
(2016) 04 OHC CK 0020
In the Orissa High Court
Case No : Crla No. 392 of 2012

Sadananda Mishra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Citation : (2016) CriLJ 3093 : (2016) sup2 CutLTCriminal 56 : (2016) 2 ILRCuttack 644

Hon'ble Judges : S.K. Sahoo, J.

Bench : Single Bench

Advocate : M/s. Santosh Kr. Mund, Hemanta Kr. Mund, Anima Kumari Dei and J. Sahu, Advocates, M/s. Hemanta Kr. Mund, A.R. Mohanty and Anima Kumari Dei, Advocates, M/s. S. K. Sanganerla, A. Sanganerla and S. Ranasingh, Advocates, for the Appellant; Mr. Sanjay Kumar Da

Final Decision : Dismissed

Judgement

S.K. Sahoo, J.—In all these three appeals, though the appellants are different but they have challenged the orders passed by the learned Authorised Officer, Special Court, Cuttack in three confiscation proceedings in rejecting their petitions filed challenging the maintainability of the confiscation proceedings and since the questions of law and facts involved are identical, with the consent of the respective parties, all these matters were heard analogously and a common judgment is being passed.

CRLA No. 392 of 2012

2. The appellant Sadananda Mishra has preferred this appeal under section 17 of the Orissa Special Courts Act, 2006 (hereafter '2006 Act') challenging the order dated 13.06.2012 of the learned Authorised Officer, Special Court, Cuttack passed in Confiscation Case No.1 of 2012 in rejecting the petition dated 6.6.2012 filed by the delinquents challenging the maintainability of the confiscation proceeding.

3. The appellant Sadananda Mishra is an accused in Cuttack Vigilance P.S. Case No.34 dated 10.11.1994 which corresponds to T.R. Case No.6 of 2008 pending in the Court of Special Judge, Special Court, Cuttack for offences punishable under sections 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 (hereafter '1988 Act'). A proceeding for confiscation was instituted at the instance of the State of Orissa under section 13 of the 2006 Act vide Confiscation Case No.1 of 2012 before the Authorised Officer, Special Court, Cuttack in which apart from the appellant, his wife Smt. Smruti Prava Mishra, son Sunanda Mishra and mother Nishamani Mishra are the delinquents. The delinquents are the residents of Sheikh Bazar under Lalbag Police Station in the district of Cuttack.

The prosecution case is that the appellant after passing Diploma in Mining Engineering joined as a Blasting Supervisor in O.M.C., Sambalpur on 26.04.1964 and then he was promoted to the rank of Mines Manager and worked in such capacity in different mines till 1976 and then he was promoted to the rank of Regional Manager and thereafter he worked as General Manager, Daitari Iron Ore Project since April, 1993. It is the prosecution case that during the check period i.e. from 22.04.1966 to 02.03.1994, the appellant was found in possession of disproportionate assets to the tune of Rs.15,31,367.20 paisa which he could not account for.

4. After completion of investigation, charge sheet was submitted against the appellant under sections 13(2) read with 13(1)(e) of 1988 Act on 30.12.1993 and accordingly cognizance of offence was taken by the Special Judge, Vigilance, Bhubaneswar and process was issued to the appellant, in pursuance of which the appellant appeared in the said Court and released on bail.

5. The State Government in Home Department exercising power conferred under section 5 of the 2006 Act made a declaration in respect of the appellant on dated 31.05.2008 which was published in the Extraordinary Orissa Gazette dated 02.06.2008. The declaration, so made is quoted herein below for ready reference:-

Home Department

Notification

The 31th May 2008

Form No.1

(See Rule-7)

Declaration

S.R.O. No.253/08—WHEREAS, it was alleged that Shri Sadananda Mishra, Ex-General Manager, Orissa Mining Corporation Ltd. Daitari Iron Ore Project, Keonjhar, S/o Late Sarat Kumar Mishra, At Sheikh Bazar, P.S: Lalbag, Dist: Cuttack, while holding high public office in the State of Orissa, i.e. Orissa Mining Corporation Ltd, Daitari Iron Ore Project, Keonjhar committed an offence under

Clause (e) of sub-section (1) of Section 13 of the Prevention of Corruption Act, 1988 and that the matter was investigated in Cuttack Vigilance P.S. Case No.34 dated 10.11.1994;

AND WHEREAS, on scrutiny of relevant materials available on record, the State Government is of the opinion that there is prima facie case of commission of the offence of Shri Sadananda Mishra, who has accumulated properties disproportionate to his known sources of income by resorting to corrupt means;

AND WHEREAS, it is felt necessary and expedient by the Government that the said offender should be tried by the Special Court established under sub-section (1) of Section 3 of Special Courts Act, 2006;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 5 of Special Courts Act, 2006 (Orissa Act 9 of 2007), the State Government do hereby declare that the said offence shall be dealt with under Special Courts Act, 2006.

[No. 2600/C]

By order of the Governor

Tarun Kanti Mishra

Principal Secretary to Government

6. After issuance of the aforesaid declaration dated 31.05.2008, an application under section 13(1) of the 2006 Act was submitted before the Authorised Officer, Special Court, Cuttack for confiscation of the assets and properties of the appellant, his wife and son and on the basis of such application, Confiscation Case No.1 of 2012 was instituted.

7. On 06.06.2012 the appellant filed an application before the learned Authorised Officer, Special Court, Cuttack challenging the maintainability of the confiscation proceeding with a prayer to drop the proceeding. It was contended by the learned counsel for the appellant before the Authorised Officer that the appellant was not holding 'high public office' as defined under Rule 2(e) of the Orissa Special Courts Rules, 2007 (hereafter '2007 Rules'). It was further contended that classification of civil posts under the State of Orissa i.e. Group-A, B, C and D were not existing earlier and it was introduced for the first time by way of an amendment to Rule 8(1) of the Orissa Civil Services (C.C.A) Rules, 1962 (hereafter '1962 Rules') through G.A. Department Notification No.17902-S.C./3-2/99/Pt- 1-Gen. dated 23.05.2000 published in the Orissa Gazette Extraordinary No.20 dated 09.06.2000. It was further contended that the amended Rule 8(1) of the 1962 Rules cannot be taken resort to in case of the appellant as the check period ended on 02.03.1994 and by then the said classification of Group-A Service i.e. the very basis of definition of 'high public office' given in Rule 2(e) of 2007 Rules was not existing. It was further contended that the appellant was not a holder of Group-A Civil Post under the

State Government at any time.

