

demands, he would prepare his report leniently enabling him re-possess his plant/company.

8. The complaint was discreetly verified. Trap team was constituted and raid was conducted at Giridih at the Company office, where the petitioner was caught red handed on 11.2.2020 in the presence of independent witnesses accepting the illegal gratification from the complainant.

9. Instant petition for quashing of the F.I.R. is premised mainly on the ground that Section 7 of PC Act will not apply to this petitioner as a 'Resolution Professional' is not a public servant within the meaning of Section 2(C) of the Prevention of Corruption Act or under Section 21 of the IPC.

10. It is argued that he is neither public servant nor he is appointed by any Court or is performing any public duty. The appointment process of resolution professional is provided under Section 22 of the Code, 2016 under which he is appointed by the committee of the creditors. The duty which has been detailed in Section 25 are not in the nature of public duty as contemplated under Section 2(c)(viii).

11. Further, I&B Code is a self-contained Code and specific provisions have been provided for redressal of grievance of any party. Under Chapter VI of the Code, Section 217, the complaints against insolvency professional agency or its member or information utility. It is proposed to be made to the Board. There are further provisions regarding the amendment in Finance, Account and Audit which is put down under Chapter VII.

Reliance is placed on the following authorities

Innoventive Industries Limited Versus ICICI Bank & Another; (2018) 1 SCC 407 wherein it has been held that

“It is settled law that a consolidating and amending Act like the present Central enactment forms a code complete in itself and in exhaustive of the matters dealt with therein”.

Arcelormittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1
it has been held,

80. However, it must not be forgotten that a Resolution Professional is only to “examine” and “confirm” that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in

conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29-A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29-A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it.

12. It is further argued that Section 232 of the I&B Code provides that the Chairperson, Members, 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 Code, to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860). The list does not include Insolvency Professionals. Section 233 gives protection to resolution professional, insolvency professional from any criminal prosecution or other legal action for the act done in good faith.

13. It is submitted by Mr. P.A.S. Pati, learned counsel on behalf of C.B.I. that the instant matter involves a case where the petitioner was caught red handed by the trap team constituted by the CBI, while accepting Rs. Two Lakh as illegal gratification in connection with discharge of his duty as Resolution Professional from the complainant.

14. On the question whether a Resolution Professional is a public servant or not, it is argued that the process of appointment of a Resolution Professional commences from Section 16 of the I&B Code, 2016 wherein it has been submitted that the adjudicating authority shall appoint an interim resolution professional. His appointment is further made under Section 22 by the committee of creditors after its constitution and the information regarding the appointment is to be communicated to the adjudicating authority. Even in case of replacement of Resolution Professional by the committee of creditors under Section 27 (3) and (4), the committee of creditors shall forward the name of the insolvency professional proposed by them to the adjudicating authority which will forward it to the Board for its confirmation. Against this scheme of Code, it is argued that it is not correct to say that the adjudicating authority has no role in the appointment of Resolution Professional.

15. Having been appointed in the resolution process before Company

Law Tribunal the duty that is discharged by him is in connection with administration of justice and therefore his office will come within the meaning of ‘Public Servant’ under Section 2-c(v) of the P.C. Act which is as under “Any person authorized by a Court of justice to perform any duty, in connection with the transmission of justice, including a liquidator, receiver or commissioner appointed by such Court”.

16. Reliance is placed on *Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299* wherein meaning of ‘Public Servant’ has been expounded by the Supreme Court under the provisions of Prevention of Corruption Act.

42. Section 2(c) defines “public servant”. The definition is extremely wide and includes within its ken even arbitrators or other persons to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority [See Section 2(c)(vi)]. Also included are office-bearers of registered cooperative societies engaged in agriculture, industry, trade or banking, who receive financial aid from the Government [See Section 2(c)(ix)]. Office-bearers or employees of educational, scientific, social, cultural or other institutions in whatever manner established, receiving financial assistance from the Government or local or other public authorities are also included [see Section 2(c)(xii)]. The two Explanations to Section 2(c) are also revealing — whereas Explanation 1 states that in order to be a public servant, one need not be appointed by the Government, Explanation 2 refers to a de facto, as opposed to a de jure, public servant, discounting whatever legal defect there may be in his right to hold that “situation”.

In *State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2020) 20 SCC 360* the nature of duty exercised was regarded as the determinative factor to decide whether the person sought to be proceeded was a public servant or not. If he was held to be exercising public duty, he can be held to be a public servant. The emphasis was not on the mode of appointment or remuneration, but if he was exercising a public duty or not. On this test it was held that the trustee in the Board of “deemed university” came within the meaning of a “public servant” covered under Section 2(c) of the PC Act. The Court held as under,

34. On a perusal of Section 2(c) of the PC Act, we may observe that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. In this regard, the legislative intention was not to provide an exhaustive list of authorities which are covered, rather a general definition of “public servant” is provided thereunder. This provides an important internal evidence as to the definition of the term “university”.....

