(2016) 02 AHC CK 0031

In the Allahabad High Court

Case No : Writ-A No. 60557 of 2015

Anil Kumar Pandey and others APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Uttar Pradesh Cane Co-operative Service Regulations, 1975 — Regulation 21
Uttar Pradesh Co-operative Societies Act, 1965 — Section 122

Citation : (2016) 7 ADJ 495 : (2016) AIR(Allahabad) 157 : (2016) AIRCC 1190 : (2016) 2 AllLJ 565 : (2016) 2 AllWC 1504 : (2016) 118 ALR 565 : (2016) 115 ALR 567 : (2016) 2 KLT 122 : (2016) 3 LLN 295 : (2016) 2 SCT 631 : (2016) 2 UPLBEC 1457

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.;Manoj Kumar Gupta;Yashwant Varma, JJ.

Bench : Full Bench

Advocate : C. B. Yadav, Addl Advocate General, Shashank Shekhar Singh, Addl CSC, Ravindra Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Dhananjaya Yeshwant Chandrachud, C.J. - The reference before the Full Bench has arisen from a referring order dated 3 November 2015 of a learned Single Judge. The questions which have been referred for decision by the Full Bench are as follows:

1. Whether a writ petition under Article 226 of the Constitution of India would be maintainable against a Cooperative Cane Development Society, at the instance of its employee, for alleged breach of the provisions of the Uttar Pradesh Cane Cooperative Service Regulations, 1975 which govern his service conditions;

2. Whether the law laid down in Ram Karan v. State of U P and Ors., Writ-A No 27306 of 2014, or Srinarayan Gupta v. State of U. P.,Special Appeal (D) No 779 of 2014, decided on 12 September 2014, is the correct law, in view of the law laid down by the Full Bench in Vijay Bihari Srivastava v. P. Postal Primary

Cooperative Bank Ltd., (2003) 1 UPLBEC 1 ; and

3. Whether the U P Cane Cooperative Service Regulations, 1975 are statutory in nature having been issued under Section 122 of the Uttar Pradesh Cooperative Societies Act, 1965 or are merely in the nature of administrative instructions.

2. In the proceedings before the learned Single Judge, the petitioners have sought a writ of mandamus directing the fifth respondent, who is the Secretary of the Cooperative Cane Development Society, Basti to allow them to join on duty, to work on their respective posts and to pay them wages for the period of the fresh crushing season which commenced from 1 October 2015 and which will continue until 15 July 2016.

3. The first to seventh petitioners claim to have been working as Seasonal Clerks while the eighth to fourteenth petitioners are stated to be working as Parchi Distributors. According to them, the Deputy Cane Commissioner published a provisional seniority list of Seasonal Clerks working in Cooperative Cane Development Societies at Gorakhpur, Basti, Maharajganj and Siddharath Nagar, by a communication dated 30 October 2004. The petitioners have sought a writ of mandamus on the basis of the provisions contained in the Uttar Pradesh Cane Cooperative Service Regulations, 1975 (Regulations). Under Chapter IV of the Regulations, provisions have been made for categorisation and recruitment. Regulation 21 envisages that at the end of each crushing season, the Secretary of the Cane Union shall classify the entire seasonal staff into categories ''A'' and ''B'' on the basis of their work and worth during the season. Persons who possess unquestionable integrity and have discharged their duties efficiently during the crushing season are to be placed in category ''A'' while the rest are to be placed in category ''B''. Regulation 26 stipulates that the staff placed in category ''A'' shall be automatically reemployed in the next season unless the strength of the seasonal staff has been reduced in any particular year to such an extent that it may not be possible to re-employ all such staff.

These Regulations have been framed under Section 122 of the Uttar Pradesh Cooperative Societies Act, 1965 Act which reads as follows:

"122. Authority to control employees of cooperate societies. - (1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society.

(2) The regulations framed under sub-section (1) shall be subject to the approval of the State Government and shall, after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede

any regulations made under Section 121."

