



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st MAY, 2023

IN THE MATTER OF:

+ **CRL.M.C. 64/2010**

S.MAMMAN

..... Petitioner

Through: Mr. A. N. Choudhary, Advocate.

versus

UOI THR.LABOUR ENFORCEMENT OFFICER ... Respondent

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of the Order dated 05.10.2009 ('Impugned Order') passed by the Ld. Metropolitan Magistrate, Patiala House Courts, New Delhi ('Ld. MM') and the proceedings emanating from Complaint Case No. 35/2004, filed under Section 29 of the Industrial Disputes Act, 1947.
2. The instant case relates to an industrial dispute which arose between the management and workmen of New India Assurance Company Limited, Regional Office-II, New Delhi ('Company') around 2002. The dispute relates to the issue of calculating the seniority of part time sweepers "State-Wise", instead of the prior practice of calculating such seniority "Place-wise".



3. On account of this dispute, conciliatory meetings of the management and workmen of the Company were held on various occasions. These meetings culminated in the drawing up of a Memorandum of Settlement ('MoS') dated 16.07.2002, in terms of Section 12(3) of the Industrial Disputes Act, 1947. The terms of the MoS are being reproduced below for ready reference:

"1. The management will take up the matter with Head Office for creation of 25 vacancies and to recommend to Head Office to balance the seniority list state wise instead of place wise, to which the federation has agreed to.

2. The parties will submit progress report within 60 days from today and if nothing is heard, it will be presumed that the settlement has been implemented."

4. It has been stated by the Petitioner i.e., Mr. S. Mamman, the then AGM of the Management of the Company, that the Management had complied with the MoS by taking up the matter with the Head Office of the Company, *vide* letter dated 23.07.2002. In this letter it was recorded that the Management recommended that the seniority for future vacancies was to be considered on a State-wise basis.

5. It has been stated by the Petitioner that despite due this, the Regional Labour Commissioner (Central) issued a Show-Cause Notice dated 28.11.2002 stating that the Management had failed to meet the terms of the MoS.

6. The Petitioner responded to the Show-Cause Notice *vide* letters dated 11.12.2002 and 12.12.2002. By way of these letters, the Petitioner stated that in compliance with the terms of the MoS the Management had in fact advised the Head Office to consider the seniority State-wise, however, the



same was found to be unviable by the Head Office as the vacancies themselves arose Centre-wise and not State-wise.

7. Thereafter, another Show-Cause Notice dated 26.03.2003 was issued to the Dy. Manager and Administrative Officer of the Company seeking compliance with the terms of the MoS. The Administrative Officer duly responded to the said Show-Cause Notice stating that the matter had already been dealt with, thereby requesting the good office of the Regional Labour Commissioner (Central) to drop the Show-Cause Notice.

8. However, not only were the aforementioned Show-Cause Notices not withdrawn, but a Complaint Case bearing No. 35/2004 was filed against the Petitioner before the Ld. Trial Court under Section 29 of the Industrial Disputes Act, 1947 ('Complaint Case').

9. A preliminary ground regarding the maintainability of the Complaint Case was raised by Petitioner due to the failure of the Labour Enforcement Officer to obtain a requisite sanction under Section 197 of the CrPC. However, *vide* Order dated 02.06.2005, the Ld. Trial Court held that the sanction under section 197 of the CrPC was not necessary in the instant case as the Petitioner did not qualify as a public servant.

10. Thereafter, the Petitioner filed a Revision Petition bearing No. 85/2006 before the Additional Sessions Judge, Patiala House Court, New Delhi ('Revision Petition') impugning the Order dated 02.06.2005. *Vide* Order dated 17.11.2007, the Additional Sessions Judge, Patiala House Court, New Delhi remanded the matter back to the Ld. Trial Court as the Ld. Trial Court did not record any findings pertaining to the fulfilment of the terms of the MoS.

11. The Ld. Trial Court *vide* Order dated 05.10.2009 held that *a)* the issue of grant of sanction has already been dealt by the Order dated 02.06.2005,



and *b)* the issue pertaining to the implementation of the MoS is based entirely on facts, which can only be dealt with only after recording evidence. With these observations, the preliminary objections of the Petitioner were found to be baseless, and were thereby dismissed.

12. Aggrieved by the Order dated 05.10.2009, the Petitioner has approached this Court by filing the instant Petition.

13. The Ld. counsel for the Petitioner has argued that the Ld. MM has erred in continuing with the proceedings despite the absence of a valid sanction. It has been argued that on this ground alone, the Complaint ought to have been quashed. Further, it has been argued that the Ld. MM has failed to appreciate that the MoS had been duly complied with by the Management.

