

SUPREME COURT OF INDIA

Manish Trivedi

Vs.

State of Rajasthan

Crl.A.No.1881of 2013

(Chandramauli Kr. Prasad and Jagdish Singh Khehar, JJ.)

29.10.2013

JUDGMENT

Chandramauli Kr. Prasad, J.

1. The petitioner's challenge to his prosecution for an offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act has been turned down by the trial court and the said order has been affirmed by the High Court by its order dated 1st of March, 2013 passed in Criminal Miscellaneous Petition No. 1686 of 2009. It is against this order that the petitioner has preferred this special leave petition.

2. Delay condoned.

3. Leave granted.

4. Shorn of unnecessary details, facts giving rise to the present appeal are that the appellant at the relevant time was a Councillor elected to the Municipal Council, Banswara and a member of the Municipal Board. According to the prosecution, one Prabhu Lal Mochi lodged a report in the Anti-Corruption Bureau, inter alia, alleging that he had a shoe repair shop near the gate of Forest Department, Banswara and the employees of the Municipal Council had seized his cabin in the year 2000 rendering him unemployed. According to the allegation, he applied for the allotment of a kiosk before

the Municipal Council but did not succeed. On enquiry the informant was told that it is the appellant who can get the allotment made in his favour and accordingly he contacted the appellant. It is alleged that the appellant demanded a sum of Rs. 50,000/- for getting the allotment done in his name and ultimately it was agreed that initially the informant would pay Rs. 5,000/- to the appellant and the rest amount thereafter. On the basis of the aforesaid information, according to the prosecution, a trap was laid and the appellant was caught red-handed and a sum of Rs. 5,000/- was recovered from him.

5. After usual investigation, charge-sheet was submitted against the appellant and he was put on trial. During the trial evidence of one of the witnesses was recorded and thereafter, the appellant filed an application before the trial court for dropping the proceeding, inter alia, contending that he being a Councillor does not come within the definition of 'public servant' and as such, he cannot be put on trial for the offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The trial court rejected the said prayer vide its order dated 13th of October, 2009. The appellant assailed this order before the High Court in an application filed under Section 482 of the Code of Criminal Procedure and the High Court by the impugned judgment has rejected his prayer.

6. It is against this order that the appellant is before us with the leave of the court.

7. We have heard Mr. Yashank Adhiyaru, Senior Counsel for the appellant while respondent is represented by Mr. Milind Kumar.

8. Mr. Adhiyaru submits that a Municipal Councillor is not a public servant and, therefore, his prosecution for the offence alleged is bad in law. According to him, for prosecuting an accused for offence under the Prevention of Corruption Act, 1988 the accused charged must be a public servant and the appellant not being a public servant cannot be prosecuted under the said Act. Further, for a person to have the status of a public servant he must be appointed by the Government and must be getting pay or salary from the Government. Not only this, to be a public servant, such a person has to discharge his duties in accordance with the rules and regulations made by the Government. According to him, the appellant was elected as a Municipal Councillor and he does not owe his appointment to any governmental authority. Being a person elected by the people, the commands and edicts of a Government authority do not apply to him. In support of the submission he has placed reliance on a judgment of this Court in the case of *R.S. Nayak vs. A.R. Antulay*¹. He has drawn our attention to the following passage from the said judgment.

"41 Whatever that may be the conclusion is inescapable that till 19 64 at any rate MLA was not comprehended in the definition of 'public servant' in Section 21. And the Santhanam Committee did not recommend its inclusion in the definition of 'public servant' in Section 21.

42 Now if prior to the enactment of Act 40 of 1964 MLA was not comprehended as a public servant in Section 21, the next question is: did the amendment make any difference in his position. The amendment keeps the law virtually unaltered. Last part of clause (9) was enacted as clause (12) (a) If MLA was not comprehended in clause (9) before its amendment and dissection, it would make no difference in the meaning of law if a portion of clause (9) is re-enacted as clause (12) (a). It must follow as a necessary corollary that the amendment of clauses (9) and (12) by Amending Act 40 of 1964 did not bring about any change in the interpretation of clause (9) and clause (12)(a) after the amendment of 1964 .

