
(1978) 05 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 937 of 1978

Jagjit Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-05-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 246

Penal Code, 1860 (IPC) — Section 21

Prevention of Corruption Act, 1947 — Section 2, 4, 5, 5(1), 5(2)

Citation : (1978) 2 ILR (P&H) 335

Hon'ble Judges : S.S. Sandhawalia, J; J.M. Tandon, J

Bench : Division Bench

Advocate : H.L. Sibal and Ravinder Seth, Kuldip Singh, for the Appellant; D.N. Rampal, D.A.G. for State of Punjab, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, J.—Whether the provisions of Section 5 read with Section 2 of the Prevention of Corruption Act, 1947 in so far as they apply to the public service of the State are ultra vires of the Constitution is the sole question that has been agitated in this writ petition.

2. As is evident, the issue is purely legal and it is, hence unnecessary to advert in detail to the facts. It suffices to mention that Jagjit Singh Petitioner is standing trial u/s 5(1)(d) and (e) read with Section 5(2) of the Prevention of Corruption Act before the Court of the Special Judge at Jullundur. The charges levelled against him are based on his having allegedly amassed wealth and property disproportionate to his known sources of income since 1970 onwards during his tenure as the Chairman, Marketing Committee, Jullundur, Chairman, Block Samiti, Jullundur; Managing Director, Central Co-operative Bank Ltd., Jullundur and as Sarpanch of his village Panchayat. The offices aforesaid come within the ambit of the definition of a public servant encompassed under the Act and consequently the challenge is laid to the applicability of the Central statute to the

public services of the State.

The relevant parts of the statutory provisions under challenge may first be set down as under:

Section 2. Interpretation.--For the purpose of this Act, "public servant)" means a public servant as defined in Section 21 of the Indian Penal Code.

Section 5. Criminal misconduct in discharge of official duty.--(1) A public servant is said to commit the offence of criminal misconduct:

...

(d) if he, by corrupt or illegal means or by otherwise abusing his position as Public servant, obtains for himself or for another person any valuable thing or pecuniary advantage.

...

(e) if he or any person on his behalf in possession, or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of the pecuniary resources or property disproportionate to his known sources of income.

It is plain that a reading of Section 2 aforesaid with Section 21 of the Indian Penal Code would plainly bring the members of the public service of the State within the definition of a "public servant" in the Act. The core of the argument raised by Shri Sibal on behalf of the Petitioner is that the aforesaid provisions of the Act cannot have any application to the public services of the State of Punjab, because Parliament or Central legislation cannot be intruded into a field which is exclusively preserved for State Legislation. It is contended that only the State of Punjab can legislate with regard to the offences committed by the members of its public service.

3. Reliance for the contention aforesaid is based primarily on Article 246 of the Constitution of India. It is submitted that by virtue of Clauses (1) and (3) thereof, Parliament and the State Legislatures have exclusive jurisdiction to make laws with respect to the matters enumerated in list I and list II of the Seventh Schedule, respectively. A reference is then made to entries 41 and 64 of the State List (List II) which are in the following terms:

41. State public services, State Public Service Commission.

...

64. Offences against laws with respect to any of the matters in this List.

...

The contention of Shri Sibal is that on a reading of these two entries together, a State Legislature would have exclusive jurisdiction to legislate with regard to

offences relating to the State public services and the State Public Service Commission. It was submitted that this arena cannot be trespassed into by the Parliamentary legislation.

4. By way of analogy reliance has also been placed on the corresponding entries No. 70 and 93 of the Union List I of the Seventh Schedule. The submission herein again is identical, that on a corn-bind reading of the two, Parliament alone would have the jurisdiction to legislate with regard to all offences pertaining to the Union Public Services, All-India Services; Union Public Service Commission. On these premises, it has been strenuously contended that whilst Parliament has exclusive jurisdiction with regard to the Union Public Services and All-India Services, similarly, the State Legislatures have an equally exclusive field to legislate with regard to the offences with respect to the States' Public services.

5. We are unable to agree. The argument apparently stems from a misreading of the import of the corresponding entries in the Union and the State Lists. Taking up first the case of the Union List, it appears to us that on a plain reading of entries 70 and 93, Parliament would have exclusive jurisdiction to make laws with regard to the Union Public Services, the All-India Services and the Union Public Service Commission. An example of such legislation is the All-India Services Act, 1961. It goes without saying that with regard to these subjects, no State Legislatures would be competent to pass any legislation. Now entry 93 would consequently vest exclusive jurisdiction in Parliament to make laws with regard to all offences which may be in violation of or against the All-India Services Act. It would be in this limited field alone that Parliament would have exclusive jurisdiction, but not with regard to the general criminal law.

