
(1993) 01 KL CK 0059
In the High Court Of Kerala
Case No : O.P. No. 8799 of 1988-V

K. Chandrasekharan

APPELLANT

Vs

C. Sasidharan Pillai and Others

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3
Criminal Procedure Code, 1973 (CrPC) — Section 4, 4(1), 4(2)
Kerala Civil Rules of Practice, 1971 — Rule 52
Kerala Public Men (Prevention of Corruption) Act, 1984 — Section 10, 10(1), 10(2), 3(1), 4
Kerala Public Men (Prevention of Corruption) Rules, 1984 — Rule 10, 5, 6, 8

Citation : (1993) CriLJ 2673

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : T.R.G. Warriar and T.C. Mohandas, for the Appellant; M. Rajasekharan Nayar, (for No. 1) and V.K. Beeran, A.A.G. (for Nos. 2 and 3), for the Respondent

Judgement

G.H. Guttal, J.—The Kerala Public Men (Prevention of Corruption) Act, hereinafter referred to as the Act, enables any person, except a public servant, a service association or trade union, to present a petition to the Commission constituted u/s 4 of the Act, requesting investigation into the allegations of corruption against public men. The respondent No. 1, made such a petition against the petitioner herein on 12th April, 1988, supported by an affidavit as required by Section 8 of the Act. On 2-7-1988 and 3-9-1988 the petitioner filed certain preliminary objections to the investigation into the allegations. The respondent No. 2, the Commission, by three separate orders dated 25-10-1988 rejected (a) the preliminary objections (b) allowed the application No. 13 of 1981 by respondent No. 1 for leave to alter the date of his affidavit from 12-4-1988 to 16-4-1988 and (c) rejected the petitioner's application No. 11 of 1988 for prosecuting the respondent No. 1 for breach of Section 8(4) of the Act. These orders are impugned in this petition.

2. I will briefly outline in paragraphs 3, 5 below the scheme of the Act and the Rules framed thereunder, in so far as is relevant for consideration of this petition.

3. The Act establishes an authority to investigate allegation of corruption against public men. By definitions contained in clauses (c) and (d) of Sub-section (1) of Section 3 of the Act corruption includes abuse of position as a public man and wilfully doing any act in contravention of any law. The constitution and composition of the commission is laid down in Section 4 of the Act.

Sub-section (2) of Section 8 of the Act requires, inter alia that every petition under Sub-section (1) of that section "shall be accompanied by an affidavit in support of the allegations contained therein."

Since allegations of corruption harm the reputation of public men, Sub-section (4) of Section 8 prohibits the maker of the petition or any other person from publishing or causing to be published the contents of the petition "in any manner whatsoever". A contravention of the command not to publish the contents of the petition is punishable with imprisonment for a term which may extend to two years or fine or both.

Section 9 of the Act commands that the Commission "shall not conduct any investigation under the Act" in the cases set out in clauses (a) to (c) of that section. Clause (a) of Section 9 requires that the commission shall not "conduct any investigation," if "the petition does not comply with the provisions of Section 8". The compliance with Section 8 means that the petition shall be accompanied by an affidavit. There is a failure to comply with Sub-section (2) of Section 8, if the petition is not accompanied by an affidavit. In such a case the commission is precluded from investigating into the allegations made in the petition.

4. The Commission's authority to "scrutinise" the allegations is laid down in and limited by Section 10 of the Act. Before the Commission proceeds to "scrutinise such allegations", it must ensure that the case does not fall within one of the clauses (a) to (c) of Section 9. This provision is the legislative warning that the commission shall not proceed to "scrutinise" the allegation unless its path is cleared by the absence of the situations enumerated in clauses (a) to (c) of Section 10. This section is the unequivocal, inexorable and unrelenting reiteration of the principle laid down in Section 9 which precludes the commission from investigating into the allegations if any one of those situations exist. That is why Sub-section (1) of Section 10 limits the exercise of the authority by the commission to "a case not falling u/s 9."

Sub-section (2) of Section 10 empowers the commission to call for any relevant "information" in respect of the allegation of corruption from, inter alia, the petitioner.

