IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 237 OF 2023

Kaushal M. Kishore .. Applicant

Versus

The State of Maharashtra and anr .. Respondents

…

Mr.Girish Kulkarni, Sr. Advocate with Mr.Kripashankar Pandey, Aditya Ajgaokar, Meet Gandhi, Ms.Rupal Shrimal, Mr.Pulkit Tyagi for the applicant.
Mr.Kuldeep Patil for the CBI.
Mr.Y.M. Nakhwa, APP for the State.

CORAM: BHARATI DANGRE, J.
RESERVED : 12th OCTOBER, 2023
PRONOUNCED : 19th OCTOBER, 2023

JUDGMENT:-

1 An explicit question of law arises in the present Criminal Revision Application filed by the applicant, who is accused of committing an offence u/s.7(a) of the Prevention of Corruption Act; being whether the 'Licensed Surveyor and Loss Assessor' appointed to investigate, manage, quantify, validate and deal with the losses arising from any contingency and report thereon, to the Insurer or the Insured as the case may be, in terms of the Insurance Regulatory and Development Authority of India

(Insurance Surveyors and Loss Assessors) Regulation 2015 is a 'Public Servant' within a meaning of Section 2(c) of the Prevention of Corruption Act, 1988.

2 An FIR bearing RC/BA1/2022/A0006 was registered by CBI ACB, Mumbai on 18/2/2022, on the basis of the complaint lodged by one Mr.Lalit Narayan Todi on 14/2/2022, followed by verification on 15/2/2022 and 16/2/2022.

On the basis of the FIR and the verification, a trap was laid by the team of the Officers from CBI headed by Ashish Sharma, PI, Investigating Officer. On 21/2/2022, the trap operation was executed by the CBI team and the applicant came to be arrested, and he was released on bail by the Special CBI Court. On completion of investigation, a charge-sheet is filed on 28/6/2022 u/s.7(a) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act 1988')

3 On filing of the charge-sheet, the applicant took out a discharge application u/s.227 of the Cr.P.C. before the Special Judge for CBI Court at Greater Mumbai, and sought discharge on the ground that he has been wrongly implicated in the subject C.R and the accusations levelled against him are fallacious. It was a specific submission advanced that the prosecution of the applicant is dependent upon the existence of a valid sanction and the CBI had procured the sanction granted by the DGM of the Insurance Company, the same being invalid, he cannot be

prosecuted and deserve a discharge. It was also specifically pleaded in the application that in order to establish an offence u/s.7 of the P.C. Act, it is imperative for the prosecution to establish that the accused was a 'Public Servant' at the time when the offence was committed.

The discharge was sought on the ground that he would not be covered within the definition of 'Public Servant' as defined u/s. 2(c) of the Prevention of Corruption Act, 1988 as he was appointed on behalf of Insurance Company as Insurance Surveyor/Independent Investigator in the insurance claim filed by claimant.

The discharge Application is rejected by the Special Judge on 23/6/2023 by adopting reasoning that the applicant was appointed as investigator and fees of Rs.25,000/- was paid to him and it is clearly reflective of the fact that he was appointed by the Insurance Authority and by recording a conclusion that, *prima facie* evidence exist sufficient enough to frame the charge against the applicant.

4 Learned Senior Counsel Mr.Girish Kulkarni represent the applicant and he has advanced his submissions, to assail the impugned order refusing discharge, as being suffering from perversity. He would argue that it is only when an accused fall within any of the clauses of Section 2(c) of the Prevention of Corruption Act, 1988 he could be said to be a 'public servant'.

He would submit that Section 21 of the IPC also define the term 'public servant' to denote a person, falling under any of the descriptions mentioned therein and it is necessary to characterize a public servant with discharge of 'public duty'. According to him, since the applicant was only issued a licence by the Insurance Regulatory and Development Authority, constituted under the Insurance Regulatory and Development Authority Act, 1999, he cannot be said to exercise 'public duty' and since he was not holding an office of the Government or was not in the service or pay of the Government, nor was he remunerated by the Government by fees or commission for the performance of public duty, he cannot fall within the ambit and scope of the term 'Public Servant'.

Mr.Kulkarni would also invite my attention to clause 2(b) of the Prevention of Corruption Act which define the term 'Public Duty' to mean a duty in the discharge of which the State, the public or the community at large has an interest.

5 The learned Senior counsel would place reliance on the decision in case of *R.S. Naik Vs. A.R. Antulay,*[1] , as well as the decision of the Delhi High Court in case of *A.R.Puri Vs. State, ILR 1987 Delhi, 71,* which, according to him, squarely cover the present case of an Assessor working for an insurance company.

