

**In Re: H.V. Jagdesh**

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**Court :** Andhra Pradesh

**Decided On :** Jul-20-1965

**Reported in :** AIR1966AP35; 1966CriLJ126

**Judge :** Basi Reddy, Anantanarayana Ayyar and ;Mohammed Mirza, JJ.

**Acts :** [Prevention of Corruption Act, 1947](#) - Sections 6(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 21

**Appeal No. :** Criminal R. Cs. Nos. 326-329 of 1964

**Appellant :** In Re: H.V. Jagdesh

**Advocate for Pet/Ap. :** V. Gopalakrishnaiah, Adv.;Public Prosecutor

**Disposition :** Petition dismissed

**Judgement :**

**Basi Reddy, J.**

1. The question that falls for determination by the Full Bench is, whether an employee of the Indian Airlines Corporation, which is a corporation established under the Air Corporations Act, 1953, is a 'public servant' within the meaning of the Twelfth clause of Section 21 of the Indian Penal Code. That clause and Explanation 4 were added by the Criminal Law Amendment Act (II of 1958). The purpose of the amendment was to bring within the purview of the anti-corruption

law, as enacted in the Indian Penal Code and in the Prevention of Corruption Act, the employees of statutory trading corporations and Government companies, which manage a great deal of public money and public property as a necessary consequence of the rapid expansion of Governmental activities in a Welfare State. In the amended form, Section 21, so far as is material, reads thus:

'Section 21:-- Public Servant:

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

.....

Twelfth:-- Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government Company as defined in Section 617 of the Companies Act, 1956.

.....

Explanation 4: The expression 'Corporation engaged in any trade or industry' includes a banking, insurance or financial corporation, a river valley corporation and corporation for supplying power, light or water to the public.'

2. The question we have to decide is common to all these revision petitions, which have been preferred by one H. V. Jagadeesh against the orders passed by the Special Judge for S. P. E. Cases, Secunderabad, overruling the preliminary objections raised by the petitioner touching the jurisdiction of the court to try him for offences under Section 409 of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act.

3. The facts material for deciding the question are as follows: The petitioner is an employee of the Indian Airlines Corporation, Begumpet, and was serving from 27-1-1948 to 12-9-1959, on which date he was put under suspension. He was originally designated as Purchase Assistant, but from 6-9-1956 his designation appears to have been changed to that of Supplies Assistant. He, however,

continued to be familiarly known as Purchase Assistant. In that capacity he is alleged to have committed several acts of misappropriation with respect to the property and funds belonging to the Indian Airlines Corporation. After due investigation, four separate charge-sheets were filed against him by the Deputy Superintendent of Police, Special Police Establishment, Hyderabad, and the cases were taken on file by the Special Judge for S. P. E. Cases, Hyderabad at Secunderabad, as C. C. Nos. 2 to 5 of 1963. The offences alleged against the petitioner in the charge sheets were inter alia offences punishable under Section 5(2) read with 5(1)(c) of the [Prevention of Corruption Act, 1947](#), and under Section 409 of the Indian Penal Code. These offences were alleged against the petitioner on footing that he is 'Public Servant' as defined in Section 21 of the Indian Penal Code. Likewise the Special Judge framed charges against the petitioner in all the four cases under Section 5(2) of the Prevention of Corruption Act and Section 409 of the Indian Penal Code on the assumption that the petitioner is a 'public servant'.

4. After the charges were so framed, the petitioner raised two preliminary objections before the Special Judge; first, that he is not a 'public servant' within the meaning of the Twelfth clause of Section 21 of the Indian Penal Code, inasmuch as the Indian Airlines Corporation of which he is an employee, is not engaged in any trade or industry as contemplated by the Twelfth clause: and secondly, that the sanction necessary for the prosecution of the petitioner for an offence under Section 5(2) of the Prevention of Corruption Act was not accorded by a competent authority in that the Assistant Controller of Stores, who accorded the sanction, is not the authority competent to remove the petitioner, who is a Purchase Assistant, from service.

5. The learned Special Judge overruled both the objections and hence these revision petitions.

6. We may say at once, upon the material placed before us by the learned Public Prosecutor, that there is plainly no substance in the second objection for the simple reason that although the petitioner was originally designated as a Purchase Assistant, yet by an order dated 6-9-1956, which was communicated to the petitioner his designation was changed to that of Supplies Assistant.

Unquestionably the Assistant Controller of Stores is the competent authority to appoint and remove from service a Supplies Assistant, The learned Public Prosecutor has filed a petition (Crl. M.P. No. 1722 of 1964) to permit the State to adduce additional evidence to prove this fact. We do not think it necessary to pass any order on this petition because it is open to the prosecution to let in this evidence in the lower Court itself where these cases are still pending.

