

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02nd DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.685 OF 2022

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BETWEEN:

SRI V.KRISHNAREDDY

...PETITIONER

(BY SRI K.SHASHIKIRAN SHETTY, SENIOR ADVOCATE
A/W SRI RANGANATH R., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY ANTI-CORRUPTION BUREAU POLICE
CHIKKABALLAPURA - 562 101
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENT

(BY SRI P.N.MANMOHAN, SPL.PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., QUASH THE CR.NO.7/2021 REGISTERED BY RESPONDENT POLICE ON 23.11.2021 FOR THE ALLEGED OFFENCES P/U/S 13(1)(b) R/W 13(2) OF THE PREVENTION OF CORRUPTION ACT, PENDING ON THE FILE OF HONOURABLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA AGAINST THE PETITIONER.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in the subject petition calls in question registration of crime against him in crime No.7/2021, for offences punishable under Sections 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1998 ('the Act' for short) pending before the Principal District and Sessions Judge at Chikkaballapura.

2. Shorn of unnecessary details, facts in brief, are as follows:-

The petitioner at the relevant point in time was working as a General Manager of Nandini Milk Products, a

unit of Karnataka Cooperative Milk Producers' Federation Limited ('KMF'), the apex body for cooperative movement in Karnataka. The petitioner joins the service of KMF in the year 1997, as a Technical Officer and from time to time had been promoted to higher echelons of office. The issue in the case at hand is not with regard to the service condition of the petitioner.

3. A Police Inspector of Anti-Corruption Bureau, Central Zone, Bangalore ('ACB') submits a source report to the Superintendent of Police on 20-11-2021. After thorough scrutiny of the documents of the petitioner with regard to assets, liabilities and annual returns, he holds that disproportionate assets of the petitioner were to the tune of 107.70%. Based upon the said source information report, a crime comes to be registered against the petitioner on 23-11-2021 for offences punishable under Section 13(1)(b) read with 13(2) of the Act. The house and the property of the petitioner were searched and investigation is continued and is said to be in progress. At

that point in time, the petitioner knocks the doors of this Court in the subject petition seeking quashing of registration of crime itself in Crime No.7 of 2021.

4. This Court by its order dated 09-03-2022 had granted an interim order of stay on a preliminary submission made by the learned counsel representing the petitioner that employees of KMF would not be public servants within its meaning as obtaining under the Act and therefore, further investigation in the case of the petitioner has been stalled.

5. Heard Sri K. Shashikiran Shetty, learned senior counsel appearing for the petitioner and Sri P.N.Manmohan, learned Special Public Prosecutor for the respondent.

6. The learned senior counsel would urge a solitary contention that the petitioner being an employee of KMF throughout his career as he joins as Technical Officer, and at the relevant point in time, was working as General

Manager and therefore, would not become a public servant within the meaning of '*public servant*' under the Act. He further submits that the very registration of crime by the ACB was one without jurisdiction and any further steps taken by the ACB are all acts without jurisdiction. He would seek annulment of entire proceedings. Reliance is also placed on a judgment rendered by a Coordinate Bench of this Court in the case of ***K.M.F. & DISTRICT MILK UNIONS RETIRED EMPLOYEES KSHEMABHIVRIDHI VEDIKE AND ANOTHER v. STATE OF KARNATAKA AND OTHERS¹*** – ***W.P.No.11224 of 2016 decided on 9th March, 2020***, to buttress his contention that employees of KMF are not Government servants for any benefits whatsoever. Therefore, the ACB could not have registered any crime against the petitioner.

7. On the other hand, Sri P.N.Manmohan, learned Special Public Prosecutor would refute the submissions of the learned senior counsel to contend that a Coordinate

¹ 2020 (4) KLJ 560

Bench of this Court in ***C. KRISHNEGOWDA v. STATE OF KARNATAKA – CrI.P.No.2801 of 2021 decided on 15th July 2021*** has addressed the very issue and held that an employee of Nirmithi Kendra is a public servant and the ACB would have jurisdiction to register a crime against a Project Manager of Nirmithi Kendra. He would contend that the petitioner is also on the same footing and the petition deserves to be dismissed.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the only issue that falls for my consideration is:

"Whether the petitioner being a General Manager of Nandini Milk Products, which is a unit of KMF would become a 'public servant' within the Prevention of Corruption Act, 1998, for the ACB to register a crime."

