
(2010) 10 MP CK 0054
In the Madhya Pradesh High Court
Case No : W.A. No. 560 of 2008

Harish Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 14
Madhya Pradesh Gram Tatha Nagar Raksha Samiti Adhiniyam, 1999 — Section 13, 14, 15(1), 19, 3
Madhya Pradesh Gram Tatha Nagar Raksha Samiti Rules, 2003 — Rule 4, 9
Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 — Section 2(g)
Penal Code, 1860 (IPC) — Section 21
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 2

Citation : (2011) CriLJ 1588 : (2011) 2 MPHT 350 : (2011) 1 MPJR 233 : (2011) 1 MPLJ 556

Hon'ble Judges : Brij Kishore Dubey, J; Abhay M. Naik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

This writ appeal has been preferred against an order dated 17-9-2008 passed in W.P. No. 4308/08 by the learned Single Judge of this Court holding thereby that Lokayukta has jurisdiction to enquire the cases against the Petitioner/Appellant under the provisions of Prevention of Corruption Act, 1988.

Short facts involved herein are that Appellant is working as Tahsil Coordinator (Tahsil Sanyojak) in Gram Raksha Samiti, Gwalior. On receipt of complaint against him, Lokayukta set up a preliminary enquiry at Case No. 4/2008 on 9-7-2008. An FIR at Crime No. 23/2008 has been registered against the Petitioner/Appellant under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988. W.P. No. 4308/08 was submitted on the ground that the Petitioner is not a public servant and this being so, Lokayukta has no jurisdiction

to hold enquiry against him. Accordingly, enquiry proceedings and consequent FIR stand vitiated.

Learned Single Judge held that the Petitioner is a public servant as defined in M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 and accordingly Lokayukt has jurisdiction to enquire cases relating to Prevention of Corruption Act against the Petitioner. Consequently, the Writ Petition was dismissed on 17-9-2008 by the impugned order at admission stage, hence, the present appeal.

Ms. Deeksha Mishra, Advocate, for Appellant, Shri R. P. Rathi, Government Advocate, for Respondents No. 1 and 5/State, Shri J. D. Suryavanshi, Special Public Prosecutor, for Respondents No. 2 to 4 and Shri Prashant Sharma, Advocate for intervenor made their respective submissions.

It is contended by the learned Counsel for the Appellant that the Petitioner is member of Gram Raksha Samiti which is a voluntary organization. He does not perform duty either under M.P. Gram Tatha Nagar Raksha Samiti Adhiniyam, 1999 or M.P. Gram Tatha Nagar Raksha Samiti Rules, 2003 (for brevity Adhiniyam, 1999 and Rules 2003). Moreover, in view of the decision of M.P. State Administrative Tribunal dated 3-9-1999 in T.A. No. 2754/88, the Petitioner/Appellant cannot be treated as public servant According to learned Counsel for the Appellant, Gram Raksha Samiti (hereinafter referred to VDS) was created under the executive instructions and there are no statutory rules governing the service conditions. Executive instructions were also not issued in exercise of statutory powers. This being so, the Petitioner is not and cannot be treated as public servant. To buttress the submission, reliance has been placed on the decision of the Apex Court in the cases of S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, , Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., , R.S. Nayak Vs. A.R. Antulay, The State of Gujarat Vs. Manshankar Prabhashankar Dwivedi and Vallabhdas Gordhandas Thakkar, and Institution of Andhra Pradesh lokayukta/UPA-Lokayukta, A.P. Vs. T. Rama Subba Reddy and Another, .

Per contra, learned Counsel for the Respondents submitted that the Petitioner is public servant within the ambit of definition contained in M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 and no interference is warranted in the impugned order.

Considered the submissions and perused the record.

Concept of Gram Raksha Samiti was introduced in the dacoity affected districts of the State of M.P. in the year 1956. Later on, in the year 1996, the State Government has by resolution constituted such Samitis in the rest of the State. Thereafter, the State Government decided with the advice of Police Reform Committee to enact a legislation to effectively utilize the concept of Gram Raksha Samiti for a more efficient police. Consequently, Gram Raksha Samiti Adhiniyam, 1999 was enforced w.e.f. 4-1-2000 with a preamble to provide for the constitution of Gram Tatha Nagar Raksha Samitis for the maintenance of peace

and order in the State of Madhya Pradesh and their powers and duties. It has been enacted for the reason that the regular police require some special arrangement to obtain relevant information to fulfil the police task of prevention and detection of crime and maintenance of public order. At the same time, the growing awareness of the citizens necessitates the participation of the community in the preservation of peace and tranquility to facilitate the development process. Act was also enacted with an object to increase the involvement of the community in the preservation of peace and public order in the State. This could have been achieved by creating formal structures in the form of Raksha Samiti in the village and localities/wards of the town.