4. In pursuance of the provisions of Section 122, the State Government has constituted the Cane Commissioner as the authority which is to frame regulations regarding recruitment, emoluments and terms and conditions of service of employees. The regulations are subject to the approval of the State Government under sub section (2) of Section 122 and are to take effect from the date of their publication in the gazette. These regulations, it cannot be disputed, are framed in exercise of the power which has been delegated under Section 122 of the Act. Section 122(1) empowers the State Government to designate the authority for exercising control over the service conditions of the employees and for framing regulations to govern them. The regulations hence have a statutory nature and flavour.

5. A Bench of five learned Judges of this Court in Vijay Bihari Srivastava v. U.P. Postal Primary Co-operative Bank Ltd.,(2003) 1 UPLBEC 1, had specifically dealt with the maintainability of a writ petition under Article 226 of the Constitution where a breach was alleged of the Regulations. In that case, a person who was appointed as a Secretary of the Postal Primary Cooperative Bank Limited was reverted to the post of Accountant which he sought to question in writ proceedings under Article 226. The submission was that the service conditions of the employees of a primary cooperative society with an area of operation over more than one district, were governed by the U P Cooperative Societies Institutional Service Board constituted by the State Government and by the Regulations which had been framed in exercise of powers conferred by Section 122 of the Act. A Bench of five learned Judges of this Court, after dealing with the precedents of the Supreme Court on the subject, held thus:

The writ petition in the nature of certiorari will lie against a Co-operative Society only when such Society has ingredient of an ''Authority'' within the meaning of Article 226 of the Constitution and not otherwise. The following guidelines are culled out from the various decisions of the Supreme Court, referred to above :-

1. The constitution of the Managing Body/Committee constitutes the functionaries of the Government.

2. There is an existence of deep and pervasive control of the management and policies of the Co-operative Society by the Government.

3. The function of the Co-operative Society is of public importance and closely related to the Governmental functions.

4. The financial control is by the Government or it provides financial aid controlling its affairs.

5. The violation of statutory rules applicable to the Society in regard to the service matters of its employees, and

6. Statutory violations or non-compliance of it by an authority under the Act."

The Court held that there was no straight jacket formula to determine as to when a cooperative society is an authority within the meaning of Article 226, but it has to be considered in the light of factors enumerated in the decisions of the Supreme Court. Moreover, it was held that it is not necessary that all the tests which have been enumerated above, should simultaneously exist to determine that an authority is an authority within the meaning of Article 226. Moreover, a mere regulatory provision under which a cooperative society is regulated by the Registrar or any other authority, shall not render it as an authority for the purpose of Article 226 of the Constitution. Finally, it was observed that even if a writ petition is maintainable, the Court may, in a given case, decline to entertain if it finds that an alternate remedy is available to the petitioner to ventilate the grievances which are raised.

6. Subsequently, a Division Bench of this Court in Srinarayan Gupta (supra), dealt with a special appeal arising out of a judgment of a learned Single Judge dismissing a writ petition filed by a clerk in a Cooperative Cane Development Society. A writ of mandamus was sought for the payment of his retrial dues and arrears of salary. When a preliminary objection was raised to the maintainability of the petition on the ground that the Society was not ''State'' within the meaning of Article 12 of the Constitution, the learned Single Judge sustained the objection and dismissed the writ petition as not being maintainable. The Division Bench in a special appeal confirmed the order of the learned Single Judge on the ground that the cooperative society was not ''State'' within the meaning of Article 12 and hence, there was no illegality in the order of the learned Single Judge. The Division Bench held that:

"It is no longer res integra that aforesaid society is not a State within the meaning of Article 12 of the Constitution, and hence there is no infirmity and illegality in the impugned judgment and order. The appeal is accordingly dismissed."

