1967 *Present:* **H. N. G. Fernando, C.J., T. S. Fernando, J., Abeyesundere, J., Manicavasagar, J., and Samerawickrame, J.**

MOHAMED AUF, Appellant, *and* THE QUEEN, Respondent

S. C. 5/67—D. C. Kandy, B/3

Bribery Act (Cap. 26)—Sections 19 (b) (c), 24, 90—"Official act"—Burden of proof—Penal Code, ss. 19, 158—Evidence Ordinance, ss. 105, 106.

(i) The accused-appellant, who was a public servant, being an Inspector of Schools, accepted a sum of money from an Estate School teacher for making a certain endorsement on the teacher's Certificate soon after the accused had conducted an inspection of an Estate School in which the teacher was employed. Although the accused was not required by any relevant rule to make the endorsement which he did make on the teacher's Certificate, there was no doubt that the teacher regarded the making of the endorsement as an official act.

Held (ABEYESUNDERE, J. dissenting), that the making of the endorsement on the teacher's certificate was an official act by the appellant within the meaning of section 19 (*b*) of the Bribery Act.

Podi Singho v. the Queen (68 N. L. R. 524) overruled.

(ii) Where a public servant is charged, under section 19 (*c*) of the Bribery Act, with having accepted a gratification which he was not authorised by law or the terms of his employment to receive, the burden of proving that the gratification was unauthorised lies on the prosecution.

APPEAL from a judgment of the District Court, Kandy.

H. W. Jayewardene, Q.C., with *M. T. M. Sivardeen*, for the Accused-Appellant.

Ananda Pereira, Deputy Solicitor-General, with *L. B. T. Premaratne*, Senior Crown Counsel, and *Noel Tittawella*, Crown Counsel, for the Crown.

Cur. adv. vult.

March 13, 1967. H. N. G. FERNANDO, C.J.—

This appeal was reserved for consideration by a Bench of five Judges because of a conflict of opinion as to the scope of certain provisions of the Bribery Act, Chapter 26.

The appellant was indicted on 2 counts as follows :—

1. That on or about the 13th day of February, 1963, at Katugastota, in the division of Kandy, within the jurisdiction of this Court, you being a public servant, to wit, Inspector of Schools, Department

of Education, did accept a gratification of a sum of Rs. 30 from Namasivayam Vathavoovar as an inducement for performing an official act, to wit, making an endorsement on the Teacher's Certificate of the said Namasivayam Vathavoovar and that you are thereby guilty of an offence punishable under section 19 of the Bribery Act.

2. That at the time and place aforesaid and in the course of the same transaction you, being a public servant, to wit, Inspector of Schools, Department of Education, did accept a gratification of a sum of Rs. 30 from the said Namasivayam Vathavoovar which gratification you were not authorised by law or the terms of your employment to receive and that you are thereby guilty of an offence punishable under section 19 of the Bribery Act,

and was convicted by the learned District Judge of Kandy on both counts. He was sentenced to imprisonment for one year on each count, sentences to run concurrently and to a fine of Rs. 25 on each count and to pay a penalty of Rs. 30.

The second count with which the appellant was charged was framed in terms of paragraph (*c*) of section 19 of the Act. The correctness of the conviction of the appellant on the first count depends upon the construction which should be placed upon sections 19 and 24 of the Act, and particularly of certain expressions which occur therein.

In the case of *Podi Singho v. The Queen*[1] the accused who was a public servant employed as a Game Watcher in the Department of Wild Life was held to have accepted a sum of Rs. 15 from a person whom he had found to be in possession of wild boar flesh. The facts of the case were that the Game Watcher solicited the money in consideration of a promise to abstain from prosecuting the person for the possession of the flesh. Abeyesundere J. (Alles J. agreeing) held that because there was no evidence that the possession of wild boar flesh is an offence known to law, the accused in accepting the money did not do so as an inducement or a reward for abstaining from performing an official act. The basis of this decision appears to be that, while the institution of a prosecution for an offence known to the law is an official act, nevertheless the institution of a prosecution for an act which is not such an offence would not be an official act. In the later case of *Karunaratne v. The Queen*[2] T. S. Fernando J. expressed his inability to agree with the interpretation given in the former case to the expression " official act ".

