
(1965) 08 RAJ CK 0005
In the Rajasthan High Court

Nand Lal

APPELLANT

Vs

Shri Prithvi Singh and Others

RESPONDENT

Date of Decision : 09-08-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Constitution of India, 1950 — Article 12
Electricity (Supply) Act, 1948 — Section 26, 5, 81, 82
Electricity Act, 1910 — Section 21, 42, 56
Penal Code, 1860 (IPC) — Section 21, 249, 379

Citation : (1966) CriLJ 868 : (1965) RLW 481

Hon'ble Judges : L.N. Chhangani, J

Bench : Single Bench

Judgement

L.N. Chhangani, J.—The question requiring determination in this reference is whether Shri Prithvisingh, Superintending Engineer, Rajasthan Electricity Board in the year 1962 and now Additional Chief Engineer and Shri S.B. Chaurasiya, Assistant Engineer, Rajasthan State Electricity Board, officers of the Government of Rajasthan and functioning on deputation with the Rajasthan State Electricity Board, are public officers within the meaning of Section 56, Sub-section (2) of the Indian Electricity Act of 1910, and as such, cannot be prosecuted for an offence under the Electricity Act without the sanction of the Rajasthan State?

2. The facts leading to the reference may be stated at the outset:-

It is common ground that on 12.1.1962 Shri Prithvisingh and Shri S.B. Chaurasiya (hereinafter referred to as the accused) acting on behalf of the Rajasthan State Electricity Board discontinued the supply of electricity to the complainant Shri Nandlal. The accused-non-petitioner entertained suspicion that the complainant had been committing theft of electrical energy and consequently, they discontinued the supply. It may also be mentioned that the Rajasthan State Electricity Board lodged information with the police to prosecute the complainant for an offence u/s 379, I.P.C. On investigation, however, a case of theft was not established against the complainant and the police filed a final

report in the matter. Thereafter Shri Nandlal filed a complaint against the Chairman, Rajasthan State Electricity Board and the two accused non-petitioners, accusing them of an offence u/s 42 of the Indian Electricity Act, 1910 (hereinafter referred to as the Act) in the Court of Sub-Divisional Magistrate Sikar. The Sub-Divisional Magistrate treated the Chairman, Rajasthan State Electricity Board as a Public Officer and did not issue any process against him. A case u/s 42 of the Act was, however, registered against the accused and processes were issued against them. Before the Sub-Divisional Magistrate they raised an objection that their prosecution was barred in the absence of the sanction of the Rajasthan State in view of the provisions of Section 56, Sub-section (2) of the Act. The Sub-Divisional Magistrate held that in view of the provisions of Section 81 of the Electricity (Supply) Act, 1948 read with Section 5 of the Act the accused should be treated as public servants within the meaning of Section 21 of the Indian Penal Code. He also held that Section 56, Sub-section (2) of the Act is the most appropriate section for giving right of privilege granted by the legislature to the accused in this complaint. He repelled the arguments of the complainant that the accused could claim protection only on proof of their having acted in good faith, The Sub-Divisional Magistrate, however, did not revoke the order taking cognizance against the accused but on the other hand, stopped proceedings u/s 249, I.P.C. and directed the complainant to obtain sanction of the State Government for the prosecution of the accused. Shri Nandlal filed a revision in the Court of the District Magistrate, Sikar. The District Magistrate recorded the following conclusions:-

1. A servant of the Board shall be entitled to be considered a public servant, vide Section 81 of the Electricity (Supply) Act, 1948, with regard to their functioning under the Indian Electricity (Supply) Act also (by virtue of link established by Section 26 of the Electricity (Supply) Act, 1948).
2. Invoking Section 2(17), C.P.C. defining "public officer" and making some arguments on logical considerations he held that the officers of the Board should be deemed to be public officers entitled to the protection of Section 56, Sub-section (2) of the Act.
3. The District Magistrate further found fault with the initial order of the Sub-Divisional Magistrate, dated 8.3.1963 taking cognizance of the case against the accused. He also observed that the Sub-Divisional Magistrate was not justified in invoking Section 249, I.P.C. to the present complaint case and that an order stopping proceedings was not good in law. According to him, the Magistrate should have revoked his order taking cognizance against the accused. He has, therefore, made the present reference which, as stated above, raises the question formulated above.
4. Mr. Datta has appeared on behalf of the complainant and has opposed the reference. He contended that the officers and the employees of an autonomous body as the State Electricity Board cannot be treated as public officers. He also contended that the requirements of the accused having acted in good faith as

contained in Sub-section (1) of Section 56 of the Act and Section 82 of the Electricity (Supply) Act, should be imported into the provisions of Sub-section (2) of Section 56 of the Act and the accused should not be held entitled to an unqualified protection.

