



## MADRAS HIGH COURT

Hon'ble Mr. D. Bharatha Chakravarthy, J.

Crl. O.P. No.25819/2017

D/- 25.06.2025

**S. Balasundram**

*Versus*

**State Rep by The Sub Inspector of Police**

**INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 - Petitioner Public Servant employed with a Government undertaking was charged under Section 168 IPC for acting as a private PF and ESI consultant while in service - Held, Madras High Court quashed the final report and allowed the petition - Standing Orders governing his employment did not absolutely prohibit secondary work but only required prior permission - Court noted Standing Orders obligated employer to grant permission if additional work did not interfere with duties - Consultancy activity did not amount to 'trade' within meaning of Section 168 IPC and absence of explicit legal prohibition meant no offence made out - Petition allowed. [Para 11, 19 and 20]**

**For Petitioner :** Mr. N.R. Elango, Senior Counsel for M/s. Aruna Elango

**For Respondent :** Mr. K. Srinivasan, Special Public Prosecutor for CBI Cases

### IMPORTANT POINTS

- In the Conduct Rules, the terms 'trade,' 'business,' 'undertaking,' and 'employment' are mentioned separately. In contrast, under Section 168 of the Indian Penal Code, only the act of carrying on trade is considered offensive, not the undertaking of employment or professional services. Therefore, it cannot be said that sporadic consultation activity that does not interfere with his work is prohibited by law; instead, an obligation to obtain prior permission or sanction is created.
- In the Conduct Rules, the terms 'trade,' 'business,' 'undertaking,' and 'employment' are mentioned separately. In contrast, under Section 168 of the Indian Penal Code, only the act of carrying on trade is considered offensive, not the undertaking of employment or professional services. Therefore, it cannot be said that sporadic consultation activity that does not interfere with his work is prohibited by law; instead, an obligation to obtain prior permission or sanction is created.

### JUDGMENT and ORDER (Oral)

#### D. BHARATHA CHAKRAVARTHY, J.

1. This Criminal Original Petition is filed with a prayer to quash the Final Report filed in C.C.No.8045 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. On source information, a case was registered in RC MA1 2016 A 0038 CBI by the respondent. The information was that the first accused, an Enforcement Officer with Employees' Provident Fund Organisation, and the second accused, who runs a chain of restaurants, conspired together. The first accused accepted a sum of Rs.10 Lakhs as a bribe and allowed the second accused to submit false Provident Fund accounts to cheat the organisation and gain undue pecuniary advantage by not paying the actual Provident Fund dues.

3. After investigation, the information was found to be incorrect, and the investigation did not reveal any evidence to substantiate the allegations against both the public servant and the second accused. Therefore, further action was dropped against the accused, against whom the case was registered. However, during the course of investigation, it was found that the petitioner/Balasundram was only filing returns and other compliances for the second accused and was acting as a consultant to them, receiving fees, as reflected in his bank statements and Income Tax Returns. Since Balasundram, being a public servant employed by Andrew Yule and Company Ltd., a Government of India undertaking, is prohibited by his Conduct Rules from engaging in such profit-making activities, his actions amounted to an offence under Section 168 of the Indian Penal Code. As a result, the respondent filed a Final Report charging him with an offence under Section 168 of the Indian Penal Code.

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4. The findings concerning the first and second accused are included in paragraph No.11 of the Final Report, which is excerpted below for ease of reference:-

"11. Hence it is submitted that as regards to Shri T.Ramanan(A-1) and M/s Adyar Ananda Bhavan(A-2), there is no proof of mens-rea and proof of quid-pro-quo to establish that there was demand and acceptance of Rs.10 lakhs by Shri T.Ramanan(A-1) from M/s Adyar Ananda Bhavan(A-2) and there is no evasion of PF dues by submitting false and fabricated documents by M/s Adyar Ananda Bhavan(A-2) since there is no inspection conducted at A-2 company since 2012. Investigation conducted did not reveal any evidence to substantiate the allegations levelled against the public servant i.e. Shri T.Ramanan(A-1) and M/s Adyar Ananda Bhavan(A-2), and therefore, no criminal case is made out against them."

