

*** "REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ Crl. Revision Petition 495/2005

Date of decision: February 06, 2009

ASHOK KUMAR RASWANT PETITIONER

! Through : Mr. Sandeep Sethi, Sr. Adv.
Mr. Anurag Jain, Adv.

Versus

\$ CBI RESPONDENT

^ Through : Mr. Ashish Kumar, Adv.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J.

1. Present revision petition has been filed by the petitioner impugning the judgment and order dated 29.04.2005 on charge and consequent framing of charge under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act

(hereinafter referred to as 'PC Act').

2. Petitioner was employed in Delhi Vidyut Board (hereinafter referred to as 'DVB') since August 1974 as Meter Reader (Temporary). He was promoted as Meter Reading Inspector on 27.12.1990, was given another promotion as Meter Reading Inspector (TS) on 1.4.1991. In the year 2002, DESU was privatized and since thereafter petitioner was transferred to BSES Rajdhani Power Ltd. (hereinafter referred to as 'BSES'), where he is presently working.
3. A written complaint was filed by Sub-Inspector Shri Lalit Kaushik, CBI-ACB, New Delhi on 22.02.2002 against the petitioner under Section 13(2) read with Section 13(1)(e) of the PC Act alleging therein that the documents seized during the house search of the petitioner in another case, he was found to have acquired disproportionate assets. This complaint culminated into registration of FIR No. RC-DAI-2002-A-0009 dated 22.02.2002. After completion of the investigation, chargesheet was filed in the Court of the Special Judge. The trial

court, after taking cognizance of the offences as aforesaid, summoned the petitioner and after hearing the parties on charge was pleased to pass the impugned order on 29.04.2005, wherein she observed that prima facie the offence under Section 13(2) read with Section 13(1)(e) was made out against the petitioner. On the same date, she framed charges against the petitioner. Aggrieved by the said order on charge and consequent framing of charge, petitioner has filed the present revision petition.

4. Mr. Sandeep Sethi, learned senior counsel for the petitioner has argued that the trial court erred in framing charges against the petitioner as it failed to take into consideration that during the said period i.e. 19.08.1974 to 2.1.2002, petitioner was employed with DVB and the chargesheet had been filed without sanction from the appropriate sanctioning authority and after enactment of Delhi Electricity Reforms Act, 2000, DVB was unbundled into various entities including the public entity known as BSES Rajdhani Power Ltd. with which the

petitioner has been working pursuant to his transfer. As per the scheme of transfer envisaged by the said Act and the Rules framed thereunder, petitioner continued to serve in BSES on the same terms and conditions which were applicable to him while in service with DVB and in no manner less favourable than, or inferior to those which were applicable to him immediately before his transfer.

5. Learned senior counsel for the petitioner further submitted that as per sub-rule 8 of Rule 6 notified on 20.11.2001 by Government of NCT of Delhi, all statutory and other schemes in respect of employment related matters, including the provident fund, gratuity fund or special fund created or existing for the benefit of the personnel the relevant transferee would stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters would become those of such transferee and the services of the personnel would be treated as having been continuous for the purpose of the application of this sub-rule.

6. It is further submitted that as per Rule 6 sub-rule 11, all the proceedings including pending against the personnel prior to the date of the transfer from the Board to the transferees, or which may relate to misconduct, lapses or acts of commission or omission committed before the date of transfer would not abate and would be continued by the relevant transferee and also that BSES is a joint venture with the Government of NCT holding shares in it and therefore the trial court went wrong when it did not consider that chargesheet had been filed against the petitioner without the necessary sanction under Section 19 of the PC Act and took cognizance of the offences. It is emphasized by the learned senior counsel for the petitioner that the court had no jurisdiction to take cognizance of the offences as charged against the petitioner without the necessary sanction and therefore the impugned order is void ab initio, without jurisdiction and is liable to be set aside.
7. Mr. Ashish Kumar appearing for the CBI has argued that since after the transfer of the

petitioner to BSES, which is a private limited company, petitioner ceased to be a Government servant and in this case, the complaint against the petitioner was received after he had joined BSES and was charge-sheeted accordingly, since he ceased to be a Government employee no sanction under Section 19 of PC Act was required to be obtained before filing the charge-sheet in the Court. It is also argued that DVB was abolished on 1.7.2002 and the same was taken over by four private companies and thus petitioner, who was transferred to BSES, ceased to be a public servant from the said date and therefore no sanction for his prosecution was required as per provisions of section 19(1)(c) of the PC Act. He further submitted that the trial court has rightly, judiciously and with due application of mind passed the impugned order on charge against the petitioner who had committed criminal misconduct while working as meter reading inspector by acquiring disproportionate assets to his own source of income and there is no illegality committed by

the trial court while passing the impugned order without sanction and therefore the revision petition deserves dismissal.