On behalf of the applicant State of Odisha, while rebutting such contentions, it was urged before the Authorised Officer that the appellant who was the Ex-General Manager of Orissa Mining Corporation, Daitari Iron Ore Project, Keonjhar was holding 'high public office' in the State of Odisha and the State Government on scrutiny of the relevant materials available on record being prima facie satisfied about the commission of the offence by the appellant in accumulating properties disproportionate to his known sources of income by resorting to corrupt means felt it necessary and expedient that the appellant should be tried by the Special Court established under subsection (1) of section 3 of 2006 Act. It was further contended that since during the check period, the appellant was holding 'high public office' as per the classification of services made by the Government of Orissa, vide Authorization Letter No.3642/C dated 8.8.2008, the Government of Orissa, Home Department, Bhubaneswar authorised the Public Prosecutor for making an application under section 13(1) of the 2006 Act for confiscation of the properties of the delinquents in accordance with law. It was further contended on behalf of the State that the appellant had challenged the maintainability the case before the High Court in W.P.(Crl.) No.562 of 2008 which was dismissed on 16.09.2009 along with a batch of writ petitions.

8. The learned Authorised Officer vide impugned order dated 13.06.2012 has been pleased to observe that the State Government being prima facie satisfied that the appellant held 'high public office' and committed the offence and the amount of money was procured by means of the offence authorised the Special Public Prosecutor for making an application for confiscation of money and other properties. It was further held that the appellant has failed to establish that he was not holding 'high public office' during the check period. It was further held that the confiscation proceeding is maintainable against the delinquents and accordingly the petition filed by the delinquents was dismissed.

CRLA No. 491 of 2013

9. The appellant Durga Prasanna Das has preferred this appeal under section 17 of the Orissa Special Courts Act, 2006 (hereafter '2006 Act?') challenging the order dated 21.09.2013 of the learned Authorised Officer, Special Court, Cuttack passed in Confiscation Case No.9 of 2013 in rejecting the petition dated 10.9.2013 filed by the delinquents challenging the maintainability of the confiscation proceeding.

10. The appellant Durga Prasanna Das is an accused in Cuttack Vigilance P.S. Case No.38 of 1999 which corresponds to T.R. Case No.3 of 2012 pending in the Court of Special Judge, Special Court, Cuttack for offences punishable under sections 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 (hereafter '1988 Act?'). A proceeding for confiscation was instituted at the instance of the State of Orissa under section 13 of the 2006 Act vide Confiscation Case No.9 of 2013 before the Authorised Officer, Special Court, Cuttack in which

apart from the appellant, his wife Smt. Bijaya Laxmi Das and son Debraj Das are the delinquents.

The prosecution case is that the appellant entered into Government Service under the State of Orissa as a Junior Engineer on 27.5.1966 and during his service career, he was promoted to the rank of Asst. Engineer and then to the rank of Executive Engineer and posted at Mahanadi North Division, Jagatpur, Cuttack. It is the prosecution case that during the check period i.e. from 27.05.1966 to 18.09.1999, the appellant was found in possession of disproportionate assets to the tune of Rs.17,73,406.69 paisa which he could not account for.

11. After completion of investigation, charge sheet was submitted against the appellant under sections 13(2) read with 13(1)(e) of 1988 Act and accordingly cognizance of offence was taken by the learned Special Judge and process was issued to the appellant, in pursuance of which the appellant appeared in the said Court and released on bail.

12. The State Government in Home Department exercising power conferred under section 5 of the 2006 Act made a declaration in respect of the appellant on dated 19.10.2011 which was published in the Extraordinary Odisha Gazette dated 17.01.2012.

13. After issuance of the aforesaid declaration dated 19.10.2011, an application under section 13(1) of the 2006 Act was submitted before the Authorised Officer, Special Court, Cuttack for confiscation of the assets and properties of the appellant, his wife and son and on the basis of such application, Confiscation Case No.9 of 2013 was instituted.

14. On 10.09.2013 the appellant filed an application before the learned Authorised Officer, Special Court, Cuttack challenging the maintainability of the confiscation proceeding with a prayer to drop the proceeding. It was contended by the learned counsel for the appellant before the Authorised Officer that the appellant was not holding 'high public office' as defined under Rule 2(e) of the Orissa Special Courts Rules, 2007 (hereafter '2007 Rules'). It was further contended that classification of civil posts under the State of Orissa i.e. Group-A, B, C and D were not existing earlier and it was introduced for the first time by way of an amendment to Rule 8(1) of the Orissa Civil Services (C.C.A) Rules, 1962 (hereafter '1962 Rules') through G.A. Department Notification No.17902-S.C./3-2/99/Pt- 1-Gen. dated 23.05.2000 published in the Orissa Gazette Extraordinary No.20 dated 09.06.2000. It was further contended that the amended Rule 8(1) of the 1962 Rules cannot be taken resort to in case of the appellant as the check period ended on 18.09.1999 and by then the said classification of Group-A Service i.e. the very basis of definition of 'high public office' given in Rule 2(e) of 2007 Rules was not existing. It was further contended that the appellant was not a holder of Group-A Civil Post under the State Government at any time.

On behalf of the applicant State of Odisha, while rebutting such contentions, it was urged before the Authorised Officer that the appellant who was the Ex-Executive Engineer, Mahanadi North Division, Jagatpur, Cuttack was holding ? high public office? in the State of Odisha and the State Government on scrutiny of the relevant materials available on record being prima facie satisfied about the commission of the offence by the appellant in accumulating properties disproportionate to his known sources of income by resorting to corrupt means felt it necessary and expedient that the appellant should be tried by the Special Court established under sub-section (1) of section 3 of 2006 Act. It was further contended that since during the check period, the appellant was holding ?high public office? as per the classification of services made by the Government of Orissa, vide Authorization Letter No.3642/C dated 8.8.2008, the Government of Orissa, Home Department, Bhubaneswar authorised the Public Prosecutor for making an application under section 13(1) of the 2006 Act for confiscation of the properties of the delinquents in accordance with law.

