

V.Srinivasan Vs. Secretary to Tamil Nadu Generation and Distribution Corpn.

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Court : Chennai

Decided On : Mar-25-2013

Judge : V.Ramasubramanian

Appellant : V.Srinivasan

Respondent : Secretary to Tamil Nadu Generation and Distribution Corpn.

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

25. 03-2013 Coram : The Honourable Mr.Justice V.RAMASUBRAMANIAN Writ Petition No.7424 of 2013 And M.P.Nos.1 & 2 of 2013 V.Srinivasan .. Petitioner Vs 1.The Secretary, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai-2. 2.The Chairman cum Managing Director, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai-2. 3.The Secretary, TANTRANSCO, Chennai-2. 4.The Chairman cum Director, TANTRANSCO, Chennai-2. .. Respondents PETITION under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records relating to Memorandum (Per) No.35421/A18/A181/2012-I dated 19.6.2012 issued by the first respondent and quash the same. For Petitioner : Mr.Abudu Kumar Rajaratnam O R D E R The petitioner has come up with the above writ petition, challenging an Office Memorandum issued by the Secretariat Branch of the Tamil Nadu Generation and Distribution Corporation Limited, clarifying that the Officials of the Corporation, come within the purview of the term 'public servant' under the Prevention of Corruption Act, 1988 and that therefore, whenever sanction is sought for

prosecution, the same shall be granted without delay.

2. Heard Mr.Abudu Kumar Rajaratnam, learned counsel for the petitioner.

3. By the Memorandum impugned in this writ petition dated 19.6.2012, the Secretariat Branch of the TANGEDCO, considered a vexed question as to whether the Officials of the Corporations continue to be public servants, even after the coming into the force of the Electricity Act, 2003 or not. The Secretariat Branch of the Corporation took an affirmative view that in view of the definition of the expression contained in the Prevention of Corruption Act, 1988, their employees, who were earlier the employees of the Electricity Board, are actually public servants. Aggrieved by the said clarification issued by way of a Memorandum dated 19.6.2012, the petitioner has come up with the above writ petition.

4. Mr.Abudu Kumar Rajaratnam, learned counsel for the petitioner contended that under Section 81 of the Electricity (Supply) Act, 1948, all the Members, Officers and other employees of the Electricity Board were deemed, when acting or purporting to act in pursuance of any of the provisions of the Act, to be public servants within the meaning of Section 21 of the Indian Penal Code. But the Electricity (Supply) Act, 1948, was repealed by the Electricity Act, 2003. Section 185 of the Electricity Act, 2003 specifically repealed the Electricity (Supply) Act, 1948 as well as the provisions of the Indian Electricity Act, 1910 and the Electricity Regulatory Commission Act, 1998. The Electricity Act, 2003 does not contain any provision, which is exactly the same as that of Section 81 of the Electricity (Supply) Act, 1948. On the contrary, it contains a provision in Section 169, whereby 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.

5. Therefore, the contention of the learned counsel for the petitioner is that while Section 81 of the 1948 Act covered all servants and employees of the Electricity Board, Section 169 of the 2003 Act restricted the application of the expression

'public servant' only to a few categories of employees, after the bifurcation of the erstwhile Board. In such circumstances, it is contended by the learned counsel for the petitioner that the impugned Memorandum making all employees of the newly formed Corporations 'public servants' amounted to executive legislation overreaching the specific statutory provisions.

6. In order to test the veracity of the above contention, I may have to take note of various provisions of four Enactments, namely The Indian Penal Code, The Electricity (Supply) Act, 1948, The Prevention of Corruption Act, 1988, and The Electricity Act, 2003.

