
(2006) 04 AHC CK 0268
In the Allahabad High Court
Case No : Writ Petition No. 2280 (S/S) of 2006

Badloo Ram and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Uttar Pradesh Regularization of Daily Wages Appointments on Group D Posts Rules,
2001 — Rule 3, 4, 5

Citation : (2006) 6 AWC 6544

Hon'ble Judges : Sri Narayan Shukla, J

Bench : Single Bench

Advocate : L.P. Misra, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Shri Narayan Shukla, J.—Heard Dr. L.P. Misra, learned Counsel for the Petitioners and learned standing counsel for the Respondents.

2. Learned standing counsel has raised an objection against the maintainability of the writ petition on the ground that the Petitioners are working in District Rural Development Agency, which is not a State and thus the writ petition is not maintainable under Article 226 of the Constitution of India. In support of his contention the learned standing counsel has relied upon a judgment of this Court rendered in the case of Nanhey Lal Vs. State of U.P. and Others, wherein this Court has held that the District Rural Development Agency is only an agency and a registered society. It does not conform to any test laid down by the Apex Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and further held that there is no material on record to show that the District Rural Development Agency is a instrumentality of the State within the meaning of Article 12 of the Constitution of India. There is no material to show that the State Government has deep and pervasive control on day-to-day affairs of the Agency

and that the State Government pays the salaries of the employees working under the Agency.

3. In reply of the objection the learned Counsel for the Petitioner has submitted that the District Rural Development Agency has been established by the State Government for the purpose of Rural Development about 25 years ago. The District Magistrate of the concerned district is the Chairman of the District Rural Development Agency and the programme of the rural development is controlled and supervised by the Chief Development Officer of the District Rural Development Department at the district level. The Agency is run with the financial assistance of revenue of State Government and Central Government to the extent of 100 and is controlled and maintained by the officers of the Indian Administrative Services employed and posted as District Magistrate or the Chief Development Officer or District Development Officer in accordance with the instructions and directions issued by the State Government and it is involved in the rural development, which is the obligation of the State Government as enumerated under the Directive Principles of the State Policy and in the way now it has become almost a permanent feature of rural development. The District Rural Development Agency is under pervasive control of State Government and is directly linked with the object and goal sought to be achieved by the State under the constitutional obligation imposed upon it by means of the Directive Principles of the State Policy. The officers of the State of Uttar Pradesh are appointed for administration and management of the society and the District Rural Development Agency, Bahraich is fully funded by the Government, i.e., 75% by Central Government and 25% by the State Government and thus the District Rural Development Agency, Bahraich is an instrumentality of the State and, therefore, it is amenable to the writ jurisdiction under Article 226 of the Constitution of India.

4. The learned Counsel for the Petitioner submitted that after the judgment of Ajay Hasia's (Ajay Hasia v. Khalid Mujib Sehravardi) case and Ramana Dayaram Shetty's case, which has been relied by this Court in the judgment of Nanhey Lal (supra) the controversy has been settled by the Apex Court in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, and after considering the several judgment including the judgments referred here-in-above, the Apex Court in paragraph 40 has held as under:

40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be-whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the

body a State.

5. Recently some questions have arisen before the Supreme Court in the case of Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, as to whether the U.P. Rajya Karmachari Kalyan Nigam is covered by the definition of "State" under Article 12 of the Constitution of India and is amenable to the writ jurisdiction under Article 226 of the Constitution of India as this Court dismissed the writ petition as not being maintainable. The Supreme Court after taking into account the composition, administrative and financial Corporation of the Nigam held Rajya Karmachari Kalyan Nigam is an "agency of the State" and observed as under:

On detailed examination of the administrative, financial and functional control of the Corporation, we have no manner of doubt that it is nothing but an "instrumentality and agency of the "State" and the control of the State is not only "regulatory" but it is "deep and pervasive" in the sense that it is formed with the object of catering to the needs of the Government employees as a supplement to their salaries and other perks. The top executives of the Government department ex-officio are members and office bearers of the Corporation. The Corporation is fully supported financially and administratively by the State and its authorities. Even day-to-day functioning of the Corporation I watched, supervised and controlled by the various departmental authorities of the State particularly the Department of Food and Civil Supplies. The multiple test indicated to be applied both by the majority and minority view in Pradeep Kumar Biswas is fully satisfied in the present case for recording a conclusion by us that the Corporation is covered as an "agency and instrumentality of the State" in the definition of "State" under Article 12 of the Constitution. It is, therefore, amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

