

**STATE OF GUJARAT VS. MANSUKHBHAI KANJIBHAI
SHAH**

COURT: Supreme Court of India

CITATION: SC (0417) 2020

DECIDED ON: 27.04.2020

BENCH: N.V. Ramana, Ajay Rastogi and Mohan M. Shantanagoudar, JJ.

LAW APPLIED: [Prevention of Corruption Act, 1988](#); [Indian Penal Code](#); [Code of Criminal Procedure](#).

INTRODUCTION

This recent case addresses the increasing rates of corruption in the country, particularly in relation to the educational sector. It establishes and restates certain crucial points of law and lays down the interpretation of certain important terms namely, public servant, public duty, university as provided under the Prevention of Corruption Act, 1988. It further discusses several vital principles of law such as the doctrine of pari materia in the interpretation of statutes.

FACTS OF THE CASE:

The case reached the Apex court through a criminal appeal, challenging an order dated 02.02.2018, issued by the Gujarat High Court (HC) at Ahmedabad. The Respondent in the present case is the Trustee of a Sumandeep Charitable Trust. A 'Sumandeep Vidyapeeth', deemed to be University, is created and funded by the said trust. The aggrieved is a student pursuing the MBBS Course in the aforementioned Deemed to be University since 2012. In 2017, the aggrieved was in her final year and had paid her complete fees according to the annual requirement. Despite this, when she was filling her final examination form, the Respondent, in

connivance with others, asked her to further pay a sum of Rupees Twenty Lakhs failing which she would not be permitted to appear for the examination. Following this, the aggrieved deposited the said amount and at the same time an FIR, with I-ER No. 3 of 2017 was filed by her mother Dr. Jasminaben, on 28.02.2017 against the four accused including the abovementioned Respondent. A sting operation was set up following the necessary procedure, wherein incriminating evidence was procured against the Accused-Respondent. Additionally, many undated cheques issued in the name of the institution amounting to more than Rs.100 crores and certain fixed deposits were recovered through separately directed raids.

Accordingly, the accused were charged u/s. 7, 8, 10 and 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 (PC Act) read along with Section 109 of Indian Penal Code, 1860 (IPC). Following this, a discharge application was filed by the Respondent u/s. 227 of CrPC before the District and Sessions Court, but the court rejected the said application. Disgruntled, he then filed a criminal revision application, before the Gujarat HC that issued an order allowing the revision application and discharging the Accused-Respondent herein. As per this order the court ruled that a deemed to be University, unlike a regular university, does not receive Government grant. Hence, trustee of a charitable trust that creates and funds the said Deemed University cannot be assumed a 'public servant' under the PC Act. Aggrieved by the said order, the State of Gujarat (Appellant) seek an appeal before the Supreme Court.

SUBMISSIONS

The Counsel on behalf of the Appellant (State) started by stating that the prime objective of the PC Act was to suppress corruption and illegal activities among public servants. By giving it a strict interpretation, the very purpose of the social legislation is defeated. Further, the interest of public at large cannot be put at stake, owing to certain technical grounds and definitions. Additionally, he submitted that public function is not exclusively limited to the State domain and can include within its ambit private institutions like universities too. Universities, by imparting education to the masses, aim to achieve greater public good and hence perform a vital public function. Deemed to be universities also play the same role in the society as regular universities. To prove the same counsel relied upon the court's decisions in *Modern Dental College & Research Centre v. State of Madhya Pradesh*¹ and *Janet Jeyapaul v. SRM*

¹ (2016) 7 SCC 353

University.² Thus, universities irrespective of whether regular or deemed to be, perform a public duty. He also placed reliance on the case of *K. Veeraswami v. Union of India*,³ wherein the court held that having a master-servant relationship between the competent authority and the public servant is not a compulsory requirement. The PC Act does not provide a proper definition of public servant but only names groups that constitute the same. Absence of sanctioning authority, cannot be used as a justification for escaping liability and does not prove that the individual performing the duty is not a public servant. In conclusion, he stated that formal remuneration, command etc. are not exhaustive grounds to decide if an individual is a public servant or not.

In contrast, the Counsel on behalf of the Respondent, in a twofold manner submitted the following: Firstly, the counsel relied upon the settled principle of law which mandates a criminal statute to be construed in a strict sense. Simply put, in cases where the statute can be interpreted in more than one way, the Courts must lean towards the construction that exempts the accused from penalty rather than the one which holds him or her guilty. Secondly, he argued that the Respondent in the present case cannot be termed as a Public Servant as he was merely a trustee and did not hold any position or post in the Deemed to be University. Since he was not providing any services to the institution in the first place, and the university in question was a deemed to be university which is different from a regular university, he did not fall within the purview of Section 2(c)(xi) of the PC Act. Accordingly, the HC was correct in discharging him.

