
(2014) 12 OHC CK 0054

In the Orissa High Court

Case No : Writ Petition (Crl) No. 122 of 2013

Chittaranjan Choudhury

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Orissa Special Courts Act, 2006 — Section 13(1), 2(d), 3, 5, 5(1) — Penal Code, 1860 (IPC) - Section 21 — Prevention of Corruption Act, 1988 - Section 13, 13(1), 13(1)(e), 13(2), 2

Citation : (2015) 119 CLT 992 : (2015) 1 ILR 240

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J.

Bench : Division Bench

Advocate : A.K. Dei, for the Appellant; Srimanta Das, Standing Council (Vigilance), for the Respondent

Final Decision : Dismissed

Judgement

P. Mohanty, J. The Petitioner in this Writ Petition seeks to quash the notification dated 25.04.2011 of the Home (Special Section) Department, which was published on 02.05.2011 in the Orissa Extraordinary Gazette under Annexure-1. The case of the Petitioner, as averred in the Writ Petition, is that he entered into government service as Junior Engineer on 13.09.1965 in Irrigation Department. He was promoted to the rank of Asst. Engineer in 1976, & then to the rank of Asst. Executive Engineer in 1993. On 06.09.1995, he was posted as Executive Engineer, Minor Irrigation Division- II, Berhampur. While continuing in the said post his house was searched on 19.04.1996 by the Vigilance Department. During search, it is alleged, the Petitioner being a public servant was found in possession of assets disproportionate to his known sources of income. As a result, alleging commission of offence under Section 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988 (for short "the P.C. Act") the Vigilance Department on 06.05.1996 lodged an FIR, which was registered as Berhampur Vigilance P.S. Case No. 25 of 1996. On conclusion of the investigation, the Vigilance Department placed charge sheet against the Petitioner & the Learned

Special Judge (Vigilance), Berhampur took cognizance & framed charge under Section 13(2) read with Section 13(1)(e) of the P.C. Act. As the matter stood thus, the Government of Odisha in the Home Department in exercise of the powers conferred by sub-section (1) of Section 5 of Special Courts Act, 2006 (for short "the Act") published Annexure-1 declaring that the Petitioner should be tried by the Special Court established under Sub-Section (1) of Section 3 of the Act. As a consequence, the case of the Petitioner stood transferred to the Court of the Learned Special Judge, Special Court, Bhubaneswar & renumbered as T.R. Case No. 8 of 2012. During pendency of the said T.R. case, the State filed an application under Section 13(1) of the Act before the Authorized Officer, Special Court, Bhubaneswar for confiscation of the assets of the Petitioner, his wife & son. The Authorized Officer registered the said application as Confiscation Case No. 17 of 2012 & issued notice to show cause under Annexure-3 series. Therefore, the Petitioner has filed this writ application to quash the declaration/notification under Annexure-1 & its consequential proceedings as unconstitutional.

2. Learned Counsel for the Petitioner submitted that during the period from 13.09.1965 to 19.04.1996, which had been taken by the prosecution as the check period or period of offence, the Petitioner was not holding any "high public office" or any post belonging to Group-A service in the State of Odisha, as defined in Rule 2(e) of the Orissa Special Courts Rules, 2007 (for short "the Rules"). During the aforesaid check period all the civil posts under the Government of Odisha were classified into (a) State Civil Posts, Class-I, (b) State Civil Posts, Class-II & (c) State Civil Posts, Class-III under the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 & such classification was in existence till 2000, when by virtue of amendment to the said Rules such classification was converted to (i) State Civil Services Group-A, (ii) State Civil Services Group-B & (iii) State Civil Services Group-C. So, according to him, since the period of offence ended on 19.04.1996 & at the relevant time the Petitioner was not holding any Group-A post under the State Government & as such he was not holding the "high public office", for which the Petitioner could not be brought within the ambit of the Act. Furthermore, the classification of posts into Group-A, Group-B, Group-C & Group-D, as made either by resolution No. 21317-SC-6-43/95- Gen. dated 22.09.1995 or by resolution No. 17655-SC-6-15/99- Gen. dated 07.06.1999 (Annexure-4) of the Government of Odisha in General Administration Department could not be taken into consideration, as no-gazette notification was made by the concerned administrative departments amending the relevant Acts and/or Rules nor was the post held by the Petitioner identified to be belonging to Group-A category. Secondly, it was contended that in order to attract Section 5(1) of the Act, a person should have committed the offences while holding "high public office". According to the Counsel for the Petitioner, the Petitioner never held "high public office" from 13.09.1965 to 19.04.1996, therefore, the declaration under Section 5(1) was bad in law. Thirdly, he contended that the Act is void for being retrospective in nature vis-à-vis Section 6 of the Act. Therefore, the impugned notification/declaration under Annexure-1

as well as consequent initiation of confiscation proceeding against the Petitioner was bad in law & liable to be set aside.