5. Mr. Bhandari for the accused supported the reference. He contended that in view of the nature of the functions and duties of the officers and the employees of the Rajasthan State Electricity Board they fall into the definition of "public officers" within the meaning of Section 56, Sub-section (2) of the Act. Alternatively, he contended that the two accused are officers of the Rajasthan State and they are only on deputation with the Rajasthan State Electricity Board. As officers of the Rajasthan State they are public officers in view of Sub-clause "h" of Section 2(17) of the C.P.C. He urged that the words "Public Officer" having not been defined in the Act, the definition in the CPC can be accepted as a guide on the principle of legislative practice in the absence of any indication to the contrary.

6. At the outset, it may be mentioned that Section 56 of the Act initially did not contain the present provision contained in Sub-section (2). The Act also does not define the expression "public officer". The expression "public officer" appears to refer to an officer who discharges functions or duties in relation to public and not in relation to private individuals. This may be accepted as a rough and general test for determining as to who should be treated as a public officer. All the same, it must be recognized that the expression "public officer" cannot be held to have a precise meaning. Consequently, in accordance with the well accepted principles of statutory interpretation the scope of the expression should be discovered by looking at the intention of the legislature as indicated by the statute. Further, for the purposes of ascertaining intention, it will be quite permissible to take into consideration the general and legislative back-ground and the purpose of the provisions under consideration.

7. It may be mentioned that after the Act of 1910, India like most other countries realized the unique importance of the electricity as a source of power for the rapid industrial expansion, development of agriculture on modern and scientific lines and technological advances. It also felt the need of legislative measures to secure a co-ordinate system in which generation may be concentrated in the most efficient units, bulk supply of energy centralized under the direction and control of one authority so that the supply of the electricity may be rationalized in the national interests. It was in the wake of this realization that the Electricity Supply Act of 1948 was enacted, This Act inter alia provided for the constitution of State Electricity Boards. The Act further conferred functions and duties of great public importance on State Electricity Boards and their representatives or officers. This will be clear from a survey of the important provisions of the Act. I, however, deem it unnecessary to undertake a survey of these provisions since such a survey was made with sufficient elaboration in a Bench decision of this Court reported in Civil Misc. Writ Petn. No. 469 of 1963 :

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The Bench in that case was considering the question whether the State Electricity Board fell within the purview of the expression "State" as defined in Article 12 of the Constitution and whether a claim of fundamental right can be made against the acts of the Board. After surveying the important provisions of the Act this Court came to the conclusion that it (the State Electricity Board) properly falls within the definition of "State", as given in Article 12 of the Constitution. The survey and the eventual conclusion arrived at by the Bench clearly brings out the public importance of the nature of the functions and duties of the State Electricity Board's members and officers. I may add that it is in keeping with the policy disclosed above that Section 81 of the Act provided that all members, officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the I.P.C. (45 of 1860).

After this Act, the Government recognized the need of further amendment of the Electricity Act of 1910. An Advisory Board was constituted in 1953 to suggest amendments. The Board consulted various State Governments and made recommendations in consequence of which the Electricity Amendment Act of 1959 (32 of 1959) was enacted. It was this Act which amended Section 56. The original section was renumbered as. Sub-section (1) and Sub-section (2) was newly added reading as follows:-

56 (2), No Court shall take cognizance of SB offence under this Act, by a public officer except with the sanction-

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other case, of the State Government.

The newly added sub-section used the expression "public officer" but the amending Act did not define the expression. It appears reasonable to infer that the legislature had in its mind (i) the provisions of Section 81 of the Electricity (Supply) Act declaring that all members, officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the Act to be public servants within the meaning of Section 21 of the Indian Penal Code, (ii) the provision of Section 2(17) of the C.P.C. defining "public officers" in terms more or less similar to those in which the expression "public servant" has been defined in Section 21 of the Act.

8. The definitions of both terms are quite comprehensive and wide and include all Government servants and other officers concerned in the performance of duties of a public nature. In this legislative and general background considering the public importance of the nature of the functions and duties of the officers and servants of the State Electricity Board and taking guidance from the definitions of "public officer" in Section 2(17) of C.P.C. and public servants in Section 21 of the

I.P.C. and the provisions of Section 81 of the Electricity (Supply) Act it appears quite reasonable to hold that the employees and officers of the State Electricity Board which has been held to be a "State" as defined in Article 12 of the Constitution, are public officers within the meaning of Section 56, Sub-section (2) of the Act. They certainly discharge functions and duties in relation to public and not in relation to private individuals.

