

RAMESH BALKRISHNA KULKARNI

v.

STATE OF MAHARASHTRA

JULY 31, 1985

[S.MURTAZA FAZAL ALI AND A. VARADARAJAN JJ.]

Indian Penal Code, 1860, Sec. 21 - "Public Servant" and "Municipal Councillor" - Distinction between - Municipal Councillor is not a "Public Servant".

Section 161 IPC and Sec. 5 (1)(d) read with sec. 5(2) of Prevention of Corruption Act - Prosecution of a "Municipal Councillor" under - Whether legal.

The appellant, a Municipal Councillor, was prosecuted u/s 161, IPC and s.5 (1)(d) read with Sec. 5(2) of the Prevention of Corruption Act. The trial Court convicted him of the aforesaid charges. On appeal, the High Court, confirmed his conviction and sentence.

In appal to this Court, the appellant contended that as a Municipal Councillor was not a 'public servant' within the meaning of Section 21 of the Indian Penal Code, he could not be prosecuted under the Act even if sanction for his prosecution was obtained.

Allowing the appeal,

HELD : 1. The appellant, not being a public servant, could not be prosecuted under the provisions of the Act - whether or not sanction to prosecute him is obtained which is wholly irrelevant to the issue. [348 B-C]

2. The concept of a 'public servant' is quite different from that of a Municipal Councillor. A 'public servant' is an authority who must be appointed by Government or a semi-governmental body and should be in the pay or salary of the same. Secondly, a 'public servant' is to discharge his duties in accordance with the rules and regulations made by the Government. On the other hand, a Municipal Councillor does not owe his appointment to any governmental authority. Such a person is elected by the people and functions undeterred by the commands or

A edicts of a governmental authority. Therefore, a Municipal Councillor is not a 'public servant' within the meaning of Sec. 21 IPC. [347 G-H, 348 A]

R.S. Nayak v. A.R. Antulay, AIR 1984 S.C. 684, followed.

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 140 of 1977.

From the Judgment and Order dated 3/6.9.1976 of the Bombay High Court in Criminal Appeal No. 103 of 1975.

C S.K. Agnihotri and V.N. Ganpule for the Appellant.

V.B. Joshi and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

D FAZAL ALI, J. This appeal by Certificate under Article 134 of the Constitution of India arises out of a judgment dated 3/6.9.76 of the Bombay High Court affirming the conviction and sentence of the appellant imposed by the trial court.

E The short point on which certificate was granted and the case has been argued by both the parties falls within a very narrow compass. The appellant, who was a Municipal Councillor, was prosecuted under section 161 of the Indian Penal Code and s.5(1)(d) read with s.5(2) of the Prevention of Corruption Act (hereinafter referred to as the 'Act'). The High Court, after holding that sanction by the competent authority to prosecute the appellant was valid, confirmed his conviction and sentence. Hence, this appeal.

F The counsel for the appellant argued that as a Municipal Councillor was not a 'public servant' within the meaning of s.21 of the IPC, he could not be prosecuted under the Act even if sanction for his prosecution was obtained. The High Court, however, negatived this contention and held that a Municipal Councillor was undoubtedly a 'public servant' and affirmed the conviction of the appellant.

G The only point for consideration in this appeal before us is whether or not a Municipal Councillor who was not assisting any public servant is a 'public servant' within the meaning of s.21 of the IPC. It is not necessary for us to go into further

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details as the matter is no longer res integra and is covered by a recent decision of this Court in the case of **R.S. Nayak v. A.R. Antulay**, A.I.R. 1984 S.C. 684, where this Court made the following observations :

"Whatever that may be, the conclusion is inescapable that till 1964 at any rate M.L.A. was not comprehended in the definition of 'public servant' in s.21. And the Santhanam Committee did not recommend its inclusion in the definition of 'public servant' in section 21 Now if prior to the enactment of Act 40 of 1964 M.L.A. was not comprehended as a public servant in s.21, the next question is : did the amendment make any difference in his position. The amendment keeps the law virtually unaltered. Last part of Clause 9 was enacted as Clause 12(a). If M.L.A. was not comprehended in Clause 9 before its amendment and dissection, it would make no difference in the meaning of law if a portion of Clause 9 is re-enacted as Clause 12(a). It must follow as a necessary corollary that the amendment of Clauses (9) and (12) by Amending Act 40 of 1964 did not bring about any change in the interpretation of Clause (9) and Clause (12) (a) after the amendment of 1964.

.. .. .

Therefore, apart from anything else, on historical evolution of Section 21, adopted as an external aid to construction, one can confidently say that **M.L.A. was not and is not a public servant within the meaning of the expression in any of the clause of Section 21. IPC.**"

(Emphasis ours)

In view of this decision, therefore, we need not go to the other authorities on the subject. Even so, we are of the opinion that the concept of a 'public servant' is quite different from that of a Municipal Councillor. A 'public servant' is an authority who must be appointed by Government or a semi-governmental body and should be in the pay or salary of the same. Secondly, a 'public servant' is to discharge his duties in accordance with the rules and regulations made by the Government. On the other hand, a Municipal Councillor does not owe his appointment to any governmental authority. Such a person is elected by the people

- A and functions undeterred by the commands or edicts of a governmental authority. The mere fact that a MIA gets allowance by way of honorarium does not convert his status into that of a 'public servant'. In *Antulay's case* (supra), the learned Judges of the Constitution Bench have referred to the entire history and evolution of the concept of a 'public servant' as contemplated by s.21 of the IPC.
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In these circumstances, we hold that the appellant, not being a public servant, could not be prosecuted under the provisions of the Act-whether or not sanction to prosecute him is obtained which is wholly irrelevant to the issue.

- C For the reasons given above, we allow the appeal, set aside the conviction and sentence imposed on the appellant and acquit him of the charges framed against him. The appellant, who is on bail, shall now be discharged from his bail-bond. Fine if paid shall be refunded to the appellant.
- D

M.L.A.

Appeal allowed.