

per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it would not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant."

These observations, to my mind, apply with full force to the facts of the instant case; more so in the light of the conclusion recorded by the Delhi High Court as reproduced above.

(4) I thus allow this petition and direct the respondent authorities to pay interest to the petitioner at the rate of 12 per cent on the above noted amounts for the period the said amounts were withheld by those authorities, within a period of four months from today. The petitioner is also held entitled to the costs of this petition which I determine at Rs. 500.

N. K. S.

Before M. M. Punchhi, J.

KUNDAN LAL SHARMA,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 10 of 1985

March 29, 1985

Prevention of Corruption Act (II of 1947)—Sections 2 and 5(1)(d)—Indian Penal Code (XLV of 1860)—Sections 21, Clause Twelfth, 120-B, 420, 467, 468 and 471—Companies Act (I of 1956)—Sections 2(7) and 617—Banking Companies (Acquisition and Transfer of Undertakings) Act (V of 1970)—Sections 3 and 7—Employees of a nationalised bank prosecuted under section 5 of the Corruption Act—Such employee—Whether a public servant within meaning of Section 21, Indian Penal Code—Legal status and character of a nationalised bank—Such a bank—Whether a Corporation established by or under a Central Act.

Held, that when the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 envisaged for each new corresponding bank a Board of Directors, whether the first Board of

Kundan Lal Sharma v. The State of Punjab (M. M. Punchhi, J.)

Directors under Section 7 or the subsequent Board of Directors under the scheme of section 9, it had clearly established separate corporations and conferred on them the corporate character. Strength can be drawn to this conclusion from the interchangeability of the words 'body corporate' and 'corporation' as these have to find way, in the acquisition Act. Thus the creation of a body corporate under sub-section (4) of section 3 is the creation of a corporation with corporate character. If that is so, the employee of a nationalised bank would squarely fall within the ambit of the expression 'public servant' since he was in the service or pay of a corporation established by or under a Central Act and not a personified institution—a concept alien to the British soil and necessarily to ours carrying the legacy. A liberal construction has to be put on words 'body corporate' and 'corporation' using them interchangeably in the context of the Acquisition Act, so that the employees of the corresponding new banks can be treated as public servants for the purposes of section 21, Indian Penal Code, bringing them within the meaning of section 5 of the Corruption Act to be tried by a Special Judge for misconduct committed by them. Thus, the legal status and character of a nationalised bank is that of a corporation established by or under the Acquisition Act and the status of persons in its service or pay is that of a public servant as the expression is known to section 21 of the Indian Penal Code.

(Paras 13 and 16).

1. Oriental Bank of Commerce and another vs. Delhi Development Authority and others, 1982 CrL. L.J. 2230.

2. Raghunath Raj Kumar, Bombay vs. B. N. Khanna and others, 1983 CrL. L.J. NOC 154 (Delhi).

DISSENTED FROM

Petition for revision under Section 401, Cr.P.C. for the revision of the order of the Court of Shri R. L. Anand, Special Judge, Patiala, dated 31st October, 1984, framing the charge against the accused under Section 120-B, I.P.C.; Under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and committed an offence punishable Under Sections 420, 468, 465 and 471, I.P.C.

N. K. Sodhi, Advocate and Mr. H. S. Mattewal, Advocate, for the Petitioner.

H. S. Riar, Deputy A.G., Punjab, for the Respondent.

JUDGMENT

M. M. Punchhi, J.

(1) The twin question which raises its head in this petition is: 'What is the legal status or character of a Nationalised Bank and what is the status of persons in its service or pay?' This question arises in this manner.

(2) The petitioner Kundan Lal Sharma was the Branch Manager of the United Commercial Bank, Bharatgarh Branch. He along with four others was sent up before the learned Special Judge, Patiala, to stand trial under Section 5(1)(d) of the Prevention of Corruption Act (hereinafter referred to as 'the Corruption Act), as also under sections 420, 467, 468 and 471 read with Section 120-B of the Indian Penal Code.