Petitioner was appointed by the State Government vide order dated 30-11-1984 on the post of Tahsil Sanyojak in VDS, Gwalior by virtue of order passed by the Police Deputy Inspector General (Admn.) Police Headquarters, Bhopal which was notified vide gazette order as revealed in Annexure A-1. He was made permanent vide Annexure A-3 by the DIG, Chambal Range, Gwalior vide order dated 19-7-1990. It is an admitted position that salary of the Petitioner is being paid from salary head No. 2055 of Police Department as revealed in Annexure A-4. It is contended on behalf of learned Counsel for Appellant that members of VDS claimed that their functions and duties were akin to police officers therefore they are part of Police Department. They prayed for direction that VDS officials should be fully amalgamated with the Police Department because they all practically perform their function as that of police officers. The State Administrative Tribunal vide its order dated 3-9-1991 passed in T.A. No. 2754/88 held that VDS is a voluntary organization. Its employees are not police officers: Copy of the order is on record as Annexure P-2. In the light of it, it is contended that the Petitioner is not public servant and consequently the preliminary enquiry as well as FIR lodged pursuant to it are vitiated for want of jurisdiction.

On perusal of the decision of the State Administrative Tribunal, Annexure P-2, it is clear that no question was involved in that case that whether the employees of VDS are public servants or not. Claim in the case of Shivnath Bajpayee and Ors. v. The State of M.P. and Ors. T.A. No. 2754/88 was for amalgamation of such officers with Police Department. It was repelled on the ground that such officers were not recruited as police officers. Consequently, discrimination against the employee of VDS and the employees of police department was not found in contravention of Article 14 of the Constitution of India. Definition of Public Servant did not come up before SAT for consideration. This being so, the Petitioner/Appellant does not get any assistance from the said decision rendered in Shivnath Bajpayee's case.

History of VDS and its functioning was traced out by the SAT in paragraph 2 of the impugned order which reads as under:

2. An organisation known as Village Defence Society was created in the erstwhile State of Madhya Bharat in October, 1958 to help the Government in its anti-dacoity operations. On reorganisation of Madhya Pradesh, a few additional posts

were created in the V.D.S.O. vide Govt. order dated 11-7-1958. Later, some more changes were made in the staffing pattern of this organisation. As of now there are 2 posts of District -Organisers and 37 Tehsil Organisers with some supporting staff. Admittedly, the post of District Organiser is equated with that of Dy. Superintendent of Police while that of Tehsil Organiser with that of Sub-Inspector of Police. They get the same scales of pay as the counterparts in the Police Department, and also put on badges of rank on their uniforms likewise. The Inspector General of Police is also the Head of this Organisation. Senior Police Officers are their recruiting and disciplinary authorities just as they are for the corresponding rank in the Police Department. The senior police officers supervise their work. Functionally, apart from motive also assist police in Naxalite operations and other law and order duties.

"Public Servant" has been defined in Section 2(g) of M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 which reads as follows:

2(g) "Public Servant" means person falling under any of the following categories namely:

(i) xx xx xx

(ii) xx xx xx

(iii) an officer referred to in Clause (a);

Section 2(a) reads as under:

2(a) "Officer" means a person appointed to a public service or post in connection with the affairs of the State of Madhya Pradesh.

This apart, salary to the Petitioner is admittedly disbursed from the Police funds of the State of Madhya Pradesh. Learned Government Advocate has made available the service book of the Petitioner which is maintained by the State Government itself. Perusal of the same goes to show that duties were assigned to the Petitioner from time to time by the police officials for the purpose of law and order as well as for providing assistance to police in anti-dacoity operations. Leave of different kinds is also sanctioned by the police officials. Considering it, the Petitioner/Appellant is found to have been appointed to a post in connection with the affairs of the State of Madhya Pradesh.

Definition of Public Servant as contained in M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 as well as in Indian Penal Code are not fully common. Since the term of Public Servant is already defined in M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981, the case of S. S. Dhanoa (supra) does not provide any assistance to the Appellant as it was not related to the duties of public servant contained in the said Adhiniyam, 1981.

In the case of Institution of A. P. Lokayukta/Upa-Lokayukta, A. P. (supra), an employee of A. P. State Handloom Weavers Co-operative Society Ltd. registered under the A.P. Co-operative Societies Act was not found to be a person appointed

to public service or post in connection with the affairs of State of A. P. In the case in hand, the Appellant is found to have been appointed in connection with the affairs of the State of M.P. relating to anti-dacoity operations.

In the case of Dr. S. L. Agarwal (*supra*), the Appellant was found to be an employee of Hindustan Steel Ltd. and was thus not holder of civil post.

