
(2006) 05 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18374 of 2005

Balwan Singh Madad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 143 PLR 494

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Surinder Singh, for the Appellant; Daya Chaudhary, Assistant Solicitor General of India for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant writ petition filed under Article 226 of the Constitution prays for quashing order dated 26.10.2004 (Annexure P.3) and order dated 8.1.2005 (Annexure P.5). Both these orders have been issued by the Air Force Group Insurance Society-respondent No. 3. The petitioner has impleaded the Union of India and Chief of Air Force as respondent Nos. 1 and 2, who have pleaded that they have neither any financial contribution to the corpus of the Society-respondent No. 3 nor they exercise any administrative control over it. It has been asserted that the Society-respondent No. 3 is a registered Society under the Society Registration Act, 1860 (for brevity "the Act") at Delhi and it has no support from the Government or any other outside source. The income of the Society is in the form of contribution received from its members and the interest generated on such income by investment. The corpus is being used to effect payment on account of death, disability and survival benefit claims. It has been asserted that no relief has been claimed against respondent Nos. 1 and 2 as there is no cause of action against them. It is alleged that the writ petition is not maintainable against respondent No. 3 which is a private body and is registered under the Act.

2. After hearing the learned Counsel, we are of the view that the society respondent No. 3 is a purely private body which completely lacks any public character. It appears to us that Air Force Officers/Officials have formed a corpus for their own mutual benefit which is used in case of death, disability and survival benefits and disburse from that corpus. The petitioner has failed to show despite repeated queries by us any financial or administrative control over respondent No. 3 either by respondent Nos. 1 and 2 or by any other governmental agency or authority. It appears to us that the character of the body is purely for the benefit of its members. It is true that merely because the society is registered under the Act would not be sufficient to hold that it is not an agency or instrumentality of the State within the meaning of Article 12 of the Constitution. A variety of tests have been laid down by the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . The question raised before their Lordships in *R.D. Shetty's case* (supra) was as to whether the corporation could be regarded as an "authority" within the meaning of Article 12 of the Constitution. A number of tests were laid down which have been summarised by the Constitution Bench of the Supreme Court in the case of *Alav Rasia v. Khalid Mujib* AIR 1987 S.C. 487 and the same reads as under:

(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2)" Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character

(3) "It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) "Existence of "deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

(5) "If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) "Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in *International Air Port Authority's case*, be an "authority" and, therefore, "State" within the meaning of the expression in Article 12.

3. The afore-mentioned tests laid down by their Lordships have been widely followed in the later judgments including *Tekraj Vasandi alias K.L. Basandhi Vs.*

Union of India (UOI) and Others, and Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, . In the later judgment, the Constitution Bench has recorded the principles laid down in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, . It was laid down in Pradeep Kumar Biswas's case (supra) that the principles laid down in Ajay Hasia's case (supra) were not rigid set of rules; the question in each case whether a particular body should be considered a "State" within the meaning of Article 12 of the Constitution have to be considered on the basis of the facts available, if such a body is found to be financially, functionally, administratively dominated, by or under the control of the Government and these facts are established then it may be found to be an agency of the State; mere regulatory control whether under statute or otherwise has not been considered to make the body as a State. The control is required to be pervasive.

4. This question has also been considered by the Full Bench of this Court in the case of Ram Parshad v. Indian Institute of Bankers (1991) 100 P.L.R. 601

5. Applying the principles laid down in the afore-mentioned judgments, we are of the view that the basic requirement for making respondent No. 3 amenable to writ jurisdiction of this Court is completely absent in the present case what to talk of any financial or administrative control. There is not even a whisper that respondent No. 3 is discharging any such functions which are likely to effect the public at large. Therefore, we find that respondent No. 3 cannot be amenable to writ jurisdiction of this Court as it is neither an "authority" or an agency of the State within the meaning of Article 12 of the Constitution.

6. For the reasons stated above, this petition fails and the same is dismissed being not maintainable. However, the petitioner may avail any other remedy, if so advised, in accordance with the law.