14. *Per contra*, defending the propriety of the Impugned Order, the Ld. Counsel for the Respondent argued that in light of Mohd. Hadi Raja vs. State of Bihar and Ors., (1998) 5 SCC 91, the sanction under 197 of the CrPC was not compulsory for the Appellant. It has also been argued that the fulfilment of the terms of the MoS needs to be adjudged within the relevant facts of the instant case by the Trial Court.

15. Heard learned Counsel appearing for the Parties and perused the material on record.

16. Two short questions arise for the consideration of this Court. *Firstly*, whether the Ld. MM committed an error in proceeding with the Complaint Case in the absence of a valid sanction. *Secondly*, whether the Ld. MM failed to appreciate that the MoS had been complied with.

17. Section 197 deals with the grant of sanction for *inter alia* public servants to ensure that such public servants are protected from vexatious litigation while discharging their duties. The law pertaining to the grant of



sanction under Section 197 is no longer *res integra*. It has been laid down time and again that officers working in public sector undertakings do not qualify as ‘public servants’. The Supreme Court in Mohd. Hadi Raja (Supra) after going through the purpose of the grant of sanction held that Section 197 of the CrPC cannot be interpreted to include officers of public sector undertakings or government companies. The following was observed in this regard:

“18. After giving our careful consideration to the question of law raised in these appeals and submissions made by the respective counsel of the parties, it appears that the justification for the protection under Section 197 of the Code of Criminal Procedure lies in the public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public servant and it is desirable that it should be left to the Government to determine the question of expediency in prosecuting a public servant. The 41st Report of the Law Commission observed that under Section 197 of the old Criminal Procedure Code, the protection given to the public servant applied only during his tenure in office and such protection did not apply after he had left the service. Such protection only during the tenure in service was considered insufficient because a person if he had any grievance against a public servant on account of discharging of public duties, could lodge a complaint against the said public servant after he would cease to hold public office. Therefore, Section 197 CrPC was redrafted so as to give protection to a public servant even when he had ceased to hold office in respect of an alleged offence which had been committed when such officer was holding the public office.”



19. “Public servant” has not been defined in the Code of Criminal Procedure but Section 2(y) of the Code of Criminal Procedure provides that the words used in the Criminal Procedure Code but not defined in the Criminal Procedure Code but defined in the Penal Code, 1860 shall be deemed to have the same meaning attributed to them in the Penal Code, 1860. Section 21 of the Penal Code, 1860 defines “public servant” and therefore the expression “public servant” will have the same meaning in the Criminal Procedure Code. It will be appropriate to refer to clauses 9 and 12 of Section 21 IPC.

“21. Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the government, or to make any survey, assessment or contract on behalf of the government or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the government, or to make, authenticate or keep any document relating to the pecuniary interests of the government or to prevent the infraction of any law for the protection of the pecuniary interests of the government.

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;

(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).”

20. Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the Government and such instrumentality discharges the duties and functions which the State intends to do as indicated in *Ajay Hasia case [(1981) 1 SCC 712 : 1981 SCC (L&S) 258]* such instrumentality or agency is none the less a juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the Government by its employees or by an authority empowered by the Government. It may be indicated here that it is not necessary that persons falling under any of the descriptions given in various clauses under Section 21 of IPC need to be appointed by the Government. If such person falls under any of the descriptions as contained in various clauses of Section 21 of the Penal Code, 1860, such person must be held to be a public servant. Explanation 1 of Section 21 indicates that persons falling under any of the above descriptions are public servants whether appointed by the Government or not. Explanation 2 indicates that 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. Sub-clause (b) of clause twelve of Section 21 expressly makes the officers of local authority and corporation established by or under a Central, Provincial or State Act or a government-



owned company as defined in Section 617 of the Companies Act, 1956, public servants. But protection under Section 197 CrPC is not available to a public servant unless other conditions indicated in that section are fulfilled.

21. It is to be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has an independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 CrPC.