7. We now turn to the first objection which occasioned this reference to the Full Bench. The stand taken by the petitioner is that although he is an employee of the Indian Airlines Corporation, he cannot be considered to be a 'public servant' within the meaning of the Twelfth clause of Section 21 of the Indian Penal Code, inasmuch as the Indian Airlines Corporation is not a corporation engaged in any trade or industry. It is argued that the word 'trade' as used in the said clause, should be understood in its primary sense as involving buying and selling of goods, and as there is no element of buying and selling in the air transport service rendered by the Indian Airlines Corporation, it cannot be said that the Corporation is engaged in trade. The further argument is that Explanation 4 which envisages corporations which do not buy and sell goods, is limited to the categories specified therein and the Indian Airlines Corporation is not one such. So, it is argued, the Twelfth clause by implication does not take in the Indian Airlines Corporation.

8. On the other hand, the contention of the learned Public Prosecutor on behalf of the State is that 'trade' is a term of wide import, and in the context in which it occurs and in the light of the object of the amendment whereby the Twelfth clause was inserted in Section 21 of the Indian Penal Code, the term should be understood in a broad sense as including any service for remuneration. So understood, it is urged, the air transport service which is rendered by the Indian Airlines Corporation, is a form of trade.

9. Therefore the sole question for determination is whether the word 'trade' occurring in the Twelfth Clause of Section 21 of the Code should be understood in its primary and narrow sense or in an extended and wider sense as including transport services such as the air transport service.

10. Now, the word 'trade' has several meanings and is understood in several senses. In Halsbury's Laws of England, Third Edition, Vol. 38 at page 8, it is stated:

'Meaning of trade: Trade in its primary meaning is the exchanging of goods for goods or goods for money; and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts or learned professions and from agriculture. The word, however, is one of very general application, and must always be considered in the context in which it is used.'

11. Similarly in Bouvier's Law Dictionary (Third Revision Volume II, at page 3290) 'trade' is defined as 'any sort of dealing by way of sale or exchange; commerce, traffic'. It is further pointed out that in its broader sense the word is held to apply amongst other things to the business of transportation of merchandise for hire.

12. So also in Stroud's Judicial Dictionary (Third Edition Volume 4 at page 3057) it is stated that formerly 'trade' was used in the sense of an 'art or mystery' e.g., that of a brewer or of a tailor, but now 'trade' has the technical meaning of buying and selling. It is, however, pointed out that 'trade may have a larger meaning also and not only etymologically but in legal usage, is a term of the widest scope.

13. Is there any justification then, for giving a narrow and constricted connotation to the word 'trade' in the Twelfth clause? In our considered opinion, neither the context in which it occurs nor the object with which the Twelfth clause was inserted by the legislature, warrants the narrow interpretation suggested by the learned advocate for the petitioner. As noticed already, the avowed object of the amendment was inter alia to bring within the scope of the anti-corruption law, the employees of statutory trading corporations, by giving an extended definition to the expression 'public servant' in Section 21 of the Code. The obvious intention of the legislature was to spread the net wider. That object would be thwarted if a narrow meaning is given to the word 'trade' by limiting it to activities involving the buying and selling of commodities, thereby excluding employees of corporations like the Indian Airlines Corporation from the category of public servants.

14. Indeed, what the Indian Airlines Corporation does under the terms of the Air Corporations Act, has all the essential attributes of a trading activity. Section 7 of that Act prescribes that the main function of the Corporation is to provide safe, efficient, adequate, economical and properly co-ordinated air transport services, whether internal or international or both, with a view to developing the air transport services to the best advantage and in particular, to ensure that the services are provided at reasonable charges. 'Air Transport Service' is defined by Section 2(ii) as a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or a series of flights.

15. Section 9 lays down that in carrying out any of the duties vested in it by the Act, the Airlines Corporation shall act so far as may be on business principles. Section 15(1) en-joins that the Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance sheet in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. Sub-section (2) of Section 15 makes provision for the annual audit of the accounts of the Corporation by the Comptroller and Auditor-General of India.

16. Thus the scheme of the Act makes it abundantly clear that the Indian Airlines Corporation is engaged in the trade of air transport service, and consequently, its employees are 'public servants'.

17. Explanation 4 also throws light on this problem and indicates the sense in which the legislature has used the term 'trade' in the Twelfth clause. The Corporations referred to in that Explanation can hardly be regarded as engaged in buying and selling goods, and there is no intelligible reason why air transport service should not be regarded as a trading activity when the service rendered by those corporations is treated as trade or industry. But then it is argued on behalf of the petitioner that the Explanation should be limited to the categories enumerated therein and since the Indian Airlines Corporation is not mentioned, it cannot be regarded as a Corporation engaged in trade. This contention is, in our opinion,

clearly untenable as it proceeds on a misconception of the scope of an Explanation. It is well understood that the proper function of an Explanation is to make plain or elucidate what is enacted, and not to add to or subtract from it. An Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the provision that it is supposed to explain. Therefore, from the mere fact that the Indian Airlines Corporation is not specifically referred to in Explanation 4, it cannot be said that the activity in which it is engaged is not a trading activity. It may well be that since transportation of passengers or goods for remuneration has always been regarded as trade, the Legislature did not deem it necessary to explain what was self-evident.

