



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 20132 OF 2023 (S-RES)



BETWEEN:

SMT.SHREEROOPA,

...PETITIONER

(BY SRI.D.R.RAVISHANKAR, SENIOR COUNSEL FOR
SMT.SIRI RAJASHEKAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REP BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF PUBLIC ADMINISTRATION
AND REFORMS (DPAR)
VIDHANA SOUDHA,
BENGALURU-560 001.
2. THE STATE OF KARNATAKA,
REP. THE ADDL. CHIEF SECRETARY,
DEPARTMENT OF URBAN DEVELOPMENT,
VIKASA SOUDHA,
BENGALURU-560 001.
3. BENGALURU DEVELOPMENT AUTHORITY
T.CHOWDAIAH ROAD,
BENGALURU-560 020.
REPRESENTED BY ITS COMMISSIONER.
4. KARNATAKA LOKAYUKTA
2ND FLOOR, M.S.BUILDING,

Digitally
signed by
PANKAJA S
Location:
HIGH
COURT OF
KARNATAKA



1ST MAIN ROAD,
AMBEDKAR VEEDHI,
BENGALURU-560 001.
REPT. BY ITS SUPERINTENDENT OF POLICE.

...RESPONDENTS
(BY SMT.PRATHIBHA.R.K., AGA FOR R-1 & R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER BEARING VIDE GO.No.CAASUI/620/SEASE/2021, BENGALURU DATED 19.08.2023 PASSED BY THE R-1 VIDE ANNEXURE-E IN SO FAR AS PETITIONER CONCERN, ETC.

THIS PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.09.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING

ORDER

1. The petitioner is before this Court challenging an approval accorded by the State Government for conducting an investigation against her under Section 17A of the Prevention of Corruption Act, 1988 (for brevity, referred to as "**the Act**").



2. The facts of the case are that a proposal was submitted by the Deputy Inspector General of Police, Anti-Corruption Bureau, to the Government seeking approval to investigate Sri T.Shyam Bhat (the then Commissioner of the BDA) and Smt.Shreeroopa (the petitioner), who was working as Deputy Secretary-III in the Bangalore Development Authority ("**the BDA**", for short).

3. It was stated that the site bearing No.617 measuring 40' X 60' had been allotted to one Sri. P.Bhaskar Reddy by the BDA in Sir. M.Vishweshwaraiah Layout, 5th Stage. Subsequently, an alternative site bearing No.1607/69 was allotted to him in the very same 5th Stage in place of Site No.617, and an allotment letter, along with a possession certificate were also issued. Subsequently, a Sale Deed was also executed in the year 2005 in favour of Sri. P.Bhaskar Reddy.

4. However, in the year 2012, as per the order of the Commissioner, six sites measuring 40' X 60' were converted into twelve sites measuring 30' X 40' and while



doing so, without the approval of Sri Bhaskar Reddy, his site measuring 40' X 60' was also converted into 30' X 40' sites and was renumbered as site No.1609/69A before being allotted to one Puttalakshamma. Similarly, other sites were also converted, and separate sub-numbers were assigned.

5. It was stated that the proposal to modify the layout and change the measurement of the sites had emanated from the office of the Executive Engineer and submitted to the office of the Commissioner, BDA, and that though 40' X 60' sites had already been allotted, without allotting alternative sites to such allottees, sites measuring 30' X 40' had been created and allotments were made to several persons, as a result of which, serious prejudice was said to have been caused to the original allottees and there was a suspicion that the officials of the BDA had gained unlawfully from the said exercise. The Deputy Inspector General of Police, Anti-Corruption Bureau, therefore, sought approval of the State Government to investigate



the then Commissioner Sri T.Shyam Bhat and also the present petitioner as provided under Section 17A of the Act.

6. The State Government, on consideration of the said proposal/request, came to the conclusion that a *prima facie* case had been made out, and therefore, it would be appropriate to accord approval for conducting an investigation as provided under Section 17A of the Act.

7. As stated above, it is this order of granting approval under Section 17A of the Act, which is being challenged by the petitioner in the instant case.

8. Sri D.R.Ravishankar, learned Senior Counsel appearing for the petitioner has strenuously contended that the order of the State Government granting the impugned approval was without application of mind and could not, therefore, be sustained.

9. He placed strong reliance on the judgments rendered by the Co-ordinate Benches of this Court in



W.P.No.8905/2022 connected with
W.P.No.9183/2022 disposed of on 13.07.2022 and
W.P.No.24073/2022 disposed of on 01.06.2023. He
stated that this Court has laid down the law that the grant
of prior approval requires serious application of mind and
merely stating that the documents were perused or that a
prima facie case was made out would not suffice for
according approval under Section 17A of the Act.