6. In this Court also the same question arose in a case of Radhey Shyam Rai v. State of U.P. and others, 2005 (3) UPLBEC 2549 (FB) and the point before a Full Bench of this Court was under consideration as to whether the U.P. Ganna Kisan Sansthan is State under Article 12 of the Constitution of India and a writ for certiorari or an order in the nature of writ of certiorari is maintainable against the "Sansthan" under Article 226 of the Constitution of India. This Court observed that nature of duty imposed on the body is a relevant factor to determine whether a writ under Article 226 of the Constitution of India can be issued or not? No doubt if the rights are purely of a private character, no mandamus can be issued but at the same time to determine whether a Society is an authority within the meaning of Article 12, the basic requirement is to know how it was created, then the composition of Management and control of the State including the functions which are discharged by such society and held that the deep and pervasive control of the State Government is apparent from the fact that earlier the Cane Commissioner happened to be the Ex-officio Chairman of the Government Council but at present the Minister Incharge of the Cane

Development of the Government of U.P. is the Chairman. The Principal Secretary, Sugar Industry and Cane Development is the Vice-Chairman whereas the Director of the Sansthan is an officer of the State Government sent on deputation, he is also the Member Secretary of the Governing Council. Similarly, the Accounts Officer/Finance Controller is an officer of the State Government and is sent on deputation. Further, the majority of the members of Governing Council are by virtue of their respective offices are under the State Government. Therefore, it is apparent that the Director and the Account Officer, who play vital role in carrying the affairs of the Sansthan are the Government Officers and the "Sansthan" has no power to appoint anybody of his choice on those posts. Thus, a Full Bench of this Court answered the question in the manner that the U.P. Ganna Kisan Sansthan fulfils all the test prescribed and can be called a public body and discharge duties, which are in the nature of public duties or obligations and is an "instrumentality" of the State. Its functions are also akin to Governmental functions.

7. The Petitioner has filed the memorandum of association of District Rural Development Agency, Bahraich in which the Chairman, Zila Panchayat, Bahraich is the Chairman and M. Ps., M.L. As., M.L. Cs. of Bahraich, Chairman of all the Standing Committees of Zila Panchayat, Bahraich, General Manager, District Industries Centre, Bahraich, Chief Medical Officer, Bahraich, District Agriculture Officer, Bahraich, Chief Veterinary Officer, Bahraich, Assistant Director Fisheries, Bahraich, Divisional Forest Officer, Bahraich, Executive Engineer, Jal Nigam, Bahraich, Executive Engineer, Minor Irrigation, Bahraich, Assistant Project Officer (Women), Bahraich are the Members of the Agency and powers of the Governing Body have also been given.

8. After perusing the same I reach the conclusion that there is deep and pervasive control of the State on the District Rural Development Agency, Bahraich, with respect to the administrative functions and its other functions and that is why accordingly it is held that District Rural Development Agency, Bahraich, is an instrumentality of the State under Article 12 of the Constitution of India and is amenable to writ jurisdiction. Accordingly, I proceed to decide the case on its merits.

9. It has been submitted in the writ petition that the Petitioner No. 1 was appointed on 14.11.1986 on class IV post and Petitioner No. 2 was appointed on 18.4.1987 by the competent authority and since then they are working continuously and discharging their duties. They have annexed the experience certificates as Annexure-2 to the writ petition, which certifies their working since 1986-87. A circular dated 17.3.1994, issued by the State Government is on record, whereby the general guidelines were issued to the District Magistrates/Chairman of the District Rural Development Agencies of the State with respect of appointment and regularisation of the employees working in the District Rural Development Agency, through paragraph 9 of which a direction has already been issued to the effect that the employees of the District Rural Development Agency

would be governed by the Rules, Regulations and orders, which are applicable with respect to the employees working in affairs of the State Government. In paragraph 2 of the aforesaid circular it has been admitted that the expenses against the salaries of the employees of the District Rural Development Agencies are borne by the Union of India as well as the State Government. On account of which the decision has been taken to adopt a uniform policy with respect of their appointments, source of appointments, educational qualifications and service conditions, etc.

10. On the strength of the aforesaid facts they submitted that they are entitled to be considered for regularisation under the U.P. Regularisation of Daily Wages Appointments (on Group "D" Posts) Rules, 2001.

11. In light of the aforesaid facts and circumstances a writ of mandamus is issued to the Respondents to consider the Petitioners' case for regularisation under the aforesaid Rules alongwith other similarly situated eligible candidates subject to their eligibility in accordance with the Rules.

12. The writ petition is allowed accordingly.