Xxx xxx xxx

Therefore, apart from anything else, on historical evolution of Section 21, adopted as an external aid to construction, one can confidently say that MLA was not and is not a 'public servant' within the meaning of the expression in any of the clauses of Section 21 IPC."

9. Another decision on which the counsel has placed reliance is the judgment of this Court in the case of *Ramesh Balkrishna Kulkarni vs. State of Maharashtra*², and he has drawn our attention to Paragraph 5 from the said judgment which reads as follows:

"5. In view of this decision, therefore, we need not go to the other authorities on the subject. Even so, we are of the opinion that the concept of a "public servant" is quite different from that of a Municipal Councilor. A "public servant" is an authority who must be appointed by Government or a semi-governmental body and should be in the pay or salary of the same. Secondly, a "public servant" is to discharge his duties in accordance with the rules and regulations made by the Government. On the other hand, a Municipal Councilor does not owe his appointment to any governmental authority. Such a person is elected by the people and functions undeterred by the commands or edicts of a governmental authority. The mere fact that an MLA gets allowance by way of honorarium does not convert his status into that of a "public servant". In *R.S. Nayak vs. A.R. Antulay*, (Supra) the learned Judges of the Constitution Bench have referred to the entire history and evolution of the concept of a "public servant" as contemplated by Section 21 of the IPC."

10. Yet another decision on which counsel has placed reliance is the judgment of this Court in the case of *State of T.N. vs. T. Thulasingham*³ and he has drawn our attention to Paragraph 76 from the said judgment which reads as follows:

"76. The High Court was, however, right in acquitting various Councillors of the charge under the Prevention of Corruption Act as they are not public servants, in

view of the decision of this Court in *Ramesh Balkrishna Kulkarni vs. State of Maharashtra* (Supra). The acquittal of the Councilors (A-75 to A-80 and A-82); Chairman and Member of the Accounts Committee (A-84 to A-86); Members of the Works Committee (A-87); Members of the Education Committee (A- 94 to A-96) ; Member of the Town Planning Committee (A-98) and Councilors (A-102 and A-104) under the provisions of the Prevention of Corruption Act is thus upheld. However, their respective convictions and sentences for other charges as found by the trial court are upheld and their acquittal by the High Court for those other charges was not justified. All the public dignitaries themselves had become the kingpin of the criminal conspiracy to defraud the Corporation of Madras."

11. Counsel for the appellant has also placed reliance on an unreported judgment of the Rajasthan High Court in the case of *Smt. Sumitra Kanthiya vs. State of Rajasthan*, disposed of on 30th of July, 2008 passed in Criminal Revision Petition No. 453 of 2008 and our attention has been drawn to the following passage from the said judgment:

"In view of the above decision of the Hon'ble Supreme Court, the petitioners being municipal councilors are not public servant and charges framed against them without giving them opportunity of hearing on 18.7.2007 cannot be sustainable, specially when the State refused to sanction prosecution and the Anti Corruption Department submitted final report but the learned Judge took the cognizance overlooking the above legal aspects."

12. Mr. Milind Kumar, learned counsel appearing on behalf of the respondent State of Rajasthan, however, submits that the appellant, undisputedly being the Municipal Councilor and a Member of the Board, comes within the definition of public servant and, hence, he cannot escape from the prosecution for the offence punishable under the Prevention of Corruption Act, 1988.

13. We have bestowed our consideration to the rival submission and we do not find any substance in the submission of Mr. Yashank Adhiyaru and the authorities relied on are clearly distinguishable.

