

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 04 of 2023

Upendra Nath Mandal Petitioner
Versus
The Union of India & Ors. Respondents.

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Neel Kamal, Advocate.
: Mr. Satish Kumar Keshri, Advocate.
For the Resp. Nos. 1 & 5 : Mr. Anil Kumar, A.S.G.I.
: Ms Chandana Kumari, A.C. to A.S.G.I.
For the Resp. No. 2 : Mr. Amitabh, Advocate.
For the Resp. Nos. 3 & 4 : Mr. Anmol Deepak, Advocate.

05/ 01.11.2023 Heard Mr. Neel Kamal, learned counsel appearing for the petitioner, Mr. Anil Kumar, learned A.S.G.I. appearing for the respondents Union of India and the CBI, Mr. Amitabh, learned counsel appearing for the MECON Limited and Mr. Anmol Deepak, learned counsel appearing for the SAIL.

2. This petition has been filed for quashing the sanction order dated 26.11.2020, whereby the respondent No. 6 has been pleased to accord sanction under the provisions of Section 19 (i)(c) of the Prevention of Corruption Act, 1988 for prosecution of the petitioner.

3. I.A. No. 397 of 2023 has been filed for granting interim protection to the petitioner.

4. Learned counsel appearing for the petitioner submits that I.A. No. 2848 of 2023 has been filed for amendment in the prayer portion of the writ petition, wherein the prayer has been made for quashing of the order taking cognizance dated 28.11.2020. He submits that the said I.A. may kindly be allowed, as it was not challenged initially in the writ petition.

5. The aforesaid prayer of the learned counsel appearing for the petitioner is being opposed by the learned counsels appearing for the respondents on the ground that the cognizance was taken on 28.11.2020 and the present writ petition was filed on 05.01.2023 and belatedly the aforesaid I.A. has been filed with a motive to have some interim protection, as the anticipatory bail application of the petitioner was allowed in favour of the petitioner and in spite of that the petitioner has not complied the terms and conditions of that anticipatory bail and the said order of the anticipatory bail was also challenged before the

Hon'ble Supreme Court, which was dismissed.

6. In view of the above submissions of the parties and in spite of the objection made by the learned counsel appearing for the respondents and also to avoid the multiplicity of litigation, the prayer made in the aforesaid I.A. is allowed.

7. Let the aforesaid I.A. be treated as a part of the main writ petition.

8. Thus, in view of allowing the aforesaid I.A. No. 2848 of 2023, the order taking cognizance dated 28.11.2020 is also under challenge in the present writ petition.

9. In the FIR, it has been alleged that Sh. Upendra Nath Mandal, while posted and functioning as Sr. Manager, Metallurgical Wing. MECON, Ltd. entered into criminal conspiracy with two firms, namely, M/s Zeal India Chemicals, Opposite Arya Samaj Mandir, 3rd Floor, Keshari Complex, S.N. Road, Upper Bazaar, Ranchi and M/s Shiv Machine Tools, 102-Armenian Street, Chennai-600001 and in furtherance thereof accepted illegal gratification from the above two firms amounting to around Rs 1,65,45,000/- through banking transactions.

It has been further alleged that Sh. Upendra Nath Mandal, the then Sr. Manager, MECON, Ranchi had received the alleged amount in various accounts existing either in his name or in the name of his relatives/friends. It is further alleged that Sh. Upendra Nath Mandal evaluated the technical bids of the above two firms submitted by them in different tenders and was also working as the Project Co-ordinator on behalf of MECON in the works awarded to the said firms. It is further alleged that Sh. Upendra Nath Mandal was the competent person to pass the designs/drawings submitted by the firms while executing the works.

It has also been alleged that M/s Zeal India Chemicals participated in the tender floated by Durgapur Steel Plant vide No. DSP/PROJ-PURI/EXPN/MSM-07/308 dated 11.05.2013 and had submitted its bid on 26.06.13. The technical bid was evaluated by Sh Upendra Nath Mandal and Tender Appraisal Report was

finalised in August, 2013. The work was awarded in favour of M/s Zeal India Chemicals which is still in progress. The amount of Rs. 49,50,000 had been paid to Sh. Upendra Nath Mandal by M/s Zeal India Chemicals during the period 12.06.13 to 15.06.16 through bank accounts in his own name and in the name of his relatives/friends.

