

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2021

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRL.P.No.2801/2021

BETWEEN:

G.Krishnegowda,
S/o Gopalagowda,
Aged about 50 years,
The Project Manager,
Nirmithi Kendra, Kandavara,
Chikkaballapura,
Chikkaballapura District-562101.

Residing at:
Sri Chowdeshwari Nilaya,
HL No.118, Velagalaburre Village,
Kolar Taluk,
Kolar District - 563 126.

... PETITIONER

(By Sri Papegowda.B., Adv.)

AND:

State of Karnataka,
Anti Corruption Bureau,
Chikkaballapura,
Represented by its SPP,
Kanija Bhavan,
Bangalore - 560 001.

... RESPONDENT

(By Sri Manmohan.P.N., Adv.)

This Criminal Petition is filed under Section 482 Cr.PC, praying to quash the entire proceedings in CrI.P.No.2/2021 dated 08.03.2021 on the file of the District & Sessions Judge at Chikkaballapura against the petitioner for the offence p/u/s

13(1)(b) and amended Section 13(2) of P.C.Act as per Annexure-A.

This petition having been heard and reserved for orders on 30.06.2021, coming on for 'Pronouncement of Order', this day, the Court made the following:

ORDER

1. Corruption hurts everyone. Corruption erodes the trust of a common man in the system. Corruption effects the society, the industry, the economy, the mankind and the nation at large. Corruption has been in existence even during ancient times and it will continue to exist and our vision has to be to curb the same and make our nation corruption free.

2. Petitioner who is the sole accused in Crime No.2/2021 registered by the Anti Corruption Bureau (ACB), Chickaballapura, for the offences punishable under Sections 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, 'P.C.Act'), has filed this petition under Section 482 Cr.PC with a prayer to quash the FIR and all further proceedings in Crime No.2/2021

which is now pending before the Court of Principal District & Sessions Judge, Chickaballapura.

3. Brief facts of the case as revealed from the records are, petitioner is working as a Project Manager in Nirmithi Kendra, Chikkaballapura Taluk and District, which is a society registered in the year 2008 under the provisions of the Karnataka Societies Registration Act, 1960. The Governing Body of the Nirmithi Kendra comprises of the Deputy Commissioner of the District as the Chairman, Chief Executive Officer of the Zilla Panchayat as the Executive Chairman, Deputy Secretary (Development) of the Zilla Panchayat as the Member Secretary, the Project Manager of Kolar District Nirmithi Kendra, the Executive Engineer, Zilla Panchayat Engineering Division, the District Welfare Officer, Chikkaballapur, the DDPI, Chikkaballapura, the Project Manager, Chickkaballapura Nirmithi Kendra, amongst others as members. The administration of the Kendra is governed by the Governing Body. The principal object of the Kendra is to develop skills

in construction and to undertake the civil construction works assigned by the Government.

4. On receipt of a source report that the petitioner who is working as a Project Manager in District Nirmithi Kendra, Chikkaballapura, was possessing disproportionate assets as against the known sources of his income, the Inspector of Police, ACB, Chikkaballapura, had forwarded the said report to the Superintendent of Police, ACB Central Zone, Bengaluru, based on which, FIR in Crime No.2/2021 was registered against the petitioner. Being aggrieved by the same, petitioner has approached this Court with a prayer to quash the same.

5. Learned Counsel for the petitioner submits that the respondent-authority has no power to register a case against the petitioner under the provisions of the P.C.Act, for the simple reason that the petitioner is not a public servant. He submits that the petitioner is an employee of Nirmithi Kendra which is a society and the said society has not been receiving any funds either from the State