9. The afore-narrated facts are not in dispute. A legally drawn source information report containing all the

materials pursuant to a preliminary inquiry done by the Police Inspector is submitted to the Deputy Superintendent of Police, who in turn approves registration of a crime against the petitioner. Therefore, the procedure that is necessary to be followed for registering a crime has in fact been followed in the case at hand, the source information report is also in accordance with law in the form of a report. The disproportionate assets drawn by the ACB against the petitioner is to the tune of 107.70%. The figures shown in the assets and liabilities statement run to several crores. The aforesaid facts are a matter of record though they are figures *prima facie*.

10. The issue is not with regard to the calculation of assets or liabilities or disproportionate assets of the petitioner. The issue is, *whether the ACB could initiate proceedings against the petitioner for offences coming under the Act in the teeth of the petitioner being an employee of KMF – a cooperative society registered under*

the provisions of the Cooperative Societies Act of the State.

11. To consider the said issue, it is germane to notice the provisions of the Act. Section 2(b) deals with 'public duty' and reads as follows:

"(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)."

Section 2(c) defines 'public servant' and reads as follows:

'(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 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 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."

(Emphasis supplied)

Section 2(b) which defines '*public duty*' directs that a duty in the discharge of which the State, the Public or the Community at large has an interest. A '*public servant*' would mean 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. Section 2(c)(viii) defines any person who holds an office by virtue of which he is authorized or required to perform any public duty. Section 2(c)(ix) defines a person who is the President, Secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking receiving or having received any financial aid from the Central Government or a State Government or any Corporation established under the Central Act or the

State Act. What runs through the stream of definitions of public servant is, he should be appointed in a position or should be functioning in a position where he performs public duty. Expansive meaning is rendered to the phrase 'public servant' under the Act on its amendment in the year 1988, which broadened the horizons of the definition of public servant, than what it was in the original enactment of 1947.

12. The phrase 'public servant' as obtaining under the Act has been subject matter of interpretation by the Apex Court and that of this Court. To put it straight, the issue is no longer *res integra*. Post the amendment to the Act in the year 1988, the phrase 'public servant' as defined under Section 2(c) fell for interpretation before the Apex Court in the case of **GOVERNMENT OF ANDHRA PRADESH v. P.VENKU REDDY**². The Apex Court has held as follows:

² (2002) 7 SCC 631

"7. After hearing the learned counsel appearing for the parties, our conclusion is that the High Court is clearly in error in relying on sub-clause (ix) and overlooking sub-clause (iii) of clause (c) of Section 2 of the 1988 Act for quashing the proceedings on the ground that the respondent-accused is not covered by the definition of "public servant".

8. From the abovequoted sub-clause (ix) of clause (c) of Section 2 of the 1988 Act, it is evident that in the expansive definition of "public servant", elected office-bearers with the President and Secretary of a registered cooperative society which is engaged in trade amongst others in "banking" and "receiving or having received any financial aid" from the Central or State Government, are included although such elected office-bearers are not servants in employment of the cooperative societies. But employees or servants of a cooperative society which is controlled or aided by the Government, are covered by sub-clause (iii) of clause (c) of Section 2 of the 1988 Act. Merely because such employees of cooperative societies are not covered by sub-clause (ix) along with holders of elective offices, the High Court ought not to have overlooked that the respondent, who is admittedly an employee of a cooperative bank which is controlled and aided by the Government, is covered within the comprehensive definition of "public servant" as contained in sub-clause (iii) of clause (c) of Section 2 of the 1988 Act. It is not disputed that the respondent-accused is in service of a cooperative Central bank which is an "authority or body" controlled and aided by the Government.

9. It cannot be lost sight of that the 1988 Act, as its predecessor, that is, the repealed Act of 1947 on the same subject, was brought into force with the avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a very wide definition of "public servant" in clause (c) of Section 2 of the 1988 Act. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the legislature throws light on the intention of the legislature in providing a very comprehensive definition of the words "public servant". Para 3 of the Statement of Objects and Reasons reads:

"3. The Bill, inter alia, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under Sections 161 to 165-A of the Penal Code, 1860, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included."

10. Clause 2 of the Notes on Clauses in the Gazette of India, Extraordinary, Part II, Section 2, further clarifies the legislative intent thus:

"2. This clause defines the expressions used in the Bill. Clause 2(c) defines 'public servant'. In the existing definition the emphasis is on the authority

employing and the authority remunerating. In the proposed definition the emphasis is on public duty. The definition of 'election' is based on the definition of this expression in the Penal Code, 1860."