22. For the purpose of enforcing the fundamental rights, the public undertaking which, on account of deep and pervasive control, can be held to be a State within the meaning of Article 12 has been treated on a par with the government department but in all its facets, public undertaking has not been equated with the department run directly by the Government. It was on this account that the surgeon appointed in Hindustan Steel Works Ltd. has not been equated with the government servant for the purpose of applicability of Article 311 of the Constitution. In Praga Tools case [(1969) 1 SCC 585] even though Praga Tools was held to be an instrumentality or agency of the State, it has been indicated by this Court that Praga Tools Corporation had a separate legal existence and being a juridical person cannot be held to be a government concern run by or under the authority of the Government. Similar view was taken by the Patna High Court in Sindri Fertilisers case [AIR 1957 Pat 10 : (1957) 2 LLJ 686] by indicating that even though the said concern was completely owned by the President of India who could also issue directions and the Directors



were to be appointed by the President of India, in the eye of law, the Company was a separate legal entity and had a separate legal existence. Such decision of Patna High Court has been approved by this Court. In *Dhanoa case* [(1981) 3 SCC 431 : 1981 SCC (Cri) 433 : 1982 SCC (L&S) 6] an IAS Officer, when on deputation to a public undertaking having deep and pervasive control of the State, was not held to be a government officer entitled to protection under Section 197 of the Code of Criminal Procedure, even though such officer did not cease to be a government servant and had a lien in government service while on deputation. The protection which a government department was entitled to has also not been given to *Hindustan Steel Works Ltd.* in *K. Jayamohan case* [(1997) 5 SCC 170 : 1997 SCC (L&S) 1140] .

23. The importance of the public undertaking should not be minimised. The Government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and a distinct legal entity, such instrumentality stands on a different footing than the government departments.

24. It is also to be indicated here that in 1973, the concept of instrumentality or agency of State was quite distinct. The interest of the State in such instrumentality or agency was well known. Even then, the legislature in its wisdom did not think it necessary to expressly include the officers of such instrumentality or the government company for affording protection by way of sanction under Section 197 CrPC.

25. It will be appropriate to notice that whenever there was a felt need to include other functionaries within



the definition of “public servant”, they have been declared to be “public servants” under several special and local acts. If the legislature had intended to include officers of an instrumentality or agency for bringing such officers under the protective umbrella of Section 197 CrPC, it would have done so expressly.

26. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by court.

27. Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal Procedure is not applicable to the officers of government companies or the public undertakings even when such public undertakings are “State” within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government. The appeals are disposed of accordingly. It is, however, made clear that we have not taken into consideration various other grounds raised in these appeals challenging the maintainability of the criminal proceedings initiated against the officers concerned of the public undertakings or the government companies. It will be open to the accused concerned to challenge the validity of the criminal cases initiated against them on other grounds, if such challenge is available in law. Such questions, if raised, in these appeals are kept open to be considered in accordance with law by the appropriate authority.”

(emphasis supplied)

18. Recently, the Supreme Court in Bharat Sanchar Nigam and Others v. Prammod V. Sawant & Anr., **2019 16 SCC 63** had the occasion to deal with the same question of law; whether the protection under Section 197 of the



CrPC is available to employees of public sector undertakings or corporations. The Apex Court observed the following:

“11. In N.K. Sharma v. Abhimanyu [N.K. Sharma v. Abhimanyu, (2005) 13 SCC 213 : (2006) 2 SCC (Cri) 135] , rejecting the challenge for requirement of sanction under Section 197 CrPC, it was observed as follows : (SCC p. 217, para 13)

“13. Admittedly the salary of the appellant is not paid by the Government. He at the relevant time was not in the service of the State. Prosecution against an officer of a government company or a public undertaking would not require any sanction under Section 197 CrPC.”

12. The question again fell for consideration in Chandan Kumar Basu v. State of Bihar [Chandan Kumar Basu v. State of Bihar, (2014) 13 SCC 70 : (2014) 5 SCC (Cri) 556] , involving an officer of an Indian Administrative Service serving on deputation as Administrator-cum-Managing Director of Bihar State Housing Cooperative Federation Ltd. Elucidating the requirements to be fulfilled for the applicability of the protection under Section 197 CrPC, it was observed as follows : (SCC p. 73, para 8)

“8. A reading of the provisions of Section 197(1) of the Code reveals that there are three mandatory requirements under Section 197(1) of the Code, namely:

(a) that the accused is a public servant;

(b) that the public servant can be removed from the post by or with the sanction either of the Central or the State Government, as the case may be;



(c) the act(s) giving rise to the alleged offence had been committed by the public servant in the actual or purported discharge of his official duties.”