In the case of R. S. Nayak (*supra*), it has been clearly laid down that Prevention of Corruption Act was enacted to take more effective provision for the prevention of bribery and corruption and therefore, the provision of the said Act must receive such construction at the hands of the Court as would advance the object and purpose underlying the Act and at any rate not defeat it.

FIR was lodged on 3-6-2008 with the Police that the Appellant has acquired assets disproportionate to the income from his known sources. At the relevant time, Adhiniyam 1999 and Rules, 2003 were in force. Section 3 provides for constitution of Raksha Samiti. By virtue of Section 4, a power of superintendence is vested in the State Government. Director General, Inspector General have been made head of Raksha Samiti by virtue of Section 5 of the said Adhiniyam. Section 8 lays down qualification of the members of Raksha Samiti. Enrollment of member of Raksha Samiti is made by the Superintendent who is empowered to issue a certificate of enrollment to every member of Raksha Samiti. A member is obliged to discharge such duties which are imposed on him under the said Adhiniyam, Functions and duties of members of Raksha Samiti are prescribed in Section 13. Most of them are related to affairs of the State. Training is provided to members of Raksha Samiti by virtue of Section 14. Sub-section (1) of Section 15 confers privileges and protection available under the Police Act. This apart, Section 19 of the Adhiniyam confers status of public servant on the members of the Raksha Samiti. This section is relevant and reproduced below:

19. Members of Raksha Samiti to be public servants. : The members of the Raksha Samiti acting under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (No. 45 of 1860).

Under Section 21 of Indian Penal Code, the word "Public Servant" denotes a person falling under any of the descriptions hereinafter following, namely:

First XX XX XX

Second XX XX XX

Third XX XX XX

Fourth XX XX XX

Fifth XX XX XX

Sixth XX XX XX

Seventh XX XX XX

Eighth XX XX XX

Ninth XX XX XX

Tenth XX XX XX

Eleventh XX XX XX

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)

It is amply clear from the nature of work assigned to the Petitioner/Appellant from time to time as revealed in his service book that he is performing the duty and is being remunerated by the Government.

Section 2(b) and 2(c) of the Prevention of Corruption Act, 1988 are relevant and 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; 2(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) xx xx xx

(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) xx xx xx

(v) xx xx xx

(vi) xx xx xx

(vii) xx xx xx

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

(ix) xx xx xx

(x) xx xx xx

(xi) xx xx xx

(xii) xx xx xx

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.

Rule 4 of Rules 2003 prescribed the functions of the members of Raksha Samiti as follows:

4. Functions of the members of the Raksha Samiti. : The members of the Gram Raksha Samiti shall also perform the following functions in addition to those functions as provided in Section 13 of the Adhiniyam, namely:

(a) Service of summons;

(b) to help in prevention of crime specially crime against women, children, minorities, scheduled castes and scheduled tribes and help in the measures to eradicate against the malpractices prevailing in the society; and

(c) to help in fostering the spirit of communal harmony, unity and national integration.

In Rule 9, it has clearly been mentioned that the members of Raksha Samiti called for duties are the public servants.

It has been held by the Hon"ble Supreme Court of India in the case of Naresh Kumar Madan Vs. State of Madhya Pradesh, that 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 corporation established by or under a Central, Provincial or the State Act, would ,also come within the purview thereof. Section 2(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.

In the case of M. Karunanidhi Vs. Union of India and Another, it has been held that a person may be held public servant if his salary is paid from the government fund.

At this juncture, I may also refer successfully paragraphs 51 and 52 from the judgment of the Apex Court in the case of R.S. Nayak Vs. A.R. Antulay,

51. As far as the expression "pay" is concerned, a Constitution Bench of this Court in M. Karunanidhi Vs. Union of India and Another, referred to various dictionaries and concluded that the word ordinarily means "salary, compensation, wages or any amount of money paid to the person who is described as in the pay of the payer". Serious exception was taken on behalf of the Appellant that no canon of construction would permit picking out shades of meaning of word "pay" and then read the phrase "in the pay of as synonymous with the word "pay". On