In *Karunaratne v. The Queen* the Judge in the lower Court had apprently regarded the term " official act " as meaning only an act which a public servant is required by law to perform, but it was held in appeal that an official act " embraces all those acts which a public servant does which are referable to his official capacity, or which, according to recognised and prevailing practice, he does as a public servant."

[1] *(1966) 68 N. L. R. 524.* [2] *(1966) 69 N. L. R. 10.*

In the instant case, the accused was an Inspector of Schools who, in the course of his duties as such, conducted an inspection at an Estate School in which the virtual complainant was employed as a teacher. After the inspection, he duly made in the school Log Book an entry concerning the results of his inspection. Thereafter he was requested by the teacher to make an endorsement on the Teacher's Certificate, which is in the form of an official booklet issued to Teacher's by the Government. He refused to make this endorsement except on payment of some money. On a subsequent occasion he accepted the money and made the endorsement on the certificate. This acceptance was the ground of his conviction.

According to the evidence the endorsement made on a Teacher's Certificate after inspection has to be in identical or similar terms to the entry made in the School Log Book. But Rule 130 in Cap. 15 of the Inspector's Manual provides that an endorsement (of a Teacher's Certificate) should be given on all certificates except certain specified certificates ; and one of the clauses contained in the list of such excepted certificates is " certificates of Teachers employed in Estate Schools ".

Clearly therefore, the accused was not required by the relevant rule to make the endorsement which he did make in the certificate of the Teacher in this case. He had previously made a similar endorsement, after a similar inspection, on this very certificate. But for present purposes I am not disposed to hold that the fact that he had once previously endorsed the same certificate sufficed to establish that the making of the endorsement was referable to his official capacity or was an act done by him as a public servant according to recognised and prevailing practice.

But the matter does not end there, because there is no doubt that the teacher regarded the making of the endorsement as an official act, and section 19 is not the only provision of the Act which can be applicable. Section 24 also requires consideration, and before referring to that section, I consider it necessary to explain what in my view is the history of that section.

The expression " official act " when it occurs in section 19 of the Bribery Act does not *prima facie* appear to have been used in any connotation different from the same expression occurring in section 158 of the Penal Code. The meaning of that expression in section 158 was considered in two judgments of this Court. In the first of them *De Zoysa v. Subaweera*[1], Wijeyewardene J. held that a Police Officer who obtained a gratification upon a representation that he would favour a person at a Police inquiry could not be convicted of an offence under section 158, if in fact the officer knew that he had no official function to perform at the inquiry. Similarly, Gratiaen J. held in *Tennakoon v. Dissanayake*[2] that an offer of a gratification to a public servant was not punishable under section 158 if in fact the act which the offeror

[1] *(1941) 42 N. L. R. 357.* [2] *(1948) 50 N. L. R. 403.*

requests the public servant to perform was not within the power of the public servant. Although a different view of the corresponding section of the Indian Code has been taken in some Indian judgments, I do not find it necessary to differ from the construction of section 158 which was accepted in the two Ceylon cases cited above. I think it fair to presume that the Legislature in enacting section 19 of the Bribery Act did not intend that there should attach to the term "official act" a meaning wider than that which was placed on it in the two judgments of this Court which I have cited above.

Section 24 of the Bribery Act is in the following terms :—

> "Where in any proceedings against any person for any offence under any section in this Part of this Act, it is proved that he accepted any gratification, having grounds to believe or suspect that the gratification was offered in consideration of his doing or forbearing to do any act referred to in that section, he shall be guilty of an offence under that section notwithstanding that he did not actually have the power, right or opportunity so to do or forbear or that he accepted the gratification without intending so to do or forbear or that he did not in fact so do or forbear."

