M. Veeraiah Chowdary Vs The State of A.P. and Others

Court: Andhra Pradesh High Court

Date of Decision: Jan. 21, 2003

Acts Referred: Andhra Pradesh General Clauses Act, 1891 â€" Section 15
Criminal Procedure Code, 1973 (CrPC) â€" Section 321
General Clauses Act, 1897 â€" Section 21
Prevention of Corruption Act, 1988 â€" Section 19, 19(1)

Citation: (2003) 1 ALD(Cri) 421 : (2003) 1 APLJ 366 : (2003) CriLJ 1896 : (2003) 3 RCR(Criminal) 324

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: K. Lakshmi Narasimha, for the Appellant; G.P. for Home, for Respondent Nos. 1, 2, 3, 6 and 7, G. Pedda Babu, S.C. for ACB for Respondent No. 4 and C. Padmanabha Reddy representing Praveen Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
This writ petition on important question of law viz., whether it is competent for the State Government to withdraw

or rescind a notification issued by it according permission u/s 19 of the Prevention of Corruption Act, 1988 (for short "the Act").

2. The relevant facts may be briefly stated as under :--

The petitioner is a partner in M/s. Teja Wines, a firm registered with the Registrar of Firms, having its object to do business in Indian Made

Foreign Liquor. Its place of business is Ongole in Prakasam district. The firm was issued license by the competent authority under A.P. Excise Act

on 31-3-1998.

3. The 5th respondent was working as Sub-Inspector of Police, Ongole Taluq Police Station in August, 1998. It is the case of the petitioner that

the 5th respondent has been constantly demanding bribe from the petitioner and used to destroy the bottles in the shops whenever his demands

were not complied with. The petitioner states that he has been running three wine shops within the jurisdiction of the Ongole Taluq Police Station.

It is stated that during the 2nd week of August, 1998, the 5th respondent had directed one of the workers of the petitioner to inform the petitioner

to meet him. The petitioner met the 5th respondent on 17-8-1998 and it is alleged that the 5th respondent demanded Rs. 10,000/- for not booking

any cases in respect of the wine shops owned by the petitioner. It is further alleged that the 5th respondent had warned the petitioner of dire

consequences in case the amount is not paid. It was in this context that the petitioner claims to have complained the matter to the 3rd respondent,

viz., the Director General of Anti Corruption Bureau (ACB). A trap was arranged by the ACB. On 28-8-1998, the petitioner went to the

residence of the 5th respondent at 9.30 a.m. and handed over the amount of Rs. 10,000/- to him. The 5th respondent received the same. In the

meanwhile, the ACB officials rushed in. When the hands of the 5th respondent were washed with the SC solution, the solution turned out to be

pink. The trap, therefore, proved successful.

4. Since the 5th respondent is a public servant, as defined under the Act, permission was necessary from the State Government to prosecute him

for the offences under that Act. The 1st respondent had accorded permission through its order in G.O.Ms.No. 333 dated 23-10-1999. The 5th

respondent was initially placed under suspension. The same was, however, revoked. The petitioner alleges that on having been reinstated, the 5th

respondent stated giving serious threats to the petitioner and that he has brought the same to the notice of the higher authorities.

5. On the basis of the sanction accorded by the 1st respondent G.O.Ms.No. 333, a case was registered against the 5th respondent under Sections

7, 11 and 13(2) read with Sections 13(1)(d) of the Act and the same was being tried by the Court of Special Judge for ACB Cases, Nellore, as

C.C.No. 20 of 1999. Charge-sheet has been filed on 27-11-1999. When the case was pending trial, the 2nd respondent had issued G.O.Ms.No.

35, Home (SC.A), Department, dated 13-2-2001 (hereinafter referred to as "the impugned order"), withdrawing the permission. The same is

challenged in this writ petition on various grounds.

6. Firstly it is contended that once the notification is issued by the 2nd respondent in exercise of power u/s 19 of the Act, it is not open to them to

withdraw the permission so accorded, since the same is not provided for under the Act. It is further contended that even assuming that there is an

implied power in the 2nd respondent to withdraw such a notification, there did not exist any ground of basis to exercise such power, and the action

of the 2nd respondent in this regard is illegal, arbitrary and unreasonable.