15. The learned Authorised Officer vide impugned order dated 21.09.2013 has been pleased to observe that the day on which the State Govt. has formed an opinion about the existence of a prima facie case and if on that day the delinquent is a person holding ?high public office? as defined under the Act, then the proceeding is definitely maintainable in a Special Court. It was further held that the proceeding as has been framed against the delinquents is maintainable and accordingly the petition filed by the delinquents was dismissed.

CRLA No. 555 of 2012

16. The appellant Sri Charu Chandra Parida has preferred this appeal under section 17 of the Orissa Special Courts Act, 2006 (hereafter ?2006 Act?) challenging the order dated 13.09.2012 of the learned Authorised Officer, Special Court, Cuttack passed in Confiscation Case No.2 of 2012 in rejecting the petition dated 5.9.2012 filed by the delinquents challenging the maintainability of the confiscation proceeding.

17. The appellant Sri Charu Chandra Parida is an accused in Cuttack Vigilance P.S. Case No.35 of 1997 which corresponds to T.R. Case No. 10 of 2008 pending in the Court of Special Judge, Special Court, Cuttack for offences punishable under sections 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 (hereafter ?1988 Act?). A proceeding for confiscation was instituted at the instance of the State of Orissa under section 13 of the 2006 Act vide Confiscation Case No.2 of 2012 before the Authorised Officer, Special Court, Cuttack in which apart from the appellant, his wife Smt. Manjulata Parida, sons Mrunmaya Parida, Chinmay Parida and Tanmay Parida are the delinquents.

The prosecution case is that the appellant after passing Degree in B. Tech in Civil Engineering joined service under the Government of Odisha on 22.06.1964 as a Junior Engineer. Then he was promoted to Assistant Engineer and then to Executive Engineer. After attending the age of superannuation, he retired on

31.01.1998 from the Government Service. It is the prosecution case that during the check period i.e. from 01.01.1979 to 15.05.1997, the appellant was found in possession of disproportionate assets to the tune of Rs.25,80,527.93 paisa which he could not account for.

18. After completion of investigation, charge sheet was submitted against the appellant under sections 13(2) read with 13(1)(e) of 1988 Act and accordingly cognizance of offence was taken by the Special Judge and process was issued to the appellant, in pursuance of which the appellant appeared in the said Court and released on bail.

19. The State Government in Home Department exercising power conferred under section 5 of the 2006 Act made a declaration in respect of the appellant on dated 11.07.2008 which was published in the Extraordinary Orissa Gazette dated 15.07.2008. The declaration, so made is quoted herein below for ready reference:-

Home Department

Notification

The 11th July 2008

Form No.1

(See Rule-7)

Declaration

S.R.O. No.348/2008- WHEREAS, it was alleged that Shri Charu Chandra Parida, S/o- Trailokyanath Parida of Village- Bhubaneswar, P.S.- Singla, Dist- Balasore, at present Bagbrundaban (Srikanthpur), P.S.-Balasore Town, Dist- Balasore, State- Orissa, while holding high public office in the State of Orissa, i.e. Ex-Executive Engineer, Charbatia (R&B) Division, Choudwar, Cuttack, committed an offence under Clause (e) of sub-section (1) of Section 13 of the Prevention of Corruption Act, 1988 and that the matter was investigated in Cuttack Vigilance P.S. Case No.35 dated 2nd June, 1997;

AND WHEREAS, on scrutiny of relevant materials available on record, the State Government is of the opinion that there is prima facie case of commission of the offence of Shri Charu Chandra Parida, who has accumulated properties disproportionate to his known sources of income by resorting to corrupt means;

AND WHEREAS, it is felt necessary and expedient by the Government that the said offender should be tried by the Special Court established under sub-section (1) of Section 3 of Special Courts Act, 2006;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 5 of Special Courts Act, 2006 (Orissa Act 9 of 2007), the State Government do hereby declare that the said offence shall be dealt with under the Special Courts Act, 2006.

[No. 3176-C]

By order of the Governor

Tarun Kanti Mishra

Principal Secretary to Government"

20. After issuance of the aforesaid declaration dated 11.07.2008, an application under section 13(1) of the 2006 Act was submitted before the Authorised Officer, Special Court, Cuttack for confiscation of the assets and properties of the appellant, his wife and their three sons and on the basis of such application, Confiscation Case No.2 of 2012 was instituted.

21. On 05.09.2012 the appellant filed an application before the learned Authorised Officer, Special Court, Cuttack challenging the maintainability of the confiscation proceeding with a prayer to drop the proceeding. It was contended by the learned counsel for the appellant before the Authorised Officer that the appellant was not holding 'high public office' as defined under Rule 2(e) of the Orissa Special Courts Rules, 2007 (hereafter '2007 Rules'). It was further contended that classification of civil posts under the State of Orissa i.e. Group-A, B, C and D were not existing earlier and it was introduced for the first time by way of an amendment to Rule 8(1) of the Orissa Civil Services (C.C.A) Rules, 1962 (hereafter '1962 Rules') through G.A. Department Notification No.17902-S.C./3-2/99/Pt18 1-Gen. dated 23.05.2000 published in the Orissa Gazette Extraordinary No.20 dated 09.06.2000. It was further contended that the amended Rule 8(1) of the 1962 Rules cannot be taken resort to in case of the appellant as the check period ended on 15.05.1997 and by then the said classification of Group-A Service i.e. the very basis of definition of 'high public office' given in Rule 2(e) of 2007 Rules was not existing. It was further contended that the appellant was not a holder of Group-A Civil Post under the State Government at any time.

On behalf of the applicant State of Odisha, while rebutting such contentions, it was urged before the Authorised Officer that the appellant who was the Ex-Executive Engineer, Charbatia (R&B) Division, Choudwar and was holding 'high public office' in the State of Odisha and the State Government on scrutiny of the relevant materials available on record being prima facie satisfied about the commission of the offence by the appellant in accumulating properties disproportionate to his known sources of income by resorting to corrupt means felt it necessary and expedient that the appellant should be tried by the Special Court established under sub-section (1) of section 3 of 2006 Act. It was further contended that since during the check period, the appellant was holding 'high public office' as per the classification of services made by the Government of Orissa, vide Authorization Letter No.3642/C dated 8.8.2008, the Government of Orissa, Home Department, Bhubaneswar authorised the Public Prosecutor for making an application under section 13(1) of the 2006 Act for confiscation of the properties of the delinquents in accordance with law. It was further contended on

behalf of the State that the appellant had challenged the maintainability the case before the High Court in W.P.(Crl.) No. 8 of 2009 which was dismissed on 16.09.2009 along with a batch of writ petitions.