It is convenient at this stage for me to refer to the construction which my brother Abeyesundere J. placed upon section 24 in observations made during the argument of this appeal. That construction was that section 24 was intended to "extend" the application of section 19 to two situations in which section 19 by itself would not apply. In this construction the first assumption (with which I have already expressed agreement) is that section 19 only applies when a gratification is offered or accepted in connection with the performance or the abstaining from performance of an act which is an official act in the strict sense that some public servant does have the power by virtue of his office to perform the act. The extension effected by section 24 is that if there is an acceptance of a gratification in connection with such a strict official act, the acceptor will be guilty of an offence—

(1) notwithstanding that he did not actually have the power, right or opportunity to do the act or to forbear to do it, or

(2) notwithstanding that he did not intend so to do or forbear or that he did not in fact so do or forbear.

In passing I may remark that there are really three extensions involved because the matters I have reproduced in (2) above involve two different situations.

Thus far I entirely agree with the construction acceptable to my brother that section 24 does render the acceptance of a gratification punishable in two or three situations in which other sections of the Bribery Act would not render the acceptor guilty of an offence. But there is another apparent extension in the language of section 24 when compared for instance with the language of section 19. Whereas

section 19 refers to " a public servant (who) accepts a gratification as an inducement or a reward for his performing or abstaining from performing any official act", section 24 refers to a public servant against whom it is proved that " he accepted a gratification, *having grounds to believe or suspect* that the gratification was offered in consideration of his doing or forbearing to do any official act ".

It seems to me that the differences of language in the two sections has the consequence that the basic fact which the prosecution must prove when it relies on section 24 is different from the basic fact to be proved when section 19 alone is relied upon. The fact to be proved for the purposes of section 19 is the acceptance of a gratification as an inducement or a reward (*inter alia*) for performing an official act. But when section 24 is invoked the basic facts to be proved are :—

(*a*) that a public servant accepted a gratification, and

(*b*) that the public servant had grounds to believe or suspect *something*.

What then is the *something* which the public servant must have had grounds to believe or to suspect ? The *something* is the consideration for the offer of the gratification. In the simplest example of an offer such as a transaction in a shop, a person offers the proper price and asks for a pound of sugar. The consideration for his offer is a matter determined by him : his reason or motive for making the offer is that he wishes or expects to receive in return the pound of sugar which he requires. Even if there are three grades of sugar on the counter, labelled at three different prices, the offeror impliedly indicates his choice by tendering the appropriate amount of cash. When such an offer is made, what does the shop assistant have reason to believe to be the consideration for the offer ? The answer is of course " the receiving of a pound of sugar ", but only because that is precisely the consideration *present in the mind of the offeror*, and expressly or impliedly specified by the offeror.

Let me suppose that A is deluded by X into thinking that X has mermaids for sale at a price of Rs. 1,000. If then A offers X that sum and asks for a mermaid, will not X have reason to believe that the consideration for the offer is that he should sell a mermaid to A ? The fact that X knows that mermaids are non-existent can make no difference to his belief as to what is A's motive or expectation in making the offer.

If the offeror of a gratification thinks that a particular act is an official act, and if his conduct is such that it reasonably leads to the belief that he is offering the gratification because he desires the performance of the act which he thinks to be an official one, then the public servant to whom the gratification is offered has grounds to believe that the offeror's motive for the offer is that the public servant should perform an official act, whether or not the act be in truth " official ".

In section 19, the Legislature has referred to *the fact* that the consideration for a gratification is of a specified nature. In section 24, however, the Legislature has referred to a reasonable *belief or suspicion* that the consideration is of the same nature. I must assume that the contrast in language was deliberate and not without purpose. The only purpose suggested during the argument of this appeal is that which I have mentioned in the preceding paragraph.