5. The allegations against the said Balasundram, the petitioner herein, are contained in paragraph No.12, which are extracted below for quick reference:-

"12. During the searches conducted on 09.12.2016 at M/s Adyar Ananda Bhavan(A-2), two bills for amounts of Rs.25,000/- each dated 21.06.2016 raised by Shri S.Balasundaram(A-3) were seized and it was revealed that Shri S.Balasundaram(A-3) is Provident Fund and Employment State Insurance (PF & ESI) consultant to M/s Adyar Ananda Bhavan (A-2) since more than twelve years. Investigation also revealed that Shri S.Balasundaram(A-3) is a Public Servant working in M/s Andrew Yule & Company Ltd. since 1988 which is a Government of India enterprise. Apart from his job at M/s Andrew Yule & Company Ltd., he is also working as a Private PF & ESI consultant to various firms and companies in his individual capacity. The statement of his SB A/c No. 428211687 held at Indian Bank, LB Road Branch, Chennai reveals that he has been constantly receiving income from several companies including M/s Adyar Ananda Bhavan(A-2) as consultant fee. Further, in Income Tax returns filed by Shri S.Balasundram(A-3) for Assessment Years 2013-14 and 2014-15, he has declared the income received from various companies."

Aggrieved by the same, this Criminal Original Petition is filed.

6. Heard Mr.N.R.Elango, learned Senior Counsel for the petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor for the respondent.

7. Mr.N.R.Elango, the learned Senior Counsel for the petitioner, submits that the entire Final Report appears to imply that engaging in private employment or consultancy is prohibited by the Conduct Rules of the said Company. The Conduct, Discipline and Appeal Rules, 2016, are not applicable since the petitioner is governed by the certified Standing Orders under the Industrial Establishment (Standing Orders) Act, 1946. Under these, a similar provision does not exist, and therefore, the petitioner is not legally bound as argued by the Investigating Agency.

8. The learned Senior Counsel would rely on the definition of the terms 'illegal' and 'legally bound to do' as contained in Section 43 of the Indian Penal Code. The learned Senior Counsel further submits that the activity shown is similar to a private practice and cannot be classified as a 'trade' within the meaning of Section 168 of the Indian Penal Code. The learned Senior Counsel cites the judgment of the Hon'ble Supreme Court of India in **Kanwarjit Singh Kakkar Vs. State of Punjab and Anr.** (2011) 13 SCC 158. Additionally, the Senior Counsel relies on the judgment of the Hon'ble Supreme Court of India in **R.Sai Bharathi Vs. J.Jayalalitha and Ors.** (2004) 2 SCC 9, particularly paragraph No.50, for the definition of 'illegal'. He argues that unless prohibited by law, the activity should not serve as a basis for prosecuting the petitioner.

9. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor for the respondent, submits that any business or calling through which profit is earned can also be termed as 'trade'. The same is expressly prohibited under both the Conduct Rules and the Standing Orders, and since the petitioner is a public servant, an offence under Section 168 is made out. Any other interpretation would only lead to public servants making untenable defences and could result in undesirable consequences.

10. I have considered the rival submissions from both sides and reviewed the material records.

11. Firstly, the document dated 21.06.1988, produced on behalf of the petitioner, being the appointment order in the said Company, namely, Andrew Yule and Company Ltd., is not disputed by the prosecution and, in this sense, is an unimpeachable document. From this, it can be seen that the petitioner was appointed in the Electrical Division, Transformer and Switchgear Unit of the said Company.



Regarding the Transformer and Switchgear Unit of the said Company, there are separate Standing Orders that have been framed. It is settled law that once a particular unit of the Company is governed by the certified Standing Orders, then the same alone applies and not the general Conduct Rules. A useful reference in this regard is the judgment of this Court, dated 11.03.2025, in **The Management of Tamil Nadu, Civil Supplies Corporation Ltd., Kilpauk, Chennai - 600 010 Vs. All India Food & Allied Workers Union**, represented by its Organising Secretary and Anr., in W.P.No.22187 of 2008.

12. Under the Standing Order No. 21, various misconducts are enumerated and 21(24) is about engaging in other employment without permission and the same is extracted hereunder:-

"21. MISCONDUCT:

.  
. .

24) Engaging in other employment whilst still in the service of the factory without the previous written permission of the Manager provided that such permission shall not be refused if such other employment does not adversely affect the performance of his duties and the interests of the factory"

Thus, it can be seen that engagement in other employment is not prohibited, but the employee is required to obtain written permission for it and it is further made obligatory to grant the permission if the activity does not affect his duties and the interests of the factory.

13. It is essential to extract Section 168 of the Indian Penal Code in this regard which reads as follows:-

" **168. Public servant unlawfully engaging in trade** .— Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

Thus, it can be seen that the act of the petitioner would be an offence if he is legally bound not to engage in trade, engages in trade.