Every preliminary investigation shall be conducted "in private and in camera". The commission is enjoined to protect the identity not only of the petitioner but also of the "public man affected by such investigation" from "the public or the

press". This obligation cast on the commission continues at all times "before, during and after such investigation". This legislative safeguard again publication of the identity of the public men is not only a logical extension of the duty cast on the petitioner by Sub-sections (4) and (5) of Section 8 not to publish or cause to be published the contents of the petition, but is a measure of the jealousy with which the legislature seeks to protect the reputation of the public men.

The commission shall not proceed to investigate the insubstantial or trivial allegations. It shall investigate into the allegations which are not insubstantial or trivial and record its findings thereon and shall recommend prosecution of the public men.

5. Rule 5 of the Kerala Public Men (Prevention of Corruption) Rules 1984 reiterates that every petition shall be supported by an affidavit as required by Sub-section (2) of Section 8. Rule 6 requires that every affidavit filed before the Commission shall be drawn up and authenticated in the manner prescribed by the Civil Rules of Practice, for the time being in force, which in this case means the Kerala Civil Rules of Practice.

Rule 8 prescribes the mode of presentation of the petition to the Commission. The petition cannot be presented to a clerk in the registry. Every petition shall be presented to the Secretary to the Commission "in person". The presentation "in person" is designed to ensure secrecy as to the contents of the petition. This rule follows Sub-sections (4) and (5) of Section 8 of the Act. Where the petition cannot be presented in person, it shall be sent to the Secretary of the Commission by registered post, which ensures its receipt by the responsible officer - the Secretary himself. Under Rule 10 a petition which does not comply with any of the requirements of the Act or the rules "shall not be entertained". However, the commission is empowered to give to the petitioner an opportunity to cure the defects within such period and in such manner as may be specified by the Secretary to the Commission.

6. The facts out of which this petition arises are stated in this paragraph and paragraph 7 below.

The petition under Sub-section (1) of Section 8 of the Act bears date "12th day of April, 1988."

The respondent No. 1 alleged that the petitioner as the Minister for Education and Law, committed corrupt practices in the appointment of two Government Pleaders, Standing Counsel for the M.G. University and Standing Counsel for the Kerala State Housing Board. It is unnecessary to set out the details of the allegations as they are not relevant for the determination of the questions raised in this petition. The petition is supported by an affidavit.

The petition which is in the prescribed form consists of columns 1 to 5 which set out names and other particulars of the parties. Column No. 6 is meant to furnish the nature and particulars of the corrupt practices. Clauses (a) to (m) of the

petition enumerate what according to the respondent No. 1 are the corrupt practices. The petition is verified in the manner laid down in the Code of Civil Procedure, for the verification of pleadings. Such verification is prescribed by Sub-section (3) of Section 8 of the Act.

The affidavit by the respondent No. 1 in support of the petition bears date "this day of 12th April 1988". Paragraphs 1-4 contain formal statements such as the name and status of the petitioner. There is no allegation of corruption in these paragraphs. Paragraphs 5-15 set out the allegations of corruption which the respondent No. 1 has to prove at the inquiry. The affirmation clause of the affidavit which is of importance reads:

"What is stated in paragraphs 1-4 is true to my knowledge and what is stated in paragraphs 5-15 is stated on information which is believed to be true."

Thus the allegations of corruption are not based on personal knowledge of the respondent No. 1 but on "information" believed to be true."

The affidavit which bears date "12th April, 1988" was actually sworn on the "16th day of April 1988."

7. As already stated, the Act and the Rules command that the person who presents the petition or anyone else shall not publish or cause to publish the contents of the petition "in any manner whatsoever". The petition and the affidavit were presented to the commission on 18th April, 1988. The contents of the petition and the fact that such petition was filed were known only to two persons the petitioner and the commission. However, the fact of the filing of the petition and the elaborate contents thereof appeared in a newspaper, the Malayala Manorama Daily, of 19-4-1988, within a day of the presentation of the petition. The same publication was repeated on 20-4-1988 in another news paper the Mathrubhumi Daily.