He has also placed before me the decision of the Bombay High Court in case of *Adi P. Gandhi Vs. State of*

1 (1984) 2 SCC 183

Maharashtra,[2] *1*, where it has been held that an 'Advocate' engaged by the Government to conduct a particular matter, is not a public servant, the test applied being, if a person do not hold any office of the Government and is not in the pay of the Government, but merely does some work and gets paid for the same, he cannot be said to be a public servant within the scope of Section 21 of the Indian Penal Code.

6 Contesting the above argument, Mr.Kuldeep Patil, the learned counsel appearing for the CBI, would submit that the applicant was a licensed surveyor and he would fall under the statutory control of an 'Authority' created under the Insurance Regulatory and Development Authority Act, 1989, an enactment to provide for the establishment of an authority, to protect the interest of the holders of the insurance policies and to regulate, promote and/or ensure orderly growth of the Insurance Industry.

As per Mr.Patil, the 'Authority' which is constituted u/s.3 of the Act, is a body corporate having perpetual succession and a common seal with power to be exercised, subject to the provisions of the Act, to acquire, to hold and to dispose off the property and is empowered to sue or be sued. The duty, powers and functions of the Authority prescribed under Chapter IV, according to Mr.Patil, include issuance of certificate of registration, its renewal, modification, withdrawal, suspension or cancellation. Amongst its other functions, the Authority is

2 *1989 Mh.L.J 588*

empowered to specify the code of conduct for Surveyors and Loss Assessors.

Mr.Patil would also rely upon the Regulations framed in exercise of power conferred by clause (x) and (xa) of sub-section (2) of Section 114 A r/w Section 42-D, 42-E and 64 UM of the Insurance Act, 1938 and Section 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999, in consultation with the Insurance Advisory Committee. The Regulations, known as the Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) Regulations, 2015 determine the regime of the Surveyors and Loss Assessors and it is the submission of Mr.Patil that the Regulation prescribe the licensing procedure for conferring licence upon the individual Surveyor and Loss Assessor and once such licence is conferred, he is subjected to Regulations of 2015 as it contemplate cancellation and suspension of licence by the Authority subject to the compliance of the procedure contemplated therein. Mr.Patil has also placed on record the Insurance Regulatory Development Authority of India. (Protection of Policy Holders' Interests) Regulations, 2017.

In order to substantiate his submission that the Licenced Surveyors and Assessors are public servants for the purpose of Prevention of Corruption Act, as they discharge public function, Mr.Patil would lay his hand upon the decision of Apex court in case of *State through Lokayukta Police, Raichur Vs C.N.*

Manjunath,[3] where the Licensed Surveyors appointed u/s.18A of the Karnataka land Revenue Act, 1964 and who are assigned with the work of licensed surveyors are held to be 'public servant' as they perform statutory duties/public function as they not only provide aid and assistance to the State Government in its statutory functions, but are also controlled by the State Government, in their functioning. Upon examination of the statutory scheme, according to Mr. Patil, it can be presumed that the duty to be discharged by such licensed surveyors in which the State or public has interest, and when these surveyors are bound by the terms of the office i.e. the terms on which they are given licence by the Government, no doubt remains, that these licensed surveyor would fall within the ambit of Section 2(c) of the P.C. Act and particularly, clause (i) and (viii) thereof which defines 'public servant'.

Drawing parlance with such licensed surveyors, it is the submission of Mr.Patil that the Surveyor and Loss Assessors appointed under the Regulation of 2015 to investigate, manage, quantify, validate and deal with the losses and submit a report, are also covered by the statutory regime of the Act of 1999 and the Regulations 2015 and hence, the judgment in case of *Manjunath,* squarely cover the case of the applicant, who is to discharge the public duty as 'Licensed Surveyor and Loss Assessor'.

3 *(2017) 11 SCC 361,*

Mr.Patil would also place reliance upon a decision from the Karnataka High Court in case of *State Vs. Sadashiva Yellagod,*[4]

7 The Prevention of Corruption Act, 1988 being the law relating to prevention of Corruption, make certain acts committed or related to public servant, as offences which invite for penalty.

In order to offer a clarification as to who shall be a 'public servant', Section 2(c) of Act of 1988 defines 'public servant' as under :-

"2(c) "public servant" means"

(i) any person in the service of pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority'

(iii)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 as defined in section 617 of the Companies Act, 1956 (1 of 1956).

