
(1987) 02 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition No's. 1608, 2213 and 2453 of 1986

D.C. Kapoor

APPELLANT

Vs

A.K. Aggarwal and Others

RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Citation : (1987) ILR Delhi 375

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : P.K. Jaitely, A.K. Srivastava and Vipin Sanghi, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) This judgment will dispose of Civil Writ Petition Ncs. 2453186, 2213186 and 1608186, filed by Shri D. C. Kapoor, Shri N. C. Jain and Shri R. B. Singh respectively, whereby they have challenged the orders of suspension passed by National Co-operative Consumer Federation of India, respondent No. 2 (hereinafter referred to as "the Federation").

(2) The respondent-federation is a registered cooperative society which was initially registered under the provisions of the Bombay Co-operative Societies Act as extended to the Union Territory of Delhi. With the promulgation of the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as the said Act), the respondent-federation was covered by the provision's of the said Act.

(3) The petitioners were working in the said federation. Shri D. C. Kapoor v/as the Chief Marketing Adviser, Shri N.C. Jain was the Assistant Manager, Grade I and Shri R. B. Singh was Regional Manager. By orders dated 6th May, 1986 issued by the. respondent-federation Shri D. C., Kapoor and Shri R. B. Singh were placed under suspension. Shri N. C. Jain was placed under suspension by a separate order dated 30th June, 1986.

(4) As already noted above, the challenge in these petitions is to the aforesaid

orders of suspension which have been issued by the respondent-federation.

(5) Before dealing with the facts of each case separately, it will be proper to consider the common questions of law which have been argued at great length by counsels for the parties.

(6) The two main questions of law which arise for consideration are whether the respondent-federation is an "authority" within the "meaning of Article 12 of the Constitution so as to subject it to the writ jurisdiction of this Court and secondly, whether the Managing Director of the respondent-federation, who admittedly has passed orders of suspension, had the jurisdiction and the authority to do so.

(7) On behalf of the respondents it was contended that the federation was not a statutory body and nor was it controlled by the Central Government and it was an independent organisation and could not be regarded as being an "authority" within the meaning of Article 12 of the Constitution. The submission of the learned counsel for the respondents was that on a correct interpretation of the provisions of the Act and the byelaws it will be evident that the respondent-federation has an independent existence of its own and the governmental control is not to such an extent as to bring it within the ambit of its being regarded as an "authority". Counsel for the petitioners, on the other hand, contend that there is a deep and pervasive control of the Government over the functioning of the respondent federation and the respondent-federation is an "authority" and Therefore amenable to jurisdiction of this Court under Article 226 of the Constitution.

(8) In order to appreciate the rival contentions it is necessary to refer to some of the provisions of the said Act.

(9) The Act had been promulgated in order to consolidate and amend the law relating to co-operative societies with objectives not confined to one State and serving the interests of members in more than one State. The Act provides for registration of such Multi State Co-operative Societies and by Section 4 of the Act the Central Government is empowered to appoint a person to be the Central Registrar of the Co-operative Societies. Section 19 provides for those persons who may be admitted as members of the Multi State Co-operative Society, The said Section 19(1) reads as under :-

"19. (L)No person shall be admitted as member of a multi-State co-operative society except the following, namely,:- (a) an individual competent to contract u/s 11 of the Indian Contract Act. 18,72 ; (b) any multi-State co-operative society or any cooperative society; (e) the Central Government : (d) a State Government ; (e) the National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962; (f) any other corporation owned or controlled by Government; (g) any Government company as defined in section 617 of the Companies Act. 1956; (h) such class or classes of persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-

State co-operative society."

Sub-section (3) of Section 19, however, provides that no individual shall be eligible for admission as a member of a national co-operative society notwithstanding what is contained in sub-section (1) of Section 19. Section 41 of the Act provides for nominees of the Central Government or State Government to be on the board of directors of the respondent-federation. The said Section reads as under :-

"41.(1) Where the Central Government or a State Government has subscribed to the share capital of a multi-State co-operative society or has guaranteed the repayment of principal and payment of interest on debentures issued by a multi-State co-operative society or has guaranteed the repayment of principal and payment of interest on loans and advances to a multi-State co-operative society, the Central Government or the State Government in this behalf, as the case may be, or any person authorized by the Central Government or the State Government, shall have the right to nominate on the board such number of persons as may, be prescribed. (2) The bye-laws of a multi-State co-operative society may provide for the nomination of persons in-excess of the limits prescribed under sub-section (1). (3) A person nominated under this section shall hold office during the pleasure of the Government by which he has been so nominated."