8. The preliminary objections raised by the petitioners which were rejected by the commission and which have been reiterated before me are these :

(a) The filing of an affidavit in support of the petition is a mandatory requirement of law. The affidavit filed by the respondent No. 1 is not in accordance with the provisions of the Civil Rules of Practice or the Code of Civil Procedure. Where statements in an affidavit are based on information, the source of the information has to be specifically stated with reference to the paragraphs. So also the grounds of belief have to be set out. The affidavit does not comply with this requirement of law. Therefore what is filed in support of the petition is not an affidavit.

(b) The affidavit purports to have been signed on 12-4-1988. It was actually attested on 16-4-1988. The application of the respondent No. 1 to correct the date of the affidavit from 12-4-1988 to 16-4-1988 should be rejected.

(c) The respondent No. 1 should be prosecuted u/s 8(5) of the Act for publication

of the contents of the petition or at least an investigation should be made.

All these contentions were negated by the three impugned orders.

9. Rule 52 of the Rules of Civil Practice Kerala, which in terms applies to this case required that every affidavit shall clearly express:

(a) how much is a statement of the deponent's knowledge.

and

(b) how much is a statement of his belief.

(c) the grounds of belief must be stated with sufficient particularity.

The rule also sets out its object. The object of the rule is to "enable the court to judge, whether it would be safe to act on the deponent's belief."

The above rule prescribes the form of the concluding portion of the affidavit. It is in form No. 17 appearing under "Judicial forms" in Appendix I. The legislative prescription of the format of the concluding portion of the affidavit reads:

"What is stated above in paragraphs.....is true to my knowledge and what is stated in paragraphs.....is stated on information and belief derived from the records and/or obtained from.....and I believe the same to be true."

Rule 52 itself does not refer to statements based on "information" but refers to statements based on deponent's "knowledge" and "belief". But the form No. 17 prescribed by the Rule is part of the Rule. Therefore, the affidavit must conform the form.

Form No. 17 makes it clear that the statements based on "information and belief" have to be separately stated with reference to the paragraphs of the affidavit. Then the source or sources have to be specifically stated - such as (i) derived from the records or (ii) obtained from other sources.

10. The provisions of Rule 52 and form No. 17 are stated above. But as held in *The State of Bombay Vs. Purushottam Jog Naik, and Padmabati Dasi v. Rasik Lal Dhar* ILR (1910) Cal 259, the provisions of Rule 3 of Order 19 of the CPC "must be strictly observed even in cases where the CPC does not in terms apply". This statement of law is important because, the judicial decisions which I will presently refer to are based on the interpretation of Rule 3 of Order 19 of the Code of Civil Procedure.

11. As stated in paragraph 6 of this judgment, the affidavit of the respondent No. 1 makes allegations of corruption only in paragraphs 5-15 thereof. These allegations are based on "information which is believed to be true". The affidavit is marked by two significant features:

(i) The source/sources of information are not stated.

(ii) The grounds of the deponent's belief in the truth of the information are

totally absent.

The first submission of the petitioner has to be considered against the above features of the affidavit.

12. Two general principles applicable to affidavits should be borne in mind.

Where allegation of abuse of power, mala fides or improper motive are made, the court should be cautious and must insist upon the existence of personal knowledge of the deponent or information verifiable from the disclosed source. (Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, and C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, .

In the case of public men who hold elected office, Azhar Hussain Vs. Rajiv Gandhi, lays down a salutary principle. The public has a right to demand constant and full time attention to their problems by such a public man. If the petition under the Act which is ill-constituted, frivolous, or unsupported by a proper affidavit hangs on like the sword of Democles, the public man would not be free to devote his wholehearted attention to matters of public importance. His time and attention meant for the public will be dissipated in facing allegations which are not based on any verifiable source.

The court or any authority exercising judicial or quasi judicial authority should scrupulously follow these principles.

13. Against the backdrop of the two general principles stated in paragraph 13 above consider the objects of verification of affidavits. The first object of having an affirmation of statements is to fix the responsibility about the validity of the statements on the maker of the affidavit. The second object is to test the genuineness and authenticity of the allegations. The third object is to assure the court that, since the source of the knowledge and information and the grounds of belief in their truth are disclosed by the deponent, it is safe to act on his affidavit. (A.K.K. Nambiar Vs. Union of India (UOI) and Another, .