8. Government of NCT of Delhi had formed a policy to restructure DVB for the purposes of restoring the operational and financial viability to meet the future demand for sufficient supply of energy. Since employees, engineers and officers including junior engineers of DVB were apprehensive that on restructuring of the DVB, they would be retrenched or their service conditions would be adversely affected, the Government of NCT of Delhi and DVB entered into a Tripartite agreement with the Delhi Vidyut Board Joint Action Committee which consisted of Delhi State Electricity Workers' Union (recognized), DESU Engineers Association (Recognised), DVB Generation of Engineers and Supervisors Association (recognized), DVB Officers Association (recognized), DVB Sub-Station Technical Staff Association (regd.) and DVB Technical Employees Association (regd.) representing workers, supervisors, engineers and

officers of DVB on 28.10.2000. Another similar Tripartite agreement was executed with Delhi Vidyut Board Junior Engineers Association representing Junior Engineers of DVB on 9.11.2000. Both these agreements were notified by the Department of Power.

9. Delhi Electricity Reforms Act came into force on 3.11.2000. Thereafter, the employees of DESU as well as DVB were transferred to various companies and the petitioner was transferred to BSES. He was employed with DVB at the time of his transfer to BSES. DVB was abolished on 1.7.2002 and after 1.7.2002, petitioner ceased to have any association with his parent employer by virtue of DVB becoming a non-entity after it was taken over by BSES and other companies.
10. The FIR was registered on 22.02.2002. At that time, petitioner was a public servant as he was working with DVB. The charge-sheet was filed in March, 2004 in the Court; after DVB became non est and petitioner stood transferred to BSES. The Court took cognizance of the offences under

Section 13(2) read with Section 13(1)(e) of the PC Act on 29.04.2005.

11. The foremost question to be considered by this Court is if petitioner continued to be a public servant w.e.f. 1.7.2002 when DVB was taken over by BSES and other companies and he stood transferred to BSES and if sanction under Section 19 of PC Act was a pre-requisite condition for filing of the charge-sheet and for taking cognizance of the offences under the PC Act by the trial court. To ascertain the status of the petitioner in BSES since 1.7.2002, I feel the necessity of referring to the certain clauses contained in the Rules notified on 20.11.2001 under Delhi Electricity Reforms Act, 2000:

“6. Transfer of Personnel

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7) subject to the provisions of the Act and these rules, the transferee may frame regulations governing the conditions of service of the personnel transferred to the transferees under these rules which shall not in any way be less favourable or inferior to those applicable to them immediately before

the transfer and till such time, the existing service conditions of the Board shall mutatis mutandis apply.

(8) subject to sub-rule (9) below, in respect of all statutory and other schemes and employment related matters, including the provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners, the relevant transferee shall stand for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of such transferee and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub-rule.

(9)

(10)

(11) All proceedings including disciplinary proceedings pending against the personnel prior to the date of the transfer from the date of the transfer from the Board to the transferees, or which may relate to misconduct, lapses or acts of commission or omission committed before the date of transfer, shall not abate and may be continued by the relevant transferee.

(12)

(13)”

Thus it is clear that though BSES had all the authority to frame its own regulations governing the condition of service of the personnel transferred to the said company under these Rules but such regulations in no manner were to be less

favourable or inferior to the Rules and Regulations which were applicable to the personnel, so transferred to the transferee company and the existing service condition of the Board, mutatis mutandis continued to apply till such rules and regulations were framed by the company. The disciplinary proceedings and other proceedings pending against the personnel prior to date of his transfer from DVB to the company, which might relate to his misconduct, lapses or acts of commission or omission committed by him before the date of transfer could also be continued by the company and under no circumstance, those proceedings were to abate on transfer. In other words, all proceedings of whatever nature pending with the Board would continue to be conducted by the company even after DVB became non est, in the same manner as if, the proceedings were being conducted by DVB. These rules are absolutely silent about the status of enquiry or proceedings pending against a personnel transferred to the company or are initiated subsequent to his transfer

for the misconduct etc. committed by him during the period he was serving with DVB.

12. Learned senior counsel for the petitioner has brought to my notice, clause 1 sub-clause a, b, f, g and m of the Tripartite agreement entered into between the Government of NCT of Delhi and DVB Joint Action Committee (the Tripartite agreement entered into between the Government of NCT of Delhi and DVB Junior Engineers Association are identical). From collective reading of these clauses contained in Tripartite agreement, it is clear that the terms and conditions of service upon transfer to the corporate entity such as promotion, transfer, leave and other allowances etc. regulated by existing service rules i.e. Fundamental Rules and Supplementary Rules (hereinafter referred to as 'FRSR') were guaranteed to continue and applicable to the personnel so transferred provided, there was mutual settlement for modification of the same between the company and the recognized union/association without detriment to the existing benefits of the employees. All

benefits of the service rendered by the employees in DVB as on the date of restructuring were protected and given full effect to. The period of service of the employees under DVB was to be treated as continuous service for the purpose of all service benefits and terminal benefits payable to the personnel.