10. He also contended that in the instant case, apart
from mentioning the words "*prima facie*", the order did not
indicate any serious application of mind or consideration of
the material that had been placed before the State
Government and it was, hence, untenable.

11. In order to appreciate this contention and ascertain
the legal position, it would be essential to have an
overview of the provisions of the Act.

12. The Act has been divided into five chapters and
consists of 31 sections.



13. Chapter I relates to preliminary aspects of the Act, such as the title, definitions, etc.

14. Chapter II relates to the appointment of Special Judges and the cases that can be tried by the Special Judge, along with the procedures to be followed and powers of a Special Judge.

15. Chapter III contains provisions which describe the offences and penalties that would apply in respect of an offence under the Act.

16. Chapter IV relates to investigation into cases under the Act and contains three sections i.e.,

- (a) Section 17 deals with persons who are authorized to investigate;
- (b) Section 17A, which relates to requirement of conducting an enquiry or inquiry or investigation of offences related to recommendations made or decision taken by



public servant in discharge of official functions or duties; and

- (c) Section 18, which elaborates the powers of a police officer to inspect bankers' books upon suspicion of an offence which he is empowered to investigate under Section 17.

17. Section 17A of the Act, which is relevant for the purposes of the instant case, reads as follows:

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions of duties.-No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in



connection with the affairs of the Union, of that Government.

- (b) In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of Government;
- (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

18. Thus, if any offence under the Act is alleged against a public servant which is relatable to a recommendation or decision taken by him, Section 17A of the Act prohibits a



police officer from conducting any enquiry or investigation without obtaining the approval of the Union Government or the State Government or the person competent to remove the public servant, as the case may be.

19. In this particular case, since the petitioner is an employee of the State Government, it is the State Government which would be the authority to accord approval to investigate the petitioner and accordingly for the purpose of this judgment, reference would be made only to the State Government.

20. Section 17A of the Act is a protective shield provided to a public servant from being subjected to an enquiry or investigation by a police officer. In the event of an allegation against a public servant that he had committed an offence under the Act, the law prevents an Investigating Officer to conduct even an investigation or inquiry, unless he has secured the permission of the employer.



21. It is to be noticed here that at the stage of seeking approval for conducting investigation, the Investigating Officer would himself not be aware as to whether there has been a commission of an offence under the Act or the circumstances surrounding the alleged offence. The Investigating Officer, at that point in time, would only have the knowledge of an allegation that an offence has been committed. In the normal course, in order to ascertain whether an offence had been actually committed, the Investigating Officer would naturally have to conduct an investigation.

22. However, even at this stage, where the Investigating Officer only has an allegation to act upon and is yet to ascertain the details of commission of the alleged offence and collect evidence, the law creates a prohibition on him from investigating into an offence unless the employer i.e., the State Government accords approval. In a sense, a public servant is placed on a pedestal and treated differently as compared to a citizen against whom an



allegation of an offence is thrown. The law, thus, grants an extraordinary layer of protection to a public servant to even be subjected to an investigation by a police officer, which is unavailable to an ordinary citizen and is against the basic principle that a police officer is required to act with a sense of promptitude and ascertain whether an offence has been committed, and also collect incriminating material which would establish the crime without loss of time.

23. However, in the case of a public servant, the Legislature, in its wisdom, has thought it fit to ensure that this normal expectation of a duty being discharged by an Investigating Officer is prohibited. This is basically because the law does not intend for a public servant to be subjected to unnecessary frivolous investigations at the instance of a disgruntled citizen, which would in turn amount to preventing the public servant to act without fear or favour and with due diligence. Obviously, keeping in mind this objective, the approval of the Government is



made a must under Section 17A of the Act. The provision fundamentally reflects this intent of the Legislature in ensuring that the State (Employer) protects its employees (public servants) from any unwanted or unnecessary investigation.

24. It must also be borne in mind that it is quite possible that in a system such as ours, a police officer can proceed to investigate any public servant, so as to intimidate or harass a public servant for extraneous factors and such instances are not uncommon in our country. It is for this reason that though there was no such provision available in the Act when it was originally enacted in 1988, probably by the experience it had in matters in relation to the Act, the Legislature thought it fit to insert Section 17A of the Act by way of an amendment in the year 2018.