11. Under the repealed Act of 1947 as provided in Section 2 of the 1988 Act, the definition of "public servant" was restricted to "public servants" as defined in Section 21 of the Penal Code, 1860. In order to curb effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of "public servant" has been given in clause (c) of Section 2 of the 1988 Act.

12. In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of the legislature. In that view the Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of "public servant", was brought in force to purify public administration. When the legislature has used such a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of "public servant", therefore, deserves a wide construction. (See State of

M.P. v. Shri Ram Singh [(2000) 5 SCC 88 : 2000 SCC (Cri) 886 : AIR 2000 SC 870] .)

13. As a matter of fact, we find that the point arising before us on the definition of "public servant" that it does include an employee of a banking cooperative society which is "controlled or aided by the Government" is clearly covered against the respondent-accused by the judgment in the case of State of Maharashtra v. Prabhakar Rao [(2002) 7 SCC 636: JT 2002 Supp (1) SC 5]."

(Emphasis supplied)

The said judgment is followed by a subsequent Bench of two learned Judges in the case of **STATE OF MAHARASHTRA v. BRULAL SADASUKH MODANI – (2016) 4 SCC 417**, wherein the Apex Court holds as follows:

"6. Be it stated, the High Court distinguished the decision rendered in State of A.P. v. P. Venku Reddy [State of A.P. v. P. Venku Reddy, (2002) 7 SCC 631: 2002 SCC (Cri) 1826] , and proceeded further to state as follows: (Brijlal case [Brijlal v. State of Maharashtra, 2008 SCC OnLine Bom 1515] , SCC OnLine Bom para 34)

"34. We are, therefore, of the opinion that the petitioner who discharged his duties as General Manager could not be termed as a 'public servant' as defined in the Prevention of Corruption Act, 1988. Under the provisions of the Banking Regulation Act, 1949 the Central

Government or any authority of the Government, Reserve Bank of India exercise regulatory control over the Bank which is registered under the Multi-State Cooperative Societies Act. The said control exercised by these authorities would not be termed as deep and pervasive one. The day-to-day activities, the internal management are not at all governed and controlled by the Government or its authorities. The Bank is not an aided one, or funded in any manner by the Government or its authorities. The service conditions of its employees are not regulated by the State or the Central Government or its authorities. Respondent 3 is, therefore, not competent to initiate action under the provisions of the Prevention of Corruption Act against the petitioner. The impugned notices issued to the petitioner by Respondent 3 are without jurisdiction and null and void. The notices are required to be quashed and set aside."

18. In this regard, the relevant paragraphs from the Statement of Objects and Reasons are requisite to be reproduced. It is as follows:

"2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Penal Code, 1860 to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Act seeks

to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The Bill, *inter alia*, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under Sections 161 to 165-A of the Penal Code, 1860, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included."

19. Section 2(c)(ix) on which immense thrust has been given by the learned counsel for the State on the basis of certain authorities of this Court, reads as follows:

"2. (c)(ix) any person who is the president, secretary or other office-bearer of a registered cooperative 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);"

20. On a perusal of the decisions of this Court, it is manifest that stress has always been laid on Section 2(c)(ix) of the 1988 Act as a consequence of which the fallout is that the registered cooperative society must have received financial aid from the Central Government or the State Government or any other institution mentioned therein.

21. The High Court [Brijlal v. State of Maharashtra, 2008 SCC OnLine Bom 1515] has referred to various provisions of the 1949 Act and proceeded on the status of cooperative society and eventually has held that: (Brijlal case [Brijlal v. State of Maharashtra, 2008 SCC OnLine Bom 1515] , SCC OnLine Bom para 28)

"28. So far as the Bank is concerned, the Central Government has not purchased any share of the Bank. It is argued by the learned APP that the power conferred on Reserve Bank of India and the Central Registrar under the provisions of the Banking Regulation Act are sufficient proof to arrive at the conclusion that the functioning of the Bank is regulated and controlled by Reserve Bank of India. We do not accept the proposition advanced by the learned APP. It is settled position that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Whatever control exercised by the Government or its authorities under the provisions of the Act are meant to ensure proper functioning of the society. The Government or in this case Reserve Bank of India or any other statutory authorities have no role to play in day-to-day

functioning of the societies/banks much less control over the recruitment of the staff, its service conditions, etc. Considering the provisions of the different enactments, more particularly the provisions of the Banking Regulation Act, 1949, we are of the view that Reserve Bank of India or the Government or its authorities do not exercise any direct, deep and pervasive control over the functioning of the Bank."