Government or the Central Government. He submits that in identical circumstances, this Court in the case of **GOPINATH ALIAS GOPINATHSA VS THE SUPERINTENDENT OF POLICE, KARNATAKA LOKAYUKTA, BIJAPUR & ANOTHER - 2014(4) KCCR 3668**, has held that the employee of the Nirmithi Kendra cannot be termed as a public servant, and therefore, had quashed the criminal proceedings initiated against the petitioner therein under the P.C.Act by the Karnataka Lokayukta Police. He submits that the said judgment was challenged by the State before the Hon'ble Supreme Court and the special leave petition was dismissed. He also submits that relying upon the judgment in Gopinath's case (supra), a coordinate bench of this Court in CrI.P.No.169/2014 had quashed the entire proceedings in respect of the petitioner therein who was also an employee of the Nirmithi Kendra. He refers to Annexure-D which is a communication issued by the Principal Secretary to the Government, Housing Department, to the President of Bengaluru Nirmithi Kendra, and submits that in the said communication, the

request for deputation of employees of the Nirmithi Kendra to other departments of the State was declined on the ground that the employees of the Nirmithi Kendra are not Government servants. He submits that the appointment of the employees of the Kendra are done by the Governing Body of the Kendra, and therefore, they are the employees of the society and they cannot be termed as public servants. He has also referred to Annexure-M which is an affidavit by the Secretary to the Housing Department, filed before this Court in a writ petition pertaining to the applicability of Right to Information Act, 2005, to the Nirmithi Kendra and submits that in the affidavit, it is categorically stated in paragraph 7 that the Nirmithi Kendra which do not receive funds/finance from the State Government or the Central Government cannot be considered as public authorities under the RTI Act. He submits that the question whether the employee of Nirmithi Kendra is a public servant or not has been already considered in Gopinath's case by this Court and the said question is no more res integra and he refers to

paragraphs 4 to 11 of the said judgment which reads as under:

"4. It is the contention of the petitioner that even an IAS Officer deputed to a Co-operative Society drawing his salary from Society cannot be a public servant and the provisions of Prevention of Corruption Act, does not apply. The Petitioner is not a public servant within the meaning of Section 2(c) of Prevention of Corruption Act. The petitioner falls totally outside the definition of public servant and jurisdiction of Lokayukta Police and there is no scope and also looking into the body of the six bye-laws framed, though it is a private sector, it has to receive funds from the State Government or Central Government, no such fund has been received by the society for which the petitioner is the Project Manager. Only on the ground that the petitioner is a Project Manager, a case is registered against him.

5. The letter at Annexure.C1 from the Housing Department of the State Government addressed to the President of the Nirmithi Kendra clearly mentions that as per the Rule 20 - appointment by deputation, the Nirmithi Kendra is registered under the Karnataka Societies Registration Act, 1960, it is not a Government Department and also petitioner cannot be called

as Government servant. Accordingly, it is contended that a false case has been initiated against the petitioner by the Lokayukta by filing a complaint before the Lokayukta Police, Bijapur, alleging violation of Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. Hence, this petition.

6. Various Annexures produced by the petitioner do depict that except the Society is registered under the Karnataka Societies Registration Act, petitioner cannot be said to be a public servant or Government servant as such, according to the petitioner, filing of the complaint and initiation of action against petitioner is without jurisdiction and also in violation of the provisions of the Karnataka Lokayukta Act, 1984 as well as Prevention of Corruption Act and the power exercised by the respondent by filing a complaint is nothing but abuse of process of law and also defamatory.

7. The learned counsel for the Lokayukta referring to Section 2(c) (xii) of the Prevention of Corruption Act, 1988 which read.--

"2. (c)(xii) Any person who is an officer-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".

Submitted that petitioner is an office bearer or Nirmithi Kendra which is receiving or having received any financial assistance from the State Government or Central Government, as such any violation forms the basis to initiate action against the petitioner under the provisions of Prevention of Corruption Act, 1988. The learned Counsel also relied upon the decision in the case of State of Punjab Vs. Karnail Singh, AIR 2009 SC 372 wherein the Apex Court was dealing with similar case of Co-operative Agricultural Development Bank Limited, that was established by the Government and the appeal filed by the State was allowed and matter was remitted for reconsideration.

8. The submission of the learned counsel for the petitioner is that neither the Society has received the funds from the State Government or Central Government nor appointments are made by the Government and is having no character of any authority or local authority under the State. The filing of the complaint and initiation of proceedings against the petitioner is nonest in the eye of the law and is nothing but abuse of process of laws.