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

4 *2016 Cr.L.J 4805*

(vii) any person who holds an office by virtue of which he is empowered to prepare, public, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) ……….

(x) ……….

(xi) ………

(xii) ………

Explanation 1 – Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 – 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."

8 The aforesaid definition of public servant, when read holistically, cover different persons, who in different situations and by applying different parameters would be falling in the scope of ambit of the term.

What emerges from clause (viii) is, a person is a 'public servant' if he holds any office by virtue of which he is authorized or required to perform any 'Public Duty'.

The term 'public duty' is also defined in the Act in Section 2(b),to read thus :-

"2(b) "Public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation – In this clause, "State" includes 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 as defined in section 617 of the Companies Act, 1956 (1 of 1956);

9 The Indian Penal Code also define the term 'public servant' in Section 21, twelve categories are carved out denoting the categories persons falling within the ambit of the term 'Public Servant' and the relevant clause for any purpose is clause twelfth which read thus :-

> *"21 "Public Servant" : The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely'*-
>
> *Twelfth – Every person* -
>
> *(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government or not.*
>
> *(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)*

For the purposes of Section 21, by virtue of Explanation 1 appended to the Section, persons falling under any of the above descriptions are public servants, whether they are appointed by Government or not, and the second explanation clarify that 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, would be considered as a public servant.

10 While categorizing the petitioner, who is licenced to act as 'Insurance Surveyor and Loss Assessor', Mr.Patil would specifically invoke Section 2 clause (viii) of the Prevention of Corruption Act, as he would submit that any person, holding an

office, by virtue of which he is authorized or require to perform any public duty is a public servant.

This argument must be tested in light of the decision of Apex Court in case of Manjunath (supra), as Mr.Patil would heavily rely upon the proposition of law flowing thereto.

In the said case, the question that arose for consideration was, whether a licensed surveyor appointed u/s.18A of the Karnataka Land Revenue Act, 1964 would be treated as a 'public servant' as defined u/s.2(c) of the Act of 1988.

The provision contained in the Karnataka Land Act in form of Section 18-A, was referred to, which read thus :-

> *"18-A.* ***Appointment of licensed surveyors – (1)*** *The Director of Survey Settlement and Land Records may, for the purposes of the third proviso to Section 128 and of clause (c) of Section 131, issue, with the prior approval of the State Government and subject to such conditions and restrictions and in such manner as may be prescribed, a licence to any person (hereinafter referred to as "the licensed surveyor") possessing the prescribed qualifications and experience.*
>
> *(2) The fee payable to a licensed surveyor shall be as may be prescribed"*

11 The aforesaid provision came to be inserted by Amending Act, 14 of 1999 and the object of the said amendment as reproduced in the Law Report, read thus :-

> ***"Amendment Act 14 of 1999*** *– Some more than three lakhs of mutation phody cases are pending for measurement and many cases are pending disposal due to change of survey numbers, variation of extent and other reasons, it is considered necessary to entrust the work of preparing sketch of the*

> *properties of private surveyors (who will be called as licensed surveyors) who shall possess such qualifications and experience, as may be prescribed by inserting a new section to the Karnataka Land Revenue Act, 1964.*
>
> *It is also proposed, by amending Section 128 and 131 of the said Act, to make it obligatory for any person reporting acquisition of right in a partition in respect of land and any person alienating any land, that is part of a survey or sub-number, to get a sketch of the said property prepared by a licensed surveyor.*
>
> *Hence, the Bill."*

12 It is in this scheme of Land Revenue Act, it is noted that in order to clear the pending cases with regards to measurement, survey sketch, change of survey numbers, etc, licensed surveyors possessing requisite qualifications and experience were appointed and they were required to perform the statutory duty of preparing survey sketches of the properties for the purpose of effecting changes in the revenue records maintained for public purpose. It was also noted that Section 18-A(1) make it clear that the licensed surveyors are appointed for the purpose of third proviso to Section 128 and of clause (c) of Section 131 of the Karnataka Land Revenue Act and it was imperative that the prescribed fee shall be paid to the licensed surveyors.

13 In the wake of the cleavage of opinion, in the different Benches of the Karnataka High Court, the issue was referred to a larger bench and it was resolved by holding that a licensed surveyor is a 'Public Servant'.