(10) At this stage, it may be noted that the Act provides that a multi-State co-operative Society shall have a board of directors or the governing body and that board of directors may elect an executive committee. The Act further provides for a chief executive to be appointed whose designation in the present case is that of managing director. The board of directors, of course, is presided over by a president who is elected by the members of the board.

(11) The next relevant, and important, provision is Section 50 of the Act which provides for constitution of a body of persons for preparation of a list out of which appointments to the posts of chief executive and other persons is to be filled. The said Section reads as under :-

"50. The Central Government shall- (a) constitute a body of persons in the manner prescribed for the preparation of a list of persons eligible for appointment to the posts of Chief Executives and other managerial posts in national co-operative societies, the maximum pay-scale of which exceeds such amount as may be prescribed ; (b) make rules for regulating the recruitment, remuneration, allowances and other conditions of service of officers and other employees of national cooperative societies."

Section 50(a), as will be seen, postulates the preparation of a list of eligible persons, inter alia, for appointment to the post of chief executive. The list may contain more than 2 or 3 names. Once such a list is prepared, then u/s 42(2) the board of directors is empowered to appoint the chief executive and other employees out of the list of persons referred to in Section 50. Section 42(2) does

not require the approval of the Central Government for appointing a person as the chief executive out of the list prepared u/s 50 of the Act. Where, however, the Central Government has subscribed to the extent of more than half of the share capital of a national cooperative society, then in such a case Section 44(4) makes it obligatory for the society to seek prior approval of the Central Government to the appointment of chief executive and the functional directors.

(12) The next important provision, relevant for deciding the point in issue, is Section 47 of the Act, which deals with the Central Government's power to give directions to such a society. The said Section reads as under :-

"47. If the Central Government is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other developmental programmes approved, or undertaken by the Central Government or to secure proper management of the business of the multi state co-operative societies generally or for preventing the affairs of the multi-State co-operative society being conducted in a manner detrimental" to the interests of the members, any depositors or creditors thereof, it is necessary to issue directions to any class of multi-State co-operative societies generally or to any multi-State co-operative society or societies in particular, the Central Government may issue directions to them or to it, from time to time, and all such multi-State co-operative societies or the society concerned, as the case may be, shall be bound to comply with. such directions."

(13) Reference may also be made to Section 59 which contains provisions with regard to the Government aid to multi state cooperative societies, like giving loans, subscribing to share capital and standing guarantee for repayment of loans etc. Section 109 of the Act enables the Central Government to make rules to carry out the said provision's of the Act.

(14) In the case of the respondent-federation the bye-laws which had been framed, inter alia, provide for a board of directors to be elected, which board is to comprise of a president, two vice presidents, directors and managing director. The membership of the federation comprises of Government of India, state federations, other member co-operatives and National Co-operative Development Corporation. As on 30th. June, 1986 the respondent-federation had 108 members out of which Government of India was only one, while the rest were all co-operative societies. The share capital of the respondent-federation as on 30th June, 1986 was as. under :-

(figure in lacs) Percentage total share capital	_____
Central Govt.	Rs. 227.74
45.52 State .Federations	Rs. 232.04
46.39 Member Co-operative	Rs 38.36
7.67 Societies Apex bodies/NAFED	Rs. 2.10
0.42 _____	_____
500.24 100.00 _____	_____

(15) The total strength of the hoard of directors of the respondent-federation is 40, out of which 3 are Central Government nominees, the rest of the directors

are elected and or nominated by other constituent members. The managing director is a person who is appointed u/s 42(2) of the Act out of a list of persons prepared u/s 50 of the Act.

(16) Before considering the scope and effect of the aforesaid provisions it will be necessary to consider the state, of law at the present, point of time. with regard to the question as to when would an entity be regarded as an "authority" under the provisions of Article 12 of the Constitution so as to be amenable to writ jurisdiction.

(17) Over the last two decades there have been a series of decisions of the Supreme Court and of the various High Courts in India with regard to the meaning, scope and ambit of the expression "authority" occurring in Article 12 of the Constitution. This question was, possibly for the first time, seriously urged before the Supreme Court in the case of *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, . After considering the constitution and the functions of the Electricity Board the Supreme Court observed as follows :--

"THE expression "other authorities" in Article 12 will thus include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred on the authority may be" for the purpose of carrying on commercial activities for under the Constitution, the State is itself envisaged as having: the right to carry on trade or business as mentioned in Article 19(1)(g). In Part IV, the word "State" has been given the same meaning as in Article 12 and one of Directive Principles laid down in Article 46 is that the State shall promote with special care the educational" and economic interests of the weaker sections of the people. The State, as defined in. Article 12. is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Article 298 to carry on any trade or business. The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, Therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Article 12. "On the other hand, there are provisions in the .Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. The Rajasthan Electricity Board was clearly an authority to which the provisions of Part III of the Constitution were applicable."