9. The petitioner is said to be the Project Manager of an institution which undertakes contracts taking no assistance of the State Government or Central Government. Accordingly, it is submitted the institution has no character of the Government or Governmental body. It is also submitted, there is a provision made to receive the amount from both the State Government or Central Government however, no such amount is received so far nor any financial assistance is extended to the Project Manager i.e., Nirmithi Kendra.

10. The learned Counsel for the petitioner also relied upon the judgment in the case of State of Maharashtra Vs. Laljit Rajshi Shah and Others, AIR 2000 SC 937 wherein referring to Section 2 of the Maharashtra Co-operative Societies Act, 1960 and also Section 21 of the Indian Penal Code, 1860 as regards a 'Public Servant' the Apex court has held that the Chairman of Maharashtra Co-operative Societies Act, though, a public servant under Societies Act but not so, under Section 21 of Indian Penal Code and he cannot be prosecuted for offences under the India Penal Code and he cannot be prosecuted for the offence under Section 161 of the Co-operative Societies Act. The learned Counsel also relied upon the judgment of this Court in the case of M.A. Parthasarathy Vs. The Special Deputy

Commissioner, Bangalore District, Bangalore and Others, ILR 2009 Kar.1940: (2009 (3) KCCR SN 139) wherein it held that as per Scheme of the Karnataka Lokayukta Act, 1984. The condition precedent for submitting the said report is, only when the allegation is substantiated either wholly or partly against public servants so that follow up action may be taken against them by the Government. As per Section 7 of the Lokayukta Act, the investigation to be conducted by the Lokayukta and Upa-Lokayukta is in respect of a complaint against a public servant only. The words 'public servant' has been defined under Section 2(12) of the Lokayukta Act.

11. The question in this case is with respect to the petitioner who is a Project Manager of Nirmithi Kendra which is neither enunciated by the State Government or Central Government, except a Society registered under the Societies Registration Act and the case of the petitioner does not fall within the definition of Section 2(12) of Lokayukta Act, so as to initiate action under Section 13(1)(e) of the Prevention of Corruption Act. In the above cited decision of the High Court, it is specifically held that Lokayukta or Upa-Lokayukta have no jurisdiction to entertain a complaint against the person who does not come within the definition of a public servant has defined under the Act. This

makes it clear that except a provision that has been made in the bye-laws of Nirmithi Kendra to receive the funds etc., by the State Government or Central Government, in the absence of any such fund being received from the State Government or Central Government and without there being any misuse of power or misuse of the amount so available with the society, there was no scope for the Investigation Officer to file a complaint to the Lokayukta and the said complaint even if it filed, is non est."

6. He submits that inspite of there being a judgment of this Court to the effect that the employees of the Nirmithi Kendra are not public servants and though the said judgment is confirmed by the Hon'ble Supreme Court, the respondent-authority has now registered a case against the petitioner for the offences punishable under the provisions of the P.C.Act, which is totally without jurisdiction, and accordingly prays to allow the petition.

7. Per contra, learned Special Public Prosecutor for the respondent submits that the judgment of this Court in Gopinath's case (supra) is not applicable to the facts of

this case. He submits that the definition of the word 'public servant' as found in the Karnataka Lokayukta Act and P.C.Act are different. He also submits that the Nirmithi Kendra, Chikkaballapura, has received grants/funds from the State Government as well as from the Central Government and in Gopinath's case (supra), there is a finding to the effect that the Nirmithi Kendra therein was not receiving any funds. He submits that since the Nirmithi Kendra, Chikkaballapura, has received funds from the State and the Central Government, it cannot be said that it is not a public authority. He submits that petitioner is discharging a public duty, and therefore, he comes within the ambit of the P.C.Act. He refers to the judgment of the Hon'ble Supreme Court in the case of **STATE OF GUJARAT VS MANUSUKHBHAI KANJIBHAI SHAH - 2020 SCC OnLine SC 412**, and submits that even persons who are discharging public duties are answerable to the State and the public, and are covered under the ambit of the P.C.Act. He submits that having regard to the nature of the work undertaken by the petitioner, it can be clearly