7. The respondents 1, 2, 6 and 7 have filed counter-affidavit. It is stated that the permission was accorded to prosecute the 5th respondent through

G.O.Ms.No. 333 dated 23-10-1999. Thereafter, the 5th respondent had made a representation pointing out the procedural lapses and lacunae in

the case and taking the same into account, the impugned order was issued. They claim that the power to issue an order takes with it the power to

withdraw the same and the impugned order does not suffer from any irregularity or illegality.

8. The 3rd respondent filed a separate counter-affidavit. It is averred therein that after successfully laying the trap, a case was booked against the

5th respondent under the provisions of the Act, and on the permission having been accorded u/s 19, prosecution was launched and charge-sheet

was filed. It is stated that the 5th respondent did not attend the Court on 15-12-2000 and 21-3-2001 when it was called. It is stated that the

Government addressed a Memo dated 8-11-2000 to the 3rd respondent requesting them not to proceed with the prosecution. The ACB, through

its letter dated 17-11-2000, informed the Government that since the charge-sheet had already been filed, the question of not proceeding with the

prosecution does not arise and it is only after the withdrawal of the prosecution, that as to be restored to by the Government. It is further stated

that the impugned order withdrawing the permission accorded by it was not. yet communicated to the Public Prosecutor.

9. The 5th respondent filed counter-affidavit stating inter alia that the trap arranged against him was motivated and that the petitioner bore grudge

against him for various reasons. It is also stated that he submitted a detailed, representation to the Government narrating the circumstances under

which he was falsely implicated and taking the same into account, the impugned order was issued. He states that there is no irregularity or infirmity

in the impugned order and it is competent for the Government to withdraw the permission accorded by it.

10. Sri K. Laxmi Narasimha, learned counsel for the petitioner, submits that the ACB had laid a trap against the 5th respondent and that the same

proved to be successful. When the matter was placed before the 2nd respondent by the ACB together with the relevant records for grant of

permission, the Government took the various aspects of the matter into account and accorded permission under G.O.Ms.No. 333, dated 23-10-

1999 after elaborately discussing the case. He submits that the only representation submitted by the 5th respondent was the one in February, 1999

and the permission was accorded after considering the said representation. According to him, there were no subsequent representations or

developments after the grant of permission and that there is no provision in the Act enabling the Government to withdraw the sanction once

accorded u/s 19 of the Act. It is his case that the provisions of the Central and State General Clauses Acts do not apply to such cases. He sums up

by stating that neither there is power vested with the Government to withdraw the sanction accorded by it nor there exist circumstances and

reasons for withdrawing the permission.

11. The learned Government Pleader for Home submits that it is always open to the Government to withdraw any order issued by it. According to

him, Section 21 of the Central General Clauses Act as well as Section 15 the A.P. General Clauses Act confer power upon the Government to

issue such notifications, He submits that the Government had considered the representations presented by the 5th respondent and had passed the

impugned order in view of the various lapses noticed by it.

12. Sri G. Pedda Babu, learned Standing Counsel for ACB, had only placed the legal and factual position before the Court. He does not either

support or oppose the action of the Government in view of the fact that his client is the prosecuting agency.

13. Sri C. Padmanabh Reddy, learned Senior Counsel, appearing for the 5th respondent, submits that the complaint submitted by the petitioner

was motivated and the trap was only an arranged one. He submits that though the Government accorded permission to prosecute the 5th

respondent, on having been convinced that there did no exist any truth in the version of the petitioner, it had withdrawn the permission. He too

states that the power to withdraw is always inherent and relies upon the provisions of Central and State General Clauses Act. It is his further

contention that mere withdrawal of permission of the Government is not going to be of any consequence and the case against the 5th respondent

can be terminated only when the Public Prosecutor files a Memo seeking permission of the Court to withdraw the case u/s 321 of Cr.P.C. and the

Court granting the same.

14. The learned counsel for the parties have relied upon several judgments in support of their respective contentions.

15. It is a matter of record that the ACB had laid trap against the 5th respondent and had launched prosecution against him for various offences

under the Act. It is also a matter of record that the Government had accorded permission as required u/s 19(1) of the Act and that the Charge-

Sheet also filed by the ACB before the trial Court. The permission accorded by it was withdrawn by the State Government through the impugned

order. It is assailed on several grounds, which are referred to above. On the basis of these contentions, the following questions arise for

consideration :

(a) Whether it is competent for the State Government to withdraw the permission accorded by it u/s 19(1) of the Act?