When the legality of the said decision was questioned before the Apex Court, Their Lordship recorded as under :-

> *"6 After hearing the learned counsel for both the parties, we are of the opinion that such a licensed surveyor is to be treated as public servant. For this purpose, we are entirely in agreement with the view taken by the Division Bench as extracted above. We may mention that different Single Judge Benches of the Karnataka High Court had conflicting views and, for this reason, the matter was referred to the Division Bench which has been answered, by the judgment dated 29-11-2011 as noted above, holding licensed surveyor to be a public servant under Section 2(c) of the Prevention of Corruption Act. For this purpose, the High Court, after taking note of the provisions of Sections 128 and 131 of the Act, came to the conclusion that there surveyors discharge statutory duty of preparing survey sketches. Such a function was earlier performed by the surveyors of the Survey Department appointed by the State Government. As these government surveyors were overburdened with the work, the Karnataka Land Revenue Act was amended by inserting Section 18-A therein and the work was assigned to these licensed surveyors. All the activities of the licensed surveyors relating to discharging of statutory duties are controlled by the Survey Department of the State Government. The High Court has observed as under :-*
>
> > *"17 …. As aforementioned, qualification, experience and age for obtaining license as a licensed surveyor, training to be undertaken by the licensed Survey Settlement Training Institute of Mysore every year; prescribing the fees to be paid to the licensed surveyors; cancellation of licence, etc, is done and carried out by the State Government. Even the jurisdiction of the licensed surveyor is specified in the licence issued by the State Government. Thus, it is clear that the licensed surveyors are not only to aid and assist the State Government in its statutory functions, but are also controlled by the State Government in their functioning as licensed surveyors. Thus, the licensed surveyors cannot be termed as mere contractors bound by their engagements, but they are the licensees who are bound by the terms of the office as licensed surveyors".*

14 On reading of the provisions of the Act and the Rules, it was concluded that the licensed surveyors are different from private surveyor who have no licence from the State Government. Once survey report is prepared by these persons, the same is duly acted upon and on the basis of which the Government functionaries take further action and it is thus the statutory work of preparing survey sketches which is bestowed upon the Licensed Surveyors and therefore they are performing the statutory duty/public functions. Further clarification is offered in paragraph nos.8 to 10 which I must reproduce :-

> *"**8** Once the nature of performance of duties gets crystallised, no doubt remains that these licensed surveyors would come within the ambit of Section (c) of the Prevention of Corruption Act and particularly clauses (I) and (viii) thereof, which defines 'public servant' to mean:*
>
> *"2(c)(i) 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:*
>
> *(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;"*
>
> ***9**. We would also like to refer to the definition of "public duty" as contained in Section 2(b) of the Prevention of Corruption Act, which reads as under :-*
>
> *2(b) "**public duty**" means a duty in the discharge of which the State, the public or the community at large has an interest."*
>
> ***10** Obviously, in the duties that are to be discharged by these public surveyors, the State or the public has interest therein. It is more so, when these public surveyors are bound by the terms of their office as licensed surveyors viz. The terms on which they are given licence by the Government"*

15 Mr.Patil, has endeavored to draw a parlance from the licensed surveyors appointed under the Karnataka Land Revenue Act and Rules as he would claim that the Licensed Surveyor and Loss Assessor are also appointed under the statutory regime of Insurance Regulatory and Development Authority Act, 1999 and Regulation of 2015 framed thereunder.

I have minutely perused the provisions of the Act of 1999, which is enacted with an intent of establishing an 'Authority' to protect the interest of the holders of insurance policies and to regulate, promote and ensure orderly growth of the insurance industry, as it requires high degree of regulation. The Parliament intended to give a statutory character to such an Authority, who was entrusted with distinct functions, aimed at protection of the interest of policy holders in the matters concerning the policy, settlement of insurance claims etc.

The Act of 1999 was brought into force from 19/4/2000 and it established and incorporated, "The Insurance Regulatory and Development Authority of India".

Chapter IV of the Act prescribe the duties, powers and functions of the 'Authority' and without generality of the provisions, the specific powers and functions of the authority shall include the issuance of certificate of registration, its renewal, modification, suspension, cancellation etc. It shall also specify the Code of Conduct for the Surveyors.

The Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) Regulation 2015, were notified on 30/10/2015 and it provide for the regime of 'Surveyor and Loss Assessors' and has defined "Surveyors and Loss Assessors" to mean a person who is licensed by the 'Authority' to act so. Chapter II is a licensing procedure for grant of license to individual Surveyors and Loss Assessors and it prescribe the eligibility criteria by specifying the qualifications. It also provide for conduct of an examination, by the Insurance Institute of India. Practical training as specified by the authority is also a necessary requirement for availing the license.