(3) Broadly speaking, the case of the prosecution is that the petitioner while working as the Branch Manager of the aforesaid Bank, which now stands nationalised, in the capacity of a public servant entered into a criminal conspiracy in the year 1979-80 with the other accused in order to cheat the Bank and the National Insurance Company and in pursuance thereof advanced a loan for the purchase of a tractor. How that loan was arranged is a matter of detail and need not be elaborated here. The tractor met with an accident and had to be repaired when it came to light that the offence had been committed. The case of the prosecution ultimately was that the petitioner along with accused No. 2 Suresh Sharma by corrupt and illegal means and otherwise abusing their official positions fraudulently and dishonestly cheated the Bank and the National Insurance Company by obtaining a pecuniary advantage of Rs. 23,281.51 from T.C. Dharmani and other co-accused. Broadly on these allegations the investigation was completed by the C.B.I. and after obtaining sanction against the petitioner, who was a Bank employee, and against Suresh Sharma, who was an employee of the National Insurance Company, a charge-sheet was submitted before the learned Special Judge, Patiala.

(4) At the pre-charge stage, the petitioner as also Suresh Sharma co-accused raised pleas that they were not public servants and thus they could not be tried by a Special Judge under the Corruption Act. The learned Special Judge dismissed the objection,—*vide* order, dated 31st October, 1984. The aggrieved petitioner has approached this Court in revision.

(5) The learned Counsel for the petitioner vehemently contended that the petitioner was not a public servant within the meaning of section 21 of the Indian Penal Code and, thus, he could not be tried by the Special Judge under the Corruption Act. It was further contended by him that a Nationalised Bank is just a 'corporate body' and not a 'corporation', and being a corporate body, since it was solely owned by the Government, it could not be termed

Kundan Lal Sharma v. The State of Punjab (M. M. Punchhi, J.)

as a Government Company as defined in section 617 of the Companies Act, 1956 (hereinafter called 'the Companies Act). Thus, he contended that the Special Judge had no jurisdiction to try the petitioner. Support was sought by him from a judgment of the Delhi High Court in *Oriental Bank of Commerce and another v. Delhi Development Authority and others*, (1), for the view canvassed. That view was reiterated by the Delhi High Court in *Raghunath Raj Kumar, Bombay v. B. N. Khanna, Delhi, and others*, (2). The soundness of the view propounded by the Delhi High Court is questioned by the learned counsel for the State on the anvil of *S. C. Aggarwal v. The State of U.P.*, (3), and *Kurian v. State of Kerala*, (4).

(6) Section 5 of the Corruption Act provides for the punishment of public servants guilty of commission of criminal misconduct. The expression 'public servant' carries in the said Act the same meaning as assigned to it in section 21 of the Indian Penal Code. Section 2 of the aforesaid Act is a clear pointer in that regard. The relevant portion of section 21, I.P.C., which apparently has near applicability to the case in hand, when culled out, would read as follows :—

"The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely—

* * * *
* * * *

Twelfth—Every person—

(a) * * *

(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).

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not."

(1) 1982 CrL. L.J. 2230.

(2) 1983 CrL. L.J. NOC 154 (Delhi).

(3) 1979 All. L.J. 922.

(4) 1982 CrL. L.J. 780.

(7) It is the common case of the parties that the petitioner when appointed in the Bank had not been so appointed by the Government. The moot point is 'whether on the nationalisation of the United Commercial Bank, did he become a public servant within the meaning of Clause Twelfth of section 21, I.P.C.? At this stage, relevant portions of the Companies Act, the Banking Regulation Act, 1949 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as 'the Acquisition Act'), be taken note of.

(8) All words and expressions not defined in the Acquisition Act have to acquire the respective meanings assigned to them in the Banking Regulation Act, 1949. See in this connection section 2(h) of the Acquisition Act. Then again, all other words and expressions used in the Banking Regulation Act but not defined therein have to have the meanings respectively assigned to them in the Companies Act. See in this connection section 5(o) of the Banking Regulation Act. The expressions 'body corporate' or 'corporation' have neither been defined in the Acquisition Act nor in the Banking Regulation Act. But these expressions are defined in section 2(7) of the Companies Act in the following way :—

“(7) 'body corporate' or 'corporation' includes a company incorporated outside India but does not include—

- (a) a corporation sole;
- (b) a co-operative society registered under any law relating to co-operative societies; and
- (c) any other body corporate (not being a Company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.”