(18) When, however, a question arose as to whether an employee of a Government company is a government servant or not limited to the protection of Article 311 of The Constitution the supreme Court in the case of *Dr. S. Agarwal vs. The General Manager, Hindustan Steel Ltd.* AIR 1970 SC 1155, held that an employee of a Government company was not Government servant who was entitled to the protection of Article 311 of the Constitution.

(19) The law developed with a series of the decisions of the Supreme Court on the question as to when, if at all, can corporations, 80-operative societies and other bodies constituted by or- under the Acts of Parliament be regarded as "State" within the meaning of Article 12 of the Constitution. Whereas the earlier view was, as evidenced by the case of Rajasthan State Electricity Board (supra), that a. statutory corporation was an authority" subsequently it was held that even if" a. body or society is registered under an Act of Parliament, it may still be regarded as an "authority", provided it satisfied other tests. Some of these cases are Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and Sabhajit Tewary Vs. Union of India (UOI) and Others, . It is, however, not necessary to discuss the aforesaid decisions in any great detail as the Supreme "Court itself has in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, referred to them in great detail and have formulated some principles which help in determining whether a particular organisation is amenable to writ jurisdiction or not.

(20) In International Airport Authority of India"s case (supra) the Supreme Court was called upon to consider the question as to whether the said Authority was a "State" or not. The Supreme Court held that not only statutory corporations but also the corporations incorporated under any law could be regarded as an "authority" under Article 12 of the Constitution.

(21) The tests which were laid down by the Supreme Court as to when can a corporation be said to be an agency or instrumentality of the Government have been summarised by the Supreme Court itself in the subsequent decision in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, in the following words :-

"9. The tests for determining as to when a corporation can be said .to bean instrumentality or agency of Government may now be called out from the judgment in the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that if. should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant .tests gathered from the decision in the International Airport Authority"s case as follows :- (1) "One thing is clear that if the retire share capital of the corporation is he"d 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

Government 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 Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or an 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 the International Airport Authority's case, be an "authority" and, Therefore, "State" within the meaning of the expression in Article 12.

(22) In Ajay "Hasia's case (supra) the question had arisen. while determining the status of an educational institution , namely, the Regional Engineering College, Srinagar, which had been registered as a society under the Jammu & Kashmir Registration of Societies Act, 1998. While dealing with the question, in Ajay Hasia's case, whether it was material for the corporation to be created by a statute to be regarded as a "State" the Supreme Court observed as under:--

"11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a . statute or it may be a Government company or a company formed under the Companies Act. 1956 or it may be a society registered under the Societies, Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to" be decided on a proper assessment of the facts in the light of the relevant factor. The concept of instrumentality or agency of the Government is not limited to .a corporation created by a statute but is equally applicable to a company cr society and in a given case it would have to be decided, on a consideration or the relevant factors. whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12. 12. It is also necessary to add that merely because a. juristic entity may be an "authority" and. Therefore "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Articles, 209, 310 and ""11 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part Iii and. by virtue of Article 36, to Part IV. it does not extend to the other

provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, and other cases involving the applicability of Article 311 "have no relevance to the issue before us."

(23) The learned counsel for the respondent have, however, strongly relied upon the decision of the Supreme Court in the case of *Sabhajit Tewary (supra)* and had sought to contend, basing on the said decision, that "the respondent-federation can not be regarded as an "authority". This decision of *Sabhajit Tewary* was considered by the Supreme Court in *Ajay Hasis case (supra)* and was dealt with by it in the following

"13. The learned counsel appearing on behalf of the respondents Nos. 6 to 8, however, relied strongly on the decision in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, and contended that this decision laid down in no uncertain terms that a society registered under the Societies Registration Act, 1860 can never be regarded as an "authority", within the meaning of Article 12. This being a decision given by a Bench of five Judges of this Court is undoubtedly binding upon us but we do not think it lays down any such proposition as is contended on behalf of the respondents. The question, which arose in this case was as to whether the Council of Scientific and Industrial Research which was judicially a society registered under the Societies Registration Act, 1860 was an "authority" within the meaning of Article 12. The test which the Court applied for determining this question was the same as the one laid down in the *International Airport Authority's case* and approved by us, namely, whether the Council was an instrumentality or agency of the Government. The Court implicitly assented to the proposition that if the Council were an agency of the Government, it would undoubtedly be an "authority". But, having regard to the various features enumerated in the judgment, the Court held that the Council was not an agency of the Government and hence could not be regarded as an "authority". The Court did not rest its conclusion on the ground that the Council was a society registered under the Societies Registration Act, 1860, but proceeded to consider various other features of the Council for arriving at the conclusion that it was not an agency of the Government and therefore, not an "authority". This would have been totally unnecessary, if the view of the Court were that a society registered under the Societies Registration Act can never be an "other within the meaning of Article 12."