the other hand, it was asserted that the point is concluded by the observation of the Constitution Bench that "so far as the second limb of the clause, "in the pay of the Government" is concerned, that appears to be of a much wider amplitude so as to include within its ambit even a public servant who may not be a regular employee receiving salary from his master. It appears that conceivably there can be a person who may be in the pay of the other person and yet there may not be a master servant relationship between them. The Court did not ascertain the meaning ascribed to phrase "in the pay of in different dictionaries. The phrase "in the pay of would ordinarily import the element of employment or paid employment or employed and paid by the employer. In Concise Oxford Dictionary, 7th Edition at page 753, the meaning assigned to the expression "in the pay of is "in the employment of. In New Collins Concise English Dictionary at page 831, in the pay of carries one meaning as "one in paid employment". In Websters New World Dictionary, the phrase "in the pay of carries the meaning "employed and paid by". Relying on all these shades of meaning, it was urged that the, phrase "in the pay of does necessarily import the element of master-servant relationship and its absence cannot be countenanced. It was submitted even if A is paid by B a sum styled as pay unless B is servant of A, it cannot be said that B is in the pay of A. We see force in this submission. However, it is not implicit in the expression "in the pay of that there ought to exist a master-servant relationship between payer and payee. One can be in the pay of another without being in employment or service of the other. We are not inclined to accept the submission that "in the pay of must in the context imply master-servant relationship for the obvious reason that the Court has to construct the phrase "in the pay of in its setting where it is preceded by the expression "in the service of the Government and succeeded by the expression "remunerated by fees or commission for the performance of any public duty by the Government". The setting and the context are very relevant for ascertaining the true meaning of the expression. In order to avoid the charge of tautology, the phrase "in the pay of the Government" in Clause (12) (a) may comprehend a situation that the person may be in the pay of the Government without being in the employment of the Government or without there being a master-servant relationship between the person receiving the pay and the Government as payer.

It was, however, contended that the question whether a person "in the pay of the Government" is ipso facto a public servant is no more res integra and concluded by the decision of the Constitution Bench in *M. Karunanidhi Vs. Union of India and Another*, . In that case, before advertng to the dictionary meaning of the expression "pay", the Constitution Bench speaking through Fazal Ali, J. observed as under at page 282 (of SCR) : (at p. 912 of AIR):

We are of the opinion that so far as the second limb "in the pay of the Government" is concerned, that appears to be of a much wider amplitude so as to include within its ambit even public servant who may not be a regular employee receiving salary from his master.

The Court further observed that "the expression "in the pay of connotes that a person is getting salary, compensation, wages or any amount of money. This by itself, however, does not lead to the inference that a relationship of master and servant must necessarily exist in all cases where a person is paid salary". We are also of the opinion that the phrase "in the pay of the Government" does not import of necessity a master-servant relationship. It is perfectly possible to say that a person can be in the pay of the Government if he is paid in consideration of discharging an assignment entrusted to him by the Government without there necessarily being a master-servant relationship between them. It is not usual in common parlance to speak of a person being in the pay of another if he is paid for acting at the behest or according to the desire of the other without the other being his master and he the servant, that is to say without the control over the manner of doing the work which a master-servant relationship implies. It is such a category in addition to the one "in the service of the Government" that is sought to be comprehended in Clause (12) (a). In respect of the extracted observation of the Constitution Bench, there is no attempt to distinguish the decision in Karunanidhi's case and, therefore, it is not necessary to consider the decisions cited in support of the submission, that a judgment of the Supreme Court especially of the Constitution Bench cannot be distinguished lightly and is "binding on us and unless questions of fundamental importance to national life are involved, need not be reexamined by us. We must however point out that the ratio of the decision in Karunanidhi's case is not what is extracted hereinbefore but the ratio is to be found at page 290 where the Constitution Bench held the Chief Minister to be a public servant as comprehended in Clause (12)(a) of Section 21 on the finding:

1. That a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions.

That a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

That the said salary is paid to the Chief Minister or the Minister from the Government funds.

It would appear at glance that no argument was advanced and none has been examined by the Constitution Bench bearing on the interpretation of the expression "Government" in Clause (12)(a). It was assumed that salary and allowances paid to the Chief Minister are by Government. What does expression "Government" in the clause connote was not even examined. And it is on the aforementioned finding that the Chief Minister was held to be a public servant but that does not conclude the matter.

Case of Dr. Mrs. Gurjeewan Garewal v. Dr. Mrs. Sumitra Dash and Ors. AIR 2004 SC 2530 is out of place because question involved herein is quite different.

In the result we hold that the learned Single Judge has rightly held that the

Petitioner/Appellant being Tahsil Coordinator of Gram Raksha Samiti (VDS) is a public servant within the meaning of M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981, Adhiniyam, 1999 and Rules 2003 and accordingly the Lokayukta has jurisdiction to make enquiry.

Shri J. D. Suryavanshi, Special Public Prosecutor, appearing for the Lokayukta informed this Court that the enquiry has already been completed and the report has been submitted to Law and Legislative Affairs Department Bhopal, on 7-6-2010 for seeking sanction for prosecution.

Resultantly, appeal fails and is hereby dismissed. Appellant to bear his own costs as well as of Respondents. Lawyer's fee to the tune of Rs. 5,000/- (Rs. Five Thousand Only) per lawyer, if pre-certified.