3. Mr. Das, Learned Standing Counsel for the Vigilance Department submitted that Orissa Special Courts Rules, 2007 defined person holding "high public office" under Rule 2(e) which included a public servant falling within the meaning of Clause-c of Section-2 of the P.C. Act or under Section 21 of the Indian Penal Code, 1860 & belonging to Group-A service of the Central or the State Government or officers of equivalent rank in any organization specified in the explanation below Clause-B of Section-2 of the said Act. The statement of the Petitioner, that during the check period he was not holding "high public office" as per the Act, was misconceived for the following reasons. The government resolution No. 17655-SC-6-15/99-Gen. dated 07.06.1999 had classified all the posts in the government offices into four groups wherein Group-A was classified as the post in the pay scale, the maximum of which was not less than Rs. 13,500/-, as evident from Annexure-B attached to the counter affidavit. Annexure-A to the counter affidavit, which was the communication made from the office of the Superintending Engineer, Southern Irrigation Circle, Berhampur, revealed that as per ORSP Rules, 1996 the scale of pay of Executive Engineer with effect from 01.01.1996 was Rs. 9350-325-14550/-. The Petitioner admitted that he was promoted to the post of Executive Engineer on 06.09.1995 & the check period was in between 13.09.1965 & 19.04.1996. The Petitioner was allowed the benefit of pay scale of Rs. 9350-14550/- w.e.f. 01.01.1996. He also relied on the Orissa Civil Services (Classification, Control & Appeal) Rules. 1962 to contend that Class-I & Group-A posts are one & the same. Thus, he submitted that during the check period, the Petitioner had held Group-A post. So, during the check period the Petitioner had held "high public office". Further, he submitted that a plain reading of Section 5(1) of the Act made it clear that it was nowhere the requirement of law that in order to attract the provision of Section 5(1), a high public official should have committed the offence, while holding the "high public office" or a Group-A post. It would be enough if the person had committed the offence & held "high public office". Thirdly, Mr. Das submitted that the issue of retrospective application of the Act did not arise as because the Petitioner was facing trial before the Learned Special Judge, Vigilance & during pendency of the trial the Act came into force. So, all the cases including the case of the Petitioner pending in the Special Judge for commission of selfsame offence got transferred to the Special Courts as per Section 6(2) of the Act. So far as the offence & punishment were concerned, those were still under the same P.C. Act. But the Act had adopted a new procedure to conclude the proceedings expeditiously & to confiscate the property illegally acquired by means of the above offence. As such, the impugned notification/declaration (Annexure 1) issued by the State Government so also the initiation of confiscation proceeding & issuance of show cause notices held good & there was no arbitrariness & illegality in the said notification & the order.

Therefore, the writ application was liable to be dismissed.

4. The questions that now fall for consideration, in the face of the above rival submissions urged on behalf of the parties, are that whether during the check period the Petitioner held a Group-A post & as such can the Petitioner be treated to be holding "high public office"? Secondly, whether in order to attract Section 5(1), a holder of "high public office" is required to hold "high public office" for the entire check period? Lastly, whether the Act is void because of retrospective operation of Section 6 of the Act?

5. In order to understand the nature of controversy, let us have a look at relevant provisions of the Act & Rules.

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

(d) "offence" means an offence of criminal misconduct within the meaning of clause (e) of Sub-Section (1) of Section 13 of the Prevention of Corruption Act, 1988;"

"Sec. 5. Declaration of cases to be dealt with under this Act-(1) If the State Government is of the opinion that there is prima-facie evidence of the commission of an offence alleged to have been committed by a person, who held high public or political office in the State of Orissa, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

(2) Such declaration shall not be called in question in any Court."

"Sec. 6. Effect of declaration-(1) On such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.

(2) Where any declaration made under Section 5 relates to an offence in respect of which a prosecution has already been instituted & the proceedings in relation thereto are pending in a Court other than Special Court, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act.""

"Rule-2. Definitions-(1) In these rules unless the context otherwise requires:

(e) "Person holding high public office" includes a public servant falling within the meaning of clause-c of Section 2 of the Prevention of Corruption Act, 1988 or under Section 21 of the Indian Penal Code, 1860 & belonging to Group-A service of the Central or State Government or officers of equivalent rank in any organization specified in the explanation below clause-B of Section 2 of the said Act who was serving under or in connection with the affairs of the State Government."

A perusal of Section 2(d) read with Section 5 of the Act makes it clear that as per the said Sections, State Government can make a declaration that the case of a

high public officer should be dealt under the Act, where it is of the opinion that there is prima facie evidence of alleged commission of an offence by the said officer under Section 13(1)(e) of P.C. Act, 1988. As per Rule 2(e) of the Rules, it emanates that a public servant can be said to be holding "high public office" if he falls within the meaning of Clause (c) of Section-2 of the P.C. Act, 1988 or under Section 21 of the Indian Penal Code, 1860 & belongs to Group-A service of the Central or the State Government or officers of equivalent rank in any organization specified in the explanation below Clause (b) of Section-2 of the said Act. Section 6(2) of the Act deals with transfer of pending proceedings, where prosecution has already been instituted, to Special Court under the Act.

