

UNION OF INDIA AND ANR.

v.

ASHOK KUMAR MITRA

FEBRUARY 24, 1995

[DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

Indian Penal Code, 1860—Section 21—Public Servant—Employees of a nationalised Bank—Whether ‘public servants’ Held yes.

The respondent, Branch Manager of Bank of India, was prosecuted for offences under sections 120-B, 420, 409, 467, 468, 471 and 477A IPC and section 5(2) r/w/s 5(1)(c)(d) of the Prevention of Corruption Act, 1947. Before charges were framed, the respondent moved a petition for his discharge before learned Judge of the Special Court stating that he was not a ‘public servant’ and therefore could not be tried by the Special Court. The application was rejected. The respondent filed revision seeking quashing of the prosecution on the ground of delay in the disposal of the case and also on the ground that not being a ‘public servant’, he could not be tried by a Special Court. The High Court rejected the first ground holding that the delay was not attributable solely to the prosecution. It was however held that the respondent could not be deemed to be a ‘public servant’ within the meaning of section 21 of IPC and as such could not be tried by the Special Court. The prosecution was accordingly quashed. Hence these appeals.

The appellant urged that a nationalised bank was a ‘Corporation’ and not a ‘body corporate’ and therefore, the respondent would be squarely covered by the definition of a ‘public servant’ as per section 21 (Twelfth) (b) of the IPC.

Allowing the appeals, this court

HELD : 1. A nationalised bank is a corporation which is established by a Central Act and is owned and controlled by the Central Government. The employees of corporations which are owned and controlled by the Central Government and established by a Central Act are ‘public servants’. [372-C]

A *R.C. Cooper v. Union of India*, [1970] 1 SCC 248; *Ashoka Marketing Ltd. and Anr. v. Punjab National Bank and Ors. etc.*, [1990] 4 SCC 406 (Constitution Bench) and *CBI v. O.P. Dogra and Ors.*, AIR (1986) SC 312: relied on.

B 2. The respondent had himself 'handsomely contributed' to the delay. One the ground of delay, not attributable only to the prosecution, the respondent could not be permitted to take advantage of his own wrong and take shelter under 'speedy trial' to escape from prosecution. [373-F]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 311-12 of 1995.

From the Judgment and Order dated 10.03.94 of the Calcutta High Court in Crl. R. Nos. 1498 and 1531 of 1991.

D Venugopal Reddy, Naveen Prakash and P. Parmeswaran for the Appellants.

Dr. Shankar Ghosh and Amlan Ghosh for the Respondent.

The Judgment of the Court was delivered by

E DR. ANAND, J. Leave granted.

F The only question that we are called upon to consider in these appeals is whether the employees of a nationalised Bank can be held to be 'public servants' within the meaning of Section 21 of Indian Penal Code and triable by Special Courts for the offences triable by these courts. The question arises in the following circumstances.

G The respondent was the Branch Manager of Bank of India at the relevant time. A case was registered against him and another person for offences under sections 120 B, 420, 409, 467, 468, and 477A IPC and Section 5(2) read with Section 5(1) (c) (d) of the Prevention of Corruption Act, 1947. After completion of investigation by the CBI, charge-sheet was filed in the Court of the Special Judge at Alipur, Calcutta on 4.12.85. Cognizance was taken but before charges were framed, the respondent moved a petition for his discharge before the Special Judge stating that he is not a 'public servant' and therefore cannot be tried by the Special Court.

H The learned Special judge by his order dated 28.6.91 rejected the applica-

tion. The respondent thereupon filed a criminal revision in the Calcutta High Court seeking quashing of the prosecution launched against him on the ground (a) delay in the disposal of the case and (b) that not being a 'public servant', he could not be tried by a Special Court.

The High Court rejected the first ground observing that the respondent himself had 'handsomely contributed' to whatever delay had so far been occasioned and, therefore, the proceedings could not be quashed on the ground of delay, which was not attributable solely to the prosecution. So far as the second ground is concerned, the High Court agreed with the submission made on behalf of the respondent and held that the respondent could not be deemed to be a 'public servant' within the meaning of Section 21 of IPC and as such could not be tried by the Special Court. The High Court relied upon the judgment in *Oriental Bank of Commerce and Ors. v. Delhi Development Authority*, reported in 1982 Cri. Law Journal 2230 in support of its finding. The prosecution was accordingly quashed. The Union of India is aggrieved and has come up in appeal by special leave.