25. It may be pertinent to notice here that the Constitutional Bench of the Apex Court in the case ***Subramanian Swamy***¹ expressed a reservation about the

¹ Subramanian Swamy v. Director, CBI & Ors.,



provision which requires prior approval of the Government for even an investigation. The relevant paragraphs read as follows:

“91. It is pertinent to notice that in *Manohar Lal Sharma* [*Manohar Lal Sharma v. Principal Secy.*, (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1] , the learned Attorney General made a concession to the effect that in the event of CBI conducting an inquiry, as opposed to an investigation into the conduct of a senior government officer, no previous approval of the Central Government is required since the inquiry does not have the same adverse connotation that an investigation has. To that extent, Section 6-A, as it is, does not survive. Insofar as investigation is concerned, an investigation into a crime may have some adverse impact but where there are allegations of an offence under the PC Act, 1988 against a public servant, whether high or low, whether decision-maker or not, an independent investigation into such allegations is of utmost importance and unearthing the truth is the goal. The aim and object of investigation is ultimately to search for truth and any law that impedes that object may not stand the test of Article 14.

(underlining by me)



99. In view of our foregoing discussion, we hold that Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to: (a) the employees of the Central Government of the level of Joint Secretary and above, and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26(c) of Act 45 of 2003 to that extent is also declared invalid.”

26. In that judgment, the Apex court went on to strike down Section 6-A of the Delhi Special Police Establishment Act, 1946 (“**the DSPE Act**”, for short), a similar provision, on the ground that it was in contravention of Article 14 of the Constitution of India, as it provided a layer of protection to only those public servants above a particular rank. Despite this ruling, the Legislature, nevertheless, has inserted Section 17A of the Act by way



of an amendment in the year 2018 and the same has been in the statute ever since.

27. In contradistinction to Section 6-A of the DSPE Act, which required the prior approval of the Union Government in respect of only a certain category of officers above the Joint Secretary to the Government, Section 17A of the Act requires the approval of the Government in respect of all its employees against whom an allegation of an offence punishable under the Act is made. In that sense, the reason, for which Section 6-A of the DSPE Act was struck down as infringing Article 14 of the Constitution, has been remedied by making prior approval for an investigation in respect of all the employees mandatory.

28. In fact, the Constitutional Bench of the Apex Court in ***R.R.Kishore***², which held that the decision in ***Subramanian Swamy*** (*supra*) declaring Section 6-A of the DSPE Act to be unconstitutional, would have

² CBI v. R.R. Kishore, 2023 SCC OnLine SC 1146.



retrospective effect and that the impugned provision would be ineffective from the very date of its insertion, has narrated the historical background of the provisions relating to prior approval under Section 6-A of the DSPE Act and Section 17A of the PC Act in paragraphs 16 to 19 of its judgment. The relevant portion in paragraph 18 in relation to Section 17A of the Act for giving the correct perspective is extracted as under:

"18. The Parliament again inserted Section 17A in the PC Act, 1988 w.e.f. 26.07.2018. This provision has continued to remain in the statute book. It also provided for sanction before prosecution but without any classification of Government servants. All Government servants of whatever category, class, or level, are provided protection Under Section 17A of the PC Act, 1988."

29. It is to be noticed here that the requirement of obtaining prior approval under Section 17A of the Act is, however, made unnecessary in cases where the public servant is arrested on the spot, under the charge of accepting or attempting to accept any undue advantage



for himself or for any other persons. Thus, in the event of arrest by the Investigating Officer on the spot, when he notices acceptance or an attempt to accept any undue advantage, there is no requirement of obtaining prior approval. This indicates that an exception is made in respect of prior approval contemplated and it is clear that prior approval is required only when the Investigating Officer is of the opinion that he has credible reason to believe that an investigation is warranted against a public servant.

30. It is, therefore, not necessary that there should be clear incriminating evidence with the Investigating Officer at the stage of him seeking prior approval under Section 17A of the Act. All that is required under the provisions of Section 17A of the Act is that the Investigating Officer has some credible evidence, on the basis of which, he forms an opinion that an investigation is warranted.

31. As a consequence, the State Government would be required to only consider the opinion that is formed by the



Investigating Officer and the material that he possesses while considering the request for approval. Since the public servant is yet to be investigated, the question of considering any incriminating material and coming to the conclusion that an investigation is unnecessary would not really arise in this particular case. Since the public servant is yet to be investigated, the question of considering whether there is any incriminating material or its veracity by the State Government to come to the conclusion that an investigation is warranted or not, would be untenable and stand to logic or reason.