(9) Thus, derivatively the expressions 'body corporate' or 'corporation' as defined in the Companies Act have to be read in the Acquisition Act as being part and parcel thereof.

(10) It is plain from the definition clause that 'body corporate' or 'corporation' have been used interchangeably whatever be their connotation in the jurisprudential sense. Further, it is noticeable that the definitions are inclusive in character and are fairly wide. Section 3(1) of the Acquisition Act provides that on the commencement of that Act there shall be constituted such corresponding new

Kundan Lal Sharma v. The State of Punjab (M. M. Punchhi, J.)

banks as are specified in the First Schedule, and sub-section (4) thereof, provides that every corresponding new bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of that Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name. It is, thus, clear that in place of the old bank a new bank comes into being with a slight variation of name. So far as the present bank is concerned, it was before the acquisition 'The United Commercial Bank Limited' but thereafter 'United Commercial Bank'. This is apparent from the columns in the First Schedule prepared under sections 2 to 4 of the Acquisition Act. The old bank or the existing bank, as the definition goes, was/is a banking company registered under the Banking Regulation Act, 1949, and concededly was/is a 'body corporate' having all the attributes of a corporate entity. On the coming into being of the corresponding new bank, it remains a 'body corporate' under sub-section (4) of Section 3 thereof and its general superintendence, direction and management of the affairs and business would vest in a Board of Directors. But until the First Board of Directors is appointed by the Central Government such superintendence, etc., vests in a Custodian and that Custodian has to be the Chairman of an existing bank holding office as such immediately before the commencement of the Acquisition Act. This scheme is clear from a reading of section 7 of the Acquisition Act. It is only for the interregnum that the Chairman of the bank is to be appointed as Custodian until the First Board of Directors is appointed by the Central Government. But the corporate entity of the corresponding new bank is in no way diminished by the temporary appointment of a Custodian sole, for that obviously is an interim measure to be replaced by the First Board of Directors and thereafter the Board is perpetually to remain constituted under a scheme under section 9. That appears to me the scheme of the Acquisition Act. Even it is not necessary to have the Chairman of the existing bank appointed as a Custodian. The proviso to section 7(5) governs the situation when any other person can be appointed as a Custodian. The Custodian, however, is to hold office during the pleasure of the Central Government. If this be the character of a corresponding new bank, it would not be out of place to say that the Acquisition Act has established simultaneously as many Central Corporations as are mentioned in the First Schedule under the provisions of the Acquisition Act.

(11) M.L. Jain, J. in *Oriental Bank of Commerce and another v. Delhi Development Authority and others*, (supra) expressed his view

in that regard by observing as follows :—

“The crucial question that follows is: is it a corporation within the narrow meaning of the aforesaid clause Twelfth of section 21 of the I.P.C. ? Reverting to the law laid down by the Supreme Court it is necessary to see that in order that the Corporation is covered by clause Twelfth, it must be proved to be a legal entity entirely separate and distinct from the individuals who compose it. That is a doctrine firmly rooted in our notions derived from common law : *A. P. State Road Transport Corporation v. Income-tax, Officer*, (5). Our inquiry has, therefore, to be directed to answer the question : *the New Bank is an entity separate from whom ?* The Banks Act does not provide for the individuals who will compose or constitute the New Bank, in contradistinction to the Acts which have established the Corporations, such as STC, LIC, etc., and have specified the individuals (indicated by name or by designation) which will constitute or compose these corporations or of which the corporation shall consist. I have also scanned several statutes of the United Kingdom and I have found that in all of them the legislature has taken care to provide the human sub-stratum for creating a separate artificial and fictional entity. The Banks Act makes no such provision except saying in sub-section (2) of its Section 7 that the general superintendence, direction and management of the affairs and business of a New Bank shall vest in a Board of Directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding New Bank is authorised to exercise and do. It cannot, therefore, be said that the Board of Directors are the individuals who compose the Corporation. The human components or constituents and thus missing there in the petitioner Banks. Strictly speaking, therefore, one has to say that the petitioner Banks are not corporations within the meaning of cl. 12. But then how to describe such a ‘body corporate’? The learned counsel for the DDA submitted that a similar question in an identical situation came to be examined by Salmond. In a foot-note (k) in para 67 in Chapter X relating to Corporations in his celebrated treatise ‘Jurisprudence’ Ed. 1966, page 66, he has said:

(5) AIR 1964, S.C. 1486, Para 17.