The procedure for application of licence is also prescribed and ultimately, it is the 'Authority' on being satisfied that an applicant is eligible for grant of licence, shall grant the same online in the format prescribed in Schedule II of the Regulations, mentioning the membership number and the particular class/department or subject of general insurance business, i.e. fire, engineering, marine cargo, marine hull, loss of profit, motor, crop and miscellaneous. The licence issued is to be valid for a period of three years.

The Regulations contain a separate provision for application for grant of fresh Corporate Surveyor and Loss Assessor licence. There is also provision for renewal of licence as well for its cancellation. Remedy is also provided for filing of an

Appeal, on being aggrieved by the decision of 'Authority' to grant or renew the licence.

16 Chapter III of the Regulation provide for constitution of a Committee to be called as 'Surveyors and Loss Assessors Committee' for assisting the 'Authority' on the matters and affairs relating to Insurance Surveyors and Loss Assessors. The Committee shall perform the functions, like recommending the syllabus for examination and practical training, requirement for persons to qualify as Surveyors and Loss Assessors, improving and developing status and standards of the profession and coordinating with educational and other institutions, having their objective wholly or partly similar to that of the profession and such other functions as are provided.

17 As per the statutory scheme, there is an embargo in any person or a firm or a Company acting as a Surveyor or Loss Assessor without being licensed under Regulation 3 or Regulation 4, as the case may be, and sub-section (2) of Section 12 provide that the Surveyor and Loss Assessors shall be appointed either by the Insurer or the Insured to assess loss under a policy of insurance, subject to the monetary limits.

Appointment of a Surveyor for the assessment of loss shall be made within 7 hours from the time the occurrence of loss was known to the insurer or insured and he shall assess losses, of only those departments for which he/she is licensed.

18 Chapter IV of the Regulation 2015 provide for the Duties and Responsibilities of Surveyors and Loss Assessors, so that they shall carry out their work with confidence, objectivity and professional integrity and they are expected to strictly adhere to the Code of Conduct stipulated in the Regulations. The Code of Conduct which shall govern the Surveyor and Loss Assessor, is prescribed in Chapter VI of the Regulation and it is expected of him to behave ethically and with integrity in the professional pursuits and he shall strive for objectivity in professional and business judgment.

19 It is this above scheme, which form the bedrock of Mr.Patil's argument, when he submit that the Surveyor and Loss Assessor shall work under the control of the Insurance Regulatory and Development Authority, who is authorized to issue a certificate of registration and renew, modify, withdraw, suspend or cancel the registration. Mr.Patil has submitted that the surveyor must follow the Code of Conduct and there is a provision for cancellation and suspension of his licence, on the ground of his misdemeanor/ misconduct or when continuation of such licence would be prejudicial to the interest of the policy holders.

20 On perusal of the Act of 1999 and Regulations of 2015, it can be cogitated that the Surveyor and Loss Assessor can be appointed either by the Insurer or the Insured for the purpose of investigation, quantification and validation of the losses arising from any contingency and upon such exercise being carried out,

he shall report the same to the party by whom, he/she is appointed.

The aforesaid job shall be performed by the Licensed Insurers, Surveyors and Loss Assessors and as per the Regulation 2015, the register of all Licensed Insurers, Surveyors and Loss Assessors shall be maintained by the Indian Institute of Insurance Surveyors and Loss Assessors (IIISLA) promoted by the Insurance Regulatory and development Authority of India which is incorporated u/s.8 of the Companies Act, 2013. The register shall contain the necessary information about such licences of surveyors and every insurer shall have a board approved surveyor and management policy with regard to empanellment of surveyors, utilization of surveyors and allotment of survey jobs to licensed surveyors.

As per Section 21 of the Regulation of 2015, every Insurer shall monitor the performance of surveyors including compliance of the Code of Conduct and the duties and responsibilities laid down in the Regulations and it is the responsibility of the Insurer to inquire into the case of violation of Code of Conduct, conduct the necessary inquiry and investigation and report to the Authority immediately.

21 From the indepth analysis of the aforesaid scheme, it is ostensibly clear that a 'Surveyor' may be maintained by an 'Insurer' by empanelling him or he may work as a free lancer and

may be engaged by the 'Insured' for the purpose of verification/estimation of his loss, so that he can stake a claim from the insurance company.

