(1965) 10 PAT CK 0011

In the Patna High Court

Electrical Executive Engineer, Electric Supply Division and Another	APPELLANT
Vs	
Surendra Prasad Pankaj and Another	RESPONDENT

Date of Decision : 19-10-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 65
Government of India Act, 1935 — Section 151

Citation : (1967) 1 LLJ 602

Hon'ble Judges : R.L. Narasimham, C.J;R.J. Bahadur, J

Bench : Division Bench

Judgement

R.L. Narasimham, C.J.—In this application under Article 226 of the Constitution the sole point for consideration is whether the Bihar State Electricity Board (hereinafter referred to as the board) is a " local authority " for the purposes of the Bihar Shops and Establishments Act, 1953 (Bihar Act 8 of 1954) (hereinafter referred to as the Act).

2. Respondent 1 was officiating as a clerk of petitioner 1 who is serving under the board as Executive Engineer, Electric Supply Division, Ramna, Muzaffarpur. His services were terminated on 9 November 1960, by respondent 1 and thereupon he filed an application u/s 26 (2) of the Act to the labour court, alleging that he was illegally removed from service. The two petitioners, raised a preliminary objection about the jurisdiction of the labour court to entertain such an application alleging that by virtue of Section 4(2) of the Act, read with Para. 3 of the schedule to that Act, the provisions of the Act are not applicable to officers of local authorities. It was urged that the board was a local authority within the meaning of the Bald Act and that, as respondent 1 was an employee (being a clerk) under the board, he was not entitled to seek relief under the provisions of the Act against the termination of his service. The labour court tried this as a preliminary issue and by its order dated 8 February 1962, rejected this contention, holding that the board was not a local authority as understood in the

Act.

3. The Act was passed by the Bihar Legislature and the provisions of the Bihar and Orissa General Clauses Act, 1917, would apply for interpreting the statutory expressions occurring in the Act. In Clause (30) of Section 4 of the Bihar and Orissa General Clauses Act, the expression " local authority " has been defined as follows:

'' Local authority,'' shall mean a municipal committee, district board, or any other authority entrusted by any Government with, if legally entitled to, the control or management of a municipal or local fund.

The expression " local fund " has, however, not been defined in the said Act; but in Rule 573 of the Bihar Treasury Code that expression has been given the following meaning:

The expression '' local fund'' denotes-

(1) Revenues administered by bodies which by law or rule having the force of law come under the control of Government, whether in regard to the proceedings generally, or to specific matters such as the sanctioning of their budgets, sanction to the creation or filling up of particular appointments, the enactment of leave, pension or similar rules;

(2) the revenues of anybody which may be specially notified by the provincial Government as such.

Rule 674 further says that a list of local funds in Bihar is given in Appendix 20. The Treasury rules contained in the Bihar Treasury Code were made in exercise of the powers conferred by Section 151 of the Government of India Act, 1935, and they have been continued in force after the commencement of the Constitution. Hence they have undoubtedly statutory force. In Chap. 12 of the Bihar Financial Rules, Vol. I, are described various classes of local funds. But the Bihar Financial Rules being essentially executive orders (see Rule 1), cannot be given much weight. Moreover, Chap. 12 of the said rules relies on the definition of local fund as given in Rule 573 of the Bihar Treasury Code, and hence for the purpose of this judgment greater importance should be given to the construction of Rule 573 of the Bihar Treasury Code. The petitioners have filed before us a copy of the letter of the Government of Bihar, Electricity Department, No. 2646/ Elec.-D/B4-3012/57E, dated 16 March 1958 (Annexure A), addressed to the Accountant-General, Bihar, in which they stated that the

Government have decided to set up a State Electricity Board in Bihar with effect from 1 April, 1958, and that the

Government are accordingly pleased to sanction the creation of a ''local fund'' in terms of Rule 573 of the Bihar Treasury Code, Vol. I, and Rule 356 of the Bihar Financial Rules, Vol. I,

and urged that by virtue of the decision of the Government, as conveyed in that letter addressed to the Accountant-General, it must be held that the fund of the board is local fund and that consequently the board is a "local authority," But the definition of " local fund " as given in Section 573 consists of two parts. Sub-rule (2) says the revenues of anybody which may be specially notified by the State Government as local fund will become local fund. Here it is conceded by the learned Government Pleader that no notification in the Bihar Gazette has issued in pursuance of Sub-rule (2) of Rule 573. It is also conceded that no amendment was made to Appendix 20 with a view to include the funds of the board in the list of local funds as required by Rule 574.

4. The question thus has become somewhat narrowed down to the construction of Sub-rule (1) of Rule 573, and this Court has to decide whether the board la a body which, by law, comes

under the control of Government, whether in regard to the proceedings generally, or to specific matters such as the sanctioning of its budgets, sanction to the creation or filling up of particular appointments, the enactment of leave, pension or similar rules.

