

**(2006) 03 AP CK 0077**

**In the Andhra Pradesh High Court**

**Case No : W.A. No"s. 252 and 255 of 2004**

Atomic Energy Education Society and Others

APPELLANT

Vs

G. Lakshmi and Another

RESPONDENT

**Date of Decision : 16-03-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 141, 16, 21

**Citation :** (2006) 3 ALD 726 : (2006) 3 ALT 209

**Hon'ble Judges :** D. Apparao, J;B. Prakash Rao, J

**Bench :** Division Bench

**Advocate :** Nuty Ram Mohanc Rao, for the Appellant; G. Ravi Mohan, in W.A. 252/2004 and A.K. Jayaprakash Rao, in W.A. 255/2004, for the Respondent

**Final Decision :** Allowed

## **Judgement**

D. Apparao, J.—These two Writ Appeals are filed against the common order of the learned Single Judge in W.P.Nos. 24910 and 25382 of 2002, dated 17-10-2003, declaring the action of the appellants in transferring the writ petitioners to other schools as unjust, illegal and contrary to law.

2. The writ petitioners are working as Sweepers-cum-Farash in Atomic Energy Educational Society (for short "A. E.E.S,"), the appellants herein. They were appointed in 1991 and 1988, respectively, and have been discharging their duties in the A.E.E.S. at Hyderabad. They were transferred to Bombay and Mysore by the impugned order dated 14-05-2002 in the public interest. Assailing the correctness of these transfers, they sought a Writ of Mandamus, declaring the orders of transfer as unjust, illegal and are violative of Articles 14, 16 and 21 of the Constitution of India.

3. The writ petitioner in W.P. No. 24910 of 2002 alleged that in compliance of the same, he reported at Jaduguda, Bombay and thereafter as there was no vacancy, he was again transferred to Anushakti Nagar, Bombay and assigned duties which were unconnected with his nature of the post. Therefore, he suffered serious ill-

health and was bed ridden. His small children were studying at Hyderabad and his wife fell ill. He sought leave which was refused. However, he was compelled to proceed to Hyderabad as there was nobody to look after his family. The appellant had agreed to absorb him through the proceedings dated 02-01-2002 at Hyderabad pursuant to the decision taken in meeting held on 20-07-2001. Contrary to it, he was transferred. In fact, his juniors were retained and accommodated at Hyderabad. This transfer was discriminatory, prejudicial to his interest and offending under Articles 14 and 16 of the Constitution of India. Though the 1st appellant-Society submitted its proposal on 03-09-2001 to R-1 to transfer their services to Nuclear Fuel Complex, the same was not accepted. The low paid employees like them were mercilessly transferred to Metropolitan cities like Bombay, offered meagre salary and they may not be able to survive. Nuclear Fuel Complex has agreed to absorb such of those surplus staff as identified by the College, but the 1st appellant while doing so did not prepare any seniority list of the employees but retained junior employees in the College and illegally transferred them.

4. The writ petitioner in W.P. No. 25382 of 2002 made a similar claim alleging that he was transferred to A.E.E.S. College, Mysore, though he reported duty at the transfer place, on the ground that there was no vacancy, he was assigned duties which were unconnected to his post and as such he fell sick and consequently came to Hyderabad on leave.

5. The appellants resisted the claim stating that 1st appellant-A.E.E.S. is a Society registered under the provisions of Societies Registration Act, 1860 and also under the Bombay Public Trust Act, 1950. It is an autonomous body. It runs various schools for the benefit of the children of the employees of department of Atomic Energy and others. It is running 30 schools at fourteen different stations in different parts of India. These schools are meant primarily for the children of employees in the department of Atomic Energy, but also provide education to several other categories of children, including the children of weaker sections of Society. A.E.E.S. is totally independent in administration and is not a "State" within the meaning of Article 12 of the Constitution of India. Therefore, the writ petition deserves to be dismissed summarily on the preliminary ground alone. In identical cases, the various High Courts as well as Hon"ble Supreme Court opined that writ petition was not maintainable. The various judgments were referred. The writ petitioners accepted the terms and conditions specified in the order of appointment at para-10 of the offer. The said offer specifies that in case of any dispute against the Society in respect of services, the Courts at Bombay shall have jurisdiction. In the case of staff member of A.E.E.S, viz., Sri V.S.R. Murthy, who filed W.P. No. 21534 of 1995 for his non-promotion, this Court vide its order dated 29-09-1995, opined that the writ petition was not maintainable on the ground of lack of territorial jurisdiction. Para-4 of the order of appointment specifies that it is open for the A.E.E.S. to transfer his services to any schools under its aegis without assigning any reasons. The services are transferable to meet the academic and administrative needs and exigencies of