(24) The next decision, in point of time, which is relevant to the present case is that of *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*. That case was concerned, with the question as to whether the Indian Council of Agricultural Research and its affiliate Indian Veterinary Research Institute were "authorities" or not. A Full Bench of this Court had held that they were not "authorities". The Supreme Court, however, reversed this decision and came to

the conclusion that the Indian. Council of Agricultural Research was an instrumentality or agency of the State. I.C.A R. was registered under the Societies Registration Act, like the respondent herein, but nevertheless, the Supreme Court found that it was an instrumentality or agency of the "Government.

(25) The last decision which may be referred in this connection is the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . It was held by the Supreme Court that the said corporation, though a Government Company registered u/s 617 of the Companies Act, was nevertheless, a "State" within the meaning of Article 12 of the Constitution.

(26) Applying the aforesaid principles to the present case. the inescapable conclusion seems to be that the respondent federation is an "authority" under Article 12 of the Constitution. As would be evident from what has been stated hereinabove, the Central Government has invested a large sum of money by way of subscribing to the share capital of the respondent. It is true that the percentage of shares held by the Central Government is only 45 per cent but in terms of money the amount invested by way of share capital is over Rs. 227 lakhs. Furthermore, reading of Sections 42 and 50 of the Act clearly shows that the chief executive, as well as the persons to be appointed to the managerial posts, are to be those who have to be. selected out of a list prepared by a body of persons constituted by the Central Government. This means that the federation has necessarily to select such a. person for appointment as a chief executive and as a manager who, in a way, has the approval of the Central Government. Therefore, there is a control by the Central Government with regard to the appointment of the chief executive of the federation. This by itself may not have been enough for me to regard the respondent federation as an "authority" but. Section 47 of the Act puts the matter beyond all doubt. Under this provision wide powers are given to the Central Government to issue directions to the society and the directions so issued are mandatory. It is no doubt true that the directions are to be issued in the public interest, or for the purpose of securing proper implementation of cooperative production or to secure proper management of the business of the society or for preventing affairs of the. society to be conducted in a manner detrimental to the interests of the members, depositors or creditors. But it is for the Government to decide what type of directions are to be issued. Section 47 ensures that the Government will not act arbitrarily, but at the same time it does show the deep and pervasive power and control which it has over the societies.

(27) It may be that in a particular case no directions are at all issued by the Government u/s 47. That would not be relevant for determining whether a society is a "State" or not What is relevant is the power which the Government has to issue such directions. This power which is contained in Section 47 of the Act is very wide and pervasive. This power, coupled with the large investment of

money by the Central Government, brings the respondent-federation within one of the tests laid down in International Airport Authority's case turn determining whether an entity is an "authority" or not, when at page 1640 it was observed by the Supreme Court, while referring to the case of SuKhdev Singh and Ors vs Bhagatram Sardar Singh Raghuvanshi and another (supra) as follows :

"BUT a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action."

The present case can also fall under the another test laid down by the Supreme Court in the following words :

"SO also the existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality."

(28) It was contended by Mr. Srivastava that even though the Central Government could issue directions u/s 47 of the Act, nevertheless, if the directions were not followed, so penal action could be taken. All that could be done, in such a case, was that the Registrar could take steps under Section. 48 of the Act for the supersession of the board. It is true that for non-compliance of the directions issued u/s 47 of the Act action u/s 48 can be taken, but in determining the extent of power and control of the Central Government over an institution what has to be seen is the extent of "the power, and not the consequence of the repercussion of disobeying or disregarding the exercise of power by the Government. Merely because no penal action can be taken for non-complying with the directions, issued u/s 47 does not mean that the Government lost its control over a society. The statutory right given u/s 47 can be exercised and if the directions issued are not complied with. serious action can be taken u/s 48 against the federation . it may be. that no penalty may be imposed for non-compliance of such a direction but the action of supersession of a board is a very serious one. The fear of suppression is enough, to my mind, to persuade a society to obey the directions which are issued by the Government under. Section 47 of the Act. Mr. Vipin Sanghi appearing for the Government had drawn my attention to the provisions of Section 16 of the Industries (Development and Regulation) Act, 1951 which gave a power to the Central Government to issue directions and contended that the powers u/s 16 of the Industries (Development and Regulation) Act, 1951 was similar to Section. 47 of the Multi State Co-operative Societies Act. The learned counsel Had contended that merely because there was a power with the central Government to issue directions would not make an authority to whom directions can be issued a "State" for otherwise every industry within the provisions of the Industries (Development and Regulation) Act, 1951 would have to be regarded as a "State" because, u/s 16 directions can be issued to it. As I have already observed, in order to determine whether an entity is an "authority" within the meaning of Article 12 of the Constitution or not all facts and circumstances have to be taken together. One single factor may not by itself be enough to indicate conclusively as to whether