7. Section 21 of the Indian Penal Code, defines the expression 'public servant' as follows: "Public servant".-- The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:-- Second.-- Every Commissioned Officer in the Military, Naval or Air Forces of India; Third.-- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; Fourth.-- Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties; Fifth.-- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant; Sixth.-- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority; Seventh.-- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement; Eighth.-- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience; Ninth.-- Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue- process, or to investigate, or to report, on any matter

affecting the pecuniary interests of the Government, or to make, authenticate, or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; Tenth.-- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district; Eleventh.-- Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; Twelfth.-- Every person-- (a)in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government; (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). Illustration A Municipal Commissioner is a public servant. Explanation 1.-- Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not. Explanation 2.-- Wherever the words" public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. Explanation 3.-- The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election." 8. The above definition was very comprehensive and was in great detail, in view of the fact that the Indian Penal Code itself, as it originally was, contained provisions, for dealing with offences relating to corruption. Sections 161 to 165-A of the Indian Penal Code, as they originally stood, dealt with (i) the offence of a public servant taking gratification (ii) the offence of taking gratification in order to influence public servant by corrupt or illegal means (iii) the offence of taking gratification for the exercise of or personal influence with public servants and (iv) punishments for abetment of such offences, etc.

9. But even before the Country attained independence, the malady of public servants resorting to corrupt practices started spreading its tentacles in Society. The Second World War gave increased opportunities for public servants to corner the resources of the community at large. Therefore, the Prevention of Corruption Act, 1947 (Act 2 of 1947) was enacted. It was published in the Government Gazette before independence. The Statement of Objects and Reasons for the Prevention of Corruption Act, 1947, indicate that the scope for bribery and corruption of public servants had been enormously increased by war conditions and that though the war was over at that time, opportunities for corrupt practices were expected to remain for considerable time to come. This Act did not tamper with the existing provisions of the Indian Penal Code. On the other hand, Section 2 of the 1947 Act, simply adopted Section 21 of the Indian Penal Code for the definition of the expression public servant. Section 3 of the Act, made the offences punishable under Sections 161 and 165 and 165-A as cognizable offences under the Code of Criminal Procedure. Section 4 raised a presumption that in cases where an accused is proved to have accepted or obtained any gratification, such gratification will be deemed to be a motive or reward. Section 5 defined a criminal misconduct in the discharge of duties of a public servant, in certain circumstances narrated therein. Section 5-A dealt with investigation into cases under the Act and Section 6 provided for previous sanction for prosecution. Section 7 made an accused in a criminal case for offences punishable under Sections 161 or 165 or 165-A of the Indian Penal Code, eligible to be a competent witness.

10. Thus, the Prevention of Corruption Act, 1947 was enacted only as supplemental to the provisions of the Indian Penal Code. It was at that time, that the Electricity (Supply) Act, 1948 was enacted. It is interesting to note that both the Prevention of Corruption Act, 1947 and the Electricity (Supply) Act, 1948, were enacted to tackle two different issues that arose in the wake of the developments that followed the Second World War. While the Prevention of Corruption Act, 1947 was enacted with a view to tackle the menace of corruption that became rampant while undertaking reconstruction activities, after the Second World War, the Electricity (Supply) Act, 1948, was enacted, as seen from its Statements of Objects and Reasons, to organise a co-ordinated development of electricity in India on a regional basis, for the purpose of post-war reconstruction and

development. The object of the 1948 Act, was to develop Grid Systems and to constitute the Semi Autonomous Bodies like Electricity Boards. Chapter III of the 1948 Act, provided for the constitution and composition of State Electricity Boards and Chapter IV defined the powers and duties of such Boards. Section 60 of the 1948 Act, empowers the State Electricity Boards to assume the obligations of the State Governments in respect of matters to which the Act applied. The Electricity Boards were conferred with powers of entry into any land or premises, for the purpose of using any transmission lines and for other incidental purposes. The Board itself was vested with delegated powers of legislation, under Section 79. Therefore, there was a need to clear any air of suspicion as to whether the employees of the Board would be public servants or not. Hence, Section 81 was inserted in the 1948 Act. Section 81 of the Electricity (Supply) Act, 1948, reads as follows:- "81. Members, Officers and Servants of the Board to be public servants.-- 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."

11. In 1948, the Indian Penal Code was the only Act that not only defined the expression "public servant" but also contained all provisions for dealing with all types of offences committed by public servants. Therefore, there was no alternative for the lawmakers in 1948, except to incorporate the above provision in Section 81 of the Electricity (Supply) Act, 1948 merely adopting the definition of the expression public servant already found in Section 21 of the Indian Penal Code, so as to make the provisions of sections 161 to 165-A of the Indian Penal Code applicable to all the Members, Officers and other employees of the Board.