6. Admitted case of the Petitioner is that he entered into government service as Junior Engineer on 13.09.1965 in Irrigation Department. He was promoted to the rank of Asst. Engineer in 1976, then to the rank of Asst. Executive Engineer in 1993. As per Orissa Service of Engineers Rules, 1941, the post of Assistant Executive Engineer is a Class-I post. Further, on 06.09.1995, he was promoted as Executive Engineer, Minor Irrigation Division-II, Berhampur. According to the Opp. Parties, the check period or period of offence is from 13.09.1965 to 19.04.1996. Hence, there is no dispute that the present Petitioner was a public servant during the check period & has held a Class-I post w.e.f. 1993.

7. Now, it is to be seen whether during the check period, i.e., from 13.09.1965 to 19.04.1996 the post, which the Petitioner has held, is a Group-A post. In this context, it is worthwhile to glance through Rule-8A of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 (for short "OCS (CCA) Rules, 1962").

"8-A. Reference to State Civil Services & State Civil Posts - All references to State Civil Services/State Civil Posts, Class-I, Class-II, Class-III & Class-IV in all Rules, Orders, Schedules, Notifications, Regulations, Instructions in force immediately before the commencement of these rules shall be construed as references to State Civil Services/State Civil Posts, Group-A, Group-B, Group-C & Group-D as the case may be & any reference to "class or classes" therein in this context shall be construed as reference to "Group or Groups" as the case may be."

A reading of Rule-8A of the OCS (CCA) Rules, 1962 makes it clear that all reference to State Civil Services/State Civil Posts, Class-I in all Rules, Order, Schedule, Notification, Regulation & Instruction in force immediately before commencement of these Rules shall be construed as reference to State Civil Service/State Civil Post Group-A. Thus, it is clear that since w.e.f. 1993 the Petitioner was holding a Class-I post as indicated earlier, taking help of clarification under Rule-8A of Orissa Civil Services (Classification, Control & Appeal) Rules, 1962, it can safely be said that the Petitioner held a Group-A post w.e.f. 1993. Thus, in our view, during the check period, the Petitioner has held a Group-A post.

8. Now, coming to the question as to whether in order to attract the provision of Section 5(1) of the Act, is it required that the holder of high public office should have held the said post for the entire check period? Our answer is an emphatic No. It may be noted that the Act was enacted in the following background as stated in the beginning of the Act itself.

"AN ACT TO PROVIDE FOR THE CONSTITUTION OF SPECIAL COURTS FOR THE SPEEDY TRIAL OF CERTAIN CLASS OF OFFENCES & FOR CONFISCATION OF THE PROPERTIES INVOLVED.

WHEREAS corruption is perceived to be amongst the persons holding high political & public offices in the State of Orissa;

& WHEREAS investigations conducted by the agencies of the Government disclose prima-facie evidence, confirming existence of such corruptions;

& WHEREAS the Government have reasons to believe that large number of persons, who had held or are holding high political & public offices have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;

& WHEREAS it is constitutional, legal & moral obligation of the State to prosecute persons involved in such corrupt practices;

& WHEREAS the existing courts of Special Judges cannot reasonably be expected to bring the trials, arising out of those prosecutions, to a speedy termination & it is imperative for the efficient functioning of a parliamentary democracy & the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch;

& WHEREAS it is necessary for the said purpose to establish Special Courts to be presided over by the persons who are or have been Sessions Judges & it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is eliminated without interfering with the right to a fair trial."

With such backdrop & having regard to the plain language of Section 5(1) of the Act, it cannot be said that in order to attract the said provision, a holder of high public office should have held the said office for the entire check period. The language of Section 5(1) cannot be read to mean that the alleged offence must have been committed by the holder of "high public office" only while holding the said "high public office". For satisfying the requirement of Section 5(1) of the Act, it would be sufficient if the alleged offence under Section 13(1)(e) of the P.C. Act has been committed by a person & the said person has held "high public office". It is not the requirement of Section 5(1) that throughout the entire period of commission of offence, the person should have held "high public office", if such a restricted interpretation is given, the same would defeat the very purpose & object of the Act, which is to bring people occupying high political & public offices to justice.

9. So far as the submission of the Petitioner that the Act is void for being retrospective in nature, we make it clear that we will ignore such submission since there is no prayer in the Writ Petition to declare the Act void. Section 6 of the Act does not give retrospective operation to the Act. Rather, while Section 6(1) envisages that once a declaration is made under Section 5, any new prosecution shall have to be instituted in a Special Court constituted under the Act. Section 6(2) enables transfer of old pending proceedings to Special Courts, as has been done in the present case, consequent upon declaration made under Section 5 of the Act.

10. In the above backdrop, this Court comes to a conclusion that during the check period the Petitioner has held Group-A post & for the purpose of Section 5 of the Act, it is nowhere requirement of law that for the entire check period, that person should have held high public office. In other words, it is not required that in order to attract the provisions of Section 5(1) the person must have held "high public office" throughout the entire check period. It would be sufficient to attract the provisions of Section 5(1), if the person has committed the offence & has also held "high public office". Thus, the case of the Petitioner clearly comes within the ambit of the Act. In such background, the impugned notification under Annexure-1 issued by the State Government in exercise of the powers conferred by Sub-Section (1) of Section 5 of the Act is legal & valid. The Writ Petition being devoid of merit is dismissed without costs.