an entity is a "State" or not. In this connection the following observations of the Supreme Court in International Airport Authority's case occurring at page 1642 may be usefully referred to :-

"It is not enough, to examine Serial time each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding to that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling."

Taking into consideration all the relevant factors in the present case, namely, the manner of appointment of the chief executive, the nomination of three directors on the board of the respondent federation, the extent of investment of the Government in the share capital of the respondent the manner in which the lists are to be prepared for appointment to the managerial posts as envisaged by Section 50 of the Act, and lastly, the power given to the Central Government u/s 47 of the Act, only points to one conclusion and that is the respondent-federation is an instrumentality or agency of the Central Government and is, Therefore a "State". Before" parting one other factor which may be relevant is that in the Performance Budget of the Ministry of Food & Supplies the respondent-federation is shown to be an organisation which is under the administrative control of the department. In view of this admission, it is not open to the counsel for the Central Government to contend that the respondent-federation is not a "State". The present petition under article 226 of the Constitution is, Therefore, clearly maintainable.

(29) Coming to the question as to whether the managing Tractor had the authority to suspend the petitioners, it is first necessary to refer to the relevant provisions of the Regulations and Byelaws. Regulation 68 contains the procedure regarding suspension. The said Regulation reads as follows"-

"68. Procedure regarding Suspension : (1) The Appointing Authority indicated in rule 64 or any authority to which it is subordinate or disciplinary authority or authority empowered in that behalf by the management by general or special order may place under suspension any employee of the federation other than a deputationist :- (a) Where disciplinary proceedings against him is contemplated or is pending, or (b) Where a case against him in respect of any criminal offence is under investigation or trial. (2) The employee who is detained in custody, on a criminal charges for a period exceeding forty eight hours shall be deemed to have been suspended with effect from the date of detention by an order of the competent authority, and the employee shall remain Under suspension until further orders. (3) Where a penalty or dismissal, removal from service imposed upon an employee under suspension is set aside in appeal under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force from the date of the original order of dismissal, removal and shall still remain in force until further orders. (4) Where a penalty of dismissal, removal -from service imposed

upon an employee is set aside or declare or rendered void, in consequence of or by any decision of a Court of Law and the disciplinary authority competent to impose a penalty, on consideration of the circumstances of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal was originally imposed, the employee shall be deemed to have been placed under suspension from the date of the original order of dismissal or removal and shall continue to remain under suspension until further order. (5) Any order of suspension made or deemed to have been made under these rules may at any farce be revoked by the authority which made or deemed to have made the order."

(30) Regulation 64 (referred to as Rule 64 in Regulation 68) reads as follows :-

"64. Authority for imposing penalties : The disciplinary authority means the Managing Director for the purpose of maintaining discipline in the organization but for the purpose of imposing any major or minor penalty under these rules, the appointing authority shall be the Disciplinary Authority. NOTE: (1) All cases of suspension should be brought to the notice of the Executive Committee. (2) The authorities mentioned above shall be competent to reinstate the suspended employees."

(31) The only Bye-law which is relevant for deciding the point in issue is Bye-law 36. The relevant portion of the said bye-law reads as follows :-

"36(3) To be responsible for the general conduct, supervision and management of the day-to-day business and affairs of NCCF."

(32) The submission of the learned counsel for the petitioners is that in their ease the appointing authority is not the managing director but the appointing authority is the executive committee. It was contended that under regulation 68 disciplinary authority . can suspend an officer but Regulation 64 provides that the disciplinary authority is the appointing authority. Therefore, it was submitted, it is only the executive committee which could take action against the petitioners and the managing director had no authority to order suspension of the petitioners.

(33) Regulation 68 enables either of the following four authorities to order the suspension of an officer :-

(1)The appointing authority.

(2)Any authority to which the appointing authority is subordinate.

(3)The disciplinary authority, and

(4)The authority empowered in that behalf by the management by general or special order.

