

(1998) 11 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 4923/98 K

Chandran, T.K.

APPELLANT

Vs

Dakshina Bharatha Hindi Prachar Sabha and Others

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Dakshina Bharat Hindi Prachar Sabha Act, 1964 — Section 4

Citation : (1998) 11 KL CK 0004

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : Sajan Manali, K.M. Poullose and Santhi K. Pai, for the Appellant;
Jacob Varghese, for the Respondent

Judgement

C.S. Rajan, J.—The Petitioner was the Managing Trustee of the first Respondent. He was removed from the Office of the Managing Trustee as per Exhibit P-7. It is Exhibit P-7 that is under challenge in this Original Petition.

2. Sri Jacob Varghese, learned Counsel appearing for the Respondents has taken the preliminary objection that the first Respondent is neither a State nor an instrumentality of the State as understood in Article 12 of the Constitution of India and therefore, is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution.

3. According to the counter-affidavit filed by the first Respondent, the first Respondent is a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act. Therefore, according to the Respondents, the character of the first Respondent is only that of a Society registered under the Societies Registration Act. The learned Counsel also relied on the following decisions to contend that this Court will not be justified in issuing any direction to the first Respondent or to quash any orders passed by the first Respondent. The learned Counsel specifically emphasized the decision of a Full Bench of this Court reported in Bhaskaran v. Additional Secretary 1987 (2)

KLТ 903. In the above decision this Court was of the view that a Society registered under the Kerala Co-operative Societies Act is not a creation of the Statute. It was only registered under the Co-operative Societies Act. Therefore, such a Society is neither a State nor an instrumentality of State as defined in Article 12 of the Constitution of India.

4. On the other hand the Petitioner has contended that the Parliament has passed the Dakshin Bharath Hindi Prachar Sabha Act (Act XIV) of 1964 by which the first Respondent has been declared as an Institution of National Importance. The Petitioner has produced the above Act as Exhibit P-10. By Section 4 of the above Act the first Respondent may hold such examinations and grant such degrees, diplomas and certificates for proficiency in Hindi or in the teaching of Hindi as may be determined by the Sabha from time to time. The Sabha also shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as may be prescribed by the Central Government. The accounts of the Sabha shall be audited by a Chartered Accountant at least once in every year. A copy of the audit report shall also be forwarded to the Central Government for its information. Section 6 of the Act contains the following provisions. Notwithstanding anything contained in the Societies Registration Act, 1960 or in the memorandum of rules and regulations, the Sabha shall not alter, extend or abridge without the previous approval of the Central Government, any of the purposes for which it has been established. The Sabha also shall not be amalgamated with any other institution or Society. Section 7 empowers the Central Government to constitute committees for the purposes enumerated therein.

5. In the counter-affidavit it has been stated that the first Respondent is the provincial branch of the fifth Respondent about which Act 14 of 1964 was enacted. Of course the counter-affidavit also states that Respondents 1 and 5 are autonomous bodies without any Governmental control over its financial matters or administrative matters.

6. In view of the various provisions contained in exhibit P-10 Act it will be impossible to hold that the Central Government has no "deep and perversive control" as contended by learned Counsel for the Respondents. There is one more reason to hold that the first Respondent is amenable to the writ jurisdiction of this Court. The first Respondent is engaged in propagating our national language. Respondents 1 and 5 are also empowered to confer degrees, diplomas and certificates. Under these circumstances, actually Respondents 1 and 2 are discharging public duties and it need not be emphasised that the propagation of national language is really a public duty. On that score also it can be said that an institution like Respondents 1 and 5 who are engaged in effectively propagating the growth of national language are discharging public duties. Therefore, under Article 226 of the Constitution even if the first Respondent is not a State or other instrumentalities, this Court can (sic) issue directions to the first Respondent.

7. The Petitioner was elected first to the Nidhi-Palak Samithi for four years. The above election is from among the Vyavasthapika Samithi, The members of the Nidhi-Palak Samithi elect the Prabhandha Nidhi-Palak (Managing Trustee) as per Rule 13(v) of the bye-laws of the first Respondent. The Petitioner was elected to the above post in January, 1997. There is no provision for removing the Managing Trustee in the bye-laws. Therefore, the removal of the Petitioner from the post of Managing Trustee by the first Respondent is without jurisdiction. The fact that there was no provision in the bye-laws for removal of the Managing Trustee has not been denied in the counter-affidavit or by the learned Counsel in his arguments. Confronted with the above situation the learned Counsel tried to sustain the action of the first Respondent on the basis of a ruling of this Court reported in *Narayan Nair and Another Vs. Joint Registrar of Co-operative Societies and Others*, . In the above case this Court considered the legality of the removal of a President of a Co-operative Society by passing a non-confidence motion. The facts of that case disclose that there was provision in the Act and Rules as well as in the bye-laws for moving and passing a non-confidence motion against the President of a Society. Therefore, the action in that case was quite consistent with the bye-laws of the Society. In this case as already noticed that there was no provision in the bye-laws for removal of a managing Trustee. Therefore, I do not think the learned Counsel was justified in relying on the above decision to sustain Exhibit P-7 order.

Therefore, I quash Exhibit P-7. The first Respondent is directed to restore the position of the Petitioner as Managing Trustee forthwith.

Original Petition is disposed of as above.