

Before S. S. Sandhawalia and J. M. Tandon, JJ.

JAGJIT SINGH—Petitioner.

*versus*

STATE OF PUNJAB AND OTHERS—Respondents.

Civil Writ Petition No. 937 of 1978

May 16, 1978.

*Prevention of Corruption Act (II of 1947)—Sections 2 and 5—Constitution of India 1950—Article 246, Clauses (1) and (3), Seventh Schedule List I, Entries 70 and 93, List II Entries 41 and 64 and List III Entry 1—Sections 2 and 5 in so far as they apply to the public service of a State—Whether ultra vires the Constitution—Parliament—Whether can make laws for crimes committed by ‘Public Servants’ of a State.*

*Held* that a reading of Article 246 of the Constitution of India 1950 along with entries 41 and 64 of the State List would show that the State Legislature is vested with exclusive jurisdiction to legislate with regard to the State Public Services and the State Public Service Commission. This exclusive power of the State Legislature further extends to the making of any laws with regard to the offences against those State statutes which are enacted with regard to the State Public Service Commission, but it is in this field and in this field alone that the State Legislature would have exclusive jurisdiction. It cannot be enlarged to the extent of covering criminal legislation with regard to the persons who may happen to be in the public service of the State. The general power to legislate generally with regard to the criminal law has not been made the exclusive preserve of either the State Legislature or Parliament. Construing entry 1 of the Concurrent List in the Seventh Schedule, it is plain that the power to legislate with regard to general criminal law has been vested in Parliament and the State Legislatures. The word ‘criminal law’ used in the opening part of this entry is one of wide ranging nature. What has been specifically excluded from the ambit of the concurrent power are only specific offences against laws with respect to any of the matters specified in the Union and State Lists and the armed forces of the Union of India. It seems manifest that the legislative powers under entries 70 and 93 of the Union List I and entries 41 and 64 of the State List are essentially restricted to service laws pertaining to the constitution of services and other allied and ancillary matters as also the constitution of the Public Service Commissions etc. Consequently, the aforesaid entries cannot be considered as barring Parliament and the State Legislatures to enact laws relating to crimes generally, which clearly fall within the wide scope of entry 1 of the Concurrent List III. As such, for criminal offences committed by the public servants of the Union or the State, the

law made under entry 1 of List III would be applicable to both and therefore the Prevention of Corruption Act 1947 having been enacted by Parliament is constitutionally valid equally in relation to the Public Service of a State.

(Paras 5, 6 and 9)

*Petition under Article 226 read with Article 228 and 131-A of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ order or direction be issued to the following effect :—*

- (i) *That the provisions of Section 5 read with Section 2 of the Prevention of Corruption Act in so far as they apply to Public Services of the State may be declared illegal, ultravires, null and void and unconstitutional ; and*
- (ii) *the respondents may be restrained from giving effect to the said provisions of the Act against the petitioner ;*
- (iii) *A writ of Mandamus be issued quashing the F.I.R. No. 77 dated the 10th August, 1977.*
- (iv) *That the proceedings before the Special Judge be quashed on the ground that he has no jurisdiction to proceed with the trial at all since he is proceeding under a law which ultravires the Constitution of India. The trial of the petitioner consequently be quashed;*
- (v) *Any other writ, order or direction which may be suitable to the facts and circumstances of the case may also be issued;*
- (vi) *It is further prayed that during the pendency of this writ petition the trial judge be restrained from proceeding further with the trial of the case;*
- (vii) *It is also prayed that the case may be forwarded to the Supreme Court for deciding the vires of the various provisions of the Prevention of Corruption Act;*
- (viii) *It is further prayed that the production of certified copies of the documents annexed hereto may be dispensed with;*
- (ix) *It is further prayed that the issuance of notices of Motion may also be dispensed with at this stage.*
- (x) *Costs of this petition be allowed to the petitioner.*

Jagjit Singh v. State of Punjab and others (S. S. Sandhawalia, J.)

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H. L. Sibal, Advocate, for the Petitioner.

(Ravinder Seth with him).

Kuldip Singh, Advocate, for Union of India.

D. N. Rampal, D.A.G. Punjab, for the State of Punjab.

### JUDGMENT

S. S. Sandhawalia, J.—(1) Whether the provisions of section 5 read with section 2 of the Prevention of Corruption Act, 1947 in so far as they apply to the public service of the State are *ultra vires* of the Constitution is the sole question that has been agitated in this writ petition.