12. After about 40 years of experimentation with the archaic law namely the Prevention of Corruption Act, 1947, the Parliament thought fit to enact a new law in order to cope up with the ever increasing malaise. Therefore, the Prevention of Corruption Act, 1988, was enacted and the 1947 Act was repealed. As seen from the Statement of Objects and Reasons, the Prevention of Corruption At, 1988 was enacted with two objects namely, (i) to widen the scope of the definition of the expression of public servant and (ii) to lift Sections 161 to 165-A of the Indian Penal Code and put them in a separate enactment.

13. With a view to achieve the first objective, the Prevention of Corruption Act, 1988 defined the expression public servant in Section 2(c) as follows:- "public servant" means-- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty; (ii) any person in the service or pay of a local authority; (iii) any person in the service or pay of a corporation evidence by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956 .); (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court; (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority; (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty; (ix) any person who is the president, secretary or other office- bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956 .); (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board; (xi) any person who is a Vice- Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations. (xii) any person who is an

office bearer or an employee of an educational, scientific, social, cultural, or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or State Government, or local or other public authority Explanation 1 Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not. Explanation 2 Wherever the words public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation" 14. A comparison of the definition appearing in Section 21 of the Indian Penal Code with the definition appearing in Section 2(c) of the Prevention of Corruption Act, would show that the latter is more wider than the former. This was intended to be so as seen from the objects of the 1988 Act. Keeping this fundamental aspect in mind, let me now pass on to the Electricity Act, 2003.

15. The Electricity Act, 2003 was enacted with a view to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive for the development of electricity industry. This Act repealed the Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1988 and it was supposed to be a comprehensive law.

16. Section 169 of the Electricity Act, 2003, on which lies the survival of the contention of the petitioner, reads as follows:- 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). This clause provides that 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 Clause 126 shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

(Notes on Clauses).

17. It will be interesting to note 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.

18. In the light of the legislative history mentioned above, let me now test the correctness of the contention of the petitioner with regard to the applicability of the provisions of Prevention of Corruption Act, 1988 to the employees of the Corporations carved out of the State Electricity Board.

19. 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.

20. 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. The Indian Penal Code dealt not only with offences relating to corruption, committed by public servants, but also dealt with various other types of offences that could be committed by public servants. Chapter IX of the Indian Penal Code deals with all types of "offences by or relating to public servants". This Chapter originally contained 11 Sections from Sections 161 to 171. Out of these 11 provisions, only Sections 161 to 165-A related to corruption. The other 6 provisions dealt only with offences other than corruption. For instance, Section 166 deals with the offence of a public servant disobeying law with intent to cause injury to any person. Section 167 deals with the offence of a public servant framing an incorrect document with intent to cause injury. Section 168 deals with the offence of a public servant unlawfully engaging in trade. Section 169 deals with the offence of a public servant unlawfully buying or

bidding for property.

21. Therefore, before the amendment to the Indian Penal Code by virtue of the provisions of the Prevention of Corruption Act, 1988, the Indian Penal Code contained provisions that related to all types of offences by public servants. As to who would be a public servant, within the meaning of the Indian Penal Code, was dealt with by the definition section namely, Section 21. In other words, in all provisions where there was a reference to public servants in the Indian Penal Code, such reference had to be construed with reference to the definition of the expression given in Section 21.

22. But after the omission of Sections 161 to 165-A from the Indian Penal Code under Section 31 of the Prevention of Corruption Act, 1988, the application of the provisions of the Code got confined only to offences other than corruption and consequently the reach of Section 21 also got shrunk. Therefore, it became clear that in respect of offences of corruption committed by public servants, one had to take recourse only to the provisions of the Prevention of Corruption Act, 1988. But in respect of offences other than corruption, committed by public servants, one could still take recourse to the provisions of the Indian Penal Code.

