

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 744 OF 2008

1. Syed Naeemuddin S/o Syed Khaja,
Age: 50 years, Occ: Service working
As Junior Engineer,
M.S.E.D.C.L. Biloli, Tq. Biloli,
District: Nanded
2. Khalid S/o Mahetab Deshmukh,
Age: 51 years, Occ: Lineman,
M.S.E.D.C.L. Biloli_Tq. Biloli,
District: Nanded
3. Ibrahimsab S/o Khajamiya Kotwal,
Manjramkar, age: 50 years,
Occ: Lineman, M.S.E.D.C.L. Biloli
Tq. Biloli, District: Nanded ..Petitioners

Versus

1. The State of Maharashtra.
(Copy to be served Public Prosecutor
High Court, Aurangabad).
2. Sidhappa S/o Shivraya Katre
Machapure, Occ: Agri.
R/o. Bamni (Bk) Tq. Biloli,
District Nanded. ..Respondents

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Advocate for Petitioners : Mr. A.S. Bajaj
APP for Respondents/State : Mr. A.S. Shinde
Advocate for Respondent No.2 : Ms. Smita Kulkarni h/f Mr. K.M.
Nagarkar

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CORAM : S.G. MEHARE, J.

RESERVED ON : AUGUST 07, 2024

PRONOUNCED ON : SEPTEMBER 12, 2024

JUDGMENT :-

1. The petitioners/employees of the then MSEDCL had impugned the order of the learned Judicial Magistrate First Class

issuing process against them for the offences punishable under Sections 323 and 506 of the Indian Penal Code in Criminal Case No.114 of 2008 dated 17.06.2008 and the order of the learned Additional Sessions Judge, Biloli passed in Criminal Revision No.17 of 2008 dated 08.09.2008 dismissing the revision.

2. The learned counsel for the petitioners submits that before the complaint was filed against the petitioners, an FIR was registered against the complainant for the offences punishable under Sections 353 and 504 of the Indian Penal Code and Section 135 of the Indian Electricity Act, 2003. However to counter that case, respondent no.2 had filed the false complaint against them. He submitted that the petitioners being public servants, the order issuing the process against them could not be passed unless the sanction is obtained as provided under Section 197 of the Criminal Procedure Code. No Court can take the cognizance against the public servants, who are the public servants defined under Section 21 of the Indian Penal Code or any other relevant provisions of law. To bolster his argument, he relied on the case of Lalankumar Singh and Others Vs. State of Maharashtra, 2022 SCC Online SC 1383 and State of Haryana and Others Vs. Bhajanlal and Others, 1992 Supp(1) SCC 335. He also submitted the notification of the State of Maharashtra dated 04.06.2005 to bolster his argument that the entire property of the Maharashtra State

Electricity Board with assets and liability has been vested with the State Government.

3. The learned counsel for the respondent submits that the petitioners were not the public servants at the relevant time. They were the employees of a Board run by the Government. Therefore, sanction under Section 197 of the Criminal Procedure Code was not essential. The Court had directed an inquiry under Section 202 of the Criminal Procedure Code. After receiving the report, the learned Magistrate has applied his mind and satisfied that there was a case for issuing process against the petitioner. The case laws relied upon by the learned counsel for the petitioners do not support his contention. Those are on different facts.

4. On hearing the respective counsels, the following question arises for determination :

- (i) Whether the petitioners were public servants ?
- (ii) Was the order issuing process against the petitioners was bad in law for want of sanction under Section 197 of the Criminal Procedure Code ?

5. Section 197 of the Criminal Procedure Code provides that no Court shall take cognizance of any offence, except with the previous sanction of the concerned authority. The Magistrate proceed to issue summons or warrant as the case may be under Section 204 of the Criminal Procedure Code only on taking the cognizance.

6. At the time of admission of present writ petition, a statement was made before the Court that the question whether the petitioners are public servants is a subject matter for consideration before the Apex Court in S.L.P (Cri.) No.7366 of 2007 and connected Petitions bearing S.L.P (Cri.) No.7338 of 2007. The question whether they are entitled to seek protection under Section 197 of the Criminal Procedure Code requires consideration. On these submissions, the rule was made and ad-interim relief was granted and the record was called.

7. In Criminal Appeal No.1979 of 2010 arising out of S.L.P (Cri.) No.7336 of 2007, no issue was before the Court about sanction under Section 197 of the Criminal Procedure Code and the appellants did not claim that they were the public servants.

8. Section 169 of the Electricity Act, 2003 provides that, members, officers, etc., Appellate Tribunal, appropriate commission to be public servants. The said Section reads thus :

“169. Members, officers, etc., of Appellate Tribunal, Appropriate Commission to be public servants.– The Chairperson, Members, officers and other employees of the Appellate Tribunal and the Chairperson, Members, Secretary, officers and other employees of the Appropriate Commission and the assessing officer referred to in section 126 shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public

servants within the meaning of section 21 of the Indian Penal Code (45 of 1860). “

9. Apart from members, officers etc., of Appellate Tribunal, the assessing officer referred to in Section 126 were deemed to be public servant within the meaning of Section 21 of the Indian Penal Code.