(34) The contention of the learned counsel for the respondent is that under Regulation 64 the managing director is the disciplinary authority for all purposes,

except for the purpose of imposing any major or minor penalty, and in respect of imposition of penalty alone it is. the appointing authority which is the disciplinary authority.

(35) Regulation 64, as I read it, is really in two parts. The test part of the said regulation clearly stipulates that for the purpose of maintaining discipline in the organisation the disciplinary authority is the managing director. The second part states that. for the purpose of imposing any major or minor punishment it is the appointing authority which shall be regarded as the disciplinary authority. The question which, Therefore, arises is whether the suspension of an officer is one which will fall in the first or the second part of the Regulation 64.

(36) It is now well settled that suspension of an officer does not amount to imposing any punishment. This is so even if an officer is suspended in contemplation of a departmental enquiry against him. The power of suspension is really a power to maintain discipline in an organisation. The power to maintain discipline, according to Regulation 64, is with the managing director. It is the managing director alone, Therefore, who was competent to take action in the present case. It is for this reason that the note to Regulation 64 merely provides for cases of suspension being brought to the notice of the executive committee. The regulation nowhere provides for the executive committee to review any such action. In fact, the note clearly indicates that even where the executive committee may be the appointing authority, the action of suspension, however, can be exercised by the managing director and the factum that such a power has been exercised should be brought to the notice of the executive committee. In this connection, reference may usefully be made to the decision of the Supreme Court in the case of *The State of West Bengal Vs. Nripendra Nath Bagchi*, . In this case a question arose as to the scope and meaning of the word "control" which vests in the High Court under Article 235 of the Constitution over the subordinate courts. Bagchi was Additional District Judge when he was placed under suspension, by an order of the Government, and thereafter an enquiry was held against him which led to his subsequent dismissal from service. One of the questions which arose for consideration in that case related to the extent of the control of the High Court over the subordinate judiciary under Article 235 of the Constitution. The Supreme Court, in this connection, observed as follows :-

"(13) We do not accept this construction. The word "control" is not defined in the constitution at all. In Part XIV which deals with Services under the Union and the States the words "disciplinary control" or "disciplinary Jurisdiction" have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word "control" must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification, Control and Appeal) Rules used the word "control" and the only rules which can legitimately come under the word "'control" are the Disciplinary Rules. Further, as we have already shown, the history which lies behind the enactment of these articles indicates that "control"

was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because .to find out the meaning of a law. recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made. the sole custodian of the control over the judicial. centered, Therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Art. 227 gives to the High Court superintendence over these courts and enables the High Court to call turn returns etc. The word "control" in Art. 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the Judges."

The Supreme Court, it will seen, clearly laid down that "control" means "control over the conduct and discipline of the Judges". It is, Therefore, in exercise of this power of control that in the case of subordinate judiciary the High Court can exercise the power of suspending an officer. It is a power which has been entrusted in the maintenance of discipline. Though the power to dismiss and to impose other major penalty in the case of subordinate judiciary is with the Governor, but the power to suspend, which is an element of maintenance of discipline, is with an authority which has a control over the officer and that authority is the High Court under Article 235 of the Constitution. Applying the aforesaid decision to the present case the power to maintain discipline Is clearly stipulated in Regulation 64 as being with the managing director. It is in the exercise of this power that the managing director can suspend a delinquent officer. It stands to reason that such a power is vested in the chief executive who is responsible for the day to day management and is net entrusted to the executive committee who can, at best. meet only periodically.

(37) My attention was also invited to the decision of the Supreme Court in the case of Corporation of the City of Nagpur vs Ramachandra and others 1981(2) S.L.R. 274. Where again it was held that the Municipal Commissioner was competent to suspend an employee pending departmental enquiry.

(38) Learned counsel for the petitioners relied on, the decision of the Gujarat High Court in the case of Nathubhai Parbat vs Rajkot Nagarpalika 1977(3) S.L.R. 768. Gujarat High Court in that case held that the initiation and conduct of disciplinary proceedings did not fall within the term "control" and, Therefore, the suspension of an officer therein by the President was not proper. With respect this decision is no longer good law in view of the decision of the Supreme Court in the case of Corporation of the City of Nagpur vs. Ramchandra and others (supra). In my view, Therefore, the managing director was authorised to take action, under Regulation 64, and suspend the petitioners .