14. The consensus of judicial authorities has established these rules governing the validity of affidavits. Firstly where statements in an affidavit are based on information, the source or sources of such information must be stated. Secondly it is not enough to state the source or sources of such information, but particulars of such source or sources must be stated. For instance if certain information is based on documents, the documents must be revealed. If it is based on what is learnt from others, the names must be stated. It is only then that the commission/court/Authority can verify the information from the disclosed sources. Thirdly, it is not enough to state that the deponent believes the statements to be true. He must disclose the grounds on which his belief is founded.

(A.K.K. Nambiar Vs. Union of India (UOI) and Another, ; Azhar Hussain Vs. Rajiv Gandhi, ; Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, ; Padmabati Dasi v. Rasik Lal Dhar, (1910)ILR 37 Cal 259).

Rule 52 of the Rules of Civil Practice read with form No. 17, is a manifestation of the above statements of law. That is why form No. 17 provides separate clauses to enable introduction of paragraph numbers for separate sources of information. It follows that an affidavit which does not state the sources of information separately if there are more than one, or the source of information if there is only one does not comply with Rule 52. Again if the grounds of belief are not stated the affidavit does not comply with Rule 52.

15. The affidavit of the respondent No. 1 suffers from the two serious infractions of law set out in paragraph 11 above. The generalised statement in the concluding portion ".....what is stated in paragraphs 5-15 is stated on information which is believed to be true", is not an affirmation of facts. It does not disclose either the source of information or the grounds for the belief in its truth. There is no way of knowing whether the information is genuine or authentic. In the absence of its source, the "information" is no better than gossip. The commission in its endeavour to discover the truth is led to a blind alley, a dead wall of ignorance. How will it judge whether the petitioner committed the acts he is accused of having committed ? Take for instance paragraph 7 of the affidavit. A number of Government Pleaders were removed for inefficiency. What is the source of this "information". Smt. Vanaja Madhavan is alleged to have been reappointed "by the respondent or at his instance." The source of this information is not disclosed. Every fact in relation to the appointment "at the instance" of the petitioner is sourceless. The petitioner has no personal knowledge of any of the facts in paragraphs 5-15 of the affidavit.

In *Sham Sundar Rajkumar v. Bharat Oil Mills, Nagpur*, AIR 1984 Bom 38 such affidavits were characterised as "not better than mere scrap of paper." An affidavit like the one filed by the respondent No. 1 which does not disclose the source of information or the grounds of belief in its truth was held "no affidavit at all" (*Sri Gouri Sankar Mukherjee Vs. State of West Bengal and Others*, and *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, In *Savithramma, Vs. Cecil Naronha and Another*, the Supreme Court described as "slipshod" the affidavits made without regard to the Rules governing them.

16. The learned members of the commission have rejected the submission of the petitioner in regard to the validity of the affidavit. Broadly stated the reasons assigned by the commission are:

(i) The effect of the cases of *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, and *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, in that "defective affidavits" should not be rejected.

(ii) Rule 52 of the Civil Rules of Practice requires that facts true to ones knowledge be stated. It does not refer to information.

Form No. 17 is not rigid.

(iii) The affidavit not being evidence, cannot be rejected even if it does not "fully"

conform to Rule 3 of Order 19 of the Code of Civil Procedure.

(iv) The facts of corruption are within the knowledge of the concerned public man. The person who complains can possibly have no direct information or knowledge of such facts.

(v) The entire affidavit is not defective. But only the verification clause is not "strictly in accordance with the usual form".

(vi) If the respondent No. 1 fails to lead evidence his petition u/s 8(1) of the Act may be rejected. "At this stage" it is not unsafe to act on the belief of respondent No. 1.

17. I will examine these points in the order in which I have stated them in the last paragraph.

(i) In Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, the Supreme Court did not hold that affidavits which do not conform Rule 3 of Order 19 of the CPC should be accepted. In paragraph 12 of its judgment, while upholding the correctness of the proposition set out by me in paragraphs 12-14 above, the Supreme Court observed:

"This has been followed more or less universally by courts in matters where reliance is placed on affidavits."

Significantly, the Supreme Court after accepting the proposition laid down in Padmabati Dasi v. Rasiklal Dhar ILR (1910) Cal 259, came to the conclusion that it has taken cognisance of the matter and "certain inferences followed from the inherent nature of facts apparent from the facts brought before this Court". Thus the Supreme Court acted on the facts brought before it and not merely on the affidavit.