23. The result is that when a person is prosecuted under the Indian Penal Code, for offences other than corruption, the question as to whether he is a public servant or not, has to be tested only with reference to the definition in Section 21 of the Code. But when a person is prosecuted under the Prevention of Corruption Act, for an offence of corruption, the question as to whether he is a public servant or not, has to be tested only with reference to the definition in Section 2(c) of the Prevention of Corruption Act, 1988.

24. Thus, the 1988 Act compartmentalised the offences committed by public servants into two categories namely, (i) those relating to corruption and (ii) those other than corruption. Therefore, if a Statute makes some persons as public servants, within the meaning of Section 21 of the Indian Penal Code alone, then it would mean that only in so far as the offences other than corruption, covered by the Indian Penal Code are concerned, they would be deemed to be public servants.

25. As a necessary corollary, the question as to whether a person is a public servant or not, for the application of the provisions of the Prevention of Corruption Act, 1988, has to be tested only with reference to the definition of the expression "public servant" contained in Section 2(c) of the Prevention of Corruption Act, 1988. This question cannot be tested with reference to Section 21 of the Indian Penal Code, as Indian Penal Code is no more applicable to offences relating to corruption.

26. 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.

27. 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.

28. 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. But in respect of the offences of corruption, every employee of the Electricity Corporation would be a public servant, if he comes within the definition of the expression in terms of Section 2(c) of the Prevention of Corruption Act, 1988. The legislative intent appears to be to have a restricted application of the provisions of the Indian Penal Code, but an

unrestricted application of the provisions of the Prevention of Corruption Act, 1988, in so far as the employees of the Corporations are concerned.

29. The conclusion that I have drawn above, can be reached through another route also. Section 173 of the Electricity Act, 2003 deals with inconsistency in laws. Section 173 simply states that nothing contained in the Electricity Act, 2003 or any rule or regulation made thereunder shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989. Similarly, Section 174, which gives overriding effect for the Electricity Act, 2003 makes it clear that such overriding effect, would be available only in respect of matters, which are not inconsistent with what is laid by the 2003 Act.

30. After having dealt with the overriding effect of the Act under Section 174, the Electricity Act, 2003 also states in Section 175 that the provisions of the Electricity Act, 2003 are in addition to and not in derogation of other laws. Therefore, it is clear that unless there is repugnancy between the Prevention of Corruption Act, 1988 and the Electricity Act, 2003, Section 174 would not come into operation. On the contrary, Section 175 would come into operation to make the provisions of the Prevention of Corruption Act, 1988, also prevail.

31. Moreover, Section 28 of the Prevention of Corruption Act, 1988, makes it clear that the provisions of the 1988 Act are in addition to and not in derogation of any other law for the time being in force and that nothing contained in the Act shall exempt any public servant from any proceeding that might be instituted against him, apart from the provisions of the 1988 Act. Therefore, the dichotomy between other offences and offences of corruption, maintained in the Indian Penal Code and the Prevention of Corruption Act, are very clear.

32. Another important aspect to be remembered is that when the Electricity (Supply) Act, 1948 was enacted, the Indian Penal Code itself contained provisions to deal with the offences of corruption. Though the Prevention of Corruption Act, 1947 was also there at that time for a limited purpose and application, section 81 of the 1948 Act did not make a reference to the Prevention of Corruption Act, 1947 at all. But on that ground namely that section 81 of the Electricity (Supply) Act,

1948 did not make a reference to Prevention of Corruption Act, 1947, the employees of the Board never escaped prosecution under the Prevention of Corruption Act, 1988, till the Electricity Act, 2003 was passed. The servants of the erstwhile Electricity Board were prosecuted in the past, namely from 1988 (the coming into force of the Prevention of Corruption Act) till 2003 (the coming into force of the Electricity Act, 2003), only under the provisions of the Prevention of Corruption Act, 1988. This was despite the fact that section 81 of the Electricity (Supply) Act, 1948 made a reference only to section 21 of the IPC and not to the Prevention of Corruption Act, 1947. Therefore, the situation cannot change suddenly, merely because section 169 of the Electricity Act, 2003 restricts the application of section 21 of the IPC to a few categories of employees.