32. It may also be pertinent to state here that the State Government, under the second proviso to Section 17A of the Act, is required to convey its decision regarding according approval to conduct an investigation within three months (which may be extended by a further period of one month). It is, therefore, clear that the Legislature has created a time frame for grant of such approval, and this is to obviously to ensure that the State Government



does not procrastinate in the matter, and thereby, aid the public servant and undermine the Investigating Officer.

33. Section 17A of the Act is drafted with the overarching objective of ensuring that unnecessary investigations against public servants are prevented, and the State Government is required to take a decision to accord or refuse approval to conduct an investigation within a time frame. This indicates the balance that the law intended to strike in the manner of an investigation being conducted against a public servant.

34. It is also clear from the wording of Section 17A of the Act that the State Government is not required to exhaustively and meticulously consider all the material available with the Investigating Officer at the time he seeks approval, and it is only required to examine and consider whether the opinion formed by the Investigating Officer that an investigation is warranted is justified or not. If the State Government is satisfied that the opinion formed by the Investigating Officer is justified and its



employee is required to be subjected to an investigation, the State Government can accord its approval.

35. It should not be forgotten that an employer is the ultimate person to determine whether its employee is required to be investigated or not, especially when an allegation of a commission of a criminal offence is leveled against his employee. If an employer is of the opinion that his employee deserves to be investigated for the commission of an offence, the employee cannot contend that the approval can be granted only if there was clear and incriminating material to establish the guilt of the accused. It is to be kept in mind that the State, as an employer, would want its employees to be above suspicion and if it takes a decision to accord approval for an investigation on the basis of an opinion formed by the Investigating Officer, the said decision would have to be judged in that light and the desirability or the validity of the decision itself cannot be doubted.



36. At this stage, the stark and striking difference between the granting of a “sanction to prosecute” and “according an approval to investigate” to an Investigating Officer would have to be elaborated. The grant of “sanction to prosecute” and the “grant of approval to investigate” are two very different concepts and would be governed by completely different parameters. At the stage of seeking sanction to prosecute, the Investigating Officer would have completed the investigation and would also have collected material, which, in his opinion, would prove that the public servant is guilty of the offence(s) alleged against him. In other words, at that stage of seeking sanction to prosecute, the Investigating Officer is well armed and certain that there is material which would establish the guilt of the public servants.

37. It is also to be noticed that despite this firm opinion of the Investigating Officer, which is based on a comprehensive investigation, the law still mandates that the State Government should accord sanction to prosecute



and only when such sanction is granted can a prosecution be launched against a public servant. At the stage of granting sanction to prosecute, the respective Government is required to examine all the materials collected during the course of investigation and then come to a conclusion as to whether the materials collected indicate if a case for prosecuting the public servant is made out.

38. The Government, even after a comprehensive investigation has been conducted and material has been collected, which, in the opinion of the Investigating Officer establishes the guilt of the public servant, has been conferred with the power to refuse sanction to prosecute. This indicates that there is a discretion vested in the State Government to refuse sanction to prosecute, if it has reason to believe that a public servant should not be prosecuted. This is fundamentally a reflection of the right that an employer possesses to decide whether it would want its employee to be prosecuted. It is to be kept in mind that a crime is always considered as a Crime against



the State and it is the State which has the absolute right to prosecute the offender. If, however, the law confers upon the State, a discretion to prosecute its servant, the same cannot be said to be arbitrary as the State is deemed to exercise its jurisdiction wisely and judiciously.

39. In respect of according an approval to investigate, obviously, the situation would be completely different, since at that juncture, the Investigating Officer would not normally have any incriminating material and would only possess credible information about the commission of an offence, and it is this credible information that is required to be considered and analysed by the Government. It is, thus, clear that the parameters that govern the according of approval to investigate would be completely different and the Government would have a much wider discretion while considering the request of the Investigating Officer.

40. To summarize, the law has conferred a two-fold protection vis-à-vis the public servants for offences under the Act. The first layer of protection is even before an



investigation is conducted, where a prior approval is needed under Section 17A of the Act. The second layer of protection is after the completion of investigation, where sanction to prosecute the public servant is required under Section 19 of the Act.

41. It is clear from the statutory framework that the Legislature has decided to not only protect the public servants from unwanted investigation but also from a prosecution, by making it mandatory for the Investigating Officer to obtain two different and separate approvals for investigation and for prosecution.

42. It should also not be forgotten that merely because an approval is accorded to conduct an investigation, the Investigating Officer cannot proceed to prosecute the public servant and he is still required to obtain prior sanction of the Government to prosecute the public servant under Section 19 of the Act.



43. Section 19 of the Act, in fact, prohibits a Court from taking cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, unless there is prior sanction by the respective Government.