It has been further alleged that M/s Shiv Machine Tools participated in the tender floated by Bokaro Steel Plant vide No. T&C(M)/8320/036C/SPG/314 dated 03.09.2014 and had submitted its bid on 15.10.14. The technical bid was evaluated by Sh. Upendra Nath Mandal and was finalised in March, 2015. The work was awarded in favour of M/s Shiv Machine Tools which is still in progress. The money of Rs. 1,15,95,000 had been paid to Sh. Upendra Nath Mandal by M/s Shiv Machine Tools during the period 03.08.15 to 02.08.16 through bank accounts in the name of his relatives/friends.

10. Learned counsel appearing for the petitioner submits that the order of sanction dated 26.11.2020 is not in accordance with law. He submits that CMD of MECON Ltd. has passed the said order in a mechanical way without applying its judicious mind and in view of that entire proceeding is bad in law. He further submits that the petitioner was working as Senior Manager, Metallurgical Wing and on 31st August, 2019, the petitioner was promoted to the post of Assistant General Manager, Meteorological Wing. He further submits that this all has happened after registration of the FIR No. RC-08(A)/2017-R under Section 120-B of the Indian Penal Code and Sections 7 and 12 of the Prevention of Corruption Act on 30.10.2017. He further submits that the wife of this petitioner has acquired certain property, being three separate plots, which was decided to be sold out to M/s Zeal India Chemicals at the price of Rs. 70 lacs. He further submits that the order taking cognizance also is not in accordance with law, as the reason has not been assigned by the learned court and in view of that the entire criminal proceeding is bad in law. He further submits that the case of the petitioner is fully covered in view of the judgment of the Hon'ble Supreme Court in the case of *Mansukhlal Vithaldas Chauhan Vrs.*

State of Gujarat, reported in (1997) 7 SCC 622. On these grounds, learned counsel appearing for the petitioner submits that the entire criminal proceedings against the petitioner may kindly be quashed.

11. On the other hand Mr. Anil Kumar, learned A.S.G.I. appearing for the respondents Union of India and the CBI submits that the CBI has now investigated the matter and chargesheet has already been submitted and pursuant to that the cognizance has been taken by the learned court. He submits that in the chargesheet, it has revealed that the work related to Medium Structural Mill (MSM) of Durgapur Steel Plant (DSP) was taken up, for which, draft Tender Specification (TS) was prepared by the MECON and this petition was then posted as Senior Manager, Metallurgical Wing, MECON, Ranchi and was having the responsibility to prepare Tender Specification. On the basis of the approved Tender Specification (approved by SIL, Durgapur), MECON prepared the estimate and tender documents and sent the same to DSP on 26.04.2013. The Tender Appraisal Report (TAR) for above said project of Durgapur Steel Plant was prepared by the petitioner and all the three bidders were declared technically and financially eligible. This Tender Appraisal Report in respect to this tender was issued to Durgapur Steel Plant on 02.09.2013 by MECON, Ranchi. There was reverse bidding on price point, which was conducted online by an independent agency M/s Mjunction Services Limited on 23.09.2013. The Block Cost (Estimated Cost) of the project was Rs. 37.63 crores and during reverse bidding, consortium led by M/s Zeal India Chemicals was the L-1, which quoted Rs. 34.64 crores. M/s Zeal India Chemicals along with its consortium partners were awarded the work. He further submits that the M/s Zeal India Chemicals had submitted documents of four numbers of equipments to show its eligibility in the said tender, however, the documents were relating to supply given to Police Department, but not to any Steel industry and hence it has no such experience for supply in steel industry, in spite of that the tender was allotted to the said company at the instance of the petitioner. He further submits that in the chargesheet, it has been revealed that the amount of Rs. 48.55 lacs was paid by M/s Zeal India Chemicals, Ranchi to the petitioner in his Bank account and in the Bank accounts

of his close relatives i.e. father-in-law, mother-in-law wife and son and other persons liked to the petitioner and in the investigation the justification of receiving such amount has not be disclosed by the petitioner. He further submits that further an amount of Rs. 94.39 lacs was illegally paid by M/s Shiv Machine Tools, Chennai to the petitioner in his bank account and in the bank accounts of his close relatives, who are his father-in-law, mother-in-law, brother-in-law, nephew and the persons like to the petitioner. On these grounds, learned counsel appearing for the respondents Union of India and CBI submits that there are sufficient materials and the learned court has rightly taken the cognizance. He further submits that the sanction order is also well speaking order and the competent authority has applied its mind. He submits that no case of quashing the proceeding is made out, as the points raised by the petitioner is the subject matter of trial, which cannot be appreciated by this court under Article 226 of the Constitution of India.

