

Naresh Kumar Madan vs State Of Madhya Pradesh on 10 April, 2007

Equivalent citations: AIR 2008 SUPREME COURT 385, 2007 (4) SCC 766, 2007 AIR SCW 7099, 2007 (2) SCC(CRI) 404, (2007) 2 JCC 1207 (SC), (2007) 3 JCR 146 (SC), 2007 (2) JCC 1207, 2007 (5) SCALE 510, (2007) 54 ALLINDCAS 87 (SC), (2007) 2 CURCRIR 228, (2007) 2 ALLCRIR 2290, (2007) 2 EFR 565, (2007) 2 MAD LJ(CRI) 835, (2007) 3 RAJ LW 2184, (2007) 2 RECCRIR 582, (2007) 5 SCALE 510, (2007) 58 ALLCRIC 552, (2007) 2 CRIMES 260, 2007 CHANDLR(CIV&CRI) 261, (2007) 2 KER LT 539, (2007) 37 OCR 658, (2007) 3 SUPREME 766, 2007 (3) ANDHLT(CRI) 146 SC

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Bench: S.B. Sinha, Markandey Katju

CASE NO. :

Appeal (crl.) 519 of 2007

PETITIONER:

Naresh Kumar Madan

RESPONDENT:

State of Madhya Pradesh

DATE OF JUDGMENT: 10/04/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 519 OF 2007 [Arising out of S.L.P. (Crl.) No. 4529 of 2006] S.B. SINHA, J :

Leave granted.

Appellant is a Civil Engineer. He is employed in the Madhya Pradesh Electricity Board constituted in terms of Section 5 of the Electricity (Supply) Act, 1948 (for short, 'the 1948 Act'). It is a body corporate and can sue and be sued in its own name under Section 12 thereof.

He allegedly took illegal gratification from the complainant for the purpose of grant of an electrical connection. A trap was laid and Appellant was allegedly caught red

handed with a sum of Rs.1,000/-, which was accepted by him by way of illegal gratification from the complainant. A charge-sheet was filed against him under Section 7 read with Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (for short 'the 1988 Act'). An application was filed by him contending that he being not a public servant, his prosecution under the 1988 Act was not maintainable. The learned Trial Judge rejected the said contention. A Revision Application was filed by the appellant thereagainst before the High Court, which was dismissed by the learned Single Judge of the High Court by reason of the impugned judgment dated 02.08.2006.

Before the courts below as also before us, the contention of Appellant has been that 'public servant' having been defined in Section 81 of the 1948 Act, the same does not satisfy the requirements of the definition as contained in Section 21 of the Indian Penal Code. Strong reliance, in this behalf, has been placed on Bimal Kumar Gupta v. Special Police Establishment Lokayukt [2001 (1) MPHT 330 : (2001) 3 J LJ 2], wherein it has been held that employees of the Madhya Pradesh State Electricity Board are not public servants.

Different statutes may use the same term for different purposes. A term or a word may be interpreted in the statute itself for fulfilling the purport and object mentioned therein whereas in another statute it may be defined differently.

Interpretation of a term in one statute, however, cannot be done with reference to its definition contained in another. [See Raymond Ltd. v. State of Chhattisgarh and Others (2007) 3 SCALE 341] Keeping in view the aforementioned legal proposition, it may be necessary to construe the definition of the term 'public servant' occurring in the relevant statutes.

Section 2(1) (c) of the 1988 Act defines 'public servant' in the following terms :

"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; xxx xxx xxx

(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);"

xxx xxx xxx 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."

Section 21 of the Indian Penal Code defines 'public servant' to mean :

"The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:-

xxx xxx xxx Twelfth.--Every person--

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

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)."

Section 81 of the 1948 Act provides that members, officers and servants of the Board to be public servant, stating :

"81. Members, officers and servants of the Board to be public servants.-All members and officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)."

The object and purport of the provisions of the 1948 Act is different from the 1988 Act. It, as noticed hereinbefore, provides for constitution and composition of such Electricity Board. Each State is indeed enjoined with a duty to constitute a Board. [See Madhya Pradesh Electricity Board v. Union of India and Others [2006 (9) SCALE 194].