13. While executing this agreement, the foremost concern of the parties was to ensure that there was no retrenchment and service conditions of the employees were not adversely affected in terms of conditions of service i.e. length of service, their salaries/wages, pension, etc. which were being regulated by service rules contained in FRSR only.
14. Neither Tripartite agreement nor Delhi Electricity Reforms Rules, 2001 made any provisions thereby maintaining status of the employees as public servant on their transfer to respective companies. Similarly, no protection under Section 197 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') nor Section 19 of the PC Act was extended to the personnel so transferred after

1.7.2002 except pecuniary benefits and security of job, pension etc. No other protection, as of a public servant, was extended to the employees of DVB or of DESU, after DVB became non-est. Service Rules incorporated in FRSR, only regulate the service condition of a public servant qua their length of service, promotions, transfers, departmental enquiries, termination from service and voluntary retirement etc. FRSR in no manner can be said to be protecting the status of the transferred employees of DVB, as public servant for offences covered under the PC Act and other offences for which sanction under Section 19 of the PC Act or Section 197 Cr.P.C. is a pre-requisite for prosecuting him in a court of law.

15. Public Servant is defined in Section 2(c) of the PC Act. It means and includes any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty; any person in the service or pay of a local authority; any person in the service or pay of a corporation established by

or under a Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government or a Government company and so on. As per explanation 2 of this Section, wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

16. In this case, after his transfer to BSES, petitioner ceased to be a public servant because he ceased to be in service of the Government and no longer remained on the pay of the Government or remunerated by the Government in any manner for the performance of his duties and he was not performing any public duty as a public servant. Petitioner being an employee of DVB was a public servant within the meaning of Section 2(c) of the PC Act when the FIR was registered against him but, he ceased to be a Government servant when the charge-sheet was filed against him.

17. Therefore BSES cannot be termed as government

company as defined in Section 617 of the Companies Act. The petitioner was a public servant within the meaning of Section 2(c) of PC Act while in employment of DESU which was a public undertaking but, ceased to be a public servant with the BSES and other companies having completely taken over DESU. No sanction under Section 19 of the PC Act was therefore required for prosecuting the petitioner after he was transferred to BSES, a private company. Now, he can be removed from his office by BSES only for which no sanction is required.

18. Petitioner at the same time can also not be termed as a public servant as being employee of BSES he is not connected with the affairs of the union or of a state and can be removed by his employer without any sanction of the Central or the State Government as the case may be. Therefore, no protection under Section 19 of the PC Act can be claimed by the petitioner.
19. Needless to say that a public servant who commits an offence within the meaning of PC Act while he

was discharging the public duty and continues to discharge his duties as public servant can only be prosecuted with the sanction contemplated under Section 19 of the PC Act at the time when chargesheet is filed against him. Without the requisite sanction the Court has no jurisdiction to take cognizance of an offence punishable under the PC Act. However, if a public servant commits an offence during his service as a public servant but ceases to be a government servant when chargesheet is filed against him, no sanction under Section 19 of the PC Act is required. In such like circumstances the Court is within its power to take cognizance of the offence without such sanction. Petitioner was a public servant when FIR was registered against him on 22.2.2002. He ceased to be a government servant with effect from 1.7.2002 when DVB was abolished and petitioner ceased to have any relation with his parent employer who became non-est after it was taken over by BSES and other companies. The chargesheet was filed in March 2004 in the Special Court against the

petitioner. On the date of filing of the chargesheet petitioner no longer enjoyed the status of a public servant being in employment of BSES, a private company. The trial court therefore was within its rights to consider the material placed on record along with the chargesheet by CBI and take cognizance of offences under Section 13(2) read with Section 13(1)(e) of the PC Act against the petitioner without the requisite sanction of the appropriate authorities, since there was no sanctioning authority in this case as DESU having been lost its entity with effect from 1.7.2002.

20. I may also state that petitioner who had full opportunity to raise the issue challenging the jurisdiction of the Special Judge to take cognizance of offences under PC Act for want of necessary sanction under Section 19 of the PC Act before the trial court did not avail of the said opportunity. The issue of sanction has been raised for the first time in the revision petition before this Court. No explanation is forthcoming from the petitioner as to why he failed to raise this legal objection to the

jurisdiction of the court to take cognizance of offences under the PC Act against him. Section 19(3) of the PC Act operates bar on the jurisdiction of a revisional/appellate court to reverse or alter an order passed by a special judge on the ground of absence of or any error omission or irregularity in the sanction required under the Act unless the Court is of the opinion that failure of justice has in fact been occasioned thereby for determining whether the absence, error, omission or irregularity in the sanction is occasioned or resulted in a failure of justice. While considering so, the Court has to consider the fact whether such objection could and should have been raised at an earlier stage in the proceedings. As observed above, petitioner failed to raise this objection before the trial court which he had the occasion to raise while addressing his arguments on charge. Besides, even if it is presumed that petitioner continued to be a public servant after he was transferred and assumed his office in BSES a private company, there is nothing on the record to

suggest that absence of sanction under Section 19 of the PC Act has caused failure of justice to him.

21. The revision petition being without any merits is hereby dismissed.
22. Trial court record be sent back along with attested copy of the order immediately through special messenger.

(ARUNA SURESH)
JUDGE

February 06, 2009
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