33. At the time when Parliament enacted the Electricity Act, 2003, it was conscious of 2 things namely (i) the existence of certain provisions in the Indian Penal Code for dealing with offences other than corruption, committed by public servants and (ii) the existence of the Prevention of Corruption Act, 1988 for dealing with offences relating to corruption, committed by public servants. The Parliament was also conscious of section 81 of the Electricity (Supply) Act, 1948 and the existence of the Prevention of Corruption Act, 1947 at the time when 1948 Act was enacted. But still section 169 of the Electricity Act, 2003 restricted the application of section 21 of the Indian Penal Code alone to certain types of officers. If the intention of the Parliament was to restrict the application of the provisions of the Prevention of Corruption Act, 1988 also, only to a few categories of employees of the newly formed companies, they would have included in section 169, along with section 21 of the IPC, the provisions of section 2(c) of the Prevention of Corruption Act, 1988 also. The very fact that section 169 of the Electricity Act, 2003 stopped with a mention about section 21 of the IPC alone, is a clear indication that the Parliament never intended to restrict the application of the provisions of the Prevention of Corruption Act, 1988, to a few category of employees alone.

34. Drawing my attention to the definition of the expression "public servant" found in Section 2(c) and the definition of the expression "public duty" found in Section 2(b), Mr. Abudu Kumar Rajaratnam, learned counsel for the petitioner contended that in today's social and economic context, even the employees of private

companies could be dragged and prosecuted under the Prevention of Corruption Act, 1988, if they are applied as such. Generation and supply of power, is such an important social function that even private companies generating wind energy and solar energy would become public servants, if the definition of the expression "public duty" is used to find out whether they are public servants or not. This, according to the learned counsel for the petitioner, would lead to disastrous consequences.

35. But the above contention goes against the fundamental rules of interpretation of Statutes. The consequences that might flow out of a plain reading of the provisions of a Statute, cannot influence the manner in which the Act has to be read and interpreted. As a matter of fact, one of the two important objects for which the Prevention of Corruption Act, 1988 was enacted, as I have pointed out earlier, was to expand the scope of the expression "public servant". Therefore, if I give a restrictive meaning on account of the possible consequences, then I would be going contrary to the objects behind the Statute. This is impermissible in law.

36. There is one more aspect. The object behind the requirement of sanction to prosecute, is actually to protect public servants from indiscriminate onslaught. Therefore, the employees of the Corporations, formed out of the erstwhile Electricity Board, should only be happy that such a protection is extended to them, in the form of the Circular impugned in the writ petition.

37. Even the learned counsel for the petitioner does not dispute, nay he cannot dispute that the employees of the Generation and Transmission Corporations of Tamil Nadu come within the definition of the expression "public servant", provided in Section 2(c) of the Prevention of Corruption Act, 1988. Therefore, the omission to make a reference to this aspect in Section 169 of the Electricity Act, 2003, is of no consequence in the light of the above discussion. The Memorandum impugned in the writ petition merely reiterates what is provided by the Statute. Even without this Memorandum, the position would have been the same. On the other hand, if the respondents had issued any Memorandum or Circular indicating that the employees of the Corporations are not covered by the Prevention of Corruption Act, 1988, then such a Circular would have been contrary to express provisions of

the Statute. But fortunately, the respondents did not commit such a mistake, but merely issued the Memorandum, reiterating the statutory prescription. Hence, no exception can be taken to the impugned Memorandum.

38. Interestingly, the servants of the erstwhile Electricity Board, who have now become the servants of the Corporations, still fall back upon the Regulations framed statutorily by the Board when it comes to claiming service benefits. They continue to come up with writ petitions under Article 226 on the ground that the companies are statutory corporations and that they are instrumentalities of State amenable to the writ jurisdiction. Therefore, when it comes to the question of nature of the duty performed by them, they cannot claim that it is not a public duty and that they are employees of private companies.

39. Therefore, the writ petition is dismissed. There will be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed. RS/SVN To
1. The Secretary, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai-2.

2. The Chairman cum Managing Director, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai-2.

3. The Secretary, TANTRANSCO, Chennai-2.

4. The Chairman cum Director, TANTRANSCO, Chennai 2

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