44. Two other factors would have to be noticed in this regard.

45. The last proviso to Section 19 of the Act enables the Central Government to prescribe guidelines for the purpose of granting sanction to prosecute a public servant. Similarly, Section 29A of the Act also enables Rules to be framed in the matter of granting sanction to prosecute under Section 19 of the Act. This clearly indicates that the law has made it clear that the granting of sanction to prosecute would have to be guided by Rules or guidelines so that sanctions are not simply granted for requests made by an Investigating Officer.



46. However, in respect of Section 17A of the Act, there is no such proviso or an enabling provision for the Government to frame Rules or guidelines for the purpose of according approval to conduct investigation. This, therefore, indicates that the law accepts that there would be different standards for granting approval to investigate and for granting of a sanction to prosecute, and one cannot be equated with the other. To put it differently, the parameters that are to be applied for according approval to investigate a public servant are not as stringent as the parameters which provide for granting sanction to prosecute a public servant.

47. The integrity of a public servant is required to be beyond suspicion as in the proverbial adage that "Caesar's wife must be above suspicion". If there exists even a shadow of doubt on the integrity of a public servant, it will not only harm his reputation but would also tarnish the entire system of which he is a part. Thus, in such a situation, if the aspersions cast on the integrity of a public



servant and an Investigating Officer under the Act harbours a view that an investigation is necessary, it would be in the interests of both the Government and the public servant that such a nagging suspicion is obliterated. In order to achieve this objective, therefore, the Government should be given the greatest degree of latitude to accord approval for conducting investigation. The contention, therefore, that the material furnished by the Investigating Officer is required to be subjected to a microscopic examination before according approval to investigate a public servant, as suggested by the learned Senior Counsel appearing for the petitioner, does not merit acceptance.

48. As stated earlier, before seeking approval under Section 17A of the Act, the Investigating Officer would only have to form a tentative opinion to determine as to whether an investigation is warranted or not, having regard to the material/credible information in his possession at that point in time. It may so happen that



after conducting an investigation, the Investigating Officer may very well come to the conclusion that there is no justification for initiating prosecution and may drop such proceedings against the public servant. Thus, the mere grant of approval to conduct investigation would not lead to an inference that the investigation would necessarily culminate in a prosecution against the public servant.

49. The argument that the materials collected have to be considered meticulously, as indicated by this Court in **W.P.No.8905/2022**, cannot be accepted for the reason that, in the said writ petition, the Court was considering an order of approval in that case, where the order of approval merely stated that the Government had meticulously considered the matter by the use of the term - "ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಲಾಗಿ". The relevant portion of the order reads as follows:

"27. If, on a coalesce of all the facts that are narrated hereinabove and the order that is impugned in the petition is tested on the anvil of objects and



reasons of Section 17A of the said Act, it would fall foul of the same as the order except saying "ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಲಾಗಿ" there is nothing indicative of the fact that it bears application of mind. Granting approval for setting the criminal law in motion cannot be a frolicsome act as is done by the State in the case at hand, as it does not even bear any semblance of application of mind. Therefore, on the ground that the order dated 21.04.2022 does not bear any application of mind, would lose its legal legs to stand and, as a result, would meet its obliteration."

50. Even in respect of the decision rendered in ***W.P. No.24073/2022***, a Co-ordinate Bench also found that in the aforementioned case, a cryptic order had been passed which was not a speaking order, and therefore, the approval accorded under Section 17A of the Act could not be sustained.

51. However, in this case, the request of the Investigating Officer is elaborate, and he had stated that a block of 40' X 60' sites were converted into 30' X 40' sites, despite the sites already having been allotted and



conveyed to the respective allottees. He has also stated that the manner in which the entire exercise had been undertaken indicated that the same had been done to make unlawful gains by the public servants involved in the process. Thus, a clear opinion had been formed by the Officer that he suspected the commission of an offence by the petitioner and another. The State Government has, on consideration of the materials placed before it, *prima facie* found that there was adequate material which indicated that an attempt had been made by the petitioner and the then Commissioner to cause loss to the Government, and therefore, in order to ascertain the truth in the matter, it was necessary to accord approval to conduct investigation.

52. In my view, this indicates that the State has applied its mind to the request made by the Investigating Officer and has considered the matter rationally before according its approval to investigate the petitioner and another. In the light of this distinguishing feature, the decision relied upon by the learned Senior Counsel for the petitioner in



W.P.No.8905/2022 and W.P.No.24073/2022, in support of his arguments can be of no avail.

53. This Writ Petition merits no interference and is, therefore, ***dismissed.***

**Sd/-
JUDGE**

PKS