
(1986) 12 KL CK 0024

In the High Court Of Kerala

Case No : Writ Appeal No's. 195 and 212 of 1982 and 358 of 1985

C.J. Thomas and Others

APPELLANT

Vs

South Indian Bank Ltd. and Others

RESPONDENT

Date of Decision : 18-12-1986

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1986) 2 ILR (Ker) 82 : (1987) 2 LLJ 193

Hon'ble Judges : V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : Manuel T. Paikeday, Mathai M. Paikeday, N. Nandakumara Menon and K.M. Joseph, for the Appellant; S. Narayanan Poti, S. Sankarasubban and B.V. Deepak, for the Respondent

Judgement

Bhaskaran Nambiar, J.—The short question in these three writ appeals is whether, the banks, the Catholic Syrian Bank Ltd. and the South Indian Bank Ltd., included in the Schedule to the Reserve Bank of India Act, is "State" within the meaning of Article 12 of the Constitution. These banks are not nationalised under the Bank Nationalisation Act.

2. The appellants employed in these banks were not selected for promotion to higher categories and filed these writ petitions against the two banks, challenging their supersession. At the threshold, the question of jurisdiction arose. All the three writ petitions have been dismissed on the ground that these banks are not "State" under Article 12 of the Constitution and, therefore, not amenable to the writ jurisdiction of this court. It is against these decisions that these appeals have been filed.

3. At the outset, it has to be stated that the factual basis has not been made in the pleadings to lead to the conclusion that these scheduled banks are "other authorities" and, therefore, "State" under Article 12. In fact, there is no averment in O. P. No. 1912 of 1982 that the South Indian Bank Ltd. is "State ". In the other two writ petitions, the only averments are that the two scheduled

banks are under the strict control of the Reserve Bank of India and that the chairmen of these banks are appointed by the Reserve Bank. The bank's stand is seen from paragraph 7 of the counter affidavit in O. P. No. 5964 of 1983 :

The contentions in paragraph 10 of the petition are not correct. The chairman of the bank is appointed by the board of directors and the fact that in certain circumstances provision, is made in the Banking Regulation Act empowering the Reserve Bank to nominate the chairman does not make the first respondent bank an authority of the Government. The bank has been incorporated under the Indian Companies Act and not formed under the provisions of the Banking Regulation Act as stated in the petition. The entire management of the company and its affairs are vested in the chairman of the board of directors of the company who exercises his powers subject to the superintendence, control and direction of the board of directors. The entire shareholding of the company is owned by private parties, the finances of the bank are raised by its own efforts and the profits of the bank are utilised by the bank for its purposes. The fact that the regulatory provisions of the Companies Act, 1956, or the Banking Regulation Act, 1949, are applicable to the company does not make it an instrumentality of the Government or "other authority" within the meaning of either Article 12 or Article 226 of the Constitution. Like any other company functioning under the Companies Act, the first respondent-bank is also functioning under the said Act and being a banking company, it is subjected to the regulatory provisions of the Banking Regulation Act also. It performs no sovereign functions nor can it exercise any authority over third persons. The regulatory provisions of the enactments, referred to above, are intended only for the proper functioning of the company and are relatable to the police power of the State. None of the tests which are usually applied by the courts to ascertain whether a concern is to be deemed an authority or an instrumentality of the Government is satisfied in the case of the first respondent bank. It is no more than a company under the company law in like manner as a registered society or a cooperative society registered under the applicable Acts. The bank exercises no jurisdiction of a public nature. It cannot by its own will alter the duties, liabilities or other legal relations of third persons or even of itself. It is merely engaged in a commercial undertaking of receiving deposits from the public and advancing loans and performing other ancillary monetary transactions. It is, therefore, respectfully submitted that neither Article 12 nor Article 226 of the Constitution of India is attracted".

4. The question as to whether a scheduled bank is "other authority" within the meaning of Article 12, or whether it is an instrumentality or agency of the Government is not a pure question of law which can be decided de hors the pleadings. The answer depends on the facts to be pleaded and proved and cannot depend on surmises or conjectures. The appellants have not pleaded any relevant or necessary facts to arrive at the conclusion that the banks satisfy the test to be a "State" under Article 12.

5. The features and circumstances to distinguish an authority as an instrumentality or agency of the State have been stated and restated by the Supreme Court in the last two decades and almost all the important decisions have been referred to in a recent decision of this court in *K.S. Sofhi v. Fertilizers and Chemicals Travancore Ltd.* [1984] KLT 32 : 64 FJR 208. Summarising the principles, this Court held thus (headnote of KLT) :

"An authority is a State within Article 12 of the Constitution if it is an instrumentality or agency of the Government. To decide whether it is an instrumentality or agency of the Government due regard may be had to the following characteristic features and the facts and circumstances of each case.

(a) The entirety or a massive majority of the share capital in the hands of the Government is a penetrating index that it is an instrument or agent of the Government.

(b) "Deep and pervasive" State control is an affirmative assurance that it is Government agency or instrumentality. This can be gathered from the following surrounding circumstances as well :

(i) Domination in the composition of the society or company by the representatives of the Government.