(b) Whether there existed any valid grounds and reasons in issuing the impugned order? and

(c) What is the impact of the impugned order on the case registered and pending against the 5th respondent?

16. The Prevention of Corruption Act, 1947 dealt with the prosecution and punishment of public servants on the charges of corruption. The same

came to be replaced by the Prevention of Corruption Act, 1988. The Act defines the offences that may be said to have been committed by the

public servants or the persons who abate the commission of the same, with special emphasis on acceptance of gratification, other than legal

remuneration. The Courts constituted u/s 3 of the Act can take cognisance of the offences punishable under Sections 7, 10, 11, 13 and 15 of the

Act, only when prior sanction is accorded by the State of General Government, as the case may be. Sanction by the concerned Government has

been given a typical significance in the context of Section 19. While it is accorded an important and pivotal role as regards taking of cognisance of

the offences, its absence or any error, omission, or irregularity in it, is declared as not constituting a ground to affect the outcome of the trial, unless

it had occasioned in failure of justice. A reading of Sub-sections (1) and (3) of Section 19 would demonstrate these aspects:

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 sanction--

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the

sanction of the Central Government, of that Government:

(b) in the case of a person who is employed in connection with the affairs of a. State and is not removable from his office save by or with the

sanction of the State Government of that Government;

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

(2) .....

(3) Notwithstanding anything contained in the Code of Criminal Procedure. 1973,--

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered 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;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority,

unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any

interlocutory order passed in any enquiry, trial, appeal or other proceedings.

Section 19 or, for that matter, any other provision of the Act, does not confer the power to withdraw the sanction, once accorded under the Act.

While the learned counsel for the petitioner submits that in the absence of such a provision, it is not competent for the State Government to

withdraw the notification, learned counsel for the respondents submit that the same is inherent and in view of Sections 21 and 15 of the Central and

State General Clauses Acts respectively, it is competent for the State Government to withdraw the notification. Section 21 of the Central General

Clauses Act reads as under :--

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-- Where, by any Central Act, or

Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner

and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders rules or bye-laws so issued.

Section 15 of the A.P. General Clauses Act is almost in para materia. The purport of Section 21 of the Central General Clauses Act has been

considered by the Supreme Court in several cases. It was held that this Section by itself does not confer any absolute power on the Government to

withdraw or amend the notification and the existence of such power should be discernible from the relevant provisions of the Act. As early as in

1958, the Supreme Court in The State of Bihar Vs. D.N. Ganguly and Others, , held as under (Para 9) :

It is well settled this Section (Section 21) of the General Clauses Act) embodies a rule of construction and the question whether or not it applies to

the provisions of a particular state would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute.

17. The same legal position was reiterated by a Constitution Bench of the Supreme Court in Gopi Chand Vs. The Delhi Administration, . It was

held as under (Para 20) :

In our opinion, this argument is not well-founded. Section 19 of the Punjab General Clauses Act, like Section 21 of the General Clauses Act

embodies a rule of construction, the nature and extent of the application of which must inevitably be governed by the relevant provisions of the

statute which confers the power to issue the notification. The power to cancel the notification can be easily conceded to the competent authority

and so also the power to modify or vary it be likewise concerned; but the said power must inevitably be exercised within the limits prescribed by

the provision conferring the said power.

18. In State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, , the Supreme Court was dealing with an identical provision in Kerala

General Clauses Act. The contention of the Kerala Government that it had power to cancel a notification in exercise of its inherent power under the

General Clauses Act, even in the absence of any provisions in the relevant statute under which the notification is issued, was repelled. Approving

the view taken by the Division Bench of the Kerala High Court, the Supreme Court observed as under (Para 27) :

The Division Bench was, therefore, right in taking the view that the General Power of rescindment available to the State Government u/s 20 of the

General Clauses Act has to be determined in the light of the ""subject-matter, context and the effect of the relevant provisions of the statute.

19. From the above, it is evident that Section 21 of the General Clauses Act (or other analogous provisions in the: State enactments) does not by

itself confer power on the Government to rescind notification and the existence of such a power has to be culled out from the provisions of the

enactment under which the notifications came to be issued.