Kundan Lal Sharma v. The State of Punjab (M. M. Punchhi, J.)

“ ‘ Occasionally in the statute book we find the so-called Corporations which are in truth not corporations at all—having no incorporated members, but are *merely personified institutions*. The Commonwealth Bank of Australia constituted by an Act of the Federal Parliament of Australia is an example. See the Commonwealth Bank Act, 1911, S.S. ‘A Commonwealth Bank of Australia is hereby established’. Section 6. ‘The Bank shall be a body corporate with perpetual succession and a common seal, and may hold land and may sue and be sued in its corporate name.’

The petitioner Banks, therefore, can be described a personified institution, an artificial legal person no doubt but not because they are corporations. I agree and it seems to me to be correct to say that the petitioner Banks are not ‘corporations’, though they are ‘bodies corporate’ personified institutions.”

(12) Sachar, J., however, while concurring with the conclusion opted for confining his judgment to repelling the contentions of the petitioners that no sanction under section 197, Cr. P. C. was required from the Central Government to prosecute them. The case arose in the context of section 197, Cr. P. C. and it was held therein that when the petitioner as Chairman was being prosecuted for the offence committed by the Bank by virtue of section 32 of the Acquisition Act, the question of his prosecution individually did not arise and so no question arose whether he was a public servant coming within the ambit of section 197, Cr. P. C. or not, with due respect to the learned Judges of the Delhi High Court, I express my inability to concur with the view expressed and even to hold that the banks were personified institutions on the basis of the footnote finding way in the report from Salmond’s Treatise known as ‘Jurisprudence.’ The learned author in quoting the example of the Commonwealth Bank of Australia afore-noted for the purpose of his country observed as follows:—

“The second class is that in which the *corpus*, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution,

but to the institution itself. *Our own law does not, indeed, so deal with the matter. The person known to the law of England as the University of London is not the institution that goes by that name, but a personified and incorporated aggregate of human beings, namely, the chancellor, Vice-Chancellor, fellows, and graduates. It is well to remember, however, that notwithstanding this tradition and practice of English Law, legal personality is not limited by any logical necessity, "or, indeed, by any obvious requirement of expediency, to the incorporation of bodies of individual persons."*

(Emphasis supplied).

(13) Thus, it is obvious that the intendment of the statute is to be seen and not merely the science of law-Jurisprudence. As it appears to me, when the acquisition Act envisaged for each new corresponding bank a Board of Directors, whether the first Board of Directors under section 7 or the subsequent Board of Directors under the scheme of section 9, it had clearly established separate corporations and conferred on them the corporate character. Strength can be drawn to this conclusion from the interchangability of the words 'body corporate' and 'corporation' as these have to find way, as said earlier, in the Acquisition Act. Thus, the creation of a body corporate under sub-section (4) of section 3 is the creation of a corporation with corporate character. If that is so, the petitioner would squarely fall within the ambit of the expression 'public servant' since he was in the service or pay of a corporation established by or under a Central Act and not a personified institution a concept alien to the British soil and necessarily to ours carrying the legacy. In the same strain, with due respect to M. L. Jain, J. I differ with the view expressed by him in *Raghunath Rai Kumar's* case (supra). Support to the view above taken is also available from the observations of O Chinnappa Reddy, J. in a Division Bench judgment of this Court in *Lachhman Dass Aggarwal versus The Punjab National Bank*, (6) Spelling out the provisions of the Acquisition Act their Lordships observed "that the Government instead of itself carrying on the business of banking, as it certainly is entitled to, has chosen to carry on the business through the instrumentality of Punjab National Bank and other 'corresponding new banks, created by the Statute and wholly owned by the Government. It is 'State action' through bodies corporate, owned 'body and soul' (if such an

Kundan Lal Sharma v. The State of Punjab (M. M. Punchhi, J.)

expression may be used) by the State." Though this was said in the context of 'authorities' within the meaning of Article 12 of the Constitution but they are meaningful to understand the character and status of the nationalised banks. Their Lordships further said that the corresponding new banks were the creatures of the statute and were not companies incorporated under the Indian Companies Act as is clear from section 11 of the Act.