14. As stated earlier, it is an admitted position that the appellant happens to be an elected Councilor and a Member of the Municipal Board. Section 3(2) of the Act defines Board. Section 7 provides for its establishment and incorporation and Section 9 provides for composition thereof. Section 3(15) defines 'Member' to mean a person who is lawfully a Member of a Board. Section 87 of the Rajasthan Municipalities Act, 1959 makes every Member to be public servant within the meaning of Section 21 of the Indian Penal Code and the same reads as follows:

"87. Members etc., to be deemed public servants.-(1) Every member, officer or

servant, and every lessee of the levy of any municipal tax, and every servant or other employee of any such lessee shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act XLV of 1860).

(2) The word "Government" in the definition of "legal remuneration" in Section 161 of that Code shall, for the purposes of sub-section (1) of this section, be deemed to include a municipal board."

15. From a plain reading of the aforesaid provision it is evident that by the aforesaid section the legislature has created a fiction that every Member shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. It is well settled that the legislature is competent to create a legal fiction. A deeming provision is enacted for the purpose of assuming the existence of a fact which does not really exist. When the legislature creates a legal fiction, the court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction. In our opinion, the legislature, while enacting Section 87 has, thus, created a legal fiction for the purpose of assuming that the Members, otherwise, may not be public servants within the meaning of Section 21 of the Indian Penal Code but shall be assumed to be so in view of the legal fiction so created. In view of the aforesaid, there is no escape from the conclusion that the appellant is a public servant within the meaning of Section 21 of the Indian Penal Code.

16. To put the record straight, we must incorporate an ancillary submission of Mr. Adhiyaru. He submits that 'Every member' used in Section 87 relates to such members who are associated with any 'lessee of the levy of any Municipal tax'. This submission has only been noted to be rejected. The expression 'Every member' in Section 87 is independent and not controlled by the latter portion at all and in view of the plain language of the section, no further elaboration is required.

17. Under the scheme of the Rajasthan Municipalities Act it is evident that the appellant happens to be a Councilor and a Member of the Board. Further in view of language of Section 87 of the Rajasthan Municipalities Act, he is a public servant within the meaning of Section 21 of the Indian Penal Code. Had this been a case of prosecution under the Prevention of Corruption Act, 1947 then this would have been the end of the matter. Section 2 of this Act defines 'public servant' to mean public servant as defined under Section 21 of the Indian Penal Code. However, under the Prevention of Corruption Act, 1988, with which we are concerned in the present appeal, the term 'public servant' has been defined under Section 2(c) thereof. In our opinion, prosecution under this Act can take place only of such persons, who come within the definition of public servant therein. Definition of public servant under the Prevention of Corruption Act, 1947 and Section 21 of the Indian Penal Code is of no consequence. The appellant is sought to be prosecuted under the Prevention of Corruption Act, 1988 and, hence, to determine his

status it would be necessary to look into its interpretation under Section 2(c) thereof, read with the provisions of the Rajasthan Municipalities Act. The view which we have taken finds support from the judgment of this Court in *State of Maharashtra vs. Prabhakar Rao*⁴, wherein it has been held as follows:

"5. Unfortunately, the High Court in its order has not considered this question at all. It has proceeded on the assumption that Section 21 of the Indian Penal Code is the relevant provision for determination of the question whether the accused in the case is a public servant. As noted earlier, Section 21 IPC is of no relevance to consider the question which has to be on interpretation of provision of Section 2(c) of the Prevention of Corruption Act, 1988 read with the relevant provisions of the Maharashtra Cooperative Societies Act, 1960."

18. Now we proceed to consider whether or not the appellant, a Councilor and the member of the Board, is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988. Section 2(c) of this Act reads as follows:

"2. Definitions. - In this Act, unless the context otherwise requires,-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) " Public servant" means,-

(i) Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) Any person in the service or pay of a local authority;

(iii) Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) Any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) Any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) Any person who holds an office by virtue of which he is authorized or required to perform any public duty;

(ix) Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) Any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) Any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.-Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.-Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

19. The present Act envisages widening of the scope of the definition of the expression 'public servant'. It was brought in force to purify public administration. The legislature has used a comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the appellant, we have no doubt that he is a public servant within the meaning of Section 2(c) of the Act. Sub-section (viii) of Section 2(c) of the present Act makes any person, who holds an

office by virtue of which he is authorized or required to perform any public duty, to be a public servant. The word 'office' is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it. Councilors and members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that appellant is a public servant within Section 2(c) (viii) of the Prevention of Corruption Act, 1988.