18. In this context, it is worthy of note that by an Act of Parliament, which came into force on the 19th December 1964--The Anti-Corruption Laws (Amendment) Act (No. 40 of 1964) -- the definition of 'public servant' in Section 21 of the Indian Penal Code has been enlarged so as to bring within its purview certain additional categories of persons including all those in the service or pay of a corporation established by or under a Central, Provincial or State Act, by omitting the words 'engaged in any trade or industry' in the Twelfth clause of Section 21 of the Code and by omitting Explanation 4 altogether; and the effect would be that for purposes of the anti-corruption law, employees of all statutory corporations -- whether trading or non-trading would henceforth be treated as 'public servant' with all the attendant disabilities. Tin's shows which way the wind is blowing.

19. It only remains to add that the point raised by the petitioner is practically concluded against him, by certain observations of the Supreme Court in *State of Maharashtra v. Jagatsing*. : [1964]4SCR299 . In that case the question arose whether an employee of a Road Transport Corporation was a public servant within the meaning of Section 21 of the Indian Penal Code, (as it stood before its amendment by Act II of 1958, by which the Twelfth clause was added to that section), read with section 43 of the Road Transport Corporations Act, 1950, so as to render him punishable under Section 161 of the Indian Penal Code, for having accepted a bribe from an applicant, promising to secure him a job in the office in which the employee was serving. The offence was stated to have been committed in 1956, that is to say, before Section 21 of the Indian Penal Code was amended

by adding the Twelfth clause and Explanation 4.

20. It may be mentioned here that a Road Transport Corporation is established under the Road Transport Corporation Act, and its functions are similar to those of the Indian Airlines Corporation established under the Air Corporations Act, except that the former provides road transport service, while the latter provides air transport service. ('Road Transport Service' is defined as a service carrying passengers or goods or both by road in vehicles for hire or reward).

21. Now, Section 43 of the Road Transport Corporations Act provides:

'All members of a Corporation, and all officers and servants of a Corporation, whether appointed by the State Government or the Corporation, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act or of any other law, to be public servants within the meaning of Section 21 of the Indian Penal Code.'

22. In the above-mentioned case, their Lordships held that inasmuch as the taking of a bribe cannot possibly amount to acting or purporting to act in pursuance of any of the provisions of the Road Transport Corporations Act or of any other law, a bribe-taker cannot be said to be a public servant within the meaning of Section 21 of the Indian Penal Code, in view of the clear language of Section 43 of the Road Transport Corporations Act, which requires that an employee of a Corporation should be acting or purporting to act in pursuance of the provisions of that Act or of any other law in order that he may be a public servant within the meaning of Section 21 of the Code.

23. Dealing with the argument that when enacting Section 43 of that Act, it could not have been the intention of the legislature to throw a cloak of immunity over all corrupt employees of a Road Transport Corporation, their Lordships made the following observations (at page 497), which are material for our purpose:

'It is urged that in this view all members, officer and servants of a corporation would be free to take bribes and would never be liable to be prosecuted under Section 161 and that this could not have been the intention behind Section 43. It is

certainly unfortunate that such a result should follow from the words used in Section 43. But the words are clear and it seems that members, officers and servants of the corporation were intended by the legislature to be public servants only when they were acting or purporting to act in pursuance of the provisions of the Road Transport Corporations Act or of any other law and not otherwise. As taking of bribe cannot under any circumstances be shown to amount to acting or purporting to act in pursuance of any of the provisions of the Road Transport Corporations Act or of any other law, the person taking a bribe cannot be said to be a public servant within the meaning of Section 21 of the Indian Penal Code in view of the clear words of Section 43. The difficulty has however now been obviated by the amendment of Section 21 by the addition of the twelfth clause therein. But as Section 21 stood at the relevant time we have to take recourse to Section 43 of the Road Transport Corporations Act and the words of that section make it quite clear that members, officers and servants of corporation can only be public servants when they act or purport to act in pursuance of any of the provisions of the Road Transport Corporations Act or of any other law; and taking of a bribe can never amount to acting or purporting to act in pursuance of any of the provisions of the Road Transport Corporations Act or of any other law.'

24. It will be seen that their Lordships' view was that if the Twelfth clause of Section 21 of the Indian Penal Code could be pressed into service in that case, the accused therein would have fallen under the category of a public servant and as such would have been liable under Section 161 of the Indian Penal Code. Obviously, what applies to an employee of a Road Transport Corporation, would apply with equal force to an employee of the Indian Airlines Corporation.

25. For the foregoing reasons we hold that the petitioner in an these cases, who is an employee of the Indian Airlines Corporation, is a 'public servant' within the meaning of the Twelfth clause of Section 21 of the Indian Penal Code.

26. In the result, all these revision petitions fail and are dismissed.

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