In considering the intention of the Legislature, it seems perfectly reasonable to infer that there was an intention to remedy an evil as great, if not greater, than that formerly provided for by section 158 of the Penal Code. The evil I have in mind is the circumstance that public servants do accept gratifications upon representations *dishonestly* made (I borrow the word from Wijeyewardene J.) that some acts they offer to perform are official acts, knowing full well that the favour or relief offered is one that cannot be granted. The language of section 24 is quite easily capable of a construction which will remedy that evil. In the absence of any other reasonable explanation for the use by the Legislature of that language, I would hold that section 24 (when read with s. 19) applies not only in the situations contemplated by my brother Abeyesundere J. and mentioned earlier in this judgment, but also renders it an offence for a public servant to accept a gratification if he has grounds to believe or suspect that the motive for the giving of the gratification is that the offeror expects that the public servant will do or forbear to do an act regarded by the offeror as an official act. I would add that section 24 must be so construed in connection also with acts referred to in other provisions of Part 2 of the Bribery Act.

In the case of *Podi Singho v. The Queen* the ground for the acquittal of the accused in appeal was that the threat of a prosecution was an idle one because in fact the person threatened had not committed an offence known to the law. In the view I have taken as to the scope of section 24 that ground for the decision in that case must be overruled.

The provisions of section 19 (c), in terms of which the 2nd count of the indictment in this case is framed, renders it punishable for a public servant to solicit or accept any gratification which he is not authorised by law or his terms of his employment to receive. There was no evidence led in the case of any term of the appellant's appointment prohibiting the receipt by him of any gratification, nor are we aware of any provision of law imposing such a prohibition. Nevertheless the learned Deputy Solicitor-General submitted that section 19 (c) casts on an accused person the burden of proving that a gratification accepted by him is authorised either by law or by the terms of his employment. What is invoked in this submission is section 105 of the Evidence Ordinance. The relevant provision of that section which can, if at all, apply in the present case is to the effect hat an accused person has the burden of proving " the existence of circumstances bringing the case within . . . . any special exception or proviso contained . . . . in any law defined in the offence." But section 19 (c) contains no proviso nor is the reference

therein to the authorisation " by law or the terms of his employment " in any way compatible with an intention of the Legislature to prohibit absolutely the acceptance of a gratification by a public servant, subject to the exception that authorisation by law of the terms of employment will be a defence. In other words, the offence defined by section 19 (*c*) is that of accepting an *unauthorised* gratification, and one of the ingredients of the offence is the fact that the gratification accepted is an unauthorised one.

Section 106 casts on a person the burden of proving any act which is especially within his knowledge. A fact can be said to be especially within the knowledge of one party, only if it is apparent that the same fact is not or is probably not, within the knowledge of the other party. In the present case there is no evidence to show that the appellant was in fact aware of his terms of his employment; on the contrary those terms are surely within the knowledge of the Government, which is the appellant's employer, and on whose behalf the prosecution in this case was lodged.

For these reasons I would hold that the burden of proving that the gratification was unauthorised lay on the prosecution.

The conviction of the appellant on the 1st count and the sentences imposed in respect of that conviction are affirmed. The conviction and sentences on the 2nd count are set aside.

T. S. FERNANDO, J.—I agree.

ABEYESUNDERE, J.—

I agree with His Lordship the Chief Justice that the appellant is not proved to be guilty on count 2 of the indictment. But I respectively disagree with him in regard to his finding that, by the application of section 24 of the Bribery Act, the conviction of the appellant on count 1 of the indictment can be upheld.

Count 1 refers to an offence under section 19 (*b*) of the Bribery Act and states that the official act for the performance of which the gratification was accepted by the appellant is the making of an endorsement on the teacher's certificate of the giver of the gratification. The appellant is an Inspector of Schools and the giver of the gratification is a teacher in an estate school. The evidence is that an Inspector of Schools is not required by rule 130 in the Inspector's Manual to make such endorsement as is referred to in count 1 on the certificate of a teacher in an estate school. There is also no evidence that it is the official function of some public servant to make such an endorsement on the certificate of a teacher in an estate school. The making of the endorsement referred to in count 1 is therefore not an official act. Consequently it cannot be held that the appellant is guilty of an offence under section 19 (*b*) of the Bribery Act.