20. The orders issued by the State Government according permission u/s 19(1) of the Act radically differ from the other administrative orders in

many respects. One of the distinguishing features is that with the grant of permission u/s 19(1), the prosecution against the accused public servant

stands launched and thereunder nothing remains to be done by the Government, which accorded the sanction. So far as the other administrative

orders are concerned, the subject-matter, the evaluation of pros and cons by the Government, the subsequent changes in the matter or policy of

the Government, etc., may, require the Government to respond to such situations. The administrative actions by their very nature are not static.

They need to be taken, monitored from time to time, and changed or rescinded, depending on the circumstances. Such an exercise will be possible

if only the Government continues to be in control of the situation after initiation of the action. The same however does not hold good in case of

according sanction for taking cognisance of the matters or putting the adjudicatory process in motion. Once such sanction is accorded, the

respective Courts or Tribunals will be in seisin of the matter and the same need to be adjudicated in accordance with the relevant statutes.

21. There does not appear to be any case, decided directly on the point, as to whether sanction, once accorded under the Act, can be withdrawn

or rescinded. However, a precedent very nearer to the point is the one in The State of Bihar Vs. D.N. Ganguly and Others, . That case arose

under the provisions of the Industrial Disputes Act. On existence of an industrial dispute between Bata Shoe Company and its employees, the

Government of Bihar, in exercise of power u/s 10(1) of the Industrial Disputes Act, referred the disputes to the Industrial Tribunal. When the

adjudication of the same was in progress, the State Government had Withdrawn the reference made by it. The same was challenge before the

Patna High Court. It Was held by the High Court that the Government did not have the power to supersede the notification issued by it u/s 10(1)

of the ID Act, referring the dispute to the Court. The Supreme Court upheld the same: After discussing the objects underlying the Industrial

Disputes Act and the Scheme of adjudication of disputes thereunder, the Supreme Court held as under (Para 10):

Thus, it is clear that the appropriate Government is given an important, voice in the matter of permitting industrial disputes to seek adjudication by

reference to the industrial tribunal. But once an order in writing is made by the appropriate Government referring an industrial dispute to the tribunal

for adjudication u/s 10(1), proceedings before the tribunal are deemed to have commenced and they are deemed to have concluded on the day on

which the award made by the tribunal becomes enforceable u/s 17A. This is the effect of Section 20(3) of the Act. This provision shows that after

the dispute is referred to the tribunal, during the continuance of the reference proceedings, it is the tribunal which is seized of the dispute and which

can exercise jurisdiction in respect of it. The appropriate Government can act in respect of a reference pending adjudication before a tribunal only

u/s 10(5) of the Act, which authorises it to add other parties to the pending dispute subject to the conditions mentioned in the said provision. It

would therefore be reasonable to hold that except for cases falling u/s 10(5) the appropriate Government stands outside the reference proceedings,

which one under the control and jurisdiction of the tribunal itself.

22. What was observed by the Supreme Court as regards reference u/s 10(1) of the Industrial Disputes Act, applies with a greater vigour in

respect of permission accorded u/s 19(1) of the Act. The exclusiveness of the control over its proceedings is more pre-dominant in case of

Criminal Courts than in case of Industrial Tribunal or Civil Courts. Further, the role assigned to the appropriate Government in referring the dispute

u/s 10(1) of the Act is very wide and participatory. Various steps are required to be taken, such as, conciliation, arbitration, etc., whenever it is

approached by an employer or an employee. It is only when all its attempts fail, that the appropriate Government is required to refer the dispute u/s

10(1). In a way, the appropriate Government can be said to be still in control of the situation inasmuch as it can declare certain measures in

exercise of its sovereign power, which in turn, may have the effect of resolving or diminishing the controversy in the Industrial Dispute. Such a

situation, however, does not exist as regards criminal proceedings. Once the cognizance of an offence is taken by the concerned Criminal Court, it

is in its exclusive province, whether or not to proceed with the same, in accordance with the procedure under Cr.P.C. and the other relevant

statutes. Therefore, the impugned order, withdrawing the permission accorded by the State Government, was without jurisdiction.

23. The 2nd aspect is as to whether there existed any basis for issuance of the impugned order. Any discussion on this aspect presupposes the

existence of power on the Government to issue such a notification. No further discussion is necessary in view of the findings on the 1st aspect.