22. The learned Authorised Officer vide impugned order dated 13.09.2012 has been pleased to observe that the appellant was working in different capacities in his service career and at the time of search and seizure, he was working as Executive Engineer, R & B, Charbatia Division, Choudwar, Cuttack which is one of the top senior posts i.e. Class-I post. The Government of Orissa adopted revised scale of pay of Government of India in respect of the State Government employees with retrospective effect i.e. 01.01.1996 and since post of Executive Engineer comes under Group-A civil posts, the State Government has rightly declared the appellant as an officer holding a 'high public office'. The learned Authorised Officer further held that the confiscation application filed by the State Government through Public Prosecutor is maintainable and accordingly the petition filed by the delinquents was dismissed.

23. The appellant in CRLA No. 392 of 2012 and the appellant in CRLA No. 555 of 2012 earlier approached this Court in W.P.(Crl) No. 562 of 2008 and W.P.(Crl) No. 8 of 2009 respectively wherein the constitutional validity of the 2006 Act and the Rules framed there under were challenged. A batch of writ petitions were filed and all the writ petitions were heard analogously and a common judgment was passed on 16.09.2009 (Ref:- Dibyadarshi Biswal and others v. State of Orissa and others, (2011) 49 Orissa Criminal Reports 1).

After considering the rival legal contentions urged on behalf of the parties, seven points were formulated by this Court, out of which points nos. 1 and 4 are relevant for the adjudication of the present case.

Point No.1

Whether the similar provisions in the present impugned Act is required to be re-examined in these writ petitions with reference to either the definition clause or declaration under Section 5 (1) and other provisions of Chapter III of the impugned Act in view of the decision rendered by this Court in Kishore Chandra Patel's case (Vol 76 (1993) Cuttack Law Times 720) wherein the provisions of Section 5 and other similar provisions of the impugned Act and chapter III (Confiscation) have already been held to be constitutional, legal and valid as the same do not offend Articles 14 and 21 of the Constitution.

Point No.4

Whether the impugned notification issued under Section 5(1) of the Act is liable to be quashed?

The Hon'ble Court dealt with points no.1 and 4 together as those were inter-related. The Hon'ble Court held as followed:-

"33. In view of the decision in Kishore Chandra Patel's Case and the

observations made in the subsequent order with reference to the Ordinance, this Court in unmistakable terms held that the provisions of the Special Courts Act, 1990 including Part-III dealing with the classification of the monies and properties of the accused persons who are facing the criminal trial is held to be constitutionally legal and valid and therefore the same does not call for interference. For the reason stated supra, there is no occasion for us to examine/consider all the legal contentions which were adverted to in the earlier part of the judgment wherein the legal contentions urged have been dealt with, and upheld validity of the Act except the provision of section 16 of the Special Courts Act of 1990 and therefore there is no need for us once again to refer the same and record findings and reasons. The decision in Kishore Chandra Patel's case attained finality?????. In addition to the reasons assigned by the Division Bench of this Court in the case of Kishore Chandra Patel regarding the discretionary power to be exercised by the State Government in picking and choosing the specific cases of persons, who are holding high public and political office against whom criminal cases are launched qua the Special Courts Act, 2006 is wholly untenable in law for the reason that the State Government has filed an affidavit in Court on 23.07.2010. Relevant paragraphs of the affidavit read thus:-

"3. That as informed by the Special Counsel for the State, during the course of hearing a doubt has arisen as to whether the State Government has any discretion in issuing the notification under Section 5 of the Special Courts Act if a case comes within the category of persons holding high public and political office as defined under the Act and Rules and there is prima facie evidence of the commission of offence under section 13(1)(e) of the Prevention of Corruption Act.

4. That it is humbly submitted that in the event there is prima facie evidence of the commission of an offence alleged to have been committed by person who held high public or political office in the State of Orissa as defined under the Act and the Rules, the State Government shall mandatorily make a declaration to that effect and the State Government does not have any discretion on the subject.

5. That the role of the State Government is limited to satisfy that the ingredients of section 5(1) of the Special Courts Act are satisfied and if the ingredients of section 5(1) of the Special Courts Act is satisfied, the State Government shall make a declaration to that effect."

34. In view of the aforesaid facts sworn to by the Joint Secretary to the State Government, Home Department, Government of Orissa, the apprehension regarding the declaration of certain cases after picking and choosing amongst the offenders who are charged under section 13(1)(e) of the P.C. Act for the purpose of invoking the provision of Chapter-III is also untenable in law. Therefore, the contention urged in this regard has no merit and is liable to be rejected.

In V.C. Shukla's case, the Apex Court had the occasion to consider the challenge to section 5 of the Delhi Special Courts Act, 1979???Referring to the aforesaid

decisions, the Apex Court in V.C. Shukla's case held that as the power has been conferred on the Central Government which is to make a declaration in accordance with the conditions laid down in section 5(1) and, therefore, in conformity with the guidelines mentioned in the preamble, the attack based on discrimination is unfounded and is hereby repelled. In this view of the matter, there is no merit in point no.5. Accordingly, point nos.1 and 4 are answered against the petitioners.

x x x x x x x

43. Accordingly, the writ petitions being devoid of merit are dismissed without costs.

44. Since we have dismissed the writ petitions and the cases are pending for more than one decade and the object and intendment of the State Legislature in enacting the Act is for speedy and expeditious disposal of the cases, which will serve the public interest to have a corruption free society in the State, we direct the Special Courts which are constituted under the provisions of the Act to conduct expeditious trial and dispose of the cases by following the Criminal Procedure Code by taking up the case day to day basis."

