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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 139 OF 2015

Shri Ramchandran Nair,
Aged 61 years, Occupation Retired,
Indian Inhabitant, residing at "Ramnivas",
Ponnaramthottam, West of Civil Station,
Mavelikara 690 101, Kerala … Applicant

Versus

1. The Superintendent of Police,
   Central Bureau of Investigation,
   Economic Offences Wing,
   Universal Insurance Building,
   4th and 6th Floor, Sir P.M. Road,
   Fort, Mumbai 400 001

2. The State of Maharashtra,
   through the Office of the Public
   Prosecutor, High Court,
   Appellate Side, Mumbai.

3. Shri. Rajesh Sharma,
   Age 44 years, Occupation : Business,
   residing at 501/502/503, Arihant, 5th
   Floor, 15th Road, TPS 3, Khar
   Gulnaz CHSL, Bandra (West),
   Mumbai 400 050.

4. Mr. Suresh Gattani,
   age 45 years, Occupation : Service,
   Indian Inhabitant, residing at D-604,
   Gayatri Satsang, Thakur Village,
   Kandivali (East), Mumbai 400 101. … Respondents

Mr. Abad Ponda along with Mr. Lalit Katariya, Benedicta Lobo i/by Katariya & Associates for the petitioner/applicant.

Mrs. A.A. Mane, A.P.P. for the State.

Mr. H.S. Venegaonkar, advocate for the CBI.

Mr. Samsher Garud along with Mr. Vishwabhushan Kamble i/by Jayakar & Partner, Advocates for the respondent nos. 3 and 4.

CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 25, 2015

ORAL JUDGMENT :

A question that arises for my determination in the present revision application is as to whether the applicant while working as Director of LIC Housing Finance Limited, was a public servant.

2. The applicant is facing trial before the learned Special Judge of Greater Mumbai for the offences punishable under sections 120B of Indian Penal Code and section 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 along with respondent nos. 3 and 4. He had made an application under section 239 of the Code of Criminal Procedure for discharge on the ground that he was not a public servant within the meaning of section 2(c) of Prevention of Corruption Act and therefore he could not be prosecuted for the alleged offence under the said Act (hereinafter referred as the 'Act').

3. Certain admitted facts can be noted here before I proceed further to examine the contention of the applicant and the opposition of C.B.I. The applicant was admittedly employee of LIC and was transferred to LIC Housing Finance Limited (hereinafter referred to as 'LICHFL') as Chief Executive Officer on 12th April, 2008. He had handed over the charge of his earlier position in the LIC of India on 22nd April, 2008 and took the charge as Chief Executive Officer of LICHFL on 23rd April, 2008. His salary structure in the LICHFL was similar to his earlier salary structure. He was provided accommodation at Flat No. A-3, Jivan Jyot, Mumbai. It is further an admitted position that after his transfer as Chief Executive Officer of LICHFL he was appointed as Director of LICHFL by independent resolution passed by LICHFL. It is also an admitted position that the LICHFL was not a company 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.

4. It appears that LICHFL was mainly handling housing loan cases. The allegations against the applicant are that he had accepted Rs.45 lac from Sunil Mantri Realty for disbursing the loan of Rs. 100 Crores which should have been cancelled because pre-disbursement conditions were not complied with within the period of six months. It is not disputed that Sunil Mantri

Realty were granted loan of Rs. 100 Cores for their project Mantri Park at Goregaon, Mumbai. One M/s. Money Matter Finance Services Limited was working on behalf of Mantri. Accused No. 2 Rajesh Sharma was looking after the affairs of said Money Matters Finance Services Limited. The loan of Rs. 100 Cores could not be disbursed because the pre-conditions were not fulfilled. It is the case of CBI before the trial Judge that the loan could not have been sanctioned after the lapse of six months and it should have been cancelled. The applicant however, allegedly agreed to disburse Rs. 60 Crores out of the said amount of Rs.100 Crores to Mantri and for that purpose he demanded Rs.45 lac from accused No.2 Rajesh Sharma. Accused No. 3 Suresh Gatani of Money Matters had delivered the money to the applicant at his residence. F.I.R. was registered on the basis of intelligence input and on completion of investigation, chargesheet was filed against the applicant and other accused.

5. As already stated, learned trial Judge refused to discharge the applicant. Learned trial Judge came to the conclusion that the applicant was a public servant when he was in the employment of LIC of India Limited. Learned trial Judge came to the conclusion that since LICHFL was controlled by LIC, the applicant was a public servant within the meaning of section 2(c)(iii) of the Act. The learned Special Judge was of the view that since LIC was

created by Central Act and was controlled by Government and that therefore, the LICHFL was also controlled by the Government, though it is not stated as to what extent the Government could interfere in the affairs of LICHFL.