(14) In *Kurian's* case (supra), a Division Bench of the Kerala High Court, held that an employee of a nationalised bank was a public servant within the ambit of section 21 of the Indian Penal Code. It was held that since the Central Bank of India became a bank of which the entire share capital vested in the Central Government, it followed that a person in the service or pay of the Central Bank of India was a public servant within the definition of the term in section 21 of the Indian Penal Code. Similarly, a Single Bench of the Allahabad High Court in *S. C. Aggarwal's* case (supra) held on first principles that in view of the Acquisition Act the new corresponding bank became a corporation established by the Central Government and, thus, an employee of the Union Bank of India was a public servant within the meaning of Clause 12(b) of section 21 which lays down that every person in the service or pay of a corporation established by or under a Central Act is a public servant. The Hon'ble Judge went on to the length of observing that "alternatively even if the corresponding bank was treated to be a company it would be a Government company as defined in section 617 of the Companies Act and its employee is a public servant within the meaning of Cl. 12(b) of S.21, which lays down that every person in the service or pay of a Government Company as defined in S. 617 of the Companies Act is a public servant."

(15) Now a Government Company as defined in section 617 of the Companies Act "means any company in which not less than fifty one per cent of the paid up share capital is held by the Central Government, or by any State Governments or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government Company as thus defined." It is obvious that if the paid up share capital in the Company is 51 per cent or more it becomes a Government Company. What remains the extent of the percentage of the paid up share capital above that limit would not and cannot alter the situation even if the entire paid up share capital is taken over by the Government and thus it wholly comes to control that company. In my opinion, it would not cease to be a Government Company as long as it remains incorporated under the Com-

panies Act; as also under the Acquisition Act, atleast for the purposes of section 21 of the Indian Penal Code. But I will not hold such view as it would run counter to the view expressed by this Court in the Division Bench judgment of *Lachhman Dass Aggarwal's* case (supra). Thus, for the purposes of disposal of this case, I would concur with the view expressed by the Allahabad High Court in the other alternative. On first principles even law cannot be presumed to have left a vacuum in that regard relating to this new class of public servants working with the corresponding new banks, who are to handle large sums of money of the public in the interests of all concerned.

(16) Lastly, to be fair to the learned counsel for the State, I need notice the view of the Supreme Court in relation to the interpretation of the provisions of the Corruption Act in the light of the amendments made in section 21 of the Indian Penal Code in the years 1958 and 1964. They are available in *The State of Madhya Pradesh v. M. V. Narasimhan*, (7) Their Lordships have held that the Prevention of Corruption Act being a social legislation, its provisions must be liberally construed so as to advance the object of the Act. With regard to the amendments, they observed that this can only be done if an extended meaning can be given to the term 'public servant' as referred to in section 2 of the Act by applying the enlarged definition contained in clause 12 inserted in the Penal Code by the two amendments referred to earlier. Also taking cue therefrom, it is my considered view that liberal construction has to be put on words 'body corporate' and 'corporation' using them interchangeably in the context of the Acquisition Act, so that the employees of the corresponding new banks can be treated as public servants for the purposes of section 21, I.P.C. bringing them within the meaning of section 5 of the Corruption Act to be tried by a Special Judge for misconduct committed by them. Thus, the twin question afore-posed is answered in this way that the legal status and character of a nationalised bank is that of a corporation established by or under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the status of persons in its service or pay is that of a public servant as the expression is known to section 21 of the I.P.C.

(17) For the foregoing reasons, I have no hesitation in rejecting the contentions of the petitioner and dismissing the petition. Order accordingly.

N. K. S.

(7) A.I.R. 1975 S.C. 1835