24. The judgment rendered by this Court upholding the constitutional validity of the 2006 Act was challenged before the Hon'ble Supreme Court. In case of Yogendra Kumar Jaiswal v. State of Bihar & Others reported in (2016) 63 Orissa Criminal Reports (SC) 426, Hon'ble Shri Justice Dipak Misra, speaking for the Bench, held as follows:-

"98. Applying the aforesaid principle, we are inclined to think that the State Government is only to be prima facie satisfied that there is an offence under Section 13(1)(e) and the accused has held high public or political office in the State. Textually understanding, the legislation has not clothed the State Government with the authority to scrutinise the material for any other purpose. The State Government has no discretion except to see whether the offence comes under Section 13(1)(e) or not. Such an interpretation flows when it is understood that in the entire texture provision turns around the words "offence alleged" and "prima facie". It can safely be held that the State Government before making a declaration is only required to see whether the person as understood in the context of the provision is involved in an offence under Section 13(1)(e) of the Orissa Act and once that is seen, the concerned authority has no other option but to make a declaration. That is the command of the legislature and once the declaration is made, the prosecution has to be instituted in a Special Court and that is the mandate of Section 6(1) of the Orissa Act. Therefore, while holding that the reference to the affidavit filed by the State Government was absolutely unwarranted, for that cannot make a provision constitutional if it is otherwise unconstitutional, we would uphold the constitutional validity, but on the base of above interpretation. The argument and challenge would fail, once on interpretation it is held that there is no element of

discretion and only prima facie satisfaction is required as laid down herein above.

99. Having said that, we shall dwell upon the argument which is raised with regard to classification part, that is, that the persons holding "high public or political office" are being put in a different class to face a trial in a different Court under a different procedure facing different consequences, is arbitrary and further the provision suffers from serious vagueness. The other aspect which has been seriously pyramided by the learned Counsel for the appellants pertains to transfer of cases to the Special Court once declaration is made.

100. Learned Counsel for the State has also referred to the rules to show that to avoid any kind of confusion a definition has been introduced in the rules. It is obligatory to make it immediately clear that the argument of the State that by virtue of bringing in a set of rules defining the term "high public or political office" takes away the provision from the realm of challenge of Article 14 of the Constitution is not correct. In this regard Mr. Vinoo Bhagat, learned Counsel for the appellants, has drawn our attention to the authority in *Hotel Balaji and Ors. v. State of A.P. and Ors.* 1993 Supp (4) SCC 536. In the said case, a question arose as to how far it is permissible to refer to the rules made in an Act while judging the legislative competency of a legislature to enact a particular provision. In that context, the majority speaking through Ranganathan, J. observed that a subordinate legislation cannot travel beyond the purview of the Act. The learned Judge noted that where the Act says that rules on being made shall be deemed "as if enacted in this Act", the position may be different. Thereafter, the learned Judge said that where the Act does not say so, the rules do not become a part of the Act. A passage from Halsbury's Laws of England (3rd Edn.) Vol. 36 at page 401 was referred to. It was contended on behalf of the State of Gujarat that the opinion expressed by Hedge J. in *J.K. Steel Ltd. v. Union of India* AIR 1970 SC 1173, a dissenting opinion was pressed into service. The larger Bench dealing with the said submission expressed the view:

"...Shri Mehta points out further that Section 86 which confers the rule-making power upon the Government does not say that the rules when made shall be treated as if enacted in the Act. Being a rule made by the Government, he says, Rule 42-E can be deleted, amended or modified at any time. In such a situation, the legislative competence of a legislature to enact a particular provision in the Act cannot be made to depend upon the rule or rules, as the case may be, obtaining at a given point of time, he submits. We are inclined to agree with the learned Counsel. His submission appears to represent the correct principle in matters where the legislative competence of a legislature to enact a particular provision arises. If so, the very foundation of the appellants' argument collapses.

101. From the aforesaid, it is crystal clear that unless the Act provides that the rules if deemed as enacted in the Act, a provision of the rule cannot be read as a part of the Act.

102. In the instant case, Section 24 lays down that the State Government may,

by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act. The said provision is not akin to what has been referred to in the case in >Hotel Balaji (supra). True it is, the said decision was rendered in the case of legislative competence but it has been cited to highlight that unless the condition as mentioned therein is satisfied, rules cannot be treated as a part of the Act. Thus analysed, the submission of the learned Counsel for the State that the Rules have clarified the position and that dispels the apprehension of exercise of arbitrary power, does not deserve acceptance.

103. Having not accepted the aforesaid submission, we shall proceed to deal with the real thrust of the submission on this score. It is urged by Mr. Padhi, learned senior Counsel for the State of Odisha, that the principles stated in the decision in V.C. Shukla (supra) will apply on all fours.

104. In the Special Courts Bill, 1978 (supra), may it be noted, the President of India had made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the Special Courts Bill, 1978 (or any of its other provisions) if enacted would be constitutionally invalid. The Court referred to the text of the preamble. The preamble of the Bill was meant to provide for trial of a certain class of offences. Clause 4 of the Act which is relevant for the present purpose, provided that if the Central Government is of the opinion that there is prima facie evidence of the commission of an offence alleged to have been committed during the period mentioned in the Preamble by a person who held high public or political office in India and that in accordance with the guidelines contained in the Preamble, the said offence ought to be dealt with under the Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

105. It was contended that Section 4(1) furnished no guidance for making the declaration for deciding who one and for what reasons should be sent up for trial to the Special Courts. The Court referred to the various statutes with regard to classification and the concept of guidance and vagueness and opined that:

"...By Clause 5 of the Bill, only those offences can be tried by the Special Courts in respect of which the Central Government has made a declaration under Clause 4(1). That declaration can be made by the Central Government only if it is of the opinion that there is prima facie evidence of the commission of an offence, during the period mentioned in the preamble, by a person who held a high public or political office in India and that, in accordance with the guidelines contained in the Preamble to the Bill, the said offence ought to be dealt with under the Act. The classification which Section 4(1) thus makes is both of offences and offenders, the former in relation to the period mentioned in the preamble that is to say, from February 27, 1975 until the expiry of the proclamation of emergency dated June 25, 1975 and in relation to the objective mentioned in the sixth para of the preamble that it is imperative for the functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of such offences should be judicially determined with the utmost

dispatch; and the latter in relation to their status, that is to say, in relation to the high public or political office held by them in India. It is only if both of these factors coexist that the prosecution in respect of the offences committed by the particular offenders can be instituted in the Special Court.