In the wake of the regime in form of the regulatory Act of 1999 and the Regulation of 2015, the work of a 'Surveyor and Loss Assessor' in the insurance regime is permitted to be carried out only by a licensed surveyor, and merely because the licensing of such Surveyor and Loss Assessor is controlled by the Statute, do not lead to a conclusion that he/she is discharging a statutory function or any public duty. Unlike the case of the 'Land Surveyor' who was appointed under the Karnataka Land Revenue Act, which was amended in the wake of increase in the volume of the work of preparation of land survey record to be maintained by the State Government since it had become necessary to entrust the work of preparing sketch of the properties to such private surveyors, necessarily to be qualified and experienced.

With the object of clearing the pending cases with regards to measurement, service sketch, change of survey, the licensed surveyor were appointed by inserting section 18A and these licensed surveyor were required to perform 'statutory duty' of preparing survey sketches of the properties for the purpose of effecting changes in the revenue records maintained for public purposes. The Act itself mandated that the prescribed fees shall be paid to the licensed surveyors.

The High Court carefully noted the provisions of the Land Revenue Act and concluded that the Surveyors discharge statutory duty and such a function was earlier performed by the Surveyors of the Survey Department, appointed by the State Government, but since they were overburdened with work, the Act was amended by inserting Section 18-A and the work was assigned to the licensed surveyors. Hence, it was concluded and rightly so that all the activities of the licensed surveyors were related to discharge of statutory duties are controlled by the survey department of the State Government, and hence, they cannot be termed as mere contractors, bound by their engagements, but they are the 'Licensees' who are bound by the terms of the office as 'Licensed Surveyors.

This not being the set of circumstances, in case of 'Insurance Surveyors and Loss Assessors', the parity with the land revenue surveyors in Manjunath is totally misplaced.

22 It is now necessary to test the argument of Mr.Patil, that the Insurance Surveyors and Loss Assessors are discharging public duty.

'Public duty' in terms of Section 2(b) of the Prevention of Corruption Act, means a duty in the discharge of which the State, the public or the community at large has an interest. By virtue of the explanation appended to the clause, the terms 'State' includes 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 as defined under the Companies Act.

Mr.Patil has argued that in the wake of the wide meaning given to the term 'State', the United Insurance Co., which is a Government of India Undertaking, would also be brought within its sweep and since the outcome of the report of the Surveyor and Loss Assessor, is a matter of interest for the Insurance company and to the public at large, preparing a report is a 'public duty'.

I am afraid that the above argument, if accepted would lead to serious effects.

An entity coming into existence through a statute, for the purpose of discharging a public function would definitely be covered within the said clause. The explanation has made the scope of the clause wider as discharge of duties in which the State, the public or the community at large has an interest, has been brought within the ambit of the expression 'public duty'. Performance of such public duty by a person, who is holding an office which requires or authorizes him to perform said duty is a sine qua non of the definition of public servant as contained in Section 2(c)(viii) of the P.C. Act.

It is therefore, necessary to construe two terms in clause (viii) being; 'office' as it is any person who holds an 'office' and by virtue of which he is authorized to perform any public duty, he would enjoy the status of public servant.

23 In *P.V. Narsimharao Vs. State,*[5], the meaning of the term 'office' appearing in the relevant provision of the Prevention of Corruption Act has been assertively held as 'a Position or place to which certain duties are attached, specially one of a more or less public character.'

Broadly understood, 'public duty' is a duty, in the discharge of which the State, with all its wide interpretation, the public or the community at large has an interest.

The term of 'public duty' which is worded in a broadest manner, is capable of encompassing any duty attached any office, as in the present day scenario, hardly any office exist, where it has no connect with the public, its interest or interest of the community at large. When seen in contrast with a private duty, it would encompass any duty in which the public at large has no interest and it is only performed for the satisfaction of a private individual or entity.

24 In *Secretary, Jaipur Development Vs. Daulatmal Jain,* where the facts involved reflected that the then Hon'ble Minister, Urban Development and Housing Department, Government of Rajasthan, along with certain Officials of the Government had blatantly misused their official position, to favour few influential

---

5 *1998(4) SCC 626*

and highly placed individuals and thereby caused wrongful gain to them and wrongful loss to the Jaipur Development Authority and the public at large, the question that arose for consideration is whether the Hon'ble Minister, who is not now a 'Public Servant' on being ceased to be a Minister, whether the investigation shall commence against her.

Pronouncing upon the role of the Minister who holds public office and performs function, under the constitution and executive policy, it was noted that the acts done and duties performed are public acts and duties as holder of the public office and hence, he/she owes certain accountability for the acts done or duties performed and in a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the constitution, by virtue of appointment.