And again: (SCC OnLine Bom para 33)

"33. ... Therefore, it would not be reasonable and proper now to relegate the petitioner to alternative forum by asking him to appear before Respondent 3 and agitate the same issues."

22. In Prabhakarao [State of Maharashtra v. Prabhakarao, (2002) 7 SCC 636: 2002 SCC (Cri) 1831], the Court was dealing with the issue whether the High Court was justified in holding that the accused was not a public servant. In the said case, the High Court had placed heavy reliance on the authority of State of Maharashtra v. Laljit Rajshi Shah [State of Maharashtra v. Laljit Rajshi Shah, (2000) 2 SCC 699: 2000 SCC (Cri) 533: AIR 2000 SC 937].

23. In Prabhakarao [State of Maharashtra v. Prabhakarao, (2002) 7 SCC 636 : 2002 SCC (Cri) 1831] , the Court has distinguished the said decision and referred to Section 2 of the 1988 Act and in that context observed thus: (SCC p. 638, paras 3-4):

"3. Under clause (iii) of Section 2(c), 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 and under clause (ix) the President, Secretary and other office-bearers of a registered cooperative society engaged in agriculture, industry, have been included in the definition of 'public servant'.

4. The question for consideration is whether the accused in the present case comes within the purview of the aforementioned clauses or any other clause of Section 2(c) of the Prevention of Corruption Act, 1988. For determination of the question, enquiry into facts, relating to the management, control and funding of the society, is necessary to be ascertained."

24. As we notice, the High Court has really been swayed by the concept of Article 12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-State society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. We are inclined to think so as the term "aid" has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of "public servant". The concept in entirety has to be understood in the backdrop of corruption."

(Emphasis supplied)

The Apex Court in the afore-quoted judgments considers the purport of the amendment to Section 2(c) in the year 1988 and being given a wider meaning than it existed earlier. Section 2(c)(ix) also fell for consideration before the Apex Court to hold that an office bearer of a registered cooperative society in the said case a multi-State cooperative society was a public servant within the meaning of Section 2(c) of the Act. The Apex Court holds that even if there is sprinkling aid falling upon the cooperative society, the office bearer of the said society would be a public servant under Section 2(c) of the Act. The Apex Court does not consider the percentage of share holding of the Government, but directs even a sprinkling aid would be sufficient to bring an employee with the definition of '*public servant*'.

13. The horizons which were already broad, are broadened further by a three Judge Bench of the Apex Court in the case of **STATE OF GUJARAT v.**

MANSUKHABHAI KANJIBHAI SHAH³, wherein it is held as follows:

"17.1. Whether the respondent trustee is a "public servant" covered under Section 2(c) of the PC Act?

17.2. Whether the respondent-accused can be discharged under Section 227 CrPC?

18. The first question before us, that is, whether the respondent who is allegedly a trustee in the Sumandeep Charitable Trust which established and sponsors the said University ("deemed to be university") is a "public servant" covered under Section 2(c) of the PC Act, can be broken up into two parts : first, whether the "deemed university" is covered under the provisions of the Prevention of Corruption Act, 1988, and secondly, whether the "respondent trustee" can be termed as "public servant" under Section 2(c)(xi) of the PC Act?

19. Before we proceed further, we need to observe the relevant provisions under the PC Act:

"2. (c) "public servant" means—

(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

³ (2020) 20 SCC 360

other public authority in connection with holding or conducting examinations;"

20. Simply speaking, any person, who is a Vice-Chancellor, any member of any governing body, professor, reader, lecturer, any other teacher or employee, by whatever designation called, of any university, is said to be a public servant. Further, the definition inter alia, covers any person whose services have been availed of by a university, or any other public authority in connection with holding or conducting examinations.

21. However, the interpretative necessity arises in this case due to the fact that the ambit of the term "university", as occurring under Section 2(c)(xi) of the PC Act, has not been clearly defined and the question arises as to whether the same covers "deemed to be university" as well. In this regard, we need to observe certain ground rules on interpretation, concerning the PC Act.