said that the petitioner is discharging public duty and he is answerable to the State as well as the public. The allegation against the petitioner is that he is possessing assets disproportionate to his known source of income, and therefore, he is answerable to the State. He submits that admittedly, the Nirmithi Kendra undertakes construction works entrusted to them by the Government and the work of the petitioner who is a Project Manager is to look after the said construction activities. He submits that the Hon'ble Supreme Court has dismissed the SLP filed by the State against the judgment of this Court in Gopinath's case (supra) in simplicitor, and therefore, the same cannot have any binding precedent. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **INDIAN OIL CORPORATION LTD. VS STATE OF BIHAR & OTHERS - (1986)4 SCC 146**, **UNION OF INDIA & OTHERS VS M.V.MOHANAN NAIR - (2020)5 SCC 421**, and **STATE OF ORISSA & OTHERS VS MD. ILLIYAS - (2006)1 SCC 275**, in support of this contention of his. He submits that the petitioner is not only a public servant, but he also discharges public duty,

and therefore, he is clearly covered by the provisions of the P.C.Act, and having regard to the allegation against him based on the source report, the ACB have rightly registered a case against him for the offences punishable under Sections 13(1)(b) read with 13(2) of the P.C.Act and the investigation in the case is under progress. He further submits that when there is a prima facie case made out for cognizable offences in the FIR, interference with the investigation should not be made in exercise of the power under Section 482 Cr.PC, and accordingly, prays to dismiss the petition.

8. I have carefully considered the arguments advanced by the learned Counsel appearing for both sides and also perused the entire material on record.

9. The question that would arise for consideration in this petition would be,

"whether the petitioner who is an employee of Nirmithi Kendra which is a body registered under the Karnataka Societies

Registration Act, 1960, can be prosecuted for the offences under the P.C.Act?"

10. The undisputed facts of this case are, petitioner is an employee of Nirmithi Kendra, Chikkaballapura, which is a society registered under the Karnataka Societies Registration Act, 1960. The said Kendra has been undertaking civil construction works of the State Government assigned to it. Petitioner who is working as Project Manager of the Kendra has been looking after the said construction works in various sites.

11. The material on record would go to show that the Deputy Commissioner of the District is the Chairman of the Governing Body of the Kendra, while the Chief Executive Officer and the Deputy Secretary of the Zilla Panchayat are the Executive Chairman and the Member Secretary, respectively. There are many other senior Government officials who are the members of the Governing Body. The audit report of the Kendra which is available on record would go to show that the Kendra has been receiving funds from the State as well as from the

Central Government. The word 'public servant' as defined under Section 2(12) of the Karnataka Lokayukta Act, reads as under:

"(12) "public servant" means a person who is or was at any time, -

- (a) the Chief Minister;
- (b) a Minister;
- (c) a member of the State Legislature;
- (d) a Government Servant;
- (e) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State of Karnataka or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of Section 617 of the Companies Act, 1956 and such other corporations or boards as the State Government may, having regard to its financial interest in such corporations or boards, by notification, from time to time, specify;
- (f) member of a Committee or Board, statutory or non-statutory, constituted by the Government; and
- (g) a person in the service or pay of,-
 - (i) a local authority in the State of Karnataka;
 - (ii) a statutory body or a corporation (not being a local authority) established by or

under a State or Central Act, owned or controlled by the State Government and any other board or corporation as the State Government may, having regard to its financial interest therein, by notification, from time to time, specify;

- (iii) a company registered under the Companies Act, 1956, in which not less than fifty one per cent of the paid up share capital is held by the State Government, or any company which is a subsidiary of such company;
- (iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960, which is subject to the control of the State Government and which is notified in this behalf in the official Gazette;
- (v) a co-operative society;
- (vi) a university;

Explanation:- In this clause, "Co-operative Society" means a Co-operative society registered or deemed to have been registered under the Karnataka Co-operative Societies Act, 1959, and "university" means a university established or deemed to be established by or under any law of the State Legislature."