Considering the role played by a Minister in the Government, it is held as under :-

> *"All purposes or actions for which moral responsibility can be attached, are actions performed by individual persons, composing the department. All Government actions, therefore, means actions performed by individual person to further the objective set down in the constitution, laws and the administrative policies to develop democratic traditions. The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of interest of citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with public interest to prevent the exploitation or misuse or abuse of the office or executive actions for personal gain or for illegal gratification".*

25 The term 'office' used in clause (viii) of Section 2(c), necessarily warrant holding of a post; occupying a post, and it is only by virtue of this office, if a person is authorized or required to perform any public duty, then and then, he is a 'Public Servant'.

In *CBI Banking Securities and Fraud Cell Vs. Ramesh Gelli and ors*,[6] the Chairman/ Managing Director or Executive Director of a private Bank operating under licence issued by RBI under the Banking Regulation Act, 1949 was held, holding an office performing public duty, but he was held not to be a public servant u/s.21 of the IPC. It was specifically held that scope of 1988 Act is intended to make Anti Corruption law more effective by widening its coverage and scope of 'Public Servant' and a person who holds an office by virtue of which he is authorized or required to perform any public duty, is a 'Public Servant' for the purposes of the Act.

The definition of 'public duty' is capable of encompassing any duty attached to an office but if there is no office, whose duties do not have traces of public interest or interest of community at large, then in that case, the particular provision cannot be attracted. Mere performance of public duty by holder of an office cannot bring the said incumbent within meaning of expression 'public servant', as the term has clear

6 2016 (3) SCC 788

connect to the office and its duties, which are performed in connection therewith, and has a public character. Consequentially, performance of duty by a person who is holding an office, which requires or authorizes him to perform such duty is a *sine qua non* for application of the definition of 'Public Servant', for purposes of the Prevention of Corruption Act.

26 In the wake of the above, when we turn to the facts of the case, the 'Surveyors and Loss Assessors' cannot be said to be discharging their duties in the wake of any 'office' held by them. It may be well accepted position that they are licensed by a statutory authority, but that do not make them either the statutory functionaries or holders of an office, which enjoins upon them discharge of public duty.

The Delhi High Court in *A.R. Puri Vs. State,*[7] *decided on 23/3/1987* held that an assessor working with an insurance company, is not a public servant within Section 21 of the Indian Penal Code and particularly being covered by clause fifthly, Justice M.K. Chawla held as under :-

> *"8 Public Servant is defined in Section 21 of the Indian Penal Code. Clause fifthly reads :-*
>
> *Once it is alleged by the prosecution that on the basis of the surveyor's report, the Insurance company has to decide the loss of the claimant, the appointment of the accused as an assessor, will prima facie prove that the accused is a public servant. The provisions of prevention of Corruption Act and thus fully attracted when he accepted Rs.1500/- as illegal gratification as a motive or reward for showing favour to Shri Bhatia.*

---

7 *ILR 1987 Delhi, 71*

Prima facie the conclusion of the learned lower court is not in consonance with the object with which the legislature included the word "assessor" in this clause. In the ordinary dictionary meaning, the word "assessor" means as a legal adviser who sits behind a Magistrate; or the one appointed as an associate in office with another or the one who assesses taxes or value of property income etc. for taxation and the one who shares another's dignity. The terminology of the fifth clause shows that according to the Interpretation Act, every jury-man, assessor or member of Panchayat are sui generis terms and similarly "court of justice or public servant" are words connoting the same general sense. The words "public servant" appearing in this clause, to my mind, connote a much narrower meaning than interpreted by the court below as they are ejusdum generis to the phrase "court of justice" preceding it."

27 When such such a surveyor was argued to be covered under clause twelfth, the following observations are of great relevance and I reproduce the same :-

"Clause (a) thus requires that a person in question must be either in the pay or service of the Government or must be remunerated by fees or commissions for the performance of any public duty by the Government. Keeping in view the fine distinction of the expression "or" relating to a person in clause 12(a) Along with the expression "government" as observed earlier, the case of the petitioner is also not covered under this clause. It is the common case of the parties that the petitioner is neither on the pay-rolls of the Government nor in the service of the Government. While entrusted with the job of surveyor, he was also not performing any public duty assigned by the Central Government or the State Government. His job in a way was on a contract basis, the remuneration of which was to be decided on the quantum of work involved in a particular job. A mere contractor, as is normally understood, will not be public servant although his contract may be with the government and he is paid on a commission basis."

28 In the concluding paragraphs, it is categorically held "that a person must be remunerated by Government", if he has to

be covered within the purview of 'Public Servants' and the following observations in the said Law Report, assume significance.