22. There is no gainsaying that nations are built upon trust. It is inevitable that in a democracy one needs to rely on those with power and influence and to trust them of being transparent and fair. There is no doubt that any action which is driven by the self-interest of these powerful individuals, rather than the public interest, destroys that trust. Where this becomes the norm, democracy, the economy and the rule of law, all take a beating, ultimately putting the whole nation at risk. Corrupt societies often spring from the examples set at the highest levels of Government, but small-scale corruption can be equally insidious. In this regard, the PC Act was formulated to bring about transparency and honesty in public life, as

indicated by its Objects and Reasons. We need to keep the aforesaid legislative intention in mind while interpreting the provisions of the PC Act.

23. *The learned Senior Counsel for the appellant State, vehemently contended that the PC Act, being a welfare legislation, cannot be narrowly interpreted, and rather, a broad interpretation needs to be provided for the same [refer State of M.P. v. M.V. Narasimhan [State of M.P. v. M.V. Narasimhan, (1975) 2 SCC 377: 1975 SCC (Cri) 589] and M. Narayanan Nambiar v. State of Kerala [M. Narayanan Nambiar v. State of Kerala, 1963 Supp (2) SCR 724: AIR 1963 SC 1116: (1963) 2 Cri LJ 186]].*

24. The golden rule of interpretation for any penal legislation is to interpret the same strictly, unless any constitutional considerations are involved, and in cases of ambiguity, the benefit of the same should enure in favour of the accused. Having said so, we need to clarify that strict interpretation does not necessarily mean literal interpretation in all cases, rather the interpretation should have regard to the genuine import of the words, taken in their usual sense [refer Commr. of Customs v. Dilip Kumar & Co. [Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1]].

25. However, we are concerned herein with interpreting the provisions of the PC Act. There is no dispute that corruption in India is pervasive. Its impact on the nation is more pronounced, due to the fact that India is still a developing economy. Presently, it can be stated that corruption in India has become an

issue which affects all walks of life. In this context, we must state that although anti-corruption laws are fairly stringent in India, the percolation and enforcement of the same are sometimes criticised as being ineffective. Due to this, the constitutional aspirations of economic and social justice are sacrificed on a daily basis. It is in the above context that we need to resolve the issues concerned herein.

26. In *Subramanian Swamy v. Manmohan Singh* [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64; (2012) 1 SCC (Cri) 1041; (2012) 2 SCC (L&S) 666] , this Court observed : (SCC p. 100, para 68)

"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 ("the 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 recognised 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."

(Emphasis supplied)

In a concurring judgment by the 3rd learned Judge, the objects and reasons for amendment to the Act, is also noticed as follows:

"62. To make the anti-corruption laws more effective, the Prevention of Corruption Bill was introduced in Parliament. The Statement of Objects and Reasons of the 1988

Act was intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions. The 1988 Act caters to its wide scope by providing for "different paths to liability, some of which are especially suited to, but by no means confined to, those who hold public office".

63. There are a number of judicial precedents dealing with the definition and meaning of "corruption". The simplest definition of "corruption" is, any act or omission by a public servant for securing pecuniary or other material advantage directly or indirectly for himself, his family or friends. It will be apposite to refer to the provisions of the 1988 Act relevant for the purpose as infra:

"2. (c) "public servant" means—

(i)-(x) ***

(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;"

(emphasis supplied)

64. It will be relevant to note that prior to the 1988 Act, employees of the university, professors, readers, etc. were not covered within the definition of "public servant" as it was contained in Section 21 of the Penal Code. Thrust of submission of the learned counsel for the respondent is that the respondent herein

who is a trustee of deemed to be university which cannot by any stretch of imagination be construed to be a public servant and would not fall within the ambit of Section 2(c)(xi) of the 1988 Act. The High Court although has accepted the contention of the learned counsel for the respondent on the said premise but it needs to be examined in the context in which the term "university" has been referred to under Section 2(c)(xi) of the 1988 Act.

... ..

67. It cannot be lost sight of that the 1988 Act, 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 1988 Act which repeals and replaces the 1947 Act contains a definition of "public servant" with wide spectrum in clause (c) of Section 2 of the 1988 Act, 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 give 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.

68. By introduction of Section 2(c)(xi) of the 1988 Act, any person or member of any governing body with whatever designation called of any university has been included in

the definition of "public servant" and any university includes all universities regardless of the fact whether it has been established under the statute or declared deemed to be university under Section 3 of the UGC Act. It is true that the distinction has been pointed out by Parliament under the provisions of the UGC Act for consideration and determination of standards of education in universities, but in my view, no distinction could be carved out between the university and deemed to be university so far it relates to the term "public servant" as defined under Section 2(c)(xi) of the 1988 Act.