As the appellant was prosecuted on count 1 for an offence under a section in Part II of the Bribery Act with reference to the official act specified in that count, section 24 of that Act may be applied to hold him guilty of such offence if there is proof that he accepted the gratification having grounds to believe or suspect that the gratification was offered to him in consideration of his doing such official act. The official act referred to in section 24 is the same as that referred to in the statement of the offence under section 19 (*b*) in view of the words " offence under any section in this Part " and the words " any act referred to in that section " occurring in section 24. Those words in section 24 do not permit the view to be taken that, although an offence under section 19 (*b*) must relate to an existent official act and not to an imaginary official act, the commission of such offence may be proved by evidence that the alleged offender accepted the gratification having grounds to believe or suspect that the gratification was offered in consideration of his doing an act which the giver of the gratification thought was an official act although in truth it was not an official act. As the act specified as an official act in count 1 is in fact not an official act, section 24 cannot be applied to establish the commission of the offence specified in that count.

Section 24 does not create an offence. It indicates the evidence sufficient for proving an offence under any section in Part II of the Bribery Act and also indicates that certain defences are not available to the accused. Firstly, section 24 indicates that, where a person is prosecuted for an offence under any section in Part II of the Bribery Act, the evidence sufficient for finding him guilty of that offence is evidence that proves that he accepted the gratification having grounds to believe or suspect that the gratification was offered to him in consideration of his doing or forbearing to do the act referred to in the section creating the offence which he is alleged to have committed. The prosecution will therefore not be handicapped by the inability to prove that the giver of the gratification stated to the alleged offender the official act with reference to which the gratification was given. Secondly section 24, by reason of the clause therein commencing with the word " notwithstanding ", indicates that it is not a defence that the accused did not actually have the power, right or opportunity to do or forbear to do the act specified in the charge, or that he accepted the gratification without intending so to do or forbear, or that he did not in fact so do or forbear.

For the aforesaid reasons I hold that the conviction of the appellant on count 1 of the indictment must also be quashed.

MANICAVASAGAR, J.—

I have had the benefit of reading the learned opinions of my Lord, the Chief Justice, and of my brother, Abeyesundere J., and I agree that the conviction of the appellant on count 2 should be set aside for

the reasons given by His Lordship the Chief Justice. In regard to count 1, I regret to take a view different to that of Abeyesundere, J., whose knowledge of the interpretation of statutes by reason of his experience in the Legal Draftsman's department, is entitled to respect. I agree with the decision of His Lordship, the Chief Justice that the verdict and sentence on the 1st count should be affirmed, but my reasons are somewhat different.

The appellant in this case is a public servant, being an Inspector of Schools, attached to the Education Department: he received from a teacher of an Estate School which came under the Education Department, a gratification to make an endorsement on his certificate book: this was an act which as a public servant, neither the appellant nor any other public servant was required by law or by any regulation to perform: but he did make an endorsement favourable to the teacher. Having regard to these facts, is the act an official act as contemplated by the section? Different opinions have been given in two judgments of this court which were cited to us at the argument; and whilst I agree with the meaning given by T. S. Fernando, J. in *Karunaratna v. The Queen*[1] I say, with respect, that it does not go far enough.

Section 19 (*b*) of the Bribery Act penalises the public servant who accepts a gratification for the performance of any official act. I have stated only that part of the section which is relevant to the case under consideration. Section 24 refers to certain circumstances which if proved would render the public servant who accepts a gratification liable to punishment for any offence in Part II of the Act; section 19 (*b*) is in Part II. Section 19 (*b*) refers to what I think is a straightforward case, where the giver makes known to the public servant the purpose of the gratification. Section 24 provides for a case where the public servant has grounds to believe or suspect that the gratification was offered in consideration of his doing any act which is made an offence by Part II, though he may not have the power, right or opportunity to do that act, or did not even intend to do it. This provision, and I believe the Bribery Act itself—though it took quite a time to be brought into the statute book—was largely influenced by the judgments delivered by two eminent judges of this court, Wijeyewardene J. in the case of *de Zoysa v. Subaweera*[2] and Gratiaen J. in *Tennakoon v. Dissanayake*[3]. They refused to give an extended judicial interpretation to the plain meaning of "official act" in section 158 of the Penal Code, which Gratiaen J. in language so characteristic of him described as "an antiquated Enactment, conceived a century ago, which still remains unamended, and helpless to cope with modern methods of corruption." Both Judges took the view that it was no offence under section 158 if a public servant received a bribe to confer a favour which he had not the power to perform.