> *"The Parliament has carefully added the words "by the Government" after the words "performance of any public duty" occurring in Clause 12(a). If the expression "by the Government" had not been added, the last part of Clause 12 would read as if every person remunerated by fee or commission for the performance of any public duty would come within the definition. This would lead to the anamolous position viz., that even persons who are remunerated by any person of entity other than the Government, also would fall within the definition of 'public servant'. K such an interpretation is given, then every person who does some kind of public duty and who is remunerated there of (not necessarily by the Government) would fall within the definition. This position would be quite against the general understanding of the term pubic servant'. That is why the Parliament has carefully and cautiously added the words "by the Government" so that only persons who are remunerated by the Government for the performance, of a public duty rendered by them would come within this definition. Thus, the most important ingredient in the third limb of Clause 12(a) is the expression "remunerated by the Government."*

29 The Surveyor and Loss Assessor may be empanelled by a particular Insurance Company or he may work as a freelancer after obtaining the necessary Licence, as a person who is expected to carry out the job of assessing the losses, must be an identified person, by any authority and when the Insurance Company is expected to settle the claims on the basis of his report, it is imperative that he is a person well qualified to assess the loss and in the outcome of the report, which is submitted by him, the insurance company would have an interest, to the extent that it is

on the basis of this report the insurance claim presented before it, shall be granted or refused. However, the Surveyor and Loss Assessor is not only engaged by the Insurance Company but even by a person, who has suffered the loss and who has a claim against the insurance company i.e. the insured may also avail his services for preparing the report of the loss sustained by him before he set up his claim before the Insurance Company. In such a scenario, it is the report prepared in favour of the insured, would assist him in securing his claim, by presenting the loss caused to him.

Hence, the submission of Mr.Patil on behalf of the CBI that the insurance company is interested in the outcome of the report, and therefore, the explanation appended to Section 2(b) is attracted, may be an interesting argument at first blush, but on deeper scrutiny, does not hold good.

Except the insurance company and the insured, no third person has any interest in the report of the Surveyor and definitely the public at large is not interested in the report. The report, at the most, is of some significance for the claimant and the insurance company, with whom he is insured and stake a claim on account of the loss suffered by him.

Unlike the report submitted by the land surveyor in case of *Manjunath,* who came to be appointed by amending the Karnataka Land Revenue Act, 1964 and who were expected to prepare the statutory duty of preparing the survey sketches of the properties for the purpose of effecting the changes ins the revenue records maintained for public purpose, the Surveyors and Loss Assessor of the insurance company, do not discharge any duty, which in any manner, is benefiting the public at large.

Hence, no parallels or corelation can be drawn from the licensed surveyor, who are performing statutory duties on being engaged by the Survey Department of State Government. Apart from this, the Loss Assessors and Surveyors are not remunerated by the State Government, neither do they occupy any 'office'; nor by virtue of holding of any office, they discharge any 'Public Duty' which is largely in the interest of public.

The decision in case of *Sanjeev Vasant Deshpande Vs. State of Maharashtra,*[8] decided on 13/8/013 by Justice K.U. Chandiwal, (As his Lordship was then) has focussed upon Section 21 of the Indian Penal Code, and in particular clause (a) and (b), i.e. when a person is in the service or pay of the Government, or remunerated by fees for commission of the performance of any public duty by the Government, or is in the service of pay of a local Authority or a Corporation.

The case of the petitioner who was empanelled surveyor of New India Assurance Company, and who was entrusted with a job of making assessment, was held to be 'Public Servant' as being covered by clause (b) of Section 21 of the IPC.

The said order, though make a passing reference to Section 2(c)(viii), the question has not been approached from

8 Cr. WP 1692/2013

view point of 'Public Duty' and hence, the said decision do not assist Mr.Patil.

For the aforesaid reasons, I find sufficient substance in the submission of learned senior counsel Mr.Kulkarni that the 'Surveyors and Loss Assessors are not 'public servants'.

The impugned order which has refused discharge to the applicant on the ground that he is a 'Public Servant' has failed to notice this important aspect, and hence, in the light of the finding recorded as above, the order is quashed and set aside.

Since it is held that the petitioner is not a 'Public Servant' and hence, he cannot be prosecuted under the Prevention of Corruption Act, 1988, and since continuation of proceedings against him would be an exercise in futility, by exercising the power under Section 227 of the Code, he deserve a discharge, and accordingly, stand discharge from Special Case No.887/2022.

The Revision Application is allowed.

(SMT. BHARATI DANGRE, J.)