STATE OF UTTARAKHAND

v.

YOGENDRA NATH ARORA

(Criminal Appeal No. 459 of 2013)

MARCH 18, 2013

[CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ.]

Prevention of Corruption Act, 1988 - s.19(1)(c) - Sanction for prosecution - Competent authority - Employee of an undertaking of the State of Uttar Pradesh - Consequently taken on deputation and posted in a undertaking of the State of Uttarakhand - While working there, case lodged against employee-respondent u/s.7 r/w s.13(1)(d) and 13(2) of the Act - Respondent repatriated on the same day to his parent organization by the State Government of Uttarakhand which also granted sanction for his prosecution - High Court quashed prosecution holding that the State Government of the Uttar Pradesh was competent to remove him and to grant necessary sanction, and not the State Government of Uttarakhand - Whether respondent being on deputation to an undertaking of the State Government of Uttarakhand, it had the power to repatriate him which would mean the power of removal from office by the State Government of Uttarakhand - Held, No - The power to repatriate does not embrace within itself the power of removal from office as envisaged u/s.19(1)(c) of the Act - The purport of taking the sanction from the authority competent to remove a corrupt government servant from his office is not only to remove him from his temporary office but to remove him from government service - It was the State Government of the Uttar Pradesh which was competent to remove the respondent and to grant necessary sanction.

A *Prevention of Corruption Act, 1988 - Office - Meaning of - Repatriation - Effect of - Words and Phrases.*

The accused-respondent was earlier employed in an undertaking of the State of Uttar Pradesh. Consequent upon reorganization of the State of Uttar Pradesh, he was taken on deputation and posted in a Government undertaking of the State of Uttarakhand. While working there, he was arrested for accepting illegal gratification and a case was lodged under Section 7 read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The respondent was repatriated on the same day to his parent organization by the State Government of Uttarakhand which also granted sanction for his prosecution. By the impugned judgment, the High Court held that the respondent being an employee of an undertaking of the State Government of Uttar Pradesh and having been repatriated to his parent department, it was the State Government of the Uttar Pradesh which was competent to remove him and to grant necessary sanction, and not the State Government of Uttarakhand and accordingly, quashed the prosecution of the respondent for being without valid sanction.

The State of Uttarakhand contended before this Court that the respondent being on deputation to an undertaking of the State Government of Uttarakhand, it had the power to repatriate him which would mean the power of removal from office by the State Government of Uttarakhand.

The question which therefore arose for determination was whether removal from his office would mean dislodging from holding that office and shifting to another office or in other words, whether the power of the State Government of Uttarakhand to repatriate the respondent meant that it had the power to remove.

Dismissing the appeal, the Court

HELD: 1.1. Office means a position which requires the person holding it to perform certain duties and discharge certain obligations and removal from his office would mean to snap that permanently. By repatriation, the person holding the office on deputation may not be required to perform that duty and discharge the obligation of that office, but nonetheless he continues to hold office and by virtue thereof performs certain other duties and discharge certain other obligations. Therefore the power to repatriate does not embrace within itself the power of removal from office as envisaged under Section 19(1)(c) of the Prevention of Corruption Act, 1988. The term removal means the act of removing from office or putting an end to an employment. The purport of taking the sanction from the authority competent to remove a corrupt government servant from his office is not only to remove him from his temporary office but to remove him from government service. [Paras 11, 12] [241-B-D, F-G]

1.2. It is common ground that without prejudice to the contention raised in the present appeal, the State Government of Uttarakhand has written to the State Government of Uttar Pradesh for granting sanction. Since the request of the State Government of Uttarakhand for sanction of prosecution of the accused-respondent is still pending before the State Government of Uttar Pradesh, hence, it is deemed expedient that the latter takes decision on the request so made, if already not taken. [Paras 6, 13] [238-C-D, 241-G-H]

V.K. Sharma v. State (Delhi Admn.) **1975 (1) SCC 784: 1975 (3) SCR 922 -relied on.**

R.S. Nayak v. A.R. Antulay **(1984) 2 SCC 183: 1984 (2)** SCR 495 - **referred to.**

A **Case Law Reference:**

1984 (2) SCR 495	**referred to**	**Para 8**
1975 (3) SCR 922	**relied on**	**Para 12**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 459 of 2013.