There is nothing in the judgment which suggests that the affidavits of the kind filed by the respondent No. 1 are valid.

In C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, the Court merely emphasised the need to scrutinise allegations carefully. It was not held that affidavits of the kind filed by the respondent No. 1 herein are valid.

(ii) The Commission has assumed that all that Rule 52 of the Rules of Civil Practice requires that facts based on one's knowledge be stated. It ignored that the grounds of belief have to be stated with "sufficient particularity". In this case no grounds of belief have been stated. Again the assumption that Form No. 17 is not a part of the rule is erroneous.

(iii) Then the commission assumes that an affidavit which partly complies with law may be accepted as valid. When law demands that an affidavit shall conform to the requirements of Rule 52 and Form 17, the only way of making an affidavit is by conforming to every requirement. The commission assumes, erroneously and contrary to the established law, that full compliance with Rule 3 of Order 19

of the Rules of Civil Practice, is not expected.

(iv) It may be true that a person who complains about corrupt practices may have no personal knowledge of the facts. That is why he is free to state facts based on information and belief. It is precisely in such cases that the law embodied in Rule 52 of the Rules of Civil Practice and Rule 3 of Order 19 of the CPC insists upon disclosure of sources of information and the grounds for belief in the truth of such information. Absence of personal knowledge is no justification for not disclosing the sources of information and the grounds of belief.

(v) The commission has held that what is defective is not the affidavit but that the verification clause "is not strictly in accordance with the usual form." This view is erroneous. It is the concluding part or the verification clause that makes a document an affidavit. It is this clause that fixes responsibility on the maker of the affidavit. If this is not in accordance with law, the paper signed by the deponent is not an affidavit at all. The idea that an affidavit need not be "strictly" complied with is opposed to the rule laid down in *Padmabati Dasi v. Rasik Lal Dhar* (1910) ILR 37 Cal 259 which was accepted by the Supreme Court in *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, .

(vi) Lastly the commission held that "at this stage" it is not unsafe to act on the belief of the respondent No. 1. The commission assumes that even if the respondent No. 1 makes allegations unsupported by a valid affidavit, the petitioner should refute them and when evidence is led truth may emerge. In other words trial should proceed, on the basis of such allegations. This very argument was rejected by the Supreme Court in *Azhar Hussain Vs. Rajiv Gandhi*, , as "thoroughly misconceived and untenable". The reason of this judgment of the Supreme Court is that the power to dismiss petitions summarily, at the threshold, is intended to serve a public purpose and should be exercised to terminate petitions which do not set out particulars about the corrupt practices.

In *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, the Supreme Court rejected the affidavit based on "correct to the best of my knowledge" clause and held that it was "no affidavit at all." Then it held that in such cases the court "would be justified in refusing to carry out investigation into allegation....."

18. Having regard to the well settled law set out in paragraphs 12-18 above, I have no hesitation in holding that the affidavit filed by the respondent No. 1 in support of his petition u/s 8(1) of the Act, is no affidavit at all. In the words of the Bombay High Court and the Supreme Court it is no more than a scrap of paper and is slipshod. It does not have the status of an affidavit.

19. In order to understand the true effect of Sub-sections (2) and (4) of Section 8 it is necessary to consider whether these provisions are mandatory.

The object of insistence on affidavit is to assure the commission of the credibility

of the allegations and to make the deponent responsible for them. By their very nature, the allegations affect the reputation of the public men concerned and their disclosure seriously undermines efficiency and morale of the public men and institutions. The legislature, by insisting upon an affidavit has expressed its intention that a petition shall not be valid unless supported by an affidavit.

Secondly the legislature has provided the consequence of failure to comply with the requirement as to affidavits. This consequence is that "the commission shall not conduct any investigation under the Act."

Another requirement of the Act is that the person presenting the petition or any other person shall not publish or cause to be published the contents of the petition "in any manner whatsoever." The words "in any manner whatsoever" denote the absolute character of the secrecy clause. The law has taken care to provide the consequence of breach of this absolute duty not to publish the contents of the petition. A contravention or breach of this obligation is punishable with imprisonment which may extend to two years or fine or both.