12. In the P.C.Act, the words 'public duty' and 'public servant' are defined in Sections 2(b) & 2(c), respectively as under:

(b) "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest.

Explanation: In this clause "State" includes 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);

(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 authorised 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 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 authorised 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."

13. From the reading of the definition of the word 'public servant' as found in the P.C.Act, it is very clear that a person who holds an office by virtue of which he is authorized or required to perform any public duty, and any person or employee of any institution if it has been receiving or if it has received any financial assistance from the State or Central Government, shall be considered as a public servant. The explanation to Section 2(c) of the P.C.Act would further go to show that such a person may be appointed by the Government or not. Therefore, a public servant need not be a Government/civil servant, but a Government/civil servant is always a public servant.

14. The Hon'ble Supreme Court in Manusukhbhai Kanjibhai Shah's case (supra) has held that an employee of a co-operative society which is controlled or aided by the Government is covered within the comprehensive definition of the word 'public servant' as defined under the P.C.Act.

15. The judgment of this Court in Gopinath's case was rendered having regard to the fact that the Nirmithi Kendra of which the petitioner therein was employed had not received any funds from the State or the Central Government or any other public authority. There is a specific finding to the said effect in the said judgment. However, in the case on hand, the records would reveal that the Nirmithi Kendra in which the petitioner is employed has been receiving funds from the Central as well as the State Government. Therefore, the judgment of this Court in Gopinath's case will not be applicable to the facts of this case.

16. The Hon'ble Supreme Court in the case of **THE STATE FINANCIAL CORPORATION & ANOTHER VS M/S. JAGDAMBA OIL MILLS & ANOTHER - AIR 2002 SC 834**, has observed that judgments can be relied upon as precedents, if only the same is applicable to the fact situation of the case. In paragraph 19 of the said judgment, the Hon'ble Supreme Court has observed as under:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes."

17. The Hon'ble Supreme Court in Indian Oil Corporation Limited case (supra), has held that:

"The dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by Supreme Court. The effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or

reasons of its dismissal must, by necessary implication, be taken to be that Supreme Court had decided only that it was not a fit case where special leave should be granted. It cannot be assumed that it had necessarily decided by implication all the questions in relation to the merits of the award, which was under challenge before Supreme Court in the special leave petition."

18. The Hon'ble Supreme Court in M.V.Mohanan Nair's case (supra), has held that dismissal of the special leave petition in limine does not constitute a law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India and the impugned judgment/order against which special leave petition is dismissed in limine does not stand affirmed by the Supreme Court nor does it merge with the order of the special leave petition. Such a judgment/order would stand on its own and cannot be cited as a precedent of the Supreme Court.

19. Having regard to the aforesaid pronouncements of the Hon'ble Supreme Court in Indian Oil Corporation Limited case and in M.V.Mohanan Nair's case (supra), it

cannot be said that the judgment of this Court in Gopinath's case (supra) has been affirmed by the Supreme Court.

20. Be that as it may, having regard to the fact that the Nirmithi Kendra in which the petitioner is employed has been receiving funds from the State and the Central Government and taking into consideration the definition of the word 'public servant' as found in the P.C.Act, it cannot be but said that the petitioner is a public servant. Even if a person is not a public servant, but by virtue of his office if he is discharging public duty, then he is covered under the ambit of the P.C.Act.

21. Corruption in our country is a growing menace and P.C.Act being a welfare legislation is required to be interpreted keeping in mind the object and spirit of the statute. In furtherance of the fight against corruption a broad interpretation to the provisions of this statute is required to be given and the arms of this Act is required to be extended to the maximum. The offences under the

P.C.Act can be invoked not only against a public servant but also against a person, who by virtue of his office has been discharging 'public duty'. In Manusukhbhai Kanjibhai Shah's case (supra), the Hon'ble Supreme Court has observed at paragraphs 26, 27, 44 to 46, 49 & 50 as under:

"26. In Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64, this Court observed:

"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision.

Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight

against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.”

(emphasis supplied)

27. We shall accordingly have due regard to the aforesaid principles while interpreting the provisions herein. The point of contention relates to whether a deemed University would be included within the ambit of the PC Act, particularly under Section 2(c)(xi) of the same, where the word used is “University”. The learned senior counsel for the appellant-State submits that the word “University” as used in Section 2(c)(xi) of the Act, must be purposively interpreted. An institution which is “deemed to be a University” under the University Grants Commission Act, 1956 [UGC Act] plays the same role in society as a “University”. These institutions have the common public duty of granting degrees, which are ultimately qualifications recognized in society. As such, an institution which is “deemed to be University”, such as the institution in the present case, is included within the ambit of the term “University” used under the Act.

44. As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, as rightly submitted by the learned senior counsel for the appellant-State, it cannot be stated that a “Deemed University” and the officials therein, perform any less or any different a public duty, than those performed by a University simpliciter, and the officials therein.

45. Therefore, for all the above reasons, we are of the opinion that the High Court was incorrect in holding that a “Deemed University” is excluded from the ambit of the term “University” under Section 2(c)(xi) of the PC Act.

46. Having come to the above conclusion, in the present case, the pivotal question is whether the appellant-trustee in the Board of **‘Deemed to be University’** is a ‘public servant’ covered under Section 2(c) of the PC Act. Recently, this Court in the case of CBI v. Ramesh Gelli, (2016) 3 SCC 788, dealt with the question

as to whether Chairman, Directors and officers of a private bank before its amalgamation with a public sector bank, can be classified as public servants for prosecution under the PC Act. While dealing with the aforesaid proposition of law, the Court analysed the purpose and scope of the PC Act and made the following observations:

“15. From the Statement of Objects and Reasons of the PC Bill it is clear that the Act was intended to make the anti-corruption law more effective by widening its coverage. **It is also clear that the Bill was introduced to widen the scope of the definition of “public servant”.** Before the PC Act, 1988, it was the Prevention of Corruption Act, 1947 and Sections 161 to 165-A in Chapter IX IPC which were governing the field of law relating to prevention of corruption. Parliament repealed the Prevention of Corruption Act, 1947 and also omitted Sections 161 to 165-A IPC as provided under Sections 30 and 31 of the PC Act, 1988. Since a new definition of “public servant” is given under the PC Act, 1988, it is not necessary here to reproduce the definition of “public servant” given in Section 21 IPC.

...

17. The above definition shows that under sub- clause (viii) contained in Section 2(c) of the PC Act, 1988, a person who holds an office by virtue of which he is authorised or required to perform any public duty, is a public servant. Now, for the purposes of the present case this Court is required to examine as to whether the Chairman/Managing Director or Executive Director of a private bank operating under licence issued by RBI under the Banking Regulation Act, 1949, held/holds an office and performed/performs public duty so as to attract the definition of “public servant” quoted above.”

(emphasis supplied)

49. In order to appreciate the amplitude of the word “public servant”, the relevance of the term “public duty” cannot be disregarded. “Public duty” is defined under Section 2(b) of the PC Act, which is reproduced below:

2(b) **‘public duty’** means a duty in the discharge of which the State, the public or the community at large has an interest.

50. Evidently, the language of Section 2(b) of the PC Act indicates that any duty discharged wherein State, the public or community at large has any interest is called a public duty. The first

explanation to Section 2 further clarifies that any person who falls in any of the categories stated under Section 2 is a public servant whether or not appointed by the government. The second explanation further expands the ambit to include every person who **de facto** discharges the functions of a public servant, and that he should not be prevented from being brought under the ambit of public servant due to any legal infirmities or technicalities."

