
(2001) 09 DEL CK 0139

In the Delhi High Court

Case No : Civil Writ Petition No. 2589/99

CSIR Scientific Workers Association

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2002) 61 DRJ 286

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Prashant Bhushan, for the Appellant; Naveen Chawla, for Respondent No. 1, Mukul Rohatgi, A.S.G., Indu Malhotra and Madhu Surekha, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—This petition has been filed as a public interest petition seeking appropriate writ, order or direction under Article 226 of the Constitution of India including a writ in the nature of mandamus seeking restoration of the publication and copyright of "The Wealth of India"/Bharat Ki Sampada" to the National Institute of Science Communication and for release of the copy of enquiry report of Mr. D K Sangal for the public and consequent disciplinary action against the respondents. The petitioners have raised the issue of restoration of publication and copyright of encyclopedia on mineral and biological resources of the country called the Wealth of India/Bharat Ki Sampada, the publication of which is alleged to have been stopped on account of illegal and mala fide transfer of information, database and copyright from the Government organisation called NISCCM to a new private society created by respondent No. 3. The petition has been listed on various occasions and affidavits have been filed on behalf of respondents 2 and 3 though no show cause notice has been issued. The said respondents have challenged the bona fides of the petition and have claimed that petitioner No. 1 had filed a similar writ petition No. 726/98 earlier raising the

similar grounds which had been dismissed on 18th February, 1998 as not a fit case to be entertained as a public interest petition. The affidavit has sought to rebut the allegations of the petitioners and has relied upon the observations of this court in the case in CWP No. 1698/98 Centre for Public Interest Litigation, Delhi v. Union of India and Ors. where an order was passed on 5th May, 1998 to the effect that where a competent authority is seized of the matter, it is not appropriate to keep the writ petition pending. It is claimed that action is being taken in pursuance to the report of Sangal Committee. It was further stated that two publications mentioned continued to be published. A preliminary objection has also been taken that the writ petition under Article 226 of the Constitution of India would not be maintainable in view of the judgment of Supreme Court in Sabhajit Tewary Vs. Union of India (UOI) and Others, where CSIR was held not an authority within the meaning of Article 12 of the Constitution of India.

2. In view of this preliminary objection being raised about the maintainability of the petition, we deemed it expedient to hear the learned counsel for the parties on this preliminary issue of maintainability before proceeding any further in the matter.

3. Mr. Mukul Rohatgi, Additional Solicitor General, instructed by Ms. Indu Malhotra, Advocate has objected to the maintainability of the petition and has relied upon the judgment in Sabhajit Tewary's case (supra). The learned Additional Solicitor General submitted that the Supreme Court had considered the composition of the Council of Scientific and Industrial Research (for short CSIR) and, thereafter, held that it is not an authority within the meaning of Article 12 of the Constitution of India. It would be relevant to reproduce paras 2, 3 and 4 of the said judgment.

"2. In order to entitle the petitioner to impeach the circular on the ground of infraction of Articles 14 and 16, the petitioner has to establish that the Council of Scientific and Industrial Research is an authority within the meaning of Article 12 of the Constitution.

3. The Council is a society registered under the Societies Registration Act. Reliance was placed by counsel for the petitioner on these features of the society. Under Rule 3, the Prime Minister of India is the ex-officio President of the Society. The Governing Body under Rule 30 consists of inter alia some persons appointed by the Government of India representing the administrative Ministry under which the Council of Scientific and Industrial Research is included and the Ministry of Finance and one or more members appointed by the Government of India. The Government of India may terminate the membership of any member or at one and the same time of all members other than the ex-officio members of the Governing Body. Rule 45 states that the Governing Body shall have the management of all the affairs and funds of the Society. Rule 46 states that the Governing Body shall have power, with the sanction of the Government of India to frame, amend or repeal bye-laws not inconsistent with the rules for the administration and management of the affairs of the Society and in particular to

provide for the terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of service of the officers and staff of the Society. Reference was also made to the Government of India (Allocation of Business) Rules, 1961 and in particular to page 76 where it is stated that all matters relating to the Council of Scientific and Industrial Research are under the department of Science and Technology.

4. Extracting the features as aforesaid, it was contended that these would indicate that the Council of Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments or the existing institutions for scientific study or problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.

4. Thus the submission of learned ASG is that there is no ground of infraction of Article 14 and 16 of the Constitution of India as CSIR is not State within the meaning of Article 12 of the Constitution of India. It was further submitted that after having considered the features of CSIR the Supreme Court had repelled the contention that the features indicate that the CSIR is not an agency of the Government.