(ii) Subjection to the directions of the Government for the performance of its functions.

(iii) The concurrence or approval of the Government for making rules and regulations.

(iv) The accounts requiring scrutiny and satisfaction of the Government.

(v) The effective control of the affairs of the society/corporation by the Government.

(c) Substantial financial assistance by the Government meeting practically the entire expenditure of the company gives an added colour and flavour of Governmental agency.

(d) The public importance of the functions, in its nature allied to Governmental activity, is also yet another vital indication.

(e) Monopoly status of the Corporation either conferred or protected by the State.

(f) Statutory origin of the corporation/company may be the hallmark of "State", but the absence of this birth mark need not exclude it from the expansive area of "State", within Article 12."

6. Admittedly, the Government has no shares in these two banks. There is no deep and pervasive State control ; nor is the management of the banks controlled by the representatives of the Government. The effective control of the affairs of the bank rests with the board of directors of the bank. There is no

financial assistance by the Government, much less any substantial financial assistance by the Government to these banks to meet their expenditure. We have, therefore, no hesitation in holding that these two scheduled banks are not instrumentalities or agencies of the Government and, therefore, not "State" within the meaning of Article 12 of the Constitution.

7. It was strenuously argued before us that these two banks are discharging public functions and that there is an effective and strict control by the Reserve Bank and that would be sufficient to bring these two banks within the definition of "State" in Article 12. It may be that these banks are discharging public functions or that the functions they discharge are sufficiently important to the public. It is true that the Reserve Bank of India has a hold and control over the functioning of all scheduled banks. These two features alone cannot make these two banks instrumentalities of the State. A mere statutory regulation or restriction in the conduct of the affairs of a company or society is not an imprint of "State" under Article 12. It is well within the province of a statute to impose reasonable restrictions. They have protection under Article 19(5) of the Constitution. The State can thus regulate and even prohibit the conduct of trade or business. As observed by Mathew J. in Sukhdev Singh's case [1975] 45 Comp Cas 285, 318 (SC).

"A mere finding of State control also is not determinative of the question, since a State has considerable measure of control under its police power over all types of business operations ."

8. When it is said that deep and pervasive control is one of the distinguishing features of "State" or "other authority" within the meaning of Article 12, what is meant is deep and pervasive financial control and not strict and severe statutory restriction.

9. Counsel for the appellants laid considerable stress on the recent decision of the Supreme Court in Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others, and invited our attention to paragraph 8 of the judgment which reads thus (at page 368):

" The matter can be viewed from a slightly different angle as well. After the decision of the Constitution Bench of this court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , the aided school receiving 95% of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and is subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of Headmaster to be valid must be approved by the Director of Public Instruction, would certainly be amenable to the writ jurisdiction of the High Court. The High Court unfortunately did not even refer to the decision of the Constitution Bench in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, rendered on November 13, 1980, while disposing of the writ petition in 1983. In Ajay Hasia's case, Bhagwati J., speaking for the

Constitution Bench, *inter alia*, observed that "the financial assistance of the State is so much as to meet almost the entire expenditure of the Corporation, it would afford some indication of the Corporation being impregnated with Governmental character". Add to this "the existence of deep and pervasive State control which may afford an indication that the Corporation is a State agency or instrumentality. "Substituting the words "public trust" in place of the "corporation", the reasons will *mutatis mutandis* apply to the school. Therefore, the High Court also was in error in holding that the third respondent school was not amenable to the writ jurisdiction of the High Court,"

10. Paragraph 7 of the judgment is also relevant which reads thus (at page 367):

"The High Court declined to grant any relief on the ground that an aided school is not "other authority" under Article 12 of the Constitution and is, therefore, not amenable to the writ jurisdiction of the High Court. The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969 Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression "Tribunal" as used in Article 227 of the Constitution which confers power of superintendence over all courts and Tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review, namely, a writ of certiorari by the High Court under Article 227 of the Constitution. The decision questioned before the High Court was of the Deputy Commissioner and the Commissioner exercising powers u/s 3 of the 1969 Act. And these statutory authorities are certainly amenable to the writ jurisdiction of the High Court."

11. The Supreme Court was not laying down any new principle or departing from the principles stated by the Constitution Benches earlier. The Supreme Court followed its own decision in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , and noted that the financial assistance of the State to the aided schools was about 95% by way of grant from the public exchequer, that the employees received statutory protection and that the relevant State Act created Tribunals which were subject to the superintendence and control of the High Court. The present cases are thus clearly distinguishable on facts, The statutory control of the Reserve Bank cannot be equated to the control of the State and the finances of the State are not involved in the management of the banking business of these scheduled banks. The Supreme Court decision does not afford any assistance to the appellants.

12. In the result, we agree with the learned single judge that the two scheduled banks, the Catholic Syrian Bank Ltd, and the South Indian Bank Ltd., are not amenable to the writ jurisdiction under Article 226 of the Constitution as they are not "other authorities" within the meaning of Article 12. The writ petitions are not maintainable and they were rightly dismissed.

13. These appeals fail and are also dismissed but, in the circumstances of the case, no costs.