(2) As is evident, the issue is purely legal and it is, hence unnecessary to advert in detail to the facts. It suffices to mention that Jagjit Singh petitioner is standing trial under section 5(1)(d) and (e) read with section 5(2) of the Prevention of Corruption Act before the Court of the Special Judge at Jullundur. The charges levelled against him are based on his having allegedly amassed wealth and property disproportionate to his known sources of income since 1970 onwards during his tenure as the Chairman, Marketing Committee, Jullundur, Chairman, Block Samiti, Jullundur; Managing Director, Central Co-operative Bank Ltd., Jullundur and as Sarpanch of his village Panchayat. The offices aforesaid come within the ambit of the definition of a public servant encompassed under the Act and consequently the challenge is laid to the applicability of the Central statute to the public services of the State.

The relevant parts of the statutory provisions under challenge may first be set down as under:—

Section 2. *Interpretation.*—For the purpose of this Act, “public servant” means a public servant as defined in section 21 of the Indian Penal Code.

Section 5. *Criminal misconduct in discharge of official duty.*—

(1) A public servant is said to commit the offence of criminal misconduct—

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(d) if he, by corrupt or illegal means or by otherwise abusing his position as Public servant, obtains for himself or for another person any valuable thing or pecuniary advantage.

... ..

(e) if he or any person on his behalf in possession, or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of the pecuniary resources or property disproportionate to his known sources of income.

It is plain that a reading of section 2 aforesaid with section 21 of the Indian Penal Code would plainly bring the members of the public service of the State within the definition of a "public servant" in the Act. The core of the argument raised by Shri Sibal on behalf of the petitioner is that the aforesaid provisions of the Act cannot have any application to the public services of the State of Punjab, because Parliament or Central legislation cannot be intruded into a field which is exclusively preserved for State Legislation. It is contended that only the State of Punjab can legislate with regard to the offences committed by the members of its public service.

(3) Reliance for the contention aforesaid is based primarily on Article 246 of the Constitution of India. It is submitted that by virtue of clauses (1) and (3) thereof, Parliament and the State Legislatures have exclusive jurisdiction to make laws with respect to the matters enumerated in list I and list II of the Seventh Schedule, respectively. A reference is then made to entries 41 and 64 of the State List (List II) which are in the following terms:—

41. State public services, State Public Service Commission.

... ..

64. Offences against laws with respect to any of the matters in this List.

... ..

The contention of Shri Sibal is that on a reading of these two entries together, a State Legislature would have exclusive jurisdiction

Jagjit Singh v. State of Punjab and others (S. S. Sandhawalia, J.)

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to legislate with regard to offences relating to the State public services and the State Public Service Commission. It was submitted that this arena cannot be trespassed into by the Parliamentary legislation.

(4) By way of analogy reliance has also been placed on the corresponding entries No. 70 and 93 of the Union List I of the Seventh Schedule. The submission herein again is identical, that on a combined reading of the two, Parliament alone would have the jurisdiction to legislate with regard to all offences pertaining to the Union Public Services, All-India Services; Union Public Service Commission. On these premises, it has been strenuously contended that whilst Parliament has exclusive jurisdiction with regard to the Union Public Services and All-India Services, similarly, the State Legislatures have an equally exclusive field to legislate with regard to the offences with respect to the States' Public services.

(5) We are unable to agree. The argument apparently stems from a misreading of the import of the corresponding entries in the Union and the State Lists. Taking up first the case of the Union List, it appears to us that on a plain reading of entries 70 and 93, Parliament would have exclusive jurisdiction to make laws with regard to the Union Public Services, the All-India Services and the Union Public Service Commission. An example of such legislation is the All-India Services Act, 1951. It goes without saying that with regard to these subjects, no State Legislatures would be competent to pass any legislation. Now entry 93 would consequently vest exclusive jurisdiction in Parliament to make laws with regard to all offences which may be in violation of or against the All-India Services Act. It would be in this limited field alone that Parliament would have exclusive jurisdiction, but not with regard to the general criminal law.

(6) Similarly, on a reading of Article 246 of the Constitution, along with entries 41 & 64 of the State List, it is evident that the State Legislature is vested with exclusive jurisdiction to legislate with regard to the State Public Services and the State Public Service Commission, Parliamentary legislation cannot intrude into this field. This exclusive power of the State Legislature further extends to the making of any laws with regard to the offences against those State statutes which are enacted with regard to the State Public Service

and the State Public Service Commission. An example of this would be if the State Legislature were to enact legislation with regard to its civil services or special legislation for the creation of the State Public Service Commission—Violations of such statutes may be declared as offences and legislated upon, but it is in this field and in this field alone that the State Legislature would have exclusive jurisdiction. It cannot be enlarged to the extent of covering criminal legislation with regard to the persons who may happen to be in the public service of the State. The general power to legislate generally with regard to the criminal law has not been made the exclusive preserve of either the State Legislature or Parliament.