6. Similarly, on a reading of Article 246 of the Constitution, along with entries 41 & 64 of the State List, it is evident that the State Legislature is vested with exclusive jurisdiction to legislate with regard to the State Public Services and the State Public Service Commission, Parliamentary legislation cannot, intrude into this field. This exclusive power of the State Legislature further extends to the making of any laws with regard to the offences against those State statutes which are enacted with regard to the State Public Service and the State Public Service Commission. An example of this would be if the State Legislature were to enact legislation with regard to its civil services or special legislation for the creation of the State Public Service Commission--Violations of such statutes may be declared as offences and legislated upon, but it is in this field and in this field alone that the State Legislature would have exclusive jurisdiction. It cannot be enlarged to the extent of covering criminal legislation with regard to the persons who may happen to be in the public service of the State. The general power to legislate generally with regard to the criminal law has not been made the exclusive preserve of either the State Legislature or Parliament.

7. The concurrent power to legislate with regard to criminal law is clear and categorical by virtue of entry 1 of the Concurrent List III which is in the following terms:

(1) Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II, and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

8. Now it is settled law that the legislative entries in the Seventh Schedule are not to be read in a pedantic, narrow or restricted sense, but include within them all power to legislate on all ancillary or subsidiary matters. The most liberal construction has to be placed on these entries and in this connection a reference may be made to the binding precedents of the final Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, , *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, , and *Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd.*, .

9. Construing the aforesaid entry 1 in the light of these judgments, it is plain that the power to legislate with regard to general criminal law has been vested in Parliament and the State Legislature. It is obvious that the word "criminal law" used in the very opening part of this entry is one of wide-ranging nature. While expressly including the general criminal law in the Indian Penal Code within the same, what has been specifically excluded from the ambit of the concurrent power are only specific offence against laws with respect of any of the matters specified in the Union and State Lists and the armed forces of the Union of India. It seems manifest that the legislative powers under entries 70 and 93 of the Union List I and entries 41 and 64 of the State List are essentially restricted to service laws pertaining to the constitution of services and other allied and ancillary matters, as also the constitution of the Public Service Commissions, etc. The exclusive legislative power herein, therefore, does not cover all types of offences that may be committed by the public servants. Consequently, the aforesaid entries cannot be considered as barring Parliament and the State Legislatures to enact laws relating to crime generally, which clearly falls within the wide scope of entry I of the Concurrent List III.

10. Pushed to the logical extreme, Mr. Sibal was forced to admit that on the construction canvassed by him a public servant of the State committing ordinary crimes of murder, theft, criminal misappropriation, etc., shall not be liable to be prosecuted for offences under the Indian Penal Code, because it has not been enacted by the appropriate State Government. Carrying the analogy a little further a State Government public servant if he commits an offence against the Essential Commodities Act, which is a Central statute, would again not be liable thereunder, because the same is parliamentary legislation. This obviously cannot be so. Any such construction would have the effect that the criminal law would cease to be a matter of equal application to offenders generally and become a matter of status depending on whether the offender is a Central or State employee. That cannot even remotely have been the intent to the founding fathers so far as one can read it. It appears to be plain that for criminal offences

committed by the public servants of the Union or the State, the law made under entry I of the List III would be applicable to both. Consequently, the Prevention of Corruption Act having been enacted by Parliament is, therefore, constitutionally valid equally in relation to the public service of the State.

11. Viewed from another angle also, the present Writ Petition is not entitled to succeed. In *Om Prakash Gupta Vs. State of U.P.*, *C.I. Emden Vs. State of Uttar Pradesh*, and *Ram Chandra Prasad Vs. The State of Bihar*, the provisions of Sections 4, 5, and 6 of the Prevention of Corruption Act were assailed on a variety of grounds as being ultra-vires of Article 14 of the Constitution. The challenge was, however, repelled and the constitutionality of these provisions upheld. In view of the observations made in *Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur*, and even more pointedly in *Ram Manohar Lal Lohia and Ors. v. State of Uttar Pradesh* AIR 1968 All 100, and *Union of India v. Gem Palace* AIR 1973 Raj 242, the aforesaid judgments of the Supreme Court are binding on us and it is not open for the Petitioners to claim a re-examination of the matter on the ground that some relevant provisions of the statute or a fresh ground of attack was not brought to the notice of their lordships of the Supreme Court.

12. No other point has been urged. The Writ Petition is without merit and hence stands dismissed in limine.