5. Mr. Prashant Bhushap, learned counsel for the petitioner, on the other hand, submitted that though the judgment in *Sabhajit Tewary's* case (supra) is a Constitution Bench judgment, much water has flown since the said judgment was delivered and various other authorities have been held to be State within the meaning of Article 12 of the Constitution of India. Not only this, it was submitted that a reference has been made to a larger bench for reconsideration of the view taken by the Constitution Bench in *Sabhajit Tewary's* case (supra).

6. Mr. Prashant Bhushan further contended that the invocation of jurisdiction under Article 226 of the Constitution of India was not confined to instrumentalities which are State within in the meaning of Article 1.2 of the Constitution of India. Mr. Bhushan sought to advance his submission by relying upon the judgment of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors.* (1989) 2 SCC 697. Mr. Bhushan sought to draw strength from the observations of Supreme Court in para 17, 19 and 20 of the judgment. The

Supreme Court recognised the departure under our constitutional framework from the English Law inasmuch as there is no limitation for the High Courts to issue writs in the nature of mandamus only against public authorities and such writs can be issued to "any person or authority". Further writ can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The Supreme Court drew a distinction between the exercise of power under Article 226 of the Constitution of India and Article 32 of the Constitution of India and was of the view that Article 12 is relevant only for purposes of enforcement of fundamental rights under Article 32. It would be relevant to reproduce para 19 and 20.

"19. The scope of this article has been explained by Subba Rao, J., in *Dwarkanath v. ITO*. This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.

20. The term "authority" used in Article 226, in the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

7. The Supreme Court further went on to observe that a mandamus cannot be denied on the grounds that duty to be enforced is not imposed by the Statute and the judicial control should not be put in a water tight compartment Dealing

with this aspect the Supreme Court in para 22 observed as under :-

"22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract". We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, Therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

8. Mr. Bhushan also referred to the memorandum of association of CSIR and specifically sought to rely on object 2 (b)(i) and (iv) which are as under :-

(i) research and development projects of national priority as evolved by the high level body concerned with overall planning for science and technology in the country;

(iv) research and development of new technologies relevant to the country's social, economic and industrial needs in keeping with the national objective of self-reliance.

9. It was thus submitted by Mr. Bhushan that the respondent could hardly contend that there is no element of public duty involved where the overall planning for science and technology in the country relevant to the country's social, economic and industrial needs keeping the national objects of self-reliance are some of the main objects of the association.

10. The learned ASG, Mr. Mukul Rohatgi sought to rebut the aforesaid contentions advanced on behalf of the petitioner by relying on the observations of *Andi Mukta's* case (supra) itself where the Supreme Court had observed that the words "any person or authority" used in Article 226 of the Constitution of India are not confined only to statutory authorities and instrumentalities of State but may cover any other person or body "performing public duty". Mr. Rohatgi submitted that it was not a case of performance of public duty in view of the observations of the Constitution Bench in *Sabhajit Tewary's* case (supra) where the Supreme Court had come to the conclusion that CSIR did not have any statutory character after analysing its rules and regulations. It was thus submitted that in view of this constitution bench judgment of the Supreme Court it would not be appropriate for the High Court to traverse grounds in respect of the allegedly another nature of functions of the same authority.

11. We have duly considered submissions advanced on behalf of the petitioners

by Mr. Prashant Bhushan and on behalf of respondent by Mr. Mukul Rohatgi, learned Additional Solicitor General.

12. We may observe at the inception itself that our decision on the maintainability of the petition has to be within the four corners of the Constitution Bench judgment in *Sabhajit Tewary's* case (supra). The Supreme Court in the said judgment has not only categorically held CSIR not an authority within the meaning of Article 12 of the Constitution of India but has come to this conclusion after analysing the features of the society in para 3 of the judgment. Further in para 22 of the judgment Supreme Court has observed that to impeach the circular (which would in our opinion apply to any action of the said society) it had to be established that CSIR is an authority within the meaning of Article 12 of the Constitution of India.

13. The fact that reference has been made to a larger bench on this issue by the Supreme Court cannot affect adjudication of the present petition at this stage since we are bound by the judgment of the Supreme Court in *Sabhajit Tewary's* case (supra). It is no doubt true that the Supreme Court in *Andi Mukta's* case (supra) had drawn the distinction between the power to be exercised under Article 226 and Article 32 of the Constitution of India and had held that Article 12 is relevant only for purpose of enforcement of fundamental rights of people and not putting them in water tight compartment. The Supreme Court had observed that the words "any person or authority" would extend to other persons or bodies "performing public duty".

14. We are of the considered view that in view of the Supreme Court having examined the nature of the constitution of CSIR in *Sabhajit Tewary's* case (supra) it is not really open for us to traverse grounds beyond the parameters laid down in the said judgment.

15. We thus dismiss the writ petition as not maintainable under Article 226 of the Constitution of India. Parties are left to bear their own costs.