106. Thereafter, the Court referred to certain periods as mentioned in the preamble and in that context, opined that:

"...But persons possessing widely differing characteristic, in the context of their situation in relation to the period of their activities, cannot by any reasonable criterion be herded in the same class. The antedating of the emergency, as it were, from June 25 to February 27, 1975 is wholly unscientific and proceeds from irrational considerations arising out of a supposed discovery in the matter of screening of offenders. The inclusion of offences and offenders in relation to the period from February 27 to June 25, 1975 in the same class as those whose alleged unlawful activities covered the period of emergency is too artificial to be sustained."

107. The Court recorded its conclusion in paragraph 120 as follows:

"The Objects and Reasons are informative material guiding the Court about the purpose of a legislation and the nexus of the differentia, if any, to the end in view. Nothing about Emergency period is adverted to there as a distinguishing mark. If at all, the clear clue is that all abuse of public authority by exalted public men, whatever the time of commission, shall be punished without the tedious delay which ordinarily defeats justice in the case of top echelons whose crimes affect the credentials of democratic regimes.

108. In this context, reference may be made to V.C. Shukla (supra) upon which heavy reliance has been placed by the State Government. The appellants therein while challenging the conviction raised a number of preliminary objections including constitutional validity of the Special Courts Act [No. 22 of 1979] on several grounds, including contravention of Articles 14 and 21 of the Constitution. A three-Judge Bench referred to the order passed in the reference made by the President of India Under Article 143(1) of the Constitution wherein majority of the provisions in the Bill were treated to be valid. Thereafter, the Bill ultimately got the assent of the President with certain changes. After the Act came into force, it assumed a new complexion. The Court in the latter judgment referred to clauses in the preamble and scanned the anatomy of the Act. It was contended that regard being had to the principles laid down by this Court in the Special Courts Bill, 1978 (supra) the provisions fail to pass the test of valid classification under Article 14, for the classification which distinguishes persons who are placed in a group from others who are left out of the group is not based on intelligible differentia; that there was no nexus between the differentiation which was the basis of the classification and the object of the Act; and that such differentiation did not have any rational relation to the object sought to be achieved by the Act. The Court reading the opinion in the Special Courts Bill,

1978 (supra) did not agree with the submissions of the learned Counsel for the appellants that this Court had held that unless emergency offenders could be punished under the Special Courts Act and that no Act seeking to punish the offences of a special type not related to the emergency would be hit by Article 14. The Court addressed to the validity of Sections 5, 6, 7 and 11 of the Special Courts Act, 1979. One of the arguments advanced was that neither the words "high public or political office" had been defined nor the offence being delineated so as to make the prosecution of such offenders a practical reality. Dealing with the said contention, the Court held:

"24. As regards the definition of "high public or political office" the expression is of wellknown significance and bears a clear connotation which admits of no vagueness or ambiguity. Even during the debate in Parliament, it was not suggested that the expression suffered from any vagueness. Apart from that even in the Reference case Krishna Iyer, J. referred to holders of such offices thus: (SCC pp. 440, 441, paras 107, 111)

"...heavy-weight criminaloids who often mislead the people by public moral weight-lifting and multi point manifestoes... such superoffenders in top positions.... No erudite pedantry can stand in the way of pragmatic grouping of high-placed office holders separately, for purposes of high-speed criminal action invested with early conclusiveness and inquired into by high-level courts.

25. It is manifest from the observations of Krishna Iyer, J., that persons holding high public or political offices mean persons holding top positions wielding large powers.

109. Thereafter, the three-Judge Bench referred to the description of persons holding high public or political office in American Jurisprudence (2d, Vol. 63, pp. 626, 627 and 637) Ferris in his Thesis on "Extraordinary Legal Remedies", Wade and Phillips in "Constitutional Law" and after referring to various meanings attributed to the words ruled:

"28. A perusal of the observations made in the various textbooks referred to above clearly shows that "political office" is an office which forms part of a political department of the Government or the political executive. This, therefore, clearly includes Cabinet Ministers, Ministers, Deputy Ministers and Parliamentary Secretaries who are running the Department formulating policies and are responsible to the Parliament. The word High is indication of a top position and enabling the holder thereof to take major policy decisions. Thus, the term "high public or political office" used in the Act contemplates only a special class of officers or politicians who may be categorised as follows:

(1) officials wielding extraordinary powers entitling them to take major policy decisions and holding positions of trust and answerable and accountable for their wrongs;

(2) persons responsible for giving to the State a clean, stable and honest

administration;

(3) persons occupying a very elevated status in whose hands lies the destiny of the nation.

29. The rationale behind the classification of persons possessing the aforesaid characteristics is that they wield wide powers which, if exercised improperly by reason of corruption, nepotism or breach of trust, may mar or adversely mould the future of the country and tarnish its image. It cannot be said, therefore, with any conviction that persons who possess special attributes could be equated with ordinary criminals who have neither the power nor the resources to commit offences of the type described above. We are, therefore, satisfied that the term "persons holding high public or political offices" is self-explanatory and admits of no difficulty and that mere absence of definition of the expression would not vitiate the classification made by the Act. Such persons are in a position to take major decisions regarding social, economic, financial aspect of the life of the community and other far-reaching decisions on the home front as also regarding external affairs and if their actions are tainted by breach of trust, corruption or other extraneous considerations, they would damage the interests of the country. It is, therefore, not only proper but essential to bring such offenders to book at the earliest possible opportunity.

110. After so stating, the Court referred to Clause 4 of the preamble and opined thus:

"31. The words "powers being a trust" clearly indicate that any act which amounts to a breach of the trust or of the powers conferred on the person concerned would be an offence triable under the Act. Clause (4) is wide enough to include any offence committed by holders of high public or political offices which amounts to breach of trust or for which they are accountable in law and does not leave any room for doubt. Mr. Bhatia, however, submitted that even if the person concerned commits a petty offence like violation of municipal bye-laws or traffic rules he would have to be prosecuted under the Act which will be seriously prejudicial to him. In our opinion, this argument is purely illusory and based on a misconception of the provisions of the Act. Section 5 which confers powers on the Central Government to make a declaration clearly refers to the guidelines laid down in the preamble and no Central Government would ever think of prosecuting holders of high public or political offices for petty offences and the doubt expressed by the counsel for the appellant is, therefore, totally unfounded."