7. This decision in Srinarayan Gupta (supra) was followed by a learned Single Judge of this Court in Ram Karan (supra). In that case, a direction was sought by the petitioner against a cooperative society which was governed by its own bye laws and which consisted primarily of cane growers, for the payment of his arrears of salary and dues. The learned Single Judge dismissed the writ petition, inter alia, placing reliance on a judgment of the Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd v. Satrughan Nishad, (2003) 8 SCC 639, a judgment of a learned Single Judge in Gopal Prasad v. State of U.P., Writ Petition No 45914 of 2013, decided on 5 September 2013 and a judgment of a Division Bench of this Court in Jyoti Kumar Malviya v. Indian Farmers Fertilizers Cooperative Ltd., 2006 (3) ADJ 383 (All) (DB). The judgment in Ram Karan was followed by a learned Single Judge of this Court in Shrinarayan Gupta, Writ-A No 37201 of 2014 against which a special appeal was dismissed by a Division Bench, as noted above, on 12 September 2014.

8. The learned Single Judge, while referring the correctness of the decisions in

Ram Karan and Shrinarayan Gupta (which are respectively of a Single Judge and of a Division Bench) has expressed doubt on their correctness since in neither of the two cases, was the judgment of the larger Bench of five learned Judges of this Court in Vijay Bihari Srivastava''s case noticed. From the judgments both of the Division Bench in Shrinarayan Gupta as well as of the learned Single Judge in Ram Karan, it is evident that the law which has been enunciated in the decision of five Judges of this Court in Vijay Bihari Srivastava has not been noted. These decisions, therefore, with respect, have been rendered without noticing a binding judgment of a larger Bench of this Court. The decision in Vijay Bihari Srivastava is of a Bench of five learned Judges and it will bind the present Full Bench.

9. In the decision in Ram Karan, the learned Single Judge placed reliance on a judgment of the Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd (supra). In that case, the mill in question was a cooperative society registered under the Societies'' Registration Act 1860. The petitioners therein had worked on Class III and Class IV posts for periods ranging between five to twelve years, some being permanent workmen while others were seasonal. The U P Cooperative Sugar Factories Federation addressed a communication to the General Manager of the mill noticing that several of the workmen engaged in the mill were surplus and whose services were required to be dispensed with in view of the deteriorating financial condition of the mill. The services of 401 workmen were dispensed with, without notice or the payment of retrenchment compensation under Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947. From this perspective, the matter was looked into from two standpoints. The first was that the writ applications were contested by the mill on the ground that it was not ''State'' or its instrumentality within the meaning of Article 12 and, hence, the writ jurisdiction could not have been validly invoked. On this aspect, the Supreme Court held as follows:

"8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, bye laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non-traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has no where been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self-generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of bye-laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-law 52, a Committee of Management consisting of fifteen members is constituted, out of whom, five members are required to be elected by the representatives of individual members, three out of the cooperative society and other institutions and two representatives of financial institutions besides five members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of State Government in the Committee is only ?rd and the management of the Committee is dominated by ?rd non-government members. Under the bye-laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less a deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is the Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by the Managing Director of the Federation on 22-11-1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of the Mill, as such the same being neither an instrumentality nor an agency of the Government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution."

The Supreme Court then dealt with the alternate submission that even if the mill is not an authority within the meaning of Article 12, a writ application could be entertained, as a mandamus could be issued under Article 226 of the Constitution against any person or authority, which would include a private person or body. The submission that a writ could be issued in the nature of mandamus against a private person or body for an infraction of a public duty, was based on the judgment of the Supreme Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R Rudani, AIR 1989 SC 1607. The Supreme Court held that the mill was engaged in the manufacture and sale of sugar which would not involve a public function. Hence, it was held that a writ petition under Article 226 of the Constitution could not have been invoked. Finally, the Supreme Court also observed that the writ petition itself raised disputed questions of fact since contrary to the assertion that some of the petitioners were permanent workmen, the defence was that all of them were seasonal workmen. Having due regard to this disputed question which was raised, the Supreme Court held that the appropriate remedy would be to seek the invocation of the adjudicatory forum under the Industrial Disputes Act, 1947 and not by way of a writ petition.