However, even assuming that such a power existed with the State Government, if needs to be seen that the trap was laid on 24-8-1998 and the

ACB had submitted its report to the State Government after complying with the preliminary requirements for launching prosecution. It was at this

stage that the 5th respondent had submitted a detailed representation in February, 1999. G.O.Ms.No. 333 was issued on 23-10-1999 i.e., about

8 months subsequent to the date of representation. There should exist proper grounds and reason for the State Government to reconsider its

decision. Reference is made in the impugned order only to the representation of the 5th respondent dated (in February 1999) 0-2-1999, report of

the Director General of ACB dated 11-6-1999 and G.O.Ms.No.333 dated 23-10-1999. There is no reference to any other proceedings or

representations. A reading of the impugned order, particularly, Para 2, discloses that the basis for the Government to issue this order is the

representation made by the 5th respondent in February, 1999. Para 2 of the impugned order reads as under :

That the accused officer Sri V. Sreerama Murthy, Sub-Inspector of Police, Ongole Taluk Police Station, Prakasam district, represented to the

Government mentioning certain infirmities in the trap, requesting to reinstate him into service pending examination of his representation.

The representation of February, 1999 was very much present before the Government when it accorded permission through G.O.Ms.No. 333

dated 23-10-1999. If only there were any subsequent developments, there can exist any semblance of justification for the Government to

reconsider it. A perusal of the relevant file discloses that after the 5th respondent has submitted his representation in February, 1999, which runs to

about 30 to 40 pages, the 2nd respondent invited the remarks from the 3rd respondent. The 3rd respondent, in turn, through his proceedings

dated 11-6-1999, pointed out that various lapses mentioned in the representation of the. 5th respondent are incorrect and ultimately recommended

for rejection of his representation. It was only after taking into account, the remark of the 3rd respondent, that G.O.Ms.No. 333 was issued. The

record does not disclose any substantial developments thereafter. It is well settled that even where power existed with the authority, that by itself

does not justify its exercise. The circumstances, which warrant exercising of the same, should be evident from the record.

24. Having regard to the facts and circumstances of the case, this Court is convinced that there did not exist any circumstances that warranted

issuance of the impugned order in the context of withdrawal of possession.

25. Section 321 of Cr.P.C. provides for withdrawal of prosecution. It empowers the Public Prosecutor or the Assistant Public Prosecutor,

incharge of the case, to withdraw the cases from the trial with the consent of the Court. On such withdrawal, depending on the stage of the case,

the accused shall be discharged or, as the case may be, acquitted. In Abdul Karim Vs. State of Karnataka and Others Etc. Etc., the Supreme

Court held that the decision of the Public Prosecutor to withdraw the case from the prosecution is not absolute and it should be on consideration of

all the relevant material and in good faith. The Court, while granting its consent, has to ensure that the Public Prosecutor has applied his mind

independently and that he is acting in good faith.

26. If, therefore, follows that the decision to withdraw from the prosecution should emanate from the Public Prosecutor, which in turn, shall be on a

dispassionate consideration of the matter. The Public Prosecutor is the creature under the Cr.P.C. and he cannot be said to be subordinate to

Government. In the given case, the Government being the prosecuting agency can place the necessary material before the Public Prosecutor. On a

consideration of the same, the ultimate decision to withdraw from or proceed with the prosecution should rest With the Public Prosecutor. In view

of the judgment of the Supreme Court in Abdul Karim''s case, the decision of Public Prosecutor to withdraw the prosecution u/s 321, Cr.P.C. is

justiciable.

27. The impugned order does not, by itself, terminate the prosecution. It is only as and when the concerned Public Prosecutor comes forward with

a Memo before the trial Court seeking permission to withdraw, the trial Court has to consider the same on the principles laid down by the

Supreme Court in the said decision.

28. From the above discussion, it is evident that the 2nd respondent did not have the power and jurisdiction to issue the impugned order

withdrawing the permission accorded u/s 19(1) of the Act to prosecute respondent No. 5 nor there existed any basis to pass the impugned order.

At any rate, the impugned order does not have the effect of terminating the proceedings against the 5th respondent and the same are required to be

continued and disposed of expeditiously by the concerned Court,

29. The writ petition is accordingly allowed. There shall be no order as to costs.