various schools. The Society is managing four schools at Hyderabad. Since there was a rapid fall in students' strength from 1995 onwards, it was decided to close down the Atomic Energy School No. 4. It had become non-viable as the strength came down from 7000 to 2400. Now there are only two schools run by A.E.E.S. at Hyderabad, requiring large size adjustments of the staff. Therefore, they were constrained to transfer Group-D employees instead of retrenching them from the services. Accordingly, the staff working in those institutions were transferred and petitioners are among such persons who had been transferred to Bombay and Mysore. The allegation that juniors were continued at Hyderabad was incorrect.

6. The writ petitioners having joined in pursuance of the transfer order, absented unauthorizedly, came back and got filed these writ petitions. These facts were suppressed. The petitioners are entitled to quarters, medical and other benefits at Bombay and Mysore. Every care has been taken while transferring of surplus employees rather than closing down the institution. The Society has constrained to perform the balancing act. Therefore, they prayed for dismissal of the writ petitions.

7. The learned Single Judge, opined that the 1st appellant-Society squarely falls within the meaning of "State" or "Instrument of State" attracting Article 12 of the Constitution of India by recouring to the decision of the Apex Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, .

8. This contention was not taken in the writ by the writ petitioners. The learned Judge reasoned that the Society is being managed and controlled by Chairman, Atomic Energy Commission or Secretary, Department of Atomic Energy. It is wholly funded by Department of Atomic Energy Department and very much connected to the affairs of the Department of Atomic Energy. The teaching and non-teaching staff are employees of Department of Atomic Energy. Considering the fact that the proposals were submitted by 3rd appellant on 03-09-2001 to transfer the service of the petitioners to Nuclear Fuel Complex and the details were called vide . letter dated 06-07-2002 and as it was not acted upon, solely, on the ground that the 1st appellant-Society is autonomous establishment. Therefore, the writ of Mandamus was issued to the 1st appellant-Society to consider and implement the proposal dated 03-09-2001 to transfer services of the petitioners to the 2nd appellant-Nuclear Fuel Complex, Hyderabad. The learned Single Judge also observed that the Society could as well adopt one or more of 250 slums situated at Hyderabad and impart education to them in consonance of the Directive Principles of State Policy enshrined under Article 47 of the Constitution of India. Accordingly, the impugned transfer orders were set aside and writ petitions were allowed with the above directions.

9. Aggrieved by the said orders, these appeals were preferred by the A.E.E.S. and the Principal of the said College contending that the order is neither sustainable at law nor on facts. The transfer of employee is purely an incidence of service and in fact, such transferability forms part of the conditions of service.

The appellant-Society, at no stretch of imagination could be treated as "State" attracting Article 12 of the Constitution of India and thus not amenable to the writ jurisdiction. It is a Society, receiving grant in aid for the purpose of establishing, managing and running various educational institutions. Various Judgments have been passed by the various High Courts as well as by the Supreme Court settling the above said issue in identical cases pertaining to the very same institution making it clear that writs are not maintainable. The learned Single Judge should have appreciated that the petitioners were not alone that were transferred due to fall of strength. The appellant-Society had to close down two of its educational institutions and instead of retrenching surplus staff, it has transferred them to various places. In fact, the very Single Judge has passed order dated 12-12-2002, while disposing W.P. No. 16713 of 2002 upholding the transfer orders issued by the appellants. Therefore, they prayed that the orders of the learned Single Judge be set aside and allow the writ appeals.

10. It is undisputed fact that the writ petitioners are working as Sweepers in A.E.E.S., registered under Societies Registration Act, 1860 and also under the Bombay Public Trust Act, 1950. It is an autonomous body. The Society is running various institutions in different parts of India primarily to cater the needs of children of employees in the department of Atomic Energy besides providing education to several other categories including children of weaker sections of Society.

11. It is not in dispute that the department of Atomic Energy is a part of Government of India. Its main objects are to regulate and control the scientific installation and atomic energy programme. It has nothing to do with the Management and running of the schools by the 1st appellant-Society. At no stretch of imagination, the employees of the appellant could become the employees of the atomic energy. No doubt, it receives grant in aid for the purpose of establishing, managing and running various educational institutions by it. However, it cannot be considered as functions of the department of Atomic Energy, Government of India. A perusal of the proceedings shows that the Nuclear Fuel Complex belonging to the department of Atomic Energy has explored the possibility of absorbing the surplus staff of the appellant-Society but they were found unsuitable for their absorption. The department of Atomic Energy has no control over the 1st appellant-Society. Obviously A.E.E.S. has established schools at places where department of Atomic Energy is established or situated. Since there was a rapid fall in students' strength from 1995 onwards, it was decided to close down the Atomic Energy School No. 4. It had become non-viable as the strength came down from 7000 to 2400. Now there are only two schools run by A.E.E.S. at Hyderabad, requiring large size adjustments of the staff. Therefore, they were constrained to transfer Group-D employees instead of retrenching them from the services. Accordingly, the staff working in those institutions were transferred and petitioners are among such persons who had been transferred to Bombay and Mysore.

