

Maharudrappa Danappa Kesarappanavar

Vs

The State of Mysore

Criminal Appeal No. 154 of 1959

(K. Subha Rao, Raghuvar Dayal JJ)

16.02.1961

JUDGMENT

RAGHUBAR DAYAL, J. -

This is an appeal by special leave against the judgment of the High Court of Mysore at Bangalore confirming the appellant's conviction for an offence under s. 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947), by the Special Judge, Dharwar.

The appellant is alleged to have committed the offence while he was a Municipal Councillor and Chairman of the Managing Committee of the Navalgund Municipality. The only question for determination in this appeal is whether the appellant was a 'public servant' contemplated by s. 2 of the Prevention of Corruption Act. The contention for the appellant is that he was not such a 'public servant'.

Section 2 of the Prevention of Corruption Act reads :

"For the purposes of this Act, 'public servant' means a public servant as defined in section 21 of the Indian Penal Code".

Section 21 of the Indian Penal Code defines the persons coming within the expression 'public servant' and its Tenth Clause reads :

"Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district".

Rule 68 framed under the Bombay District Municipal Act, 1901 (Bombay Act III of 1901) and admittedly applicable to the appellant reads :

"The Chairman of an Executive Committee shall sign payment orders on behalf of the Committee after the Committee have passed the bills and may also order payment of bills for fixed recurring charges such as pay bills in anticipation of the Committee passing them".

The High Court held that the appellant, as Chairman of the Managing Committee, could expend the money of the Municipality as he could order payment of bills for fixed recurring charges and that

therefore he came within the purview of the expression 'public servant' defined in the Tenth Clause of s. 21 of the Indian Penal Code.

The only criticism which the learned counsel for the appellant has urged against this view is that the High Court did not keep the distinction between the words 'duty' and 'power' in mind and that rule 68 empowers the Chairman to order payment and does not impose a duty on him to order payment. We are of opinion that the power to make payment of fixed recurring charges such as pay bills imposes a duty on the Chairman to do so when necessary as the power is vested in the Chairman for the benefit of the persons entitled to receive those recurring charges.

Reference may usefully be made here to what was said in this connection in *Julius v. The Lord Bishop of Oxford* [(1880) 5 App. Cas. 214, 222.]. Earl Cairns, the Lord Chancellor, said in connection with the interpretation to be put on the expression 'it shall be lawful' in a certain statute:

"The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so".

The aforesaid power is conferred on the Chairman for the benefit of the persons who have served the Municipality and have got the right to receive their pay or money for articles provided. There may arise circumstances when any delay in payment may affect those persons adversely. The pay is due on the first day of the month and it may not be convenient to fix a meeting of the Committee at a date for early payment of the pay due. A meeting already fixed may have to be adjourned for want of quorum. The passing of the pay bills, in the circumstances, is more or less a formal matter and therefore the rules empower the Chairman of the Managing Committee to order payment of the pay bills in anticipation of sanction by the Committee. The Chairman can exercise this power for the benefit of the employees voluntarily or when requested by those persons to exercise it. The mere fact that this power of the Chairman was to be exercised only with respect to fixed recurring charges and in anticipation of the Committee passing the bills for those charges therefore does not affect the question in any way. Clause ten of s. 21 of the Indian Penal Code merely requires that the person should have the duty to expend property for certain purposes. It is not restricted to such cases only where there is no limitation on the exercise of that power of expending property. The Chairman has the duty to order payment and to spend the money of the Municipality in certain circumstances. We therefore hold that the appellant was a 'public servant' when the alleged offence was committed.

In view of our opinion, we do not discuss the effect of s. 45 of the Bombay District Municipal Act which lays down that every municipal councillor shall be deemed to be a public servant within the meaning of s. 21 of the Indian Penal Code, or the question whether the appellant, as a mere Municipal Councillor, comes within the definition of 'public servant' in s. 21 of the Indian Penal Code. These questions were not considered by the High Court.

We therefore dismiss the appeal.

Appeal dismissed.

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