

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 459 OF 2013
(@SPECIAL LEAVE PETITION (CRIMINAL) No. 1593 of 2007)

STATE OF UTTARAKHAND

... APPELLANT

VERSUS

YOGENDRA NATH ARORA & ANR.

...RESPONDENTS

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

Yogendra Nath Arora (hereinafter referred to as "the Accused") was earlier employed as Deputy General Manager in U.P. Industrial 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 "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 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 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."

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

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:

"...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 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 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 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 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 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."

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.

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.

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.

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."

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 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.

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

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

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(V. GOPALA GOWDA)

NEW DELHI,

MARCH 18,2013

ITEM NO. 1A
(For Judgment)

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl) No(s).1593/2007)

(From the judgement and order dated 06/11/2006 in CRL.M.A No.740/2005 of
The HIGH COURT OF UTTARAKHAND AT NAINITAL)

STATE OF UTTARAKHAND

Petitioner(s)

VERSUS

YOGENDRA NATH ARORA & ANR.

Respondent(s)

Date: 18/03/2013 This Petition was called on for pronouncement of Judgment
today.

For Petitioner(s) Ms. Rachana Srivastava,Adv.
Mr. Utkarsh Sharma, Adv.

For Respondent(s) Mr. R.G. Srivastava, Adv.
Mr. Balraj Dewan, Adv.

Mr. V.N. Raghupathy ,Adv

Hon'ble Mr. Justice Chandramauli Kr. Prasad pronounced the
judgment of the Bench comprising of His Lordship and Hon'ble Mr.
Justice V. Gopala Gowda.

Leave granted.

The appeal is dismissed in terms of the signed reportable
judgment.

| (S.K. Rakheja)
|Court Master

| |(Indu Satija)
| |Court Master

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(Signed reportable judgment is placed on the file)