ISSUES RAISED:

Based on the submissions made by the two sides the court raised two main issues that were needed to be decided. Firstly, the court had to decide whether the Respondent who is the trustee in the present case, can be termed as a 'public servant' as u/s. 2(c) of the PC Act? For this purpose, the court first had to decide whether the 'Deemed to be University' lies within the ambit of the PC Act. Secondly, it was to decide upon the impugned order of the HC in accordance with which the Accused-Respondent was discharged u/s. 227 of the CrPC.

² (2015) 16 SCC 530

³ MANU/SC/0610/1991

RULE APPLIED:

[Prevention of Corruption Act, 1988](#)

Section 7 – *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.*

Section 8 – *Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.*

Section 10 – *Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.*

Section 13 (1) (b) — *A public servant is said to commit the offence of criminal misconduct, if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned.*

Section 13 (2) — *Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 3 [four years] but which may extend to 4 [ten years] and shall also be liable to fine.*

[Indian Penal Code, 1860](#)

Section 109 - *Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.*

[Code of Criminal Procedure, 1973](#)

Section 227 — *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

JUDGEMENT AND ANALYSIS

The judgement begins with recognition of the thought that, “*Corruption is the malignant manifestation of a malady menacing the morality of men.*” The court acknowledged that corruption that has percolated throughout the country, is inimical to the basic tenets of democracy which require the State to act in a transparent and fair manner. It further admitted

that the very purpose of the PC Act, as reflected in its objects and reasons, was to achieve honesty in public life. The court in the present case has borne this in mind while interpreting the relevant provisions of the Act.

The court first analyzed the definition of “public servant” as given under S. 2(c) (xi) of the PC Act. It contradicted the principle of *stricto sensu* relied upon by the Counsel for the Respondent by stating that strict interpretation does not mean literal interpretation. The court referring to *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co.*,⁴ stated that the interpretation must consider the genuine import of the words, taken in their usual sense. It rejected the Respondents claim that Deemed to be university being separately defined under the University Grants Commission Act, 1956 and not explicitly covered by PC Act, cannot be assumed under the latter. It observed that technical definition under one Act cannot be imported into another if it is not *pari materia* with the former. For this purpose, the court relied upon the judgement in *Bangalore Turf Club Ltd. v. Regional Director, ESI Corporation*,⁵ where it explained how the doctrine of *pari materia* rebuts the interpretative assumption that the terms given under statutes are used in an identical sense. Since the UGC and PC Act do not deal with the same subject matter, they are not *pari materia* to one another. Accordingly, it drew the inference that the term ‘University’ had to be interpreted independently under the PC Act. Moreover, the court stated that the definition of public servant under the Act does not give an exhaustive list of officials and focuses more on the public duty that they perform. The legislative debates before the Act came into force also emphasized the need to curb corruption in educational institutions.

Now with reference to the question whether the Respondent being a trustee can yet be held accountable for performing public duty, the court relying upon *CBI v. Ramesh Gelli*⁶ recognized that the PC Act was enacted in order to make anti-corruption laws more stringent. The Prevention of Corruption Act, 1947 was repealed and the new legislation came into force in 1988 with a widened scope to include those individuals that were earlier not considered public servants. The Act brought a huge wave of change as the new criterion to deem an individual as a public servant was not based on the position he or she held, but the public duty that they performed. Bearing this in mind the Court ruled that, since a Deemed to be university

⁴ (2018) 9 SCC 1]

⁵ (2014) 9 SCC 657

⁶ MANU/SC/0417/2020

and its officials, perform the same function as regular universities i.e. to impart education, they have a public duty. The trustee in the present case was the final authority with regard to the grant of admission, collection of fees and donation amount and was rendering services in relation to students and exams. Hence, he was performing a public duty.

The court also addressed the scope of S. 227 CrPC and stated that it was limited in nature. It relied upon *Union of India v. Prafulla Kumar Samal*,⁷ wherein the phrase "not sufficient ground for proceeding against the Accused" was interpreted. It states that the phrase merely requires the Judge to find out whether or not there is sufficient ground for proceeding against the Accused based on the evidence on board. In the present case the Respondent demanded Rupees. 20 lakhs from the complainant as a precondition to permit appearance for exam. Further, large number of cheques recovered during the raid. These are enough to establish grave suspicion as to the commission of the alleged offence. Therefore, the court ruled that the case was not one that required exercise of power u/s. 227 CrPC by the HC

Accordingly, the Court set aside the impugned judgment of the High Court and the appeal was allowed.

CONCLUSION

This is a landmark judgement that sets down the fundamental aims and objectives of the PC Act. It is a step closer towards the fight against corruption in the educational sector. It establishes and enhances the meaning of terms like 'University' and explains their position under the Act. It once again widened the scope of the Act and now brings a trustee of a Deemed to be university under its scope.

⁷ MANU/SC/0414/1978