In view of the aforesaid enunciation of law, we are unable to accept the submission of the learned Counsel for the appellants that the words "high public or political office" not being defined, creates a dent in the provision. The said words, we are absolutely certain, convey a category of public servants which is well understood and there is no room for arbitrariness.

x x x x x x x

162. In view of the foregoing analysis, we proceed to summarise our conclusions:

- (i) The Orissa Act is not hit by Article 199 of the Constitution.
- (ii) The establishment of Special Courts under the Orissa Act as well as the Bihar Act is not violative of Article 247 of the Constitution.
- (iii) The provisions pertaining to declaration and effect of declaration as contained in Section 5 and 6 of the Orissa Act and the Bihar Act are constitutionally valid as they do not suffer from any unreasonableness or vagueness.
- (iv) The Chapter III of the both the Acts providing for confiscation of property or money or both neither violates Article 14 nor Article 20(1) nor Article 21 of the Constitution.
- (v) The procedure provided for confiscation and the proceedings before the Authorised Officer do not cause any discomfort either to Article 14 or to Article 20(3) of the Constitution.
- (vi) The provision relating to appeal in both the Acts is treated as constitutional on the basis of reasoning that the power subsists with the High Court to extend the order of stay on being satisfied.
- (vii) The proviso to Section 18(1) of the Orissa Act does not fall foul of Article 21 of the Constitution.
- (viii) The provisions contained in Section 19 pertaining to refund of confiscated money or property does not suffer from any kind of unconstitutionality???"

25. The learned counsel for the appellants in CRLA No. 392 of 2012 and CRLA No. 491 of 2013 Mr. Hemanta Kumar Mund and the learned counsel for the appellant in CRLA No. 555 of 2012 Mr. S. K. Sanganeria though had canvassed several grounds in the appeal memos but in view of the judgment rendered by the Hon^{ble} Supreme Court in case of Yogendra Kumar Jaiswal (supra), they very cleverly avoided those grounds but strenuously contended that the dispute relating to the fact as to whether the appellants belonged to Group-A service or not is no longer required to be adjudicated as the definition provided in the 2007 Rules has been held to be not applicable to the 2006 Act and the appellants are legally entitled to challenge the jurisdiction of the learned Authorised Officer to proceed against them on the ground that they do not come within the purview of the expression 'high public office' as delineated by the Hon^{ble} Supreme Court. Learned counsels for the appellants relied upon the decision of the Hon^{ble} Supreme Court in case of Krishna Kumar Variar v. Share Shoppe reported in 2010 Criminal Law Journal 3848 wherein it is held as follows:-

"5. In our opinion, in such cases where the accused or any other person raises an objection that the Trial Court has no jurisdiction in the matter, the said person should file an application before the Trial court making this averment and giving the relevant facts. Whether a Court has jurisdiction to try/entertain a case will, at

least in part, depend upon the facts of the case. Hence, instead of rushing to the higher Court against the summoning order, the concerned person should approach the Trial Court with a suitable application for this purpose and the Trial Court should after hearing both the sides and recording evidence, if necessary, decide the question of jurisdiction before proceeding further with the case."

The learned counsels for the appellants urged that the appeal be disposed of giving liberty to the appellants to file fresh applications before the learned Authorised Officer, Special Court, Cuttack ventilating their grievance that the appellants were not holding any 'high public office' during the period for which they are accused of the offence.

The learned Standing Counsel, Vigilance Mr. Sanjay Kumar Das on the other hand vehemently opposed any such reconsideration of application by the learned Authorised Officer and submitted that it would be a dilly-dallying tactics inasmuch as in view of the ratio laid down in the judgments of Kishore Chandra Patel (supra), Dibyadarshi Biswal (supra) and Yogendra Kumar Jaiswal (supra), the declaration made by the State Government under section 5(1) of the 2006 Act that the appellants were holding 'high public office' in the State of Orissa and that there is prima facie evidence of the commission of an offence of criminal misconduct within the meaning of clause (e) of sub-section (1) of section 13 of the 1988 Act cannot be called in question in any Court in view of section 5(2) of the 2006 Act.

26. The contention of the learned Standing Counsel, Vigilance that in view of section 5(2) of the 2006 Act, the declaration made by the State Government under section 5(1) of the said Act cannot be called in question in this Court, I am afraid, cannot be accepted.

In case of *In re, The Special Courts Bill, 1978* reported in AIR 1979 SC 478, it is held as follows:-

"100. There is one more provision of the Bill to which we must refer while we are on this question. Sub-clause (1) of Clause 4 provides for the making of the declaration by the Central Government while sub-clause (2) provides that "such declaration shall not be called in question in any Court". Though the opinion which the Central Government has to form under Clause 4(1) is subjective, we have no doubt that despite the provisions of sub-clause (2), it will be open to judicial review at least within the limits indicated by this Court in *Khudiram Das v. The State of West Bengal* reported in AIR 1975 SC 550. It was observed in that case by one of us, Bhagwati J., while speaking for the Court, that in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability". The opinion has to be formed by the Government, to say the least, rationally and in a bona fide manner."

In case of *State (Delhi Administration) v. V. C. Shukla* reported in AIR 1980 SC 1382, it is held as follows:-

"83. Another allied argument advanced by Mr. Bhatia was that the issuance of a declaration under Section 5 (1) depends purely on the subjective satisfaction of the Central Government and under sub-section (2) of Section 5 such a declaration cannot be called into question by any Court so that there would be an element of inherent bias or malice in an order which the Central Government may pass, for prosecuting persons who are political opponents and that the section is therefore invalid. We are unable to agree with this argument. As already pointed out, the power of the Central Government to issue a declaration is a statutory power circumscribed by certain conditions. Furthermore, as the power is vested in a very high authority, it cannot be assumed that it is likely to be abused. On the other hand, where the power is conferred on such a high authority as the Central Government, the presumption will be that the power will be exercised in a bona fide manner and according to law. In the case of *Chinta Lingam v. Government of India*, (1971) 2 SCR 871 : (AIR 1971 SC 474), this Court observed:

"At any rate, it has been pointed out in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment.....It was said that though the power was discretionary but it was not necessarily discriminatory and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law."