From the Judgment & Order dated 06.11.2006 of the High Court of Uttarakhand at Nainital in Criminal Misc. Application No. 740 of 2005.

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Rachana Srivastava, Utkarsh Sharma for the Appellant.

R.G. Srivastava, Balraj Dewan, V.N. Raghupathy for the Respondent.

D The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Yogendra Nath Arora (hereinafter referred to as "the Accused") was earlier employed as Deputy General Manager in U.P. Industrial E Consultants, an undertaking of the State of Uttar Pradesh. Consequent upon reorganization of the State of Uttar Pradesh, he was taken on deputation on 23rd January, 2003 and posted as Deputy General Manager of the State Industrial Development Corporation, (hereinafter referred to as F "SIDCUL"), a Government undertaking of the State of Uttarakhand. While working as the Deputy General Manager of SIDCUL, a trap was laid on 30th of June, 2004 and he was arrested while accepting an illegal gratification of Rs.30,000/-. This led to lodging of Criminal Case No. 168 of 2004 at Police Station Dalanwala, District Dehradun under Section 7 read G with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"). The accused was repatriated on the same day to his parent organization by the State Government of Uttarakhand. It also granted sanction for his prosecution on 23rd of August, 2004 and the charge

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sheet was submitted on 25th of August, 2004 in the Court of Special Judge, Anti-Corruption-II, Nainital. Accused prayed for discharge, inter alia contending that the materials on record are not sufficient for framing of the charge and further, in the absence of valid sanction from the competent authority, as required under Section 19(1)(c) of the Act, the trial can not legally proceed. The Special Judge, by his order dated 18th of August, 2005 rejected his contention, inter alia, observing that there is sufficient material on record for framing of the charge. As regard the plea of absence of sanction, the learned Judge observed as follows:

> "...the question of sanction being merely an incident to the trial of the case is not to be considered at this stage. It is undoubtedly true, that the accused was an employee of the State of Uttar Pradesh and was on deputation to the State of Uttaranchal and under the subordination and administrative control of the State of Uttaranchal. Thus, the question of sanction being incident to the trial of the case and on perusal of the record, there is a sufficient material on record to charge the accused, the accused shall be charged under Section 7 read with Section 13(a)(d) and 13(2) of the Prevention of Corruption Act, 1988."

2. Accordingly, the Special Judge rejected the prayer of the accused.

3. Aggrieved by the same, the accused preferred an application under Section 482 of the Criminal Procedure Code before the High Court challenging the aforesaid order. It was contended before the High Court that the accused being an employee of an undertaking of the State Government of Uttar Pradesh, the State Government of Uttarakhand is not competent to grant sanction. This submission found favour with the High Court. The High Court held that the accused being an employee of an undertaking of the State Government of Uttar Pradesh and having been repatriated to his parent department, it is the State Government of the Uttar Pradesh which is

A competent to remove him and to grant necessary sanction. Accordingly, the High Court quashed the prosecution of the accused being without valid sanction and, while doing so, observed that the State Government of Uttarakhand shall be at liberty to prosecute the accused after obtaining valid sanction
B from the State Government of Uttar Pradesh.

4. Aggrieved by the aforesaid order, the State of Uttarakhand has filed the present special leave petition.

5. Leave granted.

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6. It is common ground that without prejudice to the contention raised in the present appeal, the State Government of Uttarakhand has written to the State Government of Uttar Pradesh for granting sanction. But, till date no decision has
D been communicated.