6. Learned advocate Mr. Ponda has submitted that by no stretch of imagination, it can be said that the applicant was a public servant mainly because he was an employee of the private company established under the Companies Act and that the applicant cannot be called as Pubic Servant only because he was earlier holding his post as public servant in LIC of India. Learned A.P.P. Mr. Venegaonkar has submitted that even if the observations made by the learned Special Judge are not to be accepted, the applicant definitely falls under the category of persons who hold office by virtue of which they are authorized or required to perform their public duty. According to him, therefore, the applicant was a public servant within the meaning of section 2(c)(viii) of the Act.

7. I have gone through the order of the learned trial judge. Learned trial Judge has observed that though the control of the Government has not been stated anywhere, it is to be presumed that the LICHFL was controlled by the Government as there was control of Government over LIC of India.

8. The learned trial Judge has stated that though the stake of LIC of India in LICHFL was less than 51% and though there was no grant or aid received from the Government or Government Corporation, there was control of the Government over LICHFL. Learned counsel Mr. Ponda has submitted that these observations of the learned Judge are not correct in as much as the officer not less than Managing Director of LIC OF India Mr.D.K. Mehrotra whose statement was recorded by the Investigating Officer has stated in his statement as under :

> "It was decided by COD that as the shareholdings of LIC and other Govt agencies had never exceeded 50% of the total share capital of the company and that the shareholdings of the private companies, mutual funds and public individuals have been the more than the shareholdings of LIC of India and other Govt. companies including banks, GIC etc. (the shareholding pattern as on 31.03.2005 and 31.03.2006 was considered during this meeting which was 46.26% and 42.99% respectively), the Committee was of the view that LIC Housing Finance Ltd. could not be categorized as Govt. Controlled Company."

9. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **S.S. Dhanoa Vs. Municipal Corporation, reported at (1981) 3 SCC 431.** In the said case, the question that came up for determination of the Hon'ble Supreme Court was whether the member of the Indian Administrative service, whose services are placed at the disposal of the Organization which is neither local authority, nor Corporation established by

the or under the Central Provincial or State Act by the Central Government or the Government of the State, can be treated to be public servant within the meaning of clause twelfth of section 21 of Indian Penal Code for the purposes of section 197 of the Code of Criminal Procedure, 1973. It is submitted by Mr. Ponda that though the issue before the Supreme Court was pertaining to definition of Public Servant under section 21 twelfth clause, the said judgment can guide this court to decide the issue involved in the present petition also. My attention was drawn to the similarity between twelfth clause of section 21 of the Indian Penal Code and clause 2(c)(iii) of the Act. Relevant portion of the two definitions can be reproduced as under :

Section 21 of I.P.C. reads as under :

> "21. "**Public servant**"- The words "Pubic Servant" denote a person falling under any of the descriptions hereinafter following; namely:-
> Twelfth – Every person--
> (a)................
> (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)."

To compare the same with section 2(c)(iii) of the Act, the same can be reproduced as under :

> "2.(c). "**Public servant**" means, -

> (i) ………..
> (ii) ………..
> (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or any authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956.”

10. Learned advocate has invited my attention to the facts of the case of Mr. Dhanoa. The appellant Mr Dhanoa was member of Indian Administrative Services. The Ministry of Agricultural, Government of India, had placed the services of appellant at the disposal of the department of Cooperation, for his appointment as the General Manager, Super Bazaar, Cannaught Place, New Delhi, with effect from April 07, 1972. His term was extended for the further period of one year with effect from 7th April, 1973. After completion of his period of deputation, the appellant was reverted as Joint Secretary in the Ministry of Agriculture. As such he continued to be Manager of Super Bazaar till the month of April, 1974. He was prosecuted for having committed offence punishable under section 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 in his capacity as General Manager of Super Bazaar. A summons was issued against him by the Magistrate. The appellant raised a plea before the learned Magistrate that he could not have been prosecuted without there being sanction from the competent authority under section 197 of the Code of Criminal Procedure,

1973 as the act complained of was nothing but an act done by him in the discharge of his duties as a public servant. The Magistrate took a view that the appellant was not a public servant within the meaning of clause Twelfth of section 21 of the Indian Penal Code and therefore, rejected the plea of the appellant. The matter was carried to Hon'ble Supreme Court as the view taken by the Magistrate was confirmed by the High Court. The Hon'ble Supreme Court also dismissed the appeal and took the view that the appellant was not a public servant while working as General Manager of Super Bazaar though he originally belonged to the cadre of Indian Administrative Services.