12. Mr. Amitabh, learned counsel appearing for the respondent-MECON has adopted the argument of Mr. Anil Kumar, learned A.S.G.I. and further submits that the competent authority has passed the sanction order for prosecution against the petitioner and there is application of mind in passing such orders and in view of that there is no illegality in the said sanction order, passed by the Chairman-cum-Managing Director of the MECON Ltd.

13. Mr. Anmol Deepak, learned counsel appearing for the respondents-SAIL has also adopted the arguments of learned counsel appearing for the Union of India and CBI and also the learned counsel appearing for the MECON.

14. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials available on record including the contents of the chargesheet, order taking cognizance as well as the sanction order and the counter affidavit and also the contentions made in the aforementioned interlocutory applications.

15. Looking into the cognizance order dated 28.11.2020, it appears that the learned court by elaborate order has been pleased to

take cognizance. The learned court has disclosed in the said order what materials have been found in the investigation against the petitioner and thereafter has taken the cognizance. In the order taking cognizance, it is reflected that the Proprietor of M/s Zeal India Chemicals, Ranchi and Proprietor of M/s Shiv Machine Tools, Chennai had participated and got selected and during the same the petitioner has prepared the technical specification and tender appraisal report of the said project after receipt of the bids from the above said firms and he passed the drawing and design of machines submitted by both the firms, however, the above said firms were not eligible for the said work, but they got selected by undue advantage extended by this petitioner to these firms being a public servant and in lieu of that the above said firms transferred the alleged illegal gratifications through the RTGS on different dates through different Bank accounts existing with the SBI, Bank of India, UBI, Axis Bank into the account of this petitioner and the names of other beneficiaries have also been disclosed in the order taking cognizance. Thus, the court finds that the cognizance order is well reasoned order and there is no illegality in the said order.

16. Looking into the chargesheet, it appears that what has been argued by the learned counsel appearing for the CBI, the materials are there, pursuant to that the cognizance has been taken.

17. Looking into the sanction order dated 26.11.2020, it appears that the materials, which were found, were placed before the Chairman-cum-Managing Director of the MECON Ltd. for taking the sanction and thereafter the said order has been passed. In the order of granting sanction, the Chairman-cum-Managing Director, has discussed entire facts and has come to the conclusion that there is need of prosecution of the petitioner and that's why the sanction order has been passed.

18. Even for non-compliance with a mandatory period cannot and should not automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of public interest having a direct bearing on the rule of law. This is also a non-sequitur. The court is required to keep in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically

quashed. At the same time, a decision to grant deemed sanction may cause prejudice to the rights of the accused as there would also be non-application of mind in such cases. In view of the above, it is in between these competing interests that the Court must maintain the delicate balance. While arriving at this balance, the Court must keep in mind the duty cast on the competent authority to grant sanction within the stipulated period of time. There must be a consequence of dereliction of duty to giving sanction within the time specified. In the case in hand, the Chairman-cum-Managing Director of the MECON Ltd. has passed the sanction order well within time and it is not a case of the petitioner that the sanction order was passed belatedly.

19. Further, this is not the case of the petitioner that the person, who has passed the sanction order, was not the competent authority, it is the duty of the courts to see that the perpetrators of crime are punished, if offence against them are proved and the accused would get the sufficient opportunities to prove his innocence during the trial. The competent authority is only required to consider whether materials placed by complainant or investigating agency *prime facie* discloses commission of an offence and a detailed inquiry is not required at the time of passing the order for sanction of prosecution under the Prevention of Corruption Act. Thus, the court finds that the order granting sanction for prosecution is in accordance with law.

20. The case relied by the learned counsel appearing for the petitioner of the case of *Mansukhlal Vithaldas Chauhan (Supra)*, the fact was otherwise, as in that case, the competency of passing such order was under scrutiny of the Hon'ble Supreme Court and the Hon'ble Supreme Court has come to the conclusion that the Deputy Secretary, who has signed the document was not the competent authority and in that view of the matter that order has been quashed. The facts of the present case is otherwise, even this is not the case of the petitioner that the Chairman-cum-Managing Director of the MECON Ltd. is not the competent authority to pass such sanction order, in view of that, the judgment relied by learned counsel appearing for the petitioner is not helping the petitioner.

21. In view of the above facts, reasons and analysis, this court

finds that no case of interference is made out. Accordingly, this petition is dismissed.

22. Since the main petition itself is dismissed on merits, the court comes to a conclusion that I.A. No. 397 of 2023, filed for interim protection has no relevancy. As such, the same is also dismissed. Pending I.A., if any, stands dismissed.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-
[A.F.R.]