It is submitted that since the judgment rendered by the Delhi High Court in *Oriental Bank of Commerce* case (supra) has been over-ruled by this Court therefore the judgment under appeal cannot be sustained. It is urged that a nationalised bank is a 'Corporation' and not a 'body corporate' as held in *Oriental Bank's* case (supra) and therefore, the respondent would be squarely covered by the definition of a 'public servant' as per section 21 Twelfth (b) of IPC.

In *R.C. Cooper v. Union of India*, [1970] 1 SCC 248 this Court with reference to the nationalised bank constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, hold that the nationalised banks are 'Corporations'.

The controversy, whether a nationalised bank is only a body corporate or is a corporation is no longer res-integra. On account of the nationalisation, the nationalised banks are not only established by a Central Act but are also owned and controlled by the Central Government.

A Constitution Bench of this Court in *Ashoka Marketing Ltd. and Anr. v. Punjab National Bank and Ors. Etc.*, [1990] 4 SCC 406 specifically considered the question whether a nationalised bank is a 'corporation' or a 'body corporate' and hold :

A "Keeping in view the provisions of the Banks Nationalisation Act we are of the opinion that the nationalised bank is a *corporation established by a Central Act and it is owned and controlled by the Central Government.*" (Emphasis ours)

B The Constitution Bench expressly over-ruled the judgment of the Delhi High Court in the *Oriental Bank of Commerce* case (supra) and held that the distinction drawn in that judgment between a 'body corporate' and a 'corporation' in relation a nationalised bank is erroneous and that the view that a nationalised bank is not a corporation could not be sustained. Thus, it now rests settled that a nationalised bank is a corporation which is established by a Central Act and is owned and controlled by the Central Government. Are the employees of Corporations which are owned and controlled by the Central Government and are established by a Central Act, 'Public Servants'?

D In *State through CBI v. O.P. Dogra & Ors.*, AIR (1986) SC 312 while setting aside the judgment of the High Court of J & K, which had held that the employees of an Insurance Company were not 'public servants' within the meaning of Section 21 RPC (corresponding to Section 21 IPC), this Court opined :

E "So far as the Life Insurance Corporation is concerned, there can be no second view that the employees of the corporation come within the definition of the term 'public servant' as given under Section 21 of RPC. So far as the other respondents are concerned, admittedly Jupiter Insurance Co. has been merged with the Oriental Fire and General Insurance Co. after nationalisation and the latter is now a part of the corporation, namely, General Insurance Corporation of India. By such process, the respondents Dogra and his associates are in the same position as Anand. Mr. Kapil Sibal, learned council appearing for Dogra and his associates has stated before us that the finding of the High Court on this score is not tenable and the respondents must be held to be public servants."

G Section 21 IPC provides :

H "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;

(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.*

On a plain reading of the above provision, it follows that the view of the Calcutta High Court in the impugned judgment holding that the Branch Manager of Bank of India is not a 'public servant' under Section 21 of IPC is erroneous and cannot be sustained.

Dr. Ghosh appearing for the respondents, however, stated that right to speedy trial having been held by this Court to be a fundamental right, the prosecution in this case in which charge-sheet was filed almost ten years ago in 1985, should be quashed on account of the inordinate delay in completing the same. In the fact situation of this case, the argument does not appeal to us. The High Court itself, after considering the facts of the case, came to the conclusion that the delay was not attributable only to the prosecution and that the respondent had himself 'handsomely contributed' to the delay. We agree with the above finding of the High Court which is based on facts and hold that on the ground of delay, not attributable only to the prosecution, the respondent cannot challenge his prosecution for various offences for which he was standing trial before the Special Court. The respondent, having himself contributed to the delay in the disposal of the trial, in no small measure, cannot be permitted to take advantage of his own wrong and take shelter under 'speedy trial' to escape from prosecution.

As a result of the above discussion these appeals succeed and are allowed. The impugned judgment of the High Court is set aside. The trial court shall proceed with the case and conclude it expeditiously.

A.G.

Appeal allowed.