7. Ms. Rachana Srivastava, learned counsel representing the State of Uttarakhand concedes that sanction by the competent State Government is necessary for prosecution of an accused for an offence punishable under Section 7 and 13
E of the Act. She points out that the accused being on deputation to an undertaking of the State Government of Uttarakhand, it had the power to repatriate him which would mean the power of removal from office by the State Government of Uttarakhand. According to her, dislodging an accused from an office and
F repatriating him would mean removal from his office. Removal from office, according to her, would not mean the removal from service. She emphasizes that the expression used in Section 19(1)(c) is 'removal from his office' and not 'removal from service'. Section 19(1)(c) of the Act which is relevant for the
G purpose reads as follows:

> "19. **Previous sanction necessary for prosecution.**(1) No court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 alleged to have been committed by a public servant, except with the previous

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sanction,-..... A

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) in the case of any other person, of the authority competent to remove him from his office." B

8. In support of the submission reliance has been placed to a Constitution Bench judgment of this Court in the case of *R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183* and our attention has been drawn to the following passage from paragraph 23 of the judgment which reads as follows: C

"...Each of the three clauses of sub-section(1) of Section 6 uses the expression 'office' and the power to grant sanction is conferred on the authority competent to remove D the public servant from his office and Section 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority E must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by F removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than legal remuneration for doing or forbearing to do an official act (Section 161 IPC) or as a public servant abets offences punishable under Sections 161 and 163 (Section G 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Section 165 IPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the H

various offences that the public servant has misused or abused the power of office held by him as public servant. The expression 'office' in the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render Section 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in Section 6 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider."

9. In fairness to her, she concedes that power to remove the accused from service is with the State Government of Uttar Pradesh and if her contention that power to repatriate would mean the power to remove from service does not find favour, it shall be the State Government of Uttar Pradesh which would be competent to grant sanction.

10. Mr. R.G. Srivastava, learned counsel representing the accused, however, contends that the expression removal from office would mean termination from service and undisputably in the facts of the present case it was the State Government of Uttar Pradesh which was competent to terminate the service of the accused. According to him, removal from office would mean removal from permanent employment.

11. In view of the rival submissions, the question which falls for determination is as to whether the expression removal from his office would mean dislodging him from holding that office and shifting him to another office. In other words, the power of the State Government of Uttarakhand to repatriate the accused would mean that it has power to remove. In our opinion, office means a position which requires the person holding it to perform certain duties and discharge certain obligations and removal from his office would mean to snap that permanently. By repatriation, the person holding the office on deputation may not be required to perform that duty and discharge the obligation of that office, but nonetheless he continues to hold office and by virtue thereof performs certain other duties and discharge certain other obligations. Therefore the power to repatriate does not embrace within itself the power of removal from office as envisaged under Section 19(1)(c) of the Act. The term removal means the act of removing from office or putting an end to an employment. The distinction between dismissal and removal from service is that former ordinarily disqualifies from future employment but the latter does not. Hence, we reject this submission of Ms. Srivastava.

12. The view which we have taken finds support from the decision of this Court in the case of *V.K. Sharma v. State (Delhi Admn.), 1975 (1) SCC 784* in which it has been held as follows:

> ".....The purport of taking the sanction from the authority competent to remove a corrupt government servant from his office is not only to remove him from his temporary office but to remove him from government service."

13. We are told by Ms. Srivastava that the request of the State Government of Uttarakhand for sanction of prosecution of the accused is still pending before the State Government of Uttar Pradesh. Hence, we deem it expedient that the latter takes decision on the request so made, if already not taken, within 8 weeks from the date of communication of this order. It

A is made clear that we are not expressing any opinion in regard to the merit of the request made by the State Government of Uttarakhand and it shall be decided by the State Government of Uttar Pradesh on its own merit in accordance with law.

B 14. Let a copy of this order be forwarded to the Chief Secretary of the State Government of Uttar Pradesh for appropriate action forthwith.

15. In the result, we do not find any merit in this appeal and it is dismissed accordingly with the aforesaid observation.

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B.B.B. Appeal dismissed.