(39) Assuming that under Regulation 64 suspension could have been ordered only by the executive committee, nevertheless in the present case, by virtue of provisions of Byelaws 36, the managing director was still competent to order suspension. As has been noted above, under Regulation 68 one of the persons who can order suspension is "an authority empowered in that behalf by the management by general or special order". This means that the management can empower anyone, by a special or a general order, to order suspension of an officer. By virtue of Byelaw 36 (i) the managing director has been specifically authorised, subject to the bye-laws and other rules framed from time to time, to order the suspension of employees of the federation. This power is not contrary to any of the provisions of the byelaws or the regulations. The power granted under Bye-law 36 can be considered to be an authority which has been given to the managing director under Regulation 68. Furthermore, Byelaw 35(iii) says that it is the duty of the managing director to be responsible for the general conduct, supervision and management of the day-to-day business and affairs of the federation. Conduct, supervision and management of affairs of the federation would include supervision and control over its employees. Ancillary to this power would be the power to suspend an employee pending holding departmental enquiry or investigation against him.

(40) For the aforesaid reasons the only conclusion which follows is that the managing director was duly empowered to suspend the officers.

(41) Coming now to the individual cases of the different petitioners, it was contended by Mr. Jetley, on behalf of Shri D. C. Kapoor that there was no material on the basis of which action could be taken against him. It was further contended that action has been taken against the petitioner only because matter was raised in Parliament on 6th May, 1986 and it is at the behest of the Central Government that the suspension of the petitioner was ordered.

(42) It is true that on 6th May 1986 some discussions took place in the Parliament where the conduct of some of the employees of the respondent-federation figured. It is also correct that in response to a question the Minister did state that action has been taken against the officers. The petitioner is possibly right in supposing that orders of suspension were issued on 6th May 1986 because of the discussions which was taking place in the Parliament on that day. But merely because orders were issued on the day when discussions took place in Parliament cannot lead one to the conclusion that suspension was ordered without, any basis. It may be that the discussion in the Parliament prompted the respondent-federation to act more expeditiously. If there were complaints against the petitioner and departmental enquiry and investigations was contemplated and report and material to that effect was available with the management before 6th May 1986, then merely because suspension was ordered on 6th May 1986 would not vitiate the order. In the counter affidavit it has been stated that action was taken against the petitioner because an enquiry was being contemplated against him for his misconduct. It has also been alleged

by the respondents that the matter has been referred to C.B.I. Annexed to the affidavit of "he respondents is a list. of charges against the petitioner which has been forwarded to the C. B. I. The perusal of the said annexure shows that the charges against, the petitioner pertained to some of his alleged actions prior to 6th May 1986. There is no reason to disbelieve the affidavit of the respondents where it is stated that it was in contemplation of the disciplinary action to be taken against the petitioner that he was placed under suspension. There is, Therefore, to my mind, no infirmity in the order of suspension issued in the case of Shri D. .C. Kapoor.

(43) Arguing the petition on behalf of Shri N. C. Jam, Shri Keshav Dayal contended that action has been taken against the said officer by reason of malafides of Shri D. K. Singh, respondent No. 5. It was contended by the learned counsel that Shri D. K. Singh, at the relevant time, was a Joint Secretary in the Ministry of Food & Civil Supplies, and the petitioner had stood as a surety on a loan taken by the daughter of Shri D.K. Singh. It is alleged that it was concerning the said transaction that Shri D. K. Singh got annoyed with the petitioner and it is he who initiated action against him. It is averred that earlier on 14th November 1980 a show cause notice had been issued to the petitioner in connection with certain supplies of Hmt watches. The petitioner had sent his reply and by letter dated 17th February 1984 the petitioner was informed that the proceedings against him in connection therewith were dropped. The learned counsel submitted that after dropping these proceedings there was no material against the petitioner on the basis of which any action could have been taken against him. In answer to the allegations the respondent had submitted that Shri N. C. Jain has been suspended because an enquiry is contemplated against him and his suspension was necessary to ensure a fair and impartial enquiry. \\It was further stated that the enquiry is being contemplated against the .petitioner and the C. B. 1. is seized of the complaint against him concerning irregularities in the supply of controlled cloth to the State of Sikkim. It was also mentioned that. after preliminary investigation the C. B. I. has lodged a F. I R. on 26th July 1986 against three officers of the respondent-federation including Shri N. C. Jain.

(44) Learned counsel turn the respondents, during the course of the hearing, has also placed on record a letter dated 13th June 1986 received by respondent No. 5 from the Government, of Sikkim. A complaint was made in this letter against diversion of controlled cloth which was dispatched for Sikkim. It was mentioned that out of 987 bales which had been released, in fact, only Ii bales were received in Sikkim. This letter of 13th June 1986 was forwarded to the managing director of the respondent federation by respondent No. 5 vide his letter of 30th June 1986. Respondent No. 5 stated in this letter that the managing dilator should look into the .matter and take immediate appropriate action under intimation to the Ministry. On this communication received from respondent No. 5 the managing director wrote as follows :-

"THE matter is indeed very serious. Only 11 bales have been received out of a

huge quantity of 1600 bales. This will "need detailed investigation. Meanwhile Shri N. C. Jain who have handled this matter in the Delhi branch may be immediately placed under suspension."