69. In construing the definition of "public servant" in clause (c) of Section 2 of the 1988 Act, 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 sub-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 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 the 1988 Act."

(Emphasis supplied)

The afore-quoted judgment of a Bench of three Judges, further amplifies what was earlier held. It is further germane to notice a judgment of the Coordinate Bench of

this Court in the case of ***Dr. H. NARAYAN v. STATE OF KARNATAKA***⁴, wherein the very point was urged and it is turned down whereby, the registration of a crime and the charge sheet filed was called in question by an employee of the Mother Diary, a unit of KMF. The coordinate Bench holds as follows:

"2. Petitioner was the Director of Mother Diary, Yelahanka, Bangalore. The Mother Diary is a unit of Karnataka Co-operative Milk Producers Federation Ltd, a society registered under the provisions of the Karnataka Co-operative Society Act. According to the respondents petitioner is a public servant and had amassed wealth of Rs.14,14,087.76 disproportionate to his known source of income. After investigation the respondents filed charge sheet for the offences punishable under Section 13(1)(e) and 13(2) of Prevention of Corruption Act in C.C. No. 39/2005 on the file of Special Judge, Bangalore Urban District, Bangalore city. During the pendency of the proceedings before the Special Court, the petitioner filed an application under Section 227 of Cr.P.C. for discharge mainly on the ground that he is not a public servant as defined under the provisions of the P.C. Act, the sanction to prosecute the petitioner as not valid and there is no material on record to frame a charge. Respondents filed objections interalia contending that the application filed by the petitioner is not maintainable, the cooperative society is an

⁴ 2013 SCC OnLine Kar.5448

authority, petitioner in an employee of cooperative society and as such he is a public servant. The investigating material prima-facie establishes the charge against the petitioner. On the basis of the rival contentions the special court framed the following points for its consideration:

- I) Whether the accused is a public servant?*
- II) Whether the sanction for prosecution of the accused is proper and valid?*
- III) Whether the material on record is sufficient to frame charge against the accused?*
- IV) What order?*

3. After heading arguments and on appreciation of material on record, the special court parsed the impugned order holding that the petitioner is a public servant, sanction is valid, there are material on record to frame charge and consequently dismissed the application filed by the petitioner. Hence this revision petition.

4. Sri S.K. Venkau Reddy, learned senior counsel for the petitioner contends that the employer of the petitioner is an establishment and is not receiving any financial aid or assistance from the Government. The employer of the petitioner is an indepedem body and the Government has no control over it. In the evidence of PW.1 no documents are produced to establish that Government has extended any

financial assistance nor exercised any control over the establishment of the petitioner. The special court without appreciating the grounds urged by the petitioner commuted an error in passing the impugned order and as such the same is liable to be set-aside.

5. *Per contra, Smt. T.M. Gayalhari, learned counsel for the respondent supports the impugned order passed by the Special Court. It is contended that the employer of the petitioner is an authority which falls under Section 2 of the PC Act. The Special court by following the law bid down by the Apex Court rightly passed the impugned order.*

6. *Heard arguments on both the side and perused the entire petition papers.*

7. *Section 2(e)(iii) of the P.C. Act reads as under:*

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)

8. Keeping the above definition in mind, it is necessary to examine the fact situation in the present case. It is not in dispute that Mother Dairy is a unit of Karnataka Milk

Producers Federation Limited, a cooperative society registered under the provisions of the Karnataka Cooperative Societies Act. Clause 20.1, 20.2 and 26.8(a) specifies that the Government has control over it. Therefore, any person working in a cooperative society is a public servant. Learned counsel for the petitioner relying on a decision of the supreme court in State of Maharashtra v. Laljit Rajshi Shah, AIR 2000 SC 937 contend that a public servant under the provisions of Maharashtra Co-operative Societies Act is not a public servant under the provisions of the Indian Penal Code and therefore the petitioner is not a public servant for the purpose of provisions of P.C. Act. I decline to accept this contention of learned counsel for the petitioner. The public servant as enumerated under the provisions of IPC is different from the public servant as defined under the provisions of the P.C. Act. The word 'public servant' in P.C. Act is having a wider meaning. On the other hand it is very narrow in the provisions of the IPC. Therefore, the decision relied on by the learned counsel for the petitioner has no application to the facts on hand.