14. Firstly, the term 'trade' is not expressly defined in the Indian Penal Code or under the General Clauses Act. In the specific context of the Competition Act, 2002, the term is defined under Section 2(x), which reads as hereunder:-

"2. Definitions.-

.  
. .

(x)"trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;"

15. The term 'trade' in the context of Section 168 IPC was examined by the Hon'ble Supreme Court of India in **State of Gujarat Vs. Maheshkumar Dhirajlal Thakkar** (1980) 2 SCC 322. The Supreme Court considered the meaning of 'trade' in paragraph No.4 and ruled that apprenticeship in the Railways does not constitute trade. It is necessary to present paragraph Nos.4 and 5 of the judgment, which are reproduced below:-

"4. The only question that falls to be considered in this appeal is whether the engagement of the respondent as the Railway Service apprentice, amounted to engaging in "trade" within the contemplation of Section 168 of the Penal Code, 1860? The High Court has answered this question in the negative, and we think rightly. The word "trade" in its narrow popular sense means "exchange of goods



for goods or for money with the object of making profits". In its widest sense, it includes any business carried on with a view to earn profit (see Halsbury's Laws of England, Vol. 32, para 487). Further, the word takes its meaning from the context.

5. The respondent entered into an agreement with the Railway Administration not for the purpose of engaging in trade, business or profession, but for the sole purpose of receiving training, so that on completion of the training, he could be employed by the Railway Administration. The mere fact that he was paid a stipend during the training period as an apprentice, did not make him an employee of the Railway Administration. Indeed, clause 17 of the agreement (Ex. 69) stated in clear terms that the Railway Administration did not bind itself to employ him on the completion of the training. In its narrow sense, the act of the accused-respondent did not amount to engaging in "trade". Even if the wider interpretation were to be put on the word "trade" in Section 168, Penal Code, the engagement of the respondent as an apprentice-trainee would not bring him within the purview of the expression "trade". The fact remains that during the period of his apprenticeship, the respondent was not carrying on any "trade" as a means of livelihood within the meaning of Section 168, Penal Code, 1860."

(emphasis supplied)

16. Thus, it can be seen that the meaning of the term 'trade' should be understood according to its common usage as the exchange of goods for goods or for money, with the purpose of making a profit or, in the broadest sense, any business conducted with the intent to earn profit. In this case, the allegation is acting as a consultant and providing professional services, such as preparing returns and submitting them before the Provident Fund Organisation, as such does not constitute 'trade' within the meaning of Section 168 of the Indian Penal Code.

17. Apart from this, even considering it a trade within the broadest meaning defined under the Competition Act, 2002, it is necessary to examine whether the additional element—whether the petitioner is legally obliged as a public servant not to engage in the activity—is established or not. It is essential to refer to the definition of 'legally bound to,' as contained in Section 43 of the Indian Penal Code, which states as follows:-

"43. "Illegal". "Legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

Thus, what is explicitly prohibited would become illegal, and anyone is legally bound to omit what is illegal.

18. A reading of the Standing Orders, extracted above, does not explicitly prohibit this kind of activity, but the only requirement is to obtain written permission, which must be granted if the activity does not adversely affect the performance of his service in the company.

19. Even according to the Conduct Rules, which the prosecution relies on, Rule 13(1) states as follows:-

"RULE 13 : PRIVATE TRADE OR EMPLOYMENT

(1) No employee of the Company shall except with the previous sanction of the competent authority, engage directly or indirectly in any trade or business or undertake any other employment;

Provided that an employee may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of literary, artistic or scientific character, subject to the conditions that his/her official duties do not thereby suffer."

Here, it can also be seen that the main requirement is the obligation to obtain prior sanction. Additionally, it is noticeable that in the Conduct Rules, the terms 'trade,' 'business,' 'undertaking,' and 'employment' are mentioned separately. In contrast, under Section 168 of the Indian Penal Code, only the act of carrying on trade is considered offensive, not the undertaking of employment or professional services. Therefore, it cannot be said that sporadic consultation activity that does not interfere with his work is prohibited by law; instead, an obligation to obtain prior permission or sanction is created. Consequently, after considering the facts and circumstances of the case, the essential elements for prosecuting the petitioner under Section 168 of the Indian Penal Code are not established, even if all the allegations in the Final Report and the accompanying materials are accepted as true and correct.



20. In view thereof, this Criminal Original Petition shall stand allowed. The Final Report filed in C.C.No.8045 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, shall stand quashed. Consequently, connected Miscellaneous Petition is closed.

Ref: LLR

**If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333**

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