12. Earlier, a number of writ petitions were filed by the staff of the very A.E.E.S. and various Courts opined that the appellant being a Society not amenable to the writ jurisdiction. It was held that the Society is not a "State" or "Instrumentality of State". The details of the writs were mentioned in the very counter, but the learned Single Judge brushed aside all those decisions without adverting to the orders passed therein. In *Ghanendra Singh Lodhi v. Atomic Energy Education Society and Ors.* C.W.J.C. No. 2166 of 1996, the High Court of Patna held "Admittedly, respondent No. 1 is a society registered under the Societies' Registration Act and the said society is running schools in so many places. In my opinion, it is not a "State" within the meaning of Article 12 of the Constitution of India. Therefore, this Writ Petition is not maintainable and is accordingly dismissed."

13. On an appeal, the Supreme Court dismissed the same in (Civil/Crl.) No. (S) 20768/97, by order dated 21-11-1997. By virtue of Article 141 of the Constitution of India, the decision is binding on all the Courts. The decision is applicable on all fours to the facts of the case. In the light of the above, the decision relied in *Pradeep Kumar Biswas* cannot be invoked. Besides, a catena of cases filed by the employees against the very 1st appellant-Society show that the writ petitions were dismissed as not maintainable it being a Society.

14. When an employee of 1st appellant-Society filed WP. No. 690 of 1998 in the High Court of Bombay, the learned Judges by virtue of the orders of the Supreme Court referred to above observed "However in view of the decision of the Patna High Court (Ranchi Bench) and the Supreme Court we do not find that it is open to us to concede to the request of the learned Counsel for the petitioner, Prayer for re-examining the issue afresh is therefore rejected. From the above it is clear that the respondent No. 2 society is not an instrumentality of the State within the meaning of Article 12 of the Constitution." Another Writ in W.P. No. 1320 of 1999 was dismissed by the same Court by order dated 05-05-1999 holding "In view of the confirmation of Patna High Court Judgment by the Supreme Court in Appeal (Civil) No. 20768 of 1997 copy of which has been shown to us, obviously no writ lies against the Respondent Society which has registered under the Societies Registration Act, 1860. Petition is, therefore, rejected at admission stage on the aforesaid ground."

15. Our own High Court in W.P.Nos. 21534 of 1995, dated 29-09-1995 dismissed the writ petition on the ground of lack of jurisdiction. Repeatedly, when the employees of 1st appellant-Society filed the writs against the orders of transfer in W.P.Nos. 13441 of 1999, 15109 Of 2000, 9691 of 2002, 16713 of 2002, 16303 of 2000, 13562 of 1999 and 12708 of 1995, the writs were dismissed holding that they were not maintainable. In fact, the very learned Single Judge earlier in W.P. No. 16713 of 2002, filed by a Sweeper, one of the employees of the 1st appellant-Society when transferred from Hyderabad, dismissed the writ by order dated 20-12-2002. The copies of all the Judgments are made available in the record. In view of the consistent orders, the writ petitions filed by the employees

do not sustain. They are misconceived.

16. Considering that the transfer is made on administrative grounds, and it was not denied that the post was a transferable job, and the transfer being permissible for the needs and exigencies, the transfer of the writ petitioners cannot be assailed. They have been continuing for the last two or three years under the interim directions. Hence, we do not see any merits in the contentions of the writ petitioners-employees.

17. The learned Counsel for the writ petitioners contended that they are lowly paid employees, working as Sweepers and may not be able to lead their lives at Bombay and Mysore, as are leading at Hyderabad. He also reeled out personal sufferings of the petitioners. The petitioners can as well make representations to the authorities concerned and we believe that they will be considered in correct perspective uninfluenced by any of the observations made in this regard.

18. In the result, these two Writ Appeals are allowed setting aside the orders of the learned Single Judge dated 17-10-2003. However, it is open for the 1st appellant-Society to consider and dispose of the representations, if the petitioners wanted to submit explaining their difficulties, in accordance with the rules. No costs.