We are however here concerned with the meaning of the words "official act" which occur in the two sections of the Bribery Act.

[1] *(1966) 69 N. L. R. 10 at p. 19.* [2] *(1941) 42 N. L. R. 357.*
[3] *(1948) 50 N. L. R. 403.*

The plain meaning would be of an act which falls within the purview of the functions of a public servant. This would exclude acts required by law or regulation to be performed, but which do not fall within the ambit of his functions, and acts though official in character, which need not be done at all by any public servant, or the doing of which is not an offence known to the law. If the interpretation is restricted to the plain meaning alone, it would undoubtedly open the door for corrupt-minded public servants to accept extra-legal gratification without compunction. This could certainly not have been the intention of the legislature : to construe the words strictly would in my opinion not give effect to the real intent of the legislature. Maxwell in his Interpretation of Statutes (1962 Edn. p. 266) says—

> " The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent, and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of the two meanings, when best effectuating the intention. They are indeed, frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Coke's words, to suppress the mischief and advance the remedy."

I find it difficult to see any principle in the distinction between the act of a public servant which falls strictly within his official functions, and an act which he has not the power or the duty to perform at all, but which he nevertheless does for a gratification, making the giver believe that he has the power to do what may be an official act or what is believed, or held out even impliedly as an official act : in either case the official acts corruptly : the legislature must surely have intended to catch up such cases as well, and therefore it is necessary to give the words a meaning " which best suits the scope and object of the statute ".

The opinion I have formed is so clearly expressed in a passage in the judgment of Jagannadhadas J. in the case of *The State v. Sadhu Charan Panigrahi*[1] that I propose to quote it : it was a case where the meaning of the words official act in s. 161 of the Indian Penal Code (same as section 158 of our Code) was considered by a Bench of 2 Judges, in regard to a public servant who had no official function to perform in respect of the matter for which he was offered a gratification, nevertheless the principle is equally applicable to the words in the Bribery Act. The learned Judge said—

> " The gist of the offence clearly is not that there was at the time, an official act to be procured capable of being performed by the taker of the bribe or by another public servant with whom he is intended to exercise his influence, but that the extra-legal gratification is obtained as a motive or reward for doing official acts, that is for doing what may be or is believed or held out to be official conduct. The stress in the section is not so much on the performance of the official

[1] *(1952) 53 Criminal Law Journal, 367 at page 369.*

act itself, or on its being capable of performance but on the nature of the act being official. This is meant to exclude from its purview acts which were totally unconnected with any official conduct and which may be attributable purely to the private capacity of the bribe-taker or of the other public servant. The emphasis is on the gratification offered being a motive or reward for official conduct (inclusive of that which is believed or held out to be so)."

This opinion which is different to the earlier decisions some of which Wijeyewardene J. has cited, has been approved in two subsequent cases, viz. *Bhim Singh v. State*[1] and by the Supreme Court in *Mahadev Dhanappa v. State of Bombay*[2], and in my judgment is the right meaning of the words "official act": to interpret it otherwise would be, to use the words of Sir Edward Coke in a different sense, to suppress the remedy and advance the mischief, a situation which could not have been the intention of the legislature. It is the duty of the Courts, where the object of the statute is clean public morality, that the words should be given a wide meaning to give effect to that object.

SAMERAWICKRAME, J.—

This appeal is against the conviction of the appellant of the commission of offences of bribery, on two counts under the Bribery Act. I agree that the conviction of the appellant on count 2 should be set aside for the reasons given in his order by My Lord the Chief Justice. In regard to count 1, I agree that the verdict and sentence should be affirmed. I set out my reasons for affirming them.