44. As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, as

rightly submitted by the learned Senior Counsel for the appellant State, it cannot be stated that a “deemed university” and the officials therein, perform any less or any different a public duty, than those performed by a university simpliciter, and the officials therein.

17. The central question in the instant petition is whether ‘Resolution Professional’ as defined under Section 22 of the I&B Code will come within the meaning of ‘Public Servant’ under Section 2 (c) of the PC Act?

18. This court is of the view that resolution professional will come within the meaning of a public servant under Section 2(c) the PC Act for the reason that definition of public servant as given under the PC Act is very wide and expansive. It is not limited to those serving under the Government or its instrumentalities and drawing salary from the public exchequer. Apart from the list of the functionaries given in Section 2 (c), the definition also lays down the functional criteria to include within its fold those discharging public duty or any duty authorized by a court of justice, in connection with administration of justice. In *State v. C.N. Manjunath, (2017) 11 SCC 361* the question involved was whether the licensed surveyors in Taluks came within the meaning of ‘public servant’ under the PC Act. It was held :

8. Once the nature of performance of duties gets crystallised, no doubt remains that these licensed surveyors would come within the ambit of Section 2(c) of the Prevention of Corruption Act and particularly clauses (i) and (viii) thereof, which defines “public servant” to mean:

“2. (c)(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;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;”

9. We would also like to refer to the definition of “public duty” as contained in Section 2(b) of the Prevention of Corruption Act, which reads as under:

“2. (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.”

The Hon’ble Supreme Court held that they were public servant as they were discharging public duty.

19. The petitioner was appointed as an interim resolution professional under Section 16 of the I & B Code, 2016 and later his appointment was confirmed by the committee of creditors under Section 22.

20. Under Section 16 (1) an interim resolution professional is appointed by the adjudicating authority on the insolvency commencement date. Under section 22 (3)(a), the committee of creditors after taking a decision to continue

the interim resolution professional as the resolution professional, is required to communicate its decision to Adjudicating Authority and others. Even in cases where resolution professional appointed under section 22 is replaced by the committee of creditors under section 27, the name of the insolvency professional proposed to be appointed is to be forwarded to the Adjudicating Authority under Section 22(3), and thereafter the Adjudicating Authority is to forward the name of the proposed resolution professional to the Board for its confirmation in the same manner as laid down in Section 16. Against this scheme of the I&B Code the plea advanced on behalf of the petitioner that Adjudicating Authority had no role in the appointment of Resolution Professional is not sustainable.

21. Considering the fact that the appointment of Resolution Professional is made during the resolution process before the Company Law Tribunal with its approval, he will be a public servant under Section 2(c)(v) of the P.C. Act.

22. The next question for consideration is whether the functions of a Resolution Professional partake the character of a 'public duty'?

23. Functions and obligations of Insolvency Professionals are as set out under Section 208 of I & B Code which are public in nature. These functions intimately relate to matters relating to loans extended by the Banks which is investments from public at large and therefore will come within the meaning of public duty as provided under Section 2-c(viii) of the P.C. Act.

24. It is true that Resolution Professional do not figure among the officers enumerated under Section 232 of I & B Code deemed to be a public servant within the meaning under section 21 of the IPC. Those who are deemed to be a public servant enjoy certain immunities from criminal prosecution for IPC offences under section 197 of Cr.P.C, as the cognizance cannot be taken without the previous sanction of the Central or State Government as the case may be. But this does not refer to, any immunity from criminal prosecution for offences committed under the PC Act.

25. Section 233 gives protection to a resolution professional from criminal prosecution for acts in good faith, and not where he has been apprehended red-handed with the bribe amount. Insolvency and bankruptcy code is self-contained code but only with respect to the matter provided therein. It does not cover the matters like the present, where a Resolution Professional takes bribes in order to favour a party for which P.C. Act is squarely applicable. Section 232 does not exclude operation of P.C. Act.

Therefore, the plea the petitioner was not a public servant and was immune from criminal prosecution under PC Act is not tenable.

26. From the aforesaid discussion it is manifest that the appointment of resolution professional is made by the National Company Law Tribunal, which is the Adjudicating Authority for the insolvency resolution process of the companies under the I & B Code, 2016. Resolution Professional has a key role to play in the insolvency resolution process and to protect the assets of the corporate debtors. From his nature of assignment and duty to be performed his office entails performance of functions which are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act.

The plea that the Petitioner was not a Public Servant within the meaning of the PC Act is rejected.

Criminal Miscellaneous Petition does not fulfill the parameters for quashing and, accordingly, stands rejected.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 05th April, 2023
AFR / Anit