Section 12 of the 1948 Act provides for incorporation of Board stating :

"Incorporation of Board.-The Board shall be a body corporate by the name notified under sub-section (1) of section 5, having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and shall by the said name sue and be sued."

Section 15 of the 1948 Act empowers the Board to appoint a Secretary and such other officers and employees as may be required to enable it to carry out its functions under the said Act. Appointment of a Secretary of the Board is subject to the approval of the State Government. Section 65 of the 1948 Act provides for power of the Board to borrow funds for the purposes mentioned therein wherefor however, previous sanction of the State Government would be required to be obtained. Section 66 thereof provides for furnishing of guarantee in respect of such loan advanced by the State

Government. Section 78 of the 1948 Act empowers the State Government to make rules for the purposes mentioned therein. Section 78A empowers the State Government to issue directions upon the Board in the discharge of its functions. Such directions are binding upon the Board. State, therefore, exercises a deep and pervasive control over the affairs of the Board.

The officers of the State Electricity Board are required to carry out public functions. They are public authorities. Their action in one way or the other may entail civil or evil consequences to the consumers of electrical energy. They may prosecute a person. They are empowered to enter into the house of the Board's consumers. It is only for proper and effective exercise of those powers, the statute provides that they would be public servants, wherefor a legal fiction has been created in favour of those employees, when acting or purported to act in pursuance of any of the provisions of the Act within the meaning of Section 21 of the Indian Penal Code. Indian Penal Code denotes various persons to be public servants. It is, however, not exhaustive. A person may be a public servant in terms of another statute. However, we may notice that a person who, inter alia, is in the service or pay of the Government established by or under a Central, Provincial or State Act, would also come within the purview thereof. Section 2(1)(c) of the 1988 Act also brings within its embrace a person in the service or pay of a corporation established by or under a Central Act.

We, therefore, fail to see any reason as to why the appellant would not answer the description of public servant within the provisions of the said Act. The decision of the learned Single Judge of the Madhya Pradesh High Court in Bimal Kumar Gupta (supra), in our opinion, does not lay down the correct law. Referring to Section 81 of the 1948 Act, it held :

"14. Considering the aforesaid provisions of law, it emerged that for the purpose of the Act of 1947, a "public servant" is a person who is covered under the definition of 'public servant' as given under Section 21 of the IPC. On careful perusal of the definition of 'public servant' as given in Section 21 of the IPC, it is found that the employees of the Electricity Board are not covered under any of the clauses of the said Section. However, by virtue of Section 81 of the Electricity Supply Act, 1948, all the members, officers and employees of the Board when acting or purporting to act in pursuance of any of the provisions of the Act are deemed to be public servant under Section 21 of the IPC. As such, it can be inferred that by virtue of Section 81 of the Electricity Supply Act, the Board employees when acting in pursuance of the provisions of the Act are considered 'deemed public servants' under Section 21 of the IPC. But as held by the Apex Court in case of State of Maharashtra Vs. Laljit Rajashi Shah (supra) on the ground of 'deemed provision' a person covered under the definition of Section 21 of the IPC cannot be considered 'public servant' for the purpose of prosecution under the provisions of the Prevention of Corruptions Act, 1947. In the aforesaid case, in view of the analogous provision of 'deemed to be public servant' for certain employees of the Cooperative Societies under Maharashtra Cooperative Societies Act, were not considered as public servant for the purpose of the Act of 1947 "

With respect we do not agree with the aforementioned inference of the learned Judge.

The Prevention of Corruption Act, 1947 was repealed and enacted in the year 1988. The definition of 'public servant', as contained in Section 2(c) thereof, is a broad based one. Reliance was placed by the learned Judge in the case of State of Maharashtra v. Laljit Rajashi Shah and Others [AIR 2000 SC 937]. Therein the court was dealing with a case of a member of a cooperative society. It was not dealing with the case of an employee of a statutory corporation. The said decision, therefore, has no application to the facts of the present case.

Definition of 'public servant' will have to be construed having regard to the provisions of the 1988 Act. By giving effect to the definition of 'public servant' in the 1988 Act, the legal fiction is not being extended beyond the purpose for which it was created or beyond the language of the section in which it was created.

For the reasons aforementioned, we find no merits in this appeal, which is accordingly dismissed.