22. In the supplemental reasons assigned by one of the Hon'ble Judges who was party to the aforesaid judgment at paragraphs-10 & 12, it is observed as follows:

"10. It cannot be lost sight of that the Act, 1988, as its predecessor that is the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a definition of 'public servant' with wide pectrum in clause (c) of Section 2 of the Act,1988, so as to purify public administration. The objects and reasons contained in the Bill leading to passing of the Act can be taken assistance of, which gives the background in which the legislation was enacted. When the legislature has introduced such a comprehensive definition of

"public servant" to achieve the purpose of punishing and curbing the growing menace of corruption in the society imparting public duty, it would be apposite not to limit the contents of the definition clause by construction which would be against the spirit of the statute.

11. xxx xxx

12. In construing the definition of 'public servant' in clause (c) of Section 2 of the Act 1988, the court is required to adopt an approach as would give effect to the intention of the legislature. The legislature has, intentionally, while extensively defining the term 'public servant' in clause (c) of Section 2 of the Act and clause (xi) in particular has specifically intended to explore the word 'any' which includes all persons who are directly or indirectly actively participating in managing the affairs of any university in any manner or the form. In this context, the legislature has taken note of 'any' person or member of "any" governing body by whatever designation called of "any" university to be termed as 'public servant' for the purposes of invoking the provisions of Act 1988."

23. The Hon'ble Supreme Court in Manusukhbhai Kanjibhai Shah's case (supra), taking into consideration

the rampant corruption that has been affecting the public life, with an object of making India corruption free, has observed that to achieve the purpose of punishing and curbing the corruption in society, the definition clause of the words 'public servant' and 'public duty' should not be limited affecting the very spirit of the statute.

24. Petitioner is an employee of the Nirmithi Kendra which is undertaking civil construction work for the Government and has been receiving funds from the State and Central Government. Since the Kendra has been receiving funds from the Government, it can be termed that the said Kendra is under the control of the State Government and having regard to the nature of work discharged by the petitioner in a society which is under the control of the Government, it can be clearly said that the petitioner has been discharging public duty. The Kendra has been receiving funds from the Government and the works entrusted by the Government is performed by the Kendra, and therefore, the Kendra as well as its employees are answerable to the State as well as to the

public. Petitioner is working as a Project Manager of Nirmithi Kendra and the nature of work carried on by him will fall within the definition of the word 'public duty' as defined under the P.C.Act. It is now well settled that even if a individual is not a public servant, but if he is discharging "public duty" by virtue of his office, he is answerable to the State and public and he comes within the ambit of the Prevention of Corruption Act. Therefore, even if the Nirmithi Kendra is not receiving or has not recovered any fund from the Central or State Government, but if the employees of the Kendra by virtue of his office is discharging public duty, then he is answerable to the State, Community and the public, and can be prosecuted for the offences under the P.C.Act. Accordingly, I answer the question framed for consideration in the affirmative.

25. Corruption is considered the single biggest problem faced by our country. It undermines democracy and rule of law and violates human rights. The corrupt take advantage of the loopholes in the legal system and that is why it has become a low risk but high profit business. Corruption to

do the wrong thing is one thing, but when corruption reaches the stage of getting right things done which a citizen is legally entitled for, then the very moral fabric of the society is destroyed.

26. Good laws alone would be not sufficient to make our country corruption free, but there has to be effective enforcement of the same and efforts should be towards making the concerned accountable. Demanding bribe is a crime so is offering a bribe.

27. The ACB has registered an FIR against the petitioner for the offences under Sections 13(1)(b) read with 13(2) of the P.C.Act, for the reason that the petitioner is possessing assets disproportionate to his known source of income. Since the Nirmithi Kendra wherein the petitioner is employed is said to have received funds from Central and State Government, it cannot be but said petitioner is a public servant. Petitioner by virtue of his office is discharging public duty, and therefore, is answerable to the State as well as the public and even if it can be said

that he is not a public servant, he cannot be left out of the hook. The criminal petition, therefore, does not merit consideration and the petitioner is not entitled for the reliefs as prayed for by him. Accordingly, I proceed to pass the following order:

Criminal petition is dismissed.

**Sd/-
JUDGE**

KK