20. Now we revert to the authorities relied on by Mr. Adhiyaru i.e. *R.S.Nayak* (supra), *Ramesh Balkrishna Kulkarni* (supra) and *T.Thulasisingam* (supra). In all these decisions, this Court was considering the scope of Section 21 of the Indian Penal Code which defines 'public servant'. It was necessary to do so as Section 2 of the Prevention of Corruption Act, 1947 defined 'public servant' to mean as defined under Section 21 of the Indian Penal Code. A member of the Board, or for that matter, a Councilor per se, may not come within the definition of the public servant as defined under Section 21 of the Indian Penal Code but this does not mean that they cannot be brought in the category of public servant by any other enactment. In the present case, the Municipal Councilor or member of the Board does not come within the definition of public servant as defined under Section 21 of the Indian Penal Code, but in view of the legal fiction created by Section 87 of the Rajasthan Municipalities Act, they come within its definition.

21. It is an admitted position that in none of the aforesaid judgments relied on by the appellant, this Court had considered any provision similar to Section 87 of the Rajasthan Municipalities Act and, therefore, those judgments cannot be read to mean that a Municipal Councilor in no circumstance can be deemed to be a public servant. Mr. Adhiyaru points out that provisions pari material to that of Section 87 of the Rajasthan Municipalities Act did exist in the respective enactments under consideration in these cases and, therefore, it has to be assumed that this Court, while holding that Municipal Councilors are not public servant, must have taken note of the similar provision. However, in fairness to him, he concedes that such a provision, in fact, has not been considered in these judgments. We are of the opinion that for ascertaining the binding nature of a judgment, what needs to be seen is the ratio. The ratio of those cases is that Municipal Councilors are not public servants under Section 21 of the Indian Penal Code. But Section 87 of the Rajasthan Municipalities Act, as discussed above, make Councilor and member of Board a public servant within the meaning of Section 21 of the Indian Penal Code. Hence, all the judgments of this Court referred to above are clearly distinguishable.

22. Not only this, in the case in hand, we are concerned with the meaning of the expression 'public servant' as defined under Section 2(c) of the Prevention of Corruption Act, 1988 and, hence, decisions rendered by this Court while interpreting Section 21 of the Indian Penal Code, which in substance and content are substantially different than Section 2(c) aforesaid, shall have no bearing at all for decision in the present case. As

regards the decision of the learned Single Judge of the Rajasthan High Court in the case of *Sumitra Kanthiya* (supra), it has also not considered Section 87 of the Rajasthan Municipalities Act. In fact, to come to the conclusion that the Municipal Councilor would not come within the definition of public servant, it has mainly placed reliance on a judgment of this Court in the case of Ramesh *Balkrishna Kulkarni* (supra). We have considered this judgment in little detail in the preceding paragraphs of the judgment and found the same to be distinguishable as the said decision did not consider the statutory provision in the present format. Further, the aforesaid case does not lay down an absolute proposition of law that Municipal Councilor in no circumstances can be treated as a public servant. The learned Judge has also not at all adverted to Section 87 of the Rajasthan Municipalities Act as also Section 2(c) of the Prevention of Corruption Act, 1988 and, hence, the judgment rendered by the Rajasthan High Court in *Sumitra Kanthiya* (supra) does not lay down the law correctly and is, therefore, overruled.

23. As the trial is pending since long, we deem it expedient that the learned Judge in seisin of the trial makes an Endeavour to dispose of the trial expeditiously and in no case later than six months from the date of receipt of a copy of this order.

24. In the result, we do not find any merit in the appeal and it is dismissed accordingly.

Judgment referred

¹1984 (2) SCC 0183

²1985 (3) SCC 0606

³1994 Supp (2) SCC 0405

⁴2002 (7) SCC 0636