20. The terms "mandatory" or "directory" refer to the method by which legislature seeks to attain its object. If the person affected by the statute has no option as to the doing of the prescribed act, the provision is mandatory, If he has an option it is directory. The act is passed for the purpose of enabling investigation into allegations of corruption against public men. For this purpose it has prescribed the rules as to affidavit and secrecy. In order that the commission successfully investigates into the allegations, compliance with those rules is essential. The stipulation that an affidavit must support a petition and that the contents of the petition shall not be published, if not complied with will defeat the very purpose of investigation.

Failure to support the petition by an affidavit attracts the specific consequence that investigation shall not be carried on. The language of Section 9 which prohibits the commission from conducting the investigation is negative and peremptory. In the case of prohibition against publication, Sub-section (4) of Section 8 employs negative language "shall not publish or cause to be published." Therefore the specific consequence of the omission to comply with the requirement of maintenance of secrecy and the negative and peremptory language used by the statute clearly means that the requirement of subsection (4) of Section 8 is mandatory. Again the mandatory character of Sub-section (4) of Section 8 is emphasised by the fact that the contravention of the secrecy clause is made punishable with imprisonment or fine or both. It is thus clear that provisions of subsection (4) of Section 8 of the Act are imperative and mandatory and admit of no exception.

In the case of Sub-section (2) of Section 8 also the prohibition against conduct of investigation by the commission is couched in imperative and negative language - "The commission shall not conduct any investigation". Therefore the requirement that the petition shall be supported by an affidavit, is also

imperative and mandatory.

21. The petitioner seeks an inquiry into the breach of the secrecy clause and identification of the person or persons who caused the publication. The commission found itself helpless, as, according to it, the law has not laid down any procedure for such investigation and prosecution of the offender. This point is considered in paragraphs 22-26 below.

22. The mandatory provision against the disclosure of the contents of the petition and the punishment, imply that punitive part has to be enforced by the commission. The procedure for trial of the offence created by the Act can be found in Section 4 of the Code of Criminal Procedure. Sub-section (1) of Section 4 lays down that "all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained." Sub-section (2) of Section 4 of the Code of Criminal Procedure provides for trial of "all offences under any other law." "All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." Therefore the offence in question being an offence "under any other law" has to be tried by the procedure laid down by the Code of Criminal Procedure.

Therefore it cannot be said that procedure for prosecuting the person who violates subsection (4) of Section 8 has not been prescribed.

23. The question is whether the commission possessed the power to investigate and identify the person who violated the secrecy clause and initiate criminal proceedings. This question has to be resolved by the aid of rules of interpretation of statutes. The reason is that the Act and Rules do not lay down that the commission or its Secretary may file a complaint in respect of the offence under subsection (4) of Section 8 of the Act. The rules of construction of statutes relevant to such cases may now be set out. The Act creates the offence and prescribes the punishment. A conclusion that an offence has been committed but no one can complain about it, leads to absurd results not intended by the legislature. The manifest purpose of subsection (5) of Section 8 is to punish those who violate Sub-section (4) of that section. It is an established rule of construction of statutes "to avoid a construction which would reduce the legislation to futility." (Maxwell - The Interpretation of Statutes, Eleventh Edition, Page 7). The courts should prefer a construction based on the view that legislature would legislate only for the purpose of bringing about an effective result. (Maxwell - The Interpretation of Statutes - Eleventh Edition, Page 7).

The question as to whether the commission possesses the power to investigate identity and prosecute the offender, is by no means easy. Yet, the fundamental postulate that legislature intended to effectuate its intention to punish the offender leads the way to an answer.

24. The Act does not say that the commission or its Secretary may file a complaint. Is it permissible then, to read the Act in such a manner as to imply that the commission or its secretary shall file a complaint and do all that is necessary to effectuate the legislative intent to punish the offender? Consider the rules which enable the court to do so.

25. In *Attorney General (Hong Kong) v. Kwok-a-Sing* (1873) LR 5 PC 179 cited at 222 by Maxwell the words "any crime or offence against the laws of China" were construed to be limited to those crimes which are punishable by the laws of all civilized nations so as to exclude political offences. Again where law declares an offence, it would impliedly give it all the incidents of the offence, such as abetment (Maxwell page 345). A law which gave to the shareholders the right to "inspect" and "peruse" a register of debentures was held to carry with it the right to take copies (Maxwell page 346).