(7) The concurrent power to legislate with regard to criminal law is clear and categorical by virtue of entry 1 of the Concurrent List III which is in the following terms:—

“(1) Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II, and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.”

(8) Now it is settled law that the legislative entries in the Seventh Schedule are not to be read in a pedantic, narrow or restricted sense, but include within them all power to legislate on all ancillary or subsidiary matters. The most liberal construction has to be placed on these entries and in this connection a reference may be made to the binding precedents of the final Court in *Navinchandra v. Commissioner of Income-tax* (1), *Sri Ram Narain v. State of Bombay* (2), and *Waverly Jute Mills v. Raymon and Company* (3).

(9) Construing the aforesaid entry 1 in the light of these judgments, it is plain that the power to legislate with regard to general criminal law has been vested in Parliament and the State Legislature. It is obvious that the word ‘criminal law’ used in the very

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(1) A.I.R. 1955 S.C. 58.

(2) A.I.R. 1959 S.C. 459.

(3) A.I.R. 1963 S.C. 90.

Jagjit Singh v. State of Punjab and others (S. S. Sandhawalia, J.)

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opening part of this entry is one of wide-ranging nature. While expressly including the general criminal law in the Indian Penal Code within the same, what has been specifically excluded from the ambit of the concurrent power are only specific offence against laws with respect of any of the matters specified in the Union and State Lists and the armed forces of the Union of India. It seems manifest that the legislative powers under entries 70 and 93 of the Union List I and entries 41 and 64 of the State List are essentially restricted to service laws pertaining to the constitution of services and other allied and ancillary matters, as also the constitution of the Public Service Commissions, etc. The exclusive legislative power herein, therefore, does not cover all types of offences that may be committed by the public servants. Consequently, the aforesaid entries cannot be considered as barring Parliament and the State Legislatures to enact laws relating to crime generally, which clearly falls within the wide scope of entry 1 of the Concurrent List III.

(10) Pushed to the logical extreme, Mr Sibal was forced to admit that on the construction canvassed by him a public servant of the State committing ordinary crimes of murder, theft, criminal misappropriation, etc., shall not be liable to be prosecuted for offences under the Indian Penal Code, because it has not been enacted by the appropriate State Government. Carrying the analogy a little further a State Government public servant if he commits an offence against the Essential Commodities Act, which is a Central statute, would again not be liable thereunder, because the same is parliamentary legislation. This obviously cannot be so. Any such construction would have the effect that the criminal law would cease to be a matter of equal application to offenders generally and become a matter of status depending on whether the offender is a Central or State employee. That cannot even remotely have been the intent to the founding fathers so far as one can read it. It appears to be plain that for criminal offences committed by the public servants of the Union or the State, the law made under entry 1 of the List III would be applicable to both. Consequently, the Prevention of Corruption Act having been enacted by Parliament is, therefore, constitutionally valid equally in relation to the public service of the State.

(11) Viewed from another angle also, the present Writ Petition is not entitled to succeed. In *Om Parkash v. State of U.P.* (4), C. I.

*Emden v. State of U.P.* (5) and *Ram Chandra Prasad v. State of Bihar* (6), the provisions of sections 4, 5, and 6 of the Prevention of Corruption Act were assailed on a variety of grounds as being *ultra-vires* of Article 14 of the Constitution. The challenge was, however, repelled and the constitutionality of these provisions upheld. In view of the observations made in *Ballabhdas Mathuradas Lakhani and others v. Municipal Committee, Malkapur* (7), and even more pointedly in *Ram Manohar Lal Lohia and others v. State of Uttar Pradesh* (8), and *Union of India v. Gem Palace* (9), the aforesaid judgments of the Supreme Court are binding on us and it is not open for the petitioners to claim a re-examination of the matter on the ground that some relevant provisions of the statute or a fresh ground of attack was not brought to the notice of their lordships of the Supreme Court.

(12) No other point has been urged. The Writ Petition is without merit and hence stands dismissed *in limine*.

H.S.B.

Before P. C. Jain and C. S. Tiwana, JJ.

B. S. BANSAL—*Petitioner*.

*versus*

STATE OF PUNJAB AND ANOTHER—*Respondents*.

Civil Writ Petition No. 157 of 1978

May 18, 1978.

*Punjab Service of Engineers Class I P.W.D. (Building and Roads Branch) Rules 1960—Rule 22—Power to relax any rule—Whether to be exercised to meet a particular case of hardship or a general situation—Non-availability of eligible officers—Whether a ground for the*

(5) A.I.R. 1960 S.C. 548.

(6) A.I.R. 1961 S.C. 1629.

(7) A.I.R. 1970 S.C. 1002.

(8) A.I.R. 1968 Allahabad 100.

(9) A.I.R. 1973 Rajasthan 242.