council, is not in conformity with law or with the rules or bye-laws made there under and is detrimental to the interests of the Council or the public or is causing or is likely to cause injury or annoyance to public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order or prohibit the doing of any such act.

(2) When any order under sub-section (1) is passed the authority making the order, shall forthwith forward to the State Government and to the Council affected thereby a copy of the order with a statement of reasons for making it; and it shall be in the discretion of the State Government to rescind the order, or to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the Council reasonable opportunity of showing cause against the order.”

13. In view of the above, it is imperative to refer to another judgment of the Apex Court rendered in the case of **Subramanian Swamy vs. Dr. Manmohan Singh AIR 2012 SC 1185**, wherein it has been held that *“where for any reason whatsoever any doubt arises as to whether the previous sanction as required under Section 19(1) of the PC Act, 1988 should be given by the Central Government or the State Government or any other authority. Such sanction shall be given by that government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have committed.”*

14. Considering the aforesaid observation of the Apex Court and perusing the amended Rule 51 of the Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 which was amended only on 15.12.2022, it is clear like a noonday sun that the authority empowered under this amended rule, cannot retrospectively exercise the power to allow the sanction for prosecution under Sections 7, 13(1)(b) and 13(2) of the PC Act, 1988 over-turning the sanction refused by the competent authority under the PC Act, 1988. Thus, the order passed under Section 19(3) of the PC Act, 1988 by the competent authority (PIC, Municipal Council, Ashta) cannot be set aside by exercising concurrent jurisdiction in the same matter. The power under section 19(1) of the PC Act, 1988 for grant of sanction to prosecute cannot be delegated by the competent authority and also sanction cannot be granted on the basis of report given by some other officer or authority.

15. In view of the aforesaid discussion, this petition (**W.P. No.16338 of 2023**) is **allowed** and the impugned orders dated 30.05.2023 and

17.07.2023 are set aside. As a natural corollary, all further proceedings originating from the sanction order also stands quashed.

16. In terms of the observation made hereinabove, the connected writ petition i.e. **W.P. No.17378 of 2024** also stands **allowed** and the impugned order dated 24.04.2024 is set aside. *Ex-consequenti*, all further proceedings originating from the sanction order also stands quashed.

17. A copy of this order shall also be kept on record in the connected writ petition i.e. W.P. No.17378 of 2024.

18. *Petitions allowed.*

19. No order as to costs.

(VIVEK KUMAR SINGH)
JUDGE

(AJAY KUMAR NIRANKARI)
JUDGE