Where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employing such means as are necessary to its execution (Maxwell, Page 350). Similarly where a court is empowered to grant an injunction, there is an implied power to punish for its disobedience, for, the power would be useless if it is not enforced (Maxwell, Page 350).

Therefore modification of the language of the statute, if necessary, by reading words into it, is an accepted mode of construing statutes. I have no doubt that a construction of the Act that the commission has no power to make a complaint of an offence under Sub-section (5) of Section 8, defeats its object rather than carry it into effect.

26. The legislative urge to punish those who violate Sub-section (4) of Section 8 is manifestly clear. The Act is designed to serve high public purpose of eliminating corruption. It should be borne in mind that the Act in question does not create a private right to punish the offender. Nor is the breach of subsection (4) of Section 8, an offence against individuals. It is an offence against the public, the protection and promotion of whose interests is entrusted to the public commission. In such a case of public concern, the omission to provide that the public body may identify and prosecute the offender cannot be so construed as to render the commission helpless and impotent. The only way of effectuating the law is to read into it these necessary implications:

(i) that the commission, who represents the public interest is aggrieved by the breach of Sub-section (4) of Section 8.

(ii) that the commission may make all investigations to identify the offender or offenders and

(iii) initiate prosecution by filing a complaint.

Consider what would happen if the commission can do nothing to initiate prosecution. The person who files a petition under subsection (1) of Section 8 may publish the contents and commit an offence. The commission, files no

complaint. The offender is not punished. These consequences, contrary to the legislative intent as they are, not only absurd but they defeat the very purpose of the Act.

27. In my opinion, the provision that the offender shall be punished with imprisonment and fine or both has clear implications. Firstly the commission, in order to be effective shall find out whether the secrecy clause has been violated. Secondly it shall find out who did it. Thirdly having identified the offender, it shall file a complaint like any other offended person. These powers are implied in the nature and function of the commission and the provisions of Sub-sections (4) and (5) of Section 8 of the Act.

If these powers are not implied, Sub-sections (4) and (5) of Section 8 of the Act are reduced to futility. The law prescribing punishment turns to be a futile exercise. No legislature should be understood to have created a futile law.

28. The petitioner herein is an individual. The offence under Sub-sections (4) and (5) of Section 8 is against the public. It is the public interest which the commission is expected to safeguard that is harmed by the publication. It stands to reason that the offence is against the commission. Therefore, the commission is aggrieved by the crime. The prosecution, if any, has to be initiated on a complaint by the commission. No doubt the petitioner may have a right under the general law to take appropriate legal proceedings. But this does not relieve the commission of its public character and public duty.

29. The petitioner's grievance in regard to the order of the commission on the application No. 13 of 1988 permitting the correction of the dates in the affidavit, is without any substance.

30. In view of my decisions on the points summarised in paragraph No. 8 of this judgment I make the following order:

(i) The judgment and order of the commission, the respondent No. 2 herein, dated 25th October, 1988 by which it rejected the preliminary objection to the validity of the affidavit of the respondent No. 1 in support of the petition No. 1 of 1988, and accepted the affidavit as valid, is hereby set aside.

(ii) The commission is at liberty to resort to its power under the proviso to Rule No. 10 of the Kerala Public Men Prevention of Corruption (Petition) Rules 1984 and give to the respondent No. 1 the opportunity to remove the defects in the affidavit in accordance with the law stated in this judgment.

(iii) The order of the commission dated 25th October, 1988 allowing the application No. 13 of 1988, is confirmed.

(iv) The order of the commission dated 25th October, 1988 dismissing the petitioner's application No. 11 of 1988 is set aside. The commission is hereby directed to:

(a) Consider whether an offence under Sub-sections (4) and (5) of Section 8 has

been committed.

(b) Inquire into the identity of the person or persons who published or caused to be published the contents of the petition No. 1 of 1988.

(c) Consider whether a complaint against the offender or offenders should be filed.

(d) If it holds that a complaint should be filed the commission shall direct its secretary to file such complaint.

(v) Subject to the above order the petition is allowed.