13. *We are of the opinion that sufficient evidence is not available on record at this stage with regard to the status of Appellant 2 in all aspects for us to unhesitatingly hold that the protection under Section 197 CrPC shall be available to him. These are matters to be considered by the Magistrate on the basis of the evidence that may be placed before him during the course of trial.*

14. *Mohd. Hadi Raja [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265] has been noticed more recently in Punjab State Warehousing Corpn. v. Bhushan Chander [Punjab State Warehousing Corpn. v. Bhushan Chander, (2016) 13 SCC 44 : (2016) 4 SCC (Cri) 142 : (2017) 1 SCC (L&S) 566] , holding that the High Court erred [Bhushan Chander v. State of Punjab, 2011 SCC OnLine P&H 5393] in providing the protection under Section 197 CrPC to an employee of the appellant Corporation which was fully government owned and financed by the State Government, and therefore, the respondent fell within the definition of a “public servant”. Setting aside the orders of the High Court, this Court observed as follows : (Bhushan Chander case [Punjab State Warehousing Corpn. v. Bhushan Chander, (2016) 13 SCC 44 : (2016) 4 SCC (Cri) 142 : (2017) 1 SCC (L&S) 566] , SCC p. 59, paras 23-24)*

“23. In Mohd. Hadi Raja v. State of Bihar [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265] the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the



submissions and eventually held that the protection by way of sanction under Section 197 CrPC is not applicable to the officers of government companies or the public undertakings even when such public undertakings are “State” within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.

24. The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in Mohd. Hadi Raja [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265] has been referred to in the grounds in this appeal. There is nothing on record to suggest that the said decision was cited before the High Court.”

*15. Lakshmansingh Himatsingh
Vaghela [Lakshmansingh Himatsingh
Vaghela v. Naresh Kumar Chandrashanker Jah,
(1990) 4 SCC 169 : 1990 SCC (Cri) 558] , on which
the appellants have placed reliance, is completely
distinguishable on its own facts. The appellant was
employed in the Municipal Corporation as a
Laboratory Officer. He was only entrusted with
discharge of duties as a public analyst. His
remuneration was not paid by the Government, but by
the Corporation. The observations in para 5 have to be
understood in that context : (SCC p. 171)*

“5. Section 197 CrPC clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Government to their prosecution be necessary. While a public servant holding an office of the kind mentioned in the section is as such public servant appointed to another office, his official acts in connection with the latter office will also relate to the former office. The words “removable from office” occurring in Section 197 signify removal



from the office he is holding. The authority mentioned in the section is the authority under which the officer is serving and competent to terminate his services. If the accused is under the service and pay of the local authority, the appointment to an office for exercising functions under a particular statute will not alter his status as an employee of the local authority.”

16. It is, therefore, held that the question of sanction under Section 197 CrPC with regard to Appellants 3 and 4 treating them to be “public servant” simply does not arise because of their absorption in the Corporation. With regard to Appellant 2, considering his status as on deputation to the appellant Corporation at the relevant point of time and in the absence of necessary evidence with regard to his status in the appellant Corporation throughout the litigation being ambiguous, we leave that question open for consideration in the trial after necessary evidence is available.

17. The trial has turned out to be stillborn since 2003, with the appellants filing one application after another. We are of the considered opinion that the trial needs to be expedited and concluded at an early date. It is ordered accordingly. The Magistrate shall endeavour to conclude the trial within a period of one year. The parties are directed to cooperate for its early disposal.”

19. It appears that it is a well settled position of law that officials of public sector undertakings do not qualify as ‘public servants’ under the IPC, and hence, a sanction under Section 197 of the CrPC is not required to initiate proceedings against them. In light of this, this Court finds no infirmity in the finding of the Ld. MM with regard to the grant of sanction.



20. The second issue before this Court is whether the Ld. MM failed to appreciate that the MoS had been duly complied with by the Management of the Company. The Petitioner argued that the terms of the MoS had had been entered into by the company, and not by him in individual capacity. It has further been argued that he had in fact recommended that the seniority should be considered on a 'State-wise' basis. On the other hand, it is the case of the Workmen that the MoS necessitated the Company to create vacancies and not simply recommend the matter to the Head Office. It is clear that to arrive at any conclusion with regard to this issue, this Court will have to interpret the terms of the MoS, and lead evidence to establish whether the terms of the MoS had been complied with. It is now trite law that this Court, while exercising its power under Section 482 of the CrPC, cannot enter into determination of a disputed question of fact (Refer to: Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668; Koppiseti Subbharao v. State of Andhra Pradesh, 2009 12 SCC 331). As the second issue before us canvasses a pure question of fact, which can only be adjudged after evidence has been adduced by both parties, this Court finds no reason to meddle with the findings of the Ld. MM in this regard as well.

21. This Court does not find any reason to interfere with the Impugned Order dated 05.10.2009. Resultantly, the instant petition is dismissed, along with pending application(s), if any.

22. Needless to state that this Court has not expressed any opinion on the merits of the case.

SUBRAMONIUM PRASAD, J

MAY 31, 2023

S. Zakir/Sh

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