To the same effect is the decision of this Court in *Budhan Choudhry v. The State of Bihar*, (1955) 1 SCR 1045 : (AIR 1955 SC 191). It was, however, suggested that as the central Government in a democracy consists of the political party which has the majority in Parliament, declarations under Section 5 (1) of the Act could be used as an engine of oppression against members of parties who are opposed to the ideologies of the ruling party. This is really an argument of fear and mistrust which, if accepted, would invalidate practically all laws of the land; for, then even a prosecution under the ordinary law may be considered as politically motivated, which is absurd. Furthermore, prejudice, malice or taint is not a matter for presumption in the absence of evidence supporting it. It is well settled that burden lies on the parties alleging bias or malice to prove its existence, and if malice or bias is proved in a particular case, the courts would strike down the act vitiated by it, in exercise of its powers under Articles 226, 227 or 136. This aspect of the matter was dealt with in the reference case thus:-

"Though the opinion which the Central Government has to form under clause 4 (1) is subjective, we have no doubt that despite the provisions of sub-clause (2) it will be open to judicial review at least within the limits indicated by this Court in *Khudiram Das v. The State of West Bengal*, (1975) 2 SCR 832, 845 : (AIR 1975 SC 550). It was observed in that case by one of us, Bhagwati, J., while speaking for the Court, that in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability". The opinion has to be

formed by the Government, to say the least, rationally and in a bona fide manner."

The Scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India has been well-defined. The power exercised by the statutory, quasi-judicial or administrative authorities can be interfered on the limited ground if it is shown that exercise of discretion itself is perverse or illegal or has resulted in causing miscarriage of justice. The High Court does not sit in appeal over the decisions of the authorities. A mere wrong decision without anything more is not enough to attract the power of judicial review. The Court is more concerned with the decision-making process than the merit of the decision itself. If the authority passing the order has requisite jurisdiction under the law to do so and there is no procedural impropriety, irrationality, mala fideness or illegality in the order, the High Court should exercise restraint and should not interfere with the order in the larger public interest.

27. Adverting to the contentions raised by the learned counsels for the respective parties, section 5(1) of the 2006 Act makes it crystal clear that if the State Government is of the opinion that there is prima facie evidence of the commission of an offence (defined under section 2(d) of the ?2006 Act?) alleged to have been committed by a person, who held ?high public or political office? in the State of Orissa, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion. Section 5(2) of the 2006 Act provides that such declaration shall not be called in question in any Court.

The preamble to the 2006 Act, inter alia, indicates that it has been enacted to take appropriate action against the persons who are holding high political and public offices and have accumulated vast property disproportionate to their known source of income by resorting to corrupt means and to establish Special Courts for the speedy termination of the trials and for final determination of guilt or innocence of the persons to be tried without interfering with the right to a fair trial.

Even though ?person holding high public office? has not been defined in the 2006 Act and the definition as enumerated in section 2(e) of the 2007 Rules cannot be read as a part of the 2006 Act as there is no such provision in the 2006 Act which says that the rules on being made shall be deemed "as if enacted in the Act" and section 24 of the 2006 Act merely states that the State Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act, it will not create a dent in the provision as in view of the ratio laid down in *Yogendra Kumar Jaiswal* (supra), the words ?high public or political office? are absolutely certain, convey a category of public servants which is well understood and there is no room for arbitrariness.

The appellant in CRLA No. 392 of 2012 was the Ex-General Manager, Orissa Mining Corporation Ltd., Daitary Iron Ore Project, Keonjhar and the appellants in

CRLA No. 491 of 2013 and CRLA No. 555 of 2012 are the Ex-Executive Engineers thus holding such top position, they were wielding large powers and they being Special Class Officers were in a position to take major decisions regarding economic and financial aspects of the project/assignments and therefore it seems that there was no difficulty on the part of the State Government to hold that the appellants were holding 'high public office' in the State of Orissa. The guidelines laid down in the preamble is clear and there is no vagueness or ambiguity in the same and therefore the decision of the State Government after scrutinising the materials that the appellants while holding 'high public office' committed the offence does not suffer from arbitrariness. Since charge sheet was submitted against the appellants under sections 13(2) read with 13(1)(e) of 1988 Act and cognizance of offence has been taken, the opinion of the State Government that there is prima facie case of the commission of the offence cannot be faulted with and it cannot be contended that the declaration made by the State Government in consonance with Section 5 of the 2006 Act suffers from any illegality. Once the declaration under Section 5(1) of 2006 Act is made, the prosecution has to be instituted in the Special Court which is the mandate of Section 6(1) of the 2006 Act and accordingly the same has been done and the proceedings are pending in the Court of Special Judge, Special Court, Cuttack for trial in T.R. Cases. Similarly no illegality is found in the approach of the Public Prosecutor in making an application under Section 13 of the 2006 Act for confiscation being authorised by the State Government after being satisfied with regard to the aspects enumerated in subsection (2). Prayer made by the learned counsel for the appellants for giving liberty to file fresh applications before the learned Authorised Officer for ventilating their grievance, according to my estimation is a delaying tactics which should not be encouraged.

28. In view of the above discussions, I am of the view that there is no infirmity in the impugned orders of the learned Authorised Officer, Special Court, Cuttack in rejecting the petitions filed by the delinquents challenging the maintainability of the confiscation proceedings.

29. Accordingly, the Criminal Appeals being devoid of merits stand dismissed.

30. The Authorised Officer, Special Court, Cuttack shall do well to expedite the confiscation proceedings and after giving fair opportunities to the respective sides to present their case, shall do well to dispose of the proceedings within a period of six months from the date of receipt of the order by taking up the cases day to day basis.

31. This Court passed orders for interim stay of further confiscation proceedings which were extended from time to time. In view of the dismissal of the Criminal Appeals, interim orders of stay of further proceeding stand automatically vacated.

32. Let a copy of the judgment be sent down to the concerned Authorised Officer for necessary action at his end.