This order was passed on 30th June 1986. On 30th June 1986, Therefore, action was taken against Shri N. C. Jain on the basis of the complaint made by the Government of Sikkim. The letter dated 30th June 1986 did not indicate as to what action should be taken on the complaint of the Government of Sikkim. The letter of Shri Singh further did not indicate that the petitioner should be placed under suspension. The decision to place the petitioner under suspension has apparently been taken by the managing director of the respondent-federation by applying his own mind. His decision does not appear to have been influenced by anyone. Assuming, Therefore, that respondent No. 5 was inimical to the petitioner that has not influenced, in the present case, the mind of the managing director of the respondent-federation in ordering the suspension of the petitioner. The decision of the managing director does not appear to be arbitrary and no fault can be found with this decision. I am unable to come to the conclusion that action has been taken against the petitioner at the behest of respondent No. 5. The suspension of the petitioner was validly made. If as is sought to be contended by the counsel for the petitioner, the Government of Sikkim has subsequently taken back its complaint, then that is a matter which, I am sure, will be looked into by the respondent-federation on a proper representation being made by the petitioner. As far as the present case is concerned, on 30th June 1986 when the impugned order was passed there was a serious complaint made by the Government of Sikkim and the managing director was fully justified in taking action thereon,

(45) Coming lastly to the case of Shri R. B. Singh, it is submitted by the learned counsel for the petitioner that Shri Singh has had a brilliant career in the organisation. He joined the organisation on 1st February 1966 as a stenographer and by dint of merit, he rose to the position of Regional Manager, to which post he was promoted in March 1980. According to the learned counsel orders were passed at the behest of the Central Government and there was no application of mind by the managing director when he ordered the suspension of the petitioner. It was contended that these orders were issued because of the statements which had been made in the Parliament. I am unable to agree with this contention. On record there is enough material which shows that action which was being contemplated against the petitioner. As early as 14th November 1980 there was a memo served on the petitioner with regard to Hmt watches. This memo was similar to the memo dated 14th November 1980 which was served on Shri N. C. Jain. Whereas in the case of Shri N. C. Jain, by letter dated 17th February 1984, charges against him were dropped but there is nothing on record to indicate that the charges leveled against the petitioner, Shri R. B. Singh vide a memo dated 14th November 1980 were ever dropped. Furthermore, in June 1982 there were more allegations in a letter with regard to purchase of mustard oil. In the counter affidavit on behalf of the respondents it has been stated that there were complaints

of misconduct against the petitioner and as enquiry was contemplated, he was, placed under suspension. It may here be noted that on 9th July 1986, approximately two months after the petitioner had been placed on suspension, a formal charge-sheet has been served on him containing allegations of misconduct. It is neither necessary nor desirable to go into the correctness of the charges leveled against the petitioner. That is an exercise which will be gone through in the departmental proceedings. All that can be said at this stage is that the articles of charge show that they were with respect to alleged misconduct on the part of the petitioner before 6th May 1986. Thus, Therefore, there was material which was available with the respondent-federation on the basis of which they could, take action. I am unable to come to the conclusion that the action has been taken against the petitioner for any malafide or ulterior motive. As I have already noted, it is possible that the federation was finally prodded to take action by reason of what transpired in the Parliament on 6th May 1986. Merely because the federation acted when the Parliament was debating on the conduct of the employees it does not mean that there was no material before the managing director for taking action against the petitioner. Even if the Central Government had asked the respondent-federation to take action against the petitioner, no fault can be found with this. There was sufficient material on record which showed that there were allegations of misconduct against the petitioner, and u/s 47 the Central Government could ask the respondent-federation to take such action. In the present case, however, I am not satisfied that the present action was taken at the behest of the Central Government. There is no direction of the Central Government asking the respondent-federation to suspend the petitioner which has been placed on record. In my view, Therefore, the order of suspension issued by the respondent-federation does not suffer from any infirmity.

(46) No other contention has been raised before me.

(47) For the aforesaid reasons, the writ petitions fail and the same are dismissed. There will be no order as to costs. In view of the fact that senior officers of the federation have been placed under suspension, I do expect that the departmental or other proceedings against them would be taken and completed as expeditiously as possible.