9. Apart from this, I find considerable force in the alternative line of reasoning relied upon by Mr. Bhandari which also leads to the same conclusion. Section 2(17) of the C.P.C. defines a public officer and under Clause "h" a Government servant is a public officer. The words "public officer" having been defined by the Indian Legislature in the CPC and the same legislature having omitted to define the expression in the Electricity Act there can be no serious objection in holding that the definition of the public officer in the CPC can be looked at as a guide in interpreting the words "public officer" in the State Electricity Act on what has been described the principle of legislative practice. Certainly there are no indications in the context or setting of the Act which may warrant that the expression "public officer" should be given a meaning different from the one given to the expression by Section 2(17) of the C.P.C. Now, there is no controversy that the accused are still employees of the Rajasthan State. They are merely on deputation with the State Electricity Board. There is an authority for the proposition that a person in the service of the Government of India does not cease to be a public officer merely on the ground that his services were lent to a private institution. AIR 1949 362 (Nagpur) may be referred to in this connection. The two accused being the members of the Rajasthan State do not cease to be public officers simply because they are functioning on deputation with the State Electricity Board. So, on this line of reasoning also they are entitled to be treated as public officers within the meaning of Section 56, Sub-section (2) of the Act.

10. I now take up the contention of Mr. Datta that on a proper interpretation of Section 36, Sub-section (2) of the Act the accused non-petitioners can claim protection only on proof of something done by them under the Act or anything in good faith purported to be done by them under this Act. It will be convenient at this stage to read Sub-section (1) of Section 56, Sub-section (2) of Section 56 of the Act and Section 82 of the Electricity (Supply) Act, 1948 together. They read as under:

56. Protection for acts done in good faith:

(1) No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done under this Act.

56. (2) No Court shall take cognizance" of an offence under this Act, by a public officer except with the sanction-

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other case, of the State Government.

82. Protection to persons acting under this Act - No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act.

Now, the legislature in its wisdom thought it proper to provide in Sub-section (1) of Section 56 and Section 82 of the Electricity (Supply) Act that protection can be claimed for something done under the Act or something in good faith purported to have been done under the Act. When Sub-section (2) was introduced in the year 1959 the legislature did not think it proper to word Sub-section (2) in the language of Sub-section (1) or Section 82 of the Electricity (Supply) Act. On the other hand, Sub-section (2) was worded so as to prevent a Court from taking cognizance of an offence under the Act by a public officer except with the sanction in case of persons employed in connection with the affairs of the Union of the Central Government and in other case of the State Government. The obvious difference in the language of the other two provisions and Sub-section (2) of Section 56 clearly indicates that the intention of the Indian legislature was to provide unqualified protection to live public officers from prosecution for offences under the Electricity Act except with the sanction of Union Government in some cases and the State Government in other cases. It may also be mentioned that the Act provides for special treatment of the offences committed under the Act. Section 56 of the Act generally provides that no prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order hereunder, except at the instance of the Government or an Electrical Inspector, or of a person aggrieved by the same.

It appears that the principle behind this section has been adopted in an amplified measure in Sub-section (2) of Section 56 and it was considered proper to provide that the public officers cannot be prosecuted for offences under the Act except with the sanction of the Central Government or the State.... Government. On a proper appreciation of the scheme of the Act the offences under the Act appear to have been differentiated from civil wrongs and offences against other acts. Sub-section (1) and Section 82 provide for other civil wrongs and offences under other acts and grant protection under certain conditions. The sub-section provides for offences under the Act and grant unqualified protection from prosecution except with the sanction of the Central or the State Government. It is in this manner that the obvious differences in the language of the various provisions can be adequately explained. Having given the matter my most careful consideration I do not feel persuaded to read in Sub-section (2) the limitations expressly introduced in Sub-section (1) of Section 56 of the Act and Section 81 of the Electricity (Supply) Act. The protection under Sub-section (2) for offences under the Act except with the sanction of the Government is unqualified. The contention of Mr. Datta is without force and cannot be accepted.

11. In the light of the above discussion, I hold that the two accused are public officers within the meaning of Section 56, Sub-section (2) of the Act and fall in

category (b) and cannot be prosecuted for offences under the Act except with the sanction of the Rajasthan State. The Sub-Divisional Magistrate therefore, went wrong in taking cognizance against them in the absence of the sanction of the Rajasthan Government. The Sub-Divisional Magistrate was also wrong in merely stopping the proceedings and not revoking his order taking cognizance against the accused-non-petitioners. The reference of the District Magistrate is reasonable and deserves to be accepted.

12. The reference is accepted. The order of the Sub-Divisional Magistrate, dated 8.3.1963 and 31.8.1963 are set aside. The proceedings against the accused non-petitioners are quashed and they stand discharged.