For the reasons stated above, the petition is hereby dismissed."

(Emphasis supplied)

It now becomes germane to refer to the judgment of the coordinate Bench on which reliance is placed by the learned counsel appearing for the ACB in the case of

G.KRISHNE GOWDA (*supra*). The learned Judge of this Court (Hon'ble Sri.Justice Vishwajith Shetty) in his judgment rendered with erudition considers the entire spectrum of the Act and follows the judgment of the Apex Court in the case of **MANUSUKHBHAI KANJIBHAI SHAH** (*supra*) and holds that the petitioner being an employee of 'Nirmithi Kendra', which undertakes civil construction for the Government and has been receiving funds from the State and the Central Governments, he is to be termed as a public servant under the Act, more so, in the light of the fact that he was performing public duty. I am in respectful agreement with the reasons rendered by the coordinate Bench in the case of **KRISHNEGOWDA** (*supra*). The present case on hand is an amplification of the phrase '*public servant*' qua the public duty that one performs.

14. Insofar as the judgments relied on by the learned senior counsel for the petitioner in the case of **KMF & DISTRICT MILK UNIONS RETIRED EMPLOYEES KSHEMABHIVRIDHI VEDIKE AND ANOTHER v. STATE**

OF KARNATAKA AND OTHERS – W.P.No.11224 of 2016 decided on 9th March, 2020, wherein the coordinate Bench of this Court holds that the employees of KMF would not be entitled to the benefits on par with the government or civil servants. This would become distinguishable on facts of the case at hand without much ado. What fell for interpretation before the coordinate Bench was not the provision under the Act, but the claim on parity and an argument of it being violative of Article 14 of the Constitution of India. A Full Bench of this Court in the case of **K.V.PANDURANGA RAO v KARNATAKA DAIRY DEVELOPMENT CORPORATION – 1993 SCC OnLine Kar.243**, has held that a writ petition would be maintainable before the constitutional Court challenging his or her order of dismissal as KMF is a State within the meaning of Article 12 of the Constitution of India. While saying so, the Full Bench observes that the functions performed by the Government earlier to the creation of the Federation were public obligations of the State, and therefore, the Federation was an agent or instrumentality

of the State within the meaning of Article 12 of the Constitution of India. Therefore, the submission of the learned senior counsel for the petitioner that an employee of the federation *i.e.*, KMF would not come within the ambit of the phrase '*public servant*' under the Act, is rendered unacceptable.

15. What can be gathered from the source information report *albeit prima facie* is that, the petitioner has amassed wealth beyond the known source of income. The source information report sketches graphic details about such acquisitions by the petitioner. Therefore, it is a case where further proceedings are necessary for the issue to be taken to its logical end.

16. It is beyond any cavil of doubt that corruption has percolated to every nook and corner of public life in the country and has become an issue in all walks of life posing a grave danger to the concept of constitutional governance, corruption emerges in various hues and forms

and it is therefore, unfathomable. Reference being made to a paragraph of the judgment of the Apex Court in the case of **Mansukhbhai Kanjibhai Shah** (*supra*) in the circumstances is apposite. The Apex Court observes as follows:

"60. Zero tolerance towards corruption should be the top-notch priority for ensuring system based and policy driven, transparent and responsive governance. Corruption cannot be annihilated but strategically be dwindled by reducing monopoly and enabling transparency in decision-making. However, fortification of social and moral fabric must be an integral component of long-term policy for nation building to accomplish corruption free society."

(Emphasis supplied)

The observation of the Apex Court is germane to this case as well.

17. For all the aforesaid reasons, I, therefore, hold that the petitioner being a General Manager of Nandini Milk Products, which is a unit of the Federation *i.e.*, KMF undoubtedly performs public duty and the Government

obligations of such public duty was transferred to the Federation, when the Federation was created and therefore, the inescapable conclusion would be that the petitioner would be a public servant within the meaning of Section 2(c) of the Act. If the petitioner is a public servant under the Act, the registration of crime against him for offence punishable under Section 13(1)(b) r/w 13(2) of the Act, cannot be found fault with as it cannot be said, that it is, de hors jurisdiction. No other contention is urged in the case at hand. The solitary contention urged, for the aforesaid reasons, deserves to be repelled and is therefore rejected.

18. In the result, the writ petition lacks merit and is accordingly dismissed.

**Sd/-
JUDGE**

nvj