The appellant is an Inspector of Schools and the allegation made against him is that he accepted a gratification for making an endorsement on the certificate of a teacher who was employed in an estate school. Evidence has been led that the rules of the Department do not require an endorsement to be made on the certificate of a teacher of an estate school. The question, therefore, is whether the appellant accepted a gratification as an inducement or reward for performing an official act within the meaning of Section 19 (*b*) of the Bribery Act.

The Bribery Act was passed because it was found that the provisions of Section 158 of the Penal Code were insufficient to deal with cases of corruption. Section 158 of the Penal Code contains provisions which make a public servant who accepts a gratification liable to punishment for the commission of an offence. The offering of the gratification is not a substantive offence but the offeror is liable as an abettor. This Court has held that under that provision, a public servant who was *functus officio* or had no power to do the official act in question could not be convicted if he accepted a gratification. The Penal Code too contains in Section 19 of the definition of public servant and the persons who could be made liable under Section 158 are those belonging to the categories of public servants set out in that definition.

[1] *(1955) 56 Criminal Law Journal 992.* [2] *(1953) Criminal Law Journal 992 (S. C.).*

Having regard to the definition of public servant in the Penal Code, the nature of the provisions of Section 158 and its place in the Code, it seems to me that the provisions in that Section were designed to secure impartiality and fairness in the performance of official acts rather than to stamp out corruption.

The Bribery Act, however, is without doubt, meant to deal with the menace of corruption in public and official life of this country. The term ' public servant ' is defined in Section 90 of the Act as follows :—

> " ' Public servant ' includes every officer, servant or employee of the Crown, or of any local authority, or of any scheduled institution, every juror, and every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court or by any other competent public authority."

The schedule refers to 34 institutions and includes bodies such as Co-operative Societies registered under the Co-operative Societies Ordinance, registered Community Centres and registered Rural Development Societies. Section 24 of the Act also provides that a person who has accepted a gratification will be guilty of an offence even though he did not actually have the power, right or opportunity to do or to forbear to do an act. It will thus be seen that the provisions in the Bribery Act are intended to apply to a wider class and to have a wider scope than those in the Penal Code. Having regard to these matters and also to the object of the Act, I am of the view that the term ' official act ' in Section 19 (*a*) and (*b*) should be given a wider meaning than that given to it in the construction of Section 158 of the Penal Code. I think that the term was intended to have a meaning wide enough to catch up all acts connected with official conduct or employment of a public servant, as the performance or non-performance of them should not be used by him for the purpose of making gain. I think that ' official act ' in Section 19 (*a*) and (*b*) has been used as opposed to personal or private conduct. I am, therefore, of the view that ' official act ' in that provision should be read to mean any act of a public servant referable to his office or employment and the doing of which does not constitute private or personal conduct.

Under the provisions of Section 24, a person who accepts a gratification is liable in respect of an act even though he did not actually have the power, right or opportunity to do the act. That a public servant has no power to do an act may be due either to the fact that he personally is not empowered to do that act or that no public servant is so empowered. In either case, however, in view of Section 24, a person who accepts a gratification for doing such an act would be liable if it is an act the doing of which, if he had the power to do it, would be referable to his office or employment and would not constitute his personal or private conduct.

In the present case, the appellant made the entry in the certificate of the teacher as the officer who had conducted an inspection of the school in which the teacher was employed. Had he not held the office or post of Inspector of Schools, no question of an entry by him in the certificate of this teacher would have arisen. It is because he held the inspection as an Inspector of Schools and held that office that he was asked to make and made the entry in the certificate. It is clear, therefore, that the making of the entry in the certificate was an act referable to his office or employment and was not an act which constituted his personal or private conduct. I am, therefore, of the view that the making of the entry in the teacher's certificate in the circumstances was an official act by the appellant within the meaning of Section 19 (*b*) of the Bribery Act.

Conviction on 1st count affirmed.

Conviction on 2nd count set aside.