11. Mr. Ponda has submitted that the case of the applicant in the present application is similar to the case of Dhanoa. It was submitted that though the applicant belonged to the Corporation controlled by the Government, he was not public servant when his services were placed at the disposal of the LICHFL which was admittedly a private company. Learned Special Judge has taken a view that since there was stake of LIC of India in LICHFL, the applicant continued to be employee of LIC and was a public servant within the meaning of section 2(c)(iii) of the Act. While dealing with the similar situation in the case of Mr. Dhanoa, the Apex Court had made following observations :

> "The Super Bazaar at Connaught Place and at various other

> places are run by the Cooperative Store Limited under the control of the Ministry of Agriculture (Department of Cooperation). The incumbents of supervisory and other key posts including that of the General Manager cannot be appointed or removed without the prior approval of the Central Government. The whole purpose of Clause 6 of the Agreement in the matter of appointment of General Manager and other incumbents holding key posts is to safeguard interests of the Central Government . Legally speaking, the Super Bazaars are owned and managed by the Society and not by the Central Government and, therefore, the appellant was not employed in connection with the affairs of the Union within the meaning of Section 197 of the CrPC, 1973."

12. Learned counsel for the applicant has contended that though the affairs of the LICHFL were controlled and supervised by the LIC of India, LICHFL, legally speaking, was not owned by LIC Of India Limited. It is submitted that the applicant ceased to be public servant on the date his services were placed at the disposal of LICHFL. Not only that the applicant was appointed as Director by the Executive Committee of LICHFL. According to Mr. Ponda, it is absolutely clear that he ceased to be public servant within the meaning of section 2(c)(iii) of the Act.

13. Learned Additional P.P. Mr. Venegaonkar has submitted that even if the contention of the applicant with regard to section 2(c)(iii) of the Act is accepted, the applicant cannot escape from the liability of facing trial in as much as in his capacity as Director of LICHFL he was holding an office by

virtue of which he was authorized or required to perform public duty and therefore, he was a public servant within the meaning of section 2(c)(viii) of the Act.

14. If we apply the parameters laid down by the Supreme Court in the case of Dhanoa, the view expressed by the learned Judge does not appear to be correct. In the case of Dhanoa also there was agreement executed between the Cooperative Store Limited and Union of India and in the said agreement, Union of India has advanced loan of Rs.40 lac to the society for establishment and management of the Super Bazaars and the Central Government also held more than 97 per cent shares in the total shareholding of the society.

15. As far as application of section 2(c)(viii) to the case of the applicant is concerned, learned trial judge has observed that since the applicant was a public servant within the meaning of section 2(c)(iii) he obviously was performing public duty and therefore, his case could also be covered by section 2(c)(viii). In my view this interpretation is not correct in as much as if section 2(c)(viii) had to be made applicable, the prosecuting agency was under an obligation to prima facie demonstrate as to what public duty the applicant was supposed to perform by virtue of his office held in the LICHFL. Chargesheet does not indicate that the applicant was performing any public duty by virtue of his office. Chargesheet was mainly based on the

ground that the applicant was in the employment of LIC and therefore, he was a public servant. Since the contention of the prosecuting agency with regard to section 2(c)(iii) has been rejected by this court, the prosecution agency was under an obligation to independently demonstrate as to how section 2(c)(viii) will be applicable. I do not find anything in the chargesheet on the basis of which section 2(c)(viii) can be made applicable to the applicant.

16. Since the facts of the case were not discussed and the discharge application was argued only on the basis of the legal issue, this court has come to the conclusion that the applicant was not a public servant either within the meaning of section 2(c)(iii) or 2(c)(viii) of the Act. The order passed by the leaned Sessions Judge is therefore, erroneous and needs to be set aside.

O R D E R

(a) Criminal Revision Application is allowed. The order passed by the learned Special Judge, Greater Mumbai on 24th July, 2014 in Special Case No. 65 of 2011 below Exh. 30 rejecting the discharge application of the applicant is set aside.

(b) The applicant shall stand discharged of the offences punishable under section 120B of the Indian Penal Code and sections 7, 12 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act,1988.

(c) Bail bonds of the applicant, if any, shall stand cancelled.

(d) Revision Application stands disposed of accordingly.

(JUDGE)