10. Sub-section (1) of Section 126 of the Electricity Act, 2003 provides that the assessing officer may inspect any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, the assessing officer shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

11. Section 151 of the said Act further provides for the cognizance of the offence. It provides that, no court shall take cognizance of an offence punishable under the said Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose. However,

by way of amendment, the powers were also conferred upon the police to investigate the offence.

12. The State Government by various notification appointed various officers of MSEDCL to detect the theft under Section 135 of the Electricity Act. The Junior Engineer and the other employees working on the field were also appointed for the purpose of Section 135. The general practice of assessing the theft of the electricity was, soon after detecting the theft, the person inspecting the meter or gadget provisionally assess the amount of theft. The appropriate government or the MSEB Board has authorized the Junior Engineer and linemen to find out the theft of the electricity. Since the persons who were authorized to detect the theft of the electricity and to provisionally assess the amount of theft, it can be accepted that such persons are covered under Section 169 of the Electricity Act, 2003.

13. In the old Act of 1948, Section 81 was very specific that all [members and officers and other employees] of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

14. The Madras High Court in V. Srinivasan Vs. The Secretary and others, Writ Petition No.7424 of 2013 and M.P. Nos.1 and 2 of 2013 had decided the issues raised therein on 25.03.2023. The question before the Court was whether Section 81 of the 1948 Act

covering all servants and employees of the electricity board as public servants under Section 21 of the Indian Penal Code, is identical to Section 169 of the Electricity Act, 2003.

15. It was a case of Prevention of Corruption Act, 1988. It has been held that Section 169 of the Electricity Act, 2003, is not in pari materia with Section 81 of the Electricity (Supply) Act, 1948, in so far as the persons covered by them are concerned. But both provisions are identical to each other, in so far as the provision of law on which both revolved, is concerned, namely Section 21 of the Indian Penal Code.

16. It has been observed in para 19 that as indicated earlier, the primary contention of the petitioner is that while Section 81 of the 1948 Act, made all employees of the Board as public servants, within the meaning of Section 21 of the Indian Penal Code, Section 169 of the Electricity Act, 2003 named only a few Officers as public servants, within the meaning of Section 21 of the Indian Penal Code. To this extent, there can be no quarrel with the contention of the learned counsel for the petitioner, as Section 169 of the 2003 Act is restrictive than Section 81 of the 1948 Act.

17. In para 20, it has been observed that 'But that is not the end of the issue here. Both the 1948 Act and the 2003 Act confined their applications only to the definition of the expression "public servant" as found in Section 21 of the Indian Penal Code.'

18. Lastly in para 26, it has been observed that ‘therefore, the reference in Section 169 of the Electricity Act, 2003, making some Officers as public servants, within the meaning of Section 21 of the Indian Penal Code, has to be construed as a reference confined only to offences other than corruption. In so far as the offences of corruption are concerned, the question whether the employees of the Corporations carved out of the Electricity Board are public servants or not, has to be tested only with reference to the definition in Section 2(c) of the Prevention of Corruption Act, 1988 and not with reference to Section 169 of the Electricity Act, 2003 read with Section 21 of the Indian Penal Code.’

19. In para 27, it has been further observed that ‘the fact that Section 169 of the Electricity Act, 2003, restricted the application of the definition of the expression "public servant" found in Section 21 of the Indian Penal Code, only to a few Officers, is an indication of only two things. They are (i) that in so far as offences other than corruption, punishable even today under the Indian Penal Code are concerned, only a few Officers named in Section 169 are public servants; and (ii) that in so far as offences relating to corruption are concerned, the Electricity Act, 2003 did not deem fit to restrict the application of the Prevention of Corruption Act only to a few Officers.’

20. In para 28, it has been observed that ‘in other words, in respect of offences other than corruption, an employee of the

Electricity Corporation, would not be a public servant unless he is covered by Section 169 of the Electricity Act, 2003.'

21. Section 21 of the Indian Penal Code is comprehensive which includes various servants as public servants. In Clause 12, the servants of the 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) were also covered under the definition of the public servants. The MSEDCL is the government established Board.

22. Section 169 of the Electricity Act, 2003 which defines the term public servants in pursuance to Section 21 of the Indian Penal Code includes the servants or the employees under Section 126 of the Electricity Act, 2003. As discussed above, the Board has authorized various officers including the Junior Engineers and linemen to detect the theft. Hence, they are covered under the definition of public servants in Section 169 of the Electricity Act, 2003. Therefore, the Court is of the view that the learned Judicial Magistrate First Class erred in issuing the process against the petitioners without sanction as required under Section 197 of the Criminal Procedure Code. This issue was not dealt with at all. The impugned order also does not reflect the application of mind. Hence, the petition deserves to be allowed. Hence, the following order :

ORDER

- A) The writ petition is allowed.
- B) The impugned orders of the learned Judicial Magistrate First Class, Biloli passed in Criminal Case No.114 of 2008 dated 17.06.2008 and learned Additional Sessions Judge, Biloli passed in Criminal Revision No.17 of 2008 dated 08.09.2008, stand quashed and set aside.
- C) Rule is made absolute in the above terms.

(S.G. MEHARE, J.)