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THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on:17.07.2006

+ CRL REV. P. 422/2006

ASHOK BHATTACHARYA

...Petitioner

- versus -

STATE THROUGH CENTRAL BUREAU
OF INVESTIGATION

...Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Madan Bhatia, Mr S.P. Kalra, Sr Advocates with Mr
P.K. Dey and Mr S.D. Sharma.

For the State/CBI : Mr R.M. Tiwari.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest?

yes

BADAR DURREZ AHMED, J (ORAL)

1. The only point raised in the present petition is that the petitioner does not fall within the expression "public servant" as defined under Section 5(1) of

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the Prevention of Corruption Act, 1947. The case pertains to the company known as Ganesh Flour Mills Co. Ltd. It is the contention of the learned counsel for the petitioner that by virtue of the Ganesh Flour Mills Co. Ltd. (Acquisition and Transfer of Undertakings) Act, 1984 (hereinafter referred to as the "said Act"), the entire holdings of the company known as Ganesh Flour Mills Co. Ltd. was not taken over but only those units which are specifically mentioned in Section 2(e) of the said Act were taken over. On the other hand, it is the contention of the learned counsel for the CBI that by virtue of the said Act, the entire company, i.e., Ganesh Flour Mills Co. Ltd., including all its assets and liabilities and holdings were taken over. It is an admitted position that the present petitioner was employed at the Calcutta Unit of the Ganesh Flour Mills Co. Ltd. Therefore, the position is this. If it is held that the entire company was acquired by the said Act then the petitioner would be a public servant within the meaning of the Prevention of Corruption Act, 1947. However, if it is held that only those Units specified in Section 2(e) of the said Act were acquired then the petitioner, not being an employee connected with the said Units, would not fall within the definition of public servant under the Prevention of Corruption Act, 1947. Similar arguments were raised before the

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Special Judge and the Special Judge by virtue of the order dated 20.5.2006 accepted the arguments on behalf of the respondent and rejected the arguments on behalf of the petitioner. In the impugned order after referring to Section 12

(1) of the said Act, the learned Special Judge concluded as under:-

“From a bare perusal of the aforesaid provision, it is clear that every employee of Ganesh Flour Mills had become employee of the Central Government w.e.f. 28th January, 1984. In other words, the aforesaid applicants/accused persons were “Public Servants” on the relevant date, therefore, provisions of Prevention of Corruption Act, 1947 are fully attracted.”

2. From an examination of the aforesaid extract it is clear that the Special Judge was of the view that every employee of the Ganesh Flour Mills had become an employee of the Central Government with effect from 28th January, 1984. In other words, the aforesaid applicants/accused persons were “Public Servants” on the relevant date and, therefore, the provisions of Prevention of Corruption Act, 1947 were attracted. I am afraid, that this conclusion is erroneous. The said Act itself defines the word “Company” and the expression “Ganesh Flour Mills” and the said word and expression are to be understood in this sense unless the context otherwise requires. Section 2 (c) and Section 2 (e) of the said Act read as under:-

“2 (c) “Company” means the Ganesh Flour Mills Company Limited, Delhi, a company within the meaning of the Companies Act 1956, and having its registered office at Subzi Mandi, Delhi.

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“2 (e) “Ganesh Flour Mills” means -

(i) the Delhi Vanaspati Factory, Delhi.

(ii) the Hindustan Breakfast Food Manufacturing Factory, New Delhi, including the Ganesh Electrical Factory, New Delhi which is interlinked with it by reason of its location, common services and infrastructure;

(iii) the Kanpur Vanaspati Factory, Kanpur; and

(iv) the Solvent Extraction Plant, Bombay.”

Section 3 of the Act is the provision under which the Transfer and vesting of Ganesh Flour Mills was brought about. Section 3 of the said Act reads as under:-

“3. On the appointed day, the Ganesh Flour Mills and the right, title and interest of the Company in relation to the Ganesh Flour Mills, shall, by virtue of this Act, stand transferred to, and shall vest in the Central Government.”

Section 5 and Section 12 are also relevant for the purpose of this petition and they are as under:-

“5. (1) Notwithstanding anything contained in section 3 and 4, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the Ganesh Flour Mills and the right, title and interest of the Company in relation to the Ganesh Flour Mills which have vested in the Central Government under section 3, shall instead of continuing to vest in the Central Government, vest in that Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest in relation to the Ganesh Flour Mills vest in a Government company under sub-section (1) the Government company shall, on and from the date of such vesting, be deemed to have become the owner of the Ganesh Flour Mills and all the rights and liabilities of the Central Government in relation to the Ganesh Flour Mills shall, on and from the date of such vesting, be deemed to have been the rights and liabilities, respectively of the Government company.”

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“12. (1) Every person who has been, immediately before the appointed day, employed by the Company in connection with the Ganesh Flour Mills shall become,-

(a) on and from the appointed day, an employee of the Central Government; and

(b) where the Ganesh Flour Mills is directed, under sub-section (1) of Section 5, to vest in a Government Company, an employee of that company on and from the date of such vesting,

and shall hold office or service under the Central Government or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if there had been no such



vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration or other conditions of service are duly altered by the Central Government or the Government company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer, or other person employed in connection with the Ganesh Flour Mills to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.”

3. A plain reading of the aforesaid provisions indicates that the words “company” has reference to the Ganesh Flour Mills Co. Ltd. whereas the expression “Ganesh Flour Mills” does not mean the entire company but only the units - Delhi Vanaspati Factory, Delhi; the Hindustan Breakfast Food Manufacturing Factory, New Delhi; the Ganesh Electrical Factory, New Delhi; Kanpur Vanaspati Factory, Kanpur; and, the Solvent Extraction Plant, Bombay. It has no reference to any unit of the company at Calcutta. Section 3 of the said Act, as set out above, clearly indicates that Ganesh Flour Mills (meaning the said units) and the right, title and interest of the company (meaning the Ganesh Flour Mills Co. Ltd.) in relation to the said Ganesh Flour Mills, (i.e. the said

units) would stand transferred and vest in the Central Government from the appointed day. The appointed day being 21.1.1984. Similar is the purport of the provisions of Section 5.


4. Section 12 (1) of the said Act also clearly indicates that every person who has been, immediately before the appointed day, i.e. before 28.1.1984, employed by the Company (i.e., Ganesh Flour Mills Co. Ltd.) in connection with the Ganesh Flour Mills (i.e., the five units specified in Section 2(e) of the said Act) would become, on and from the appointed day, an employee of the Central Government. Clearly, therefore, it is not the case that each and every employee of Ganesh Flour Mills Co. Ltd. became an employee of the Central Government from 28.1.1984. It is only those employees of Ganesh Flour Mills Co. Ltd. who were employed in connection with the specified units collectively known as Ganesh Flour Mills described in Section 2 (e) of the said Act who became employees of the Central Government. The present petitioner was employed by Ganesh Flour Mills Co. Ltd. but not in connection with any of the said units. He was admittedly, employed at Calcutta which is not specified in Section 2(e) of the said Act. Therefore, it cannot be construed that he became

an employee of the Central Government. The impugned order is clearly erroneous. The petitioner cannot be considered to be a public servant. Therefore, the provisions of the Prevention of Corruption Act, 1947 cannot be applied to him. As such, the offence under the said Prevention of Corruption Act, 1947 cannot be made out insofar as the present petitioner is concerned. The impugned order is set aside. This Revision Petition stands disposed of.

Dasti to all the counsel.

July 17, 2006

J


BADAR DURREZ AHMED
(JUDGE)