10. The issue which arose before the Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd (supra) did not essentially relate to a situation, such as the present, where the infraction which has been complained of, is a breach of statutory regulations on the basis of which a writ of mandamus was claimed. In fact, in a subsequent decision in S.S Rana v. Registrar, Coop Societies, (2006) 11 SCC 634 the Supreme Court dealt with a case where a Branch Manager of a cooperative bank, governed by the Himachal Pradesh Cooperative Societies Act 1968, was terminated after a disciplinary proceeding. In a writ petition, a Division Bench of the High Court held against the petitioner on the ground that the petition was not maintainable. The Division Bench accordingly dismissed the writ petition. The Himachal Pradesh Cooperative Societies Rules 1971 have been framed in pursuance of the power conferred by the Himachal Pradesh Cooperative Societies Act 1968. Rule 56 (5), inter alia, contained a provision by which the Registrar could direct the Committee of a society, pending an investigation into the conduct of an officer or servant of the society into an allegation of grave misdemeanour, to place such a person under suspension. The Supreme Court held that the society had not been constituted under an Act; the State had no role in the functions of the society. Adverting to the provisions of Rule 56, the Supreme Court noted that though the terms and conditions of the officers of the cooperative society are governed by the Rules, Rule 56 did not contain any provisions in terms whereof any legal right as such is conferred upon an officer of the society. Moreover, it was held that the State does not have a deep and pervasive control over the society and general regulations under an Act, such as the Companies Act or the Cooperative Societies Act, would not render the activities of the company or the society as subject to the control of the State. Moreover, it was held that:

"The Society has not been created under any statute. It has not been shown before that in terminating the services of the appellant, the respondent has violated any mandatory provisions of the Act or the Rules framed thereunder. In fact, in the writ petition no such case was made out."

(emphasis supplied)

11. The decision in S S Rana (supra), therefore, involved a situation where neither was a society created under the Statute nor was it established before the Supreme Court that the termination was in violation of the mandatory provisions of the Act or the Rules framed under it. Hence, the decision of the High Court that the writ petition could not be maintainable was sustained.

12. The judgment of the Bench of five learned Judges of this Court in Vijay Bihari Srivastava''s case has been rendered after considering the decisions of the Supreme Court on the subject. The decision binds. Among the decisions of the Supreme Court which have been cited by the Bench of five learned Judges are the following:

(1) Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487.

(2) Tekraj Vasandi v. Union of India, (1988) 1 SCC 236.

(3) Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, AIR 1989 SC 1607.

(4) Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 and

(5) U.P. State Cooperative Land Development Bank Ltd v. Chandra Bhan Dubey, (1999) 1 SCC 741.

13. Having regard to this position, we would necessarily have to hold, as we do, that the broad principle of law which has been formulated in the judgment of the Division Bench in Shrinarayan Gupta (supra) would not be reflective of the correct position of law. Both the judgments of the Division Bench in Shrinarayan Gupta and of the learned Single Judge in Ram Karan would necessarily have to be read in a manner consistent with the view taken in the judgment of the Bench of five learned Judges of this Court in Vijay Bihari Srivastava''s case.

14. The Regulations which have been framed in exercise of the power conferred by Section 122 of the Act are traceable to a source of statutory power. These Regulations are framed by the Cane Commissioner as an authority to whom the functions of doing so have been delegated by the State Government under Section 122. Hence, the Regulations cannot be regarded merely as administrative instructions. The Regulations have been made in pursuance of the statutory power conferred by Section 122.

15. We accordingly answer Questions (2) and (3) referred by the learned Single Judge in the aforesaid terms. Insofar as Question (1) is concerned, the issue would have to be resolved having due regard to the tests which have been laid down in the judgment of five Judges of this Court in Vijay Bihari Srivastava''s case. Moreover, the issue of maintainability is distinct from whether the discretion should be exercised under Article 226 in a given case. Even if a petition is maintainable, the Court may, in the facts of a particular case, decline to entertain it under Article 226 as, for instance, where disputed questions of fact arise or an efficacious alternate remedy is available.

16. Having regard to the fact that the writ petition is still pending, we leave it open to the learned Single Judge to arrive at a decision on the basis of the law as laid down in the judgment of the five Judges of this Court in Vijay Bihari Srivastava, as noted above.

17. The reference is accordingly answered. The petition shall now be placed before the appropriate Bench according to roster for decision in light of this judgment.