The answer to this will depend obviously on the nature of the control exercised by the State Government over the funds which are administered by the board, and for that purpose one has to scrutinize carefully the relevant provisions of the Electricity (Supply) Act, 1948. The board was constituted by Section 5 of that Act, and though Government have the power to suspend or remove members of the board (see Section 10) for certain specified grounds, the Government''s control over the revenues of the board is not so clear. Section 61 of that Act says that the annual financial budget shall be submitted by the board to the State Government, but it does not say that the budget requires the sanction of the State Government. Section 61(3) merely says that the budget shall be laid before the legislature, where it may be discussed but it shall not be subject to vote. Sub-section (4) of that section further says that the board shall take into consideration any comments made on the said statement in the State Legislature. These words show that the board is not bound to accept all the suggestions made by the State Legislature but is only required to " take them into consideration." As regards sanction to the creation or filling up of particular appointments, the making of rules regarding leave, pension and other matters of the staff of the board, the Government have practically no control. Section 79 of that Act confers power on the board to make regulations for those purposes and other purposes. Clause (c) of that section confers power on the board to provide regulations for the salaries, allowances and other conditions of service of its staff. But the proviso to that section does not say that the regulation made in pursuance of Clause (c) of Section 79 requires the previous approval of the State Government. The board''s power in respect of these matters is practically uncontrolled.

5. The learned Government Pleader, however, contended that though in respect of specific matters, such as budget or appointment and conditions of service of

the staff of the board, the Electricity (Supply) Act does not confer any special power on the Government, nevertheless there are other provisions in that Act to show that the Government have control over the proceedings of the board "generally" and that, consequently, the first part of Sub-rule (1) of Rule 573 of the Bihar Treasury Code, Vol. I, may apply. It is true that the said Act imposes certain restrictions on the unbudgeted expenditure of the board (see Section 62) and the Government have also power to grant subventions and loans to the board (Ss. 63 and 64). Section 66 also confers power on the Government to guarantee the raising of such loans and Section 69 requires the accounts of the board to be kept in a prescribed manner and also makes those accounts subject to audit by the Comptroller and the Auditor-General. It is also true that the power of the board to make regulations regarding the administration of the funds and other property of the board conferred by Clause (a) of Section 79 of that Act requires the previous approval of the State Government. Section 78 confers rule-making power on the Government as regards the power of the chairman, his term of office and the conditions of service of the members of the board and various other matters. But Sub-section (1) of Section 78A expressly says that the State Government''s control is of a supervisory nature only in respect of questions of policy. Sub-section (2) of that section further says that if there is any dispute between the board and the State Government as to whether a question is a question of policy it shall be referred for final decision to the Central Electricity Authority, which under Chap. 2 is constituted by the Central Government. This section indicates that for all practical purposes the board is an autonomous body and not directly subject to the administrative control of the State Government in regard to its proceedings generally. I would, therefore, hold that the funds of the board will not come within the definition of " local fund " as given in Rule 573 of the Bihar Treasury Code, Vol. I.

6. It is difficult to say as to why when the State Government issued the letter, dated 16 March 1958, to the Accountant-General (Annexure A) sanctioning the creation of a local fund they did not follow up the letter by either issuing a notification in the Gazette or by amending the list of local funds given in Appendix 20 of the said Code. We gave the learned Government Pleader a week''s time to ascertain special reasons, if any, for this omission, but he frankly confessed on the adjourned date of hearing that he was unable to give any special reasons. One is, therefore, left to a mere surmise that after the issue of the letter, Government were not satisfied that the nature of the control exercised by them over the revenues of the board was sufficient to attract the difinition of "local fund" as given in Sub-rule (1) of Rule 573.

7. I should also refer to the provisions of Sub-section (2) of Section 65 of the Electricity (Supply) Act, 1948, which seems to furnish a clue to the solution of the point under discussion. That sub-section says that the State Government may make rules empowering the board to borrow money, but there is the following significant addition:

and may apply to the board with such modifications as may be necessary to be consistent with this Act the provisions of the Local Authorities Loans Act, 1914, and the rules made thereunder as if the board were a local authority.

If the board was a local authority because it was administering a local fund, there would have been no necessity for the express provision in Sub-section (2) of Section 65 to the effect that for the purposes of borrowing money and the application of the provisions of the Local Authorities Loans Act, 1914, the board should be deemed to be a local authority. It is true that the Electricity (Supply) Act is an Act of Parliament and its Interpretation must be governed by the provisions of the General Clauses Act, 1897. But the definition of "local authority " In Clause (28) of 8. 3 of that Act does not differ in material respects from the definition of the same expression in Clause (30) of Section 4 of the Bihar and Orissa Act. It appears to me that Sub-section (2) of Section 65 of the Electricity (Supply) Act was deliberately drafted in that form because Parliament thought that in the absence of such a provision the board may not be a local authority. Hence, except for the limited purpose of applying the provisions of the Local Authorities Loans Act, 1914, and the rules made thereunder, the board cannot be held to be a local authority for the purposes of the Bihar Treasury Code or for the purposes of the Act.

8. It may be urged that the Bihar Treasury Code was made for the purpose of regulating transactions in the State treasuries and that any definition contained therein should not be applied in construing the expression " local fund " occurring in the General Clauses Act. Even if this argument is accepted, we have to fall back on the dictionary meaning of " local fund," because that expression has not been defined in other statutory provisions. As pointed out by their lordships of the Supreme Court in Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, :

The etymological meaning of the word '' local'' is '' relating to'' or '' pertaining to '' a place.

9. In that case their lordships were concerned with the interpretation of the expression " local area " and they held (by a majority) that:

The area administered by a local authority such as a municipality, district board, a local board or a union board, a panchayat or somebody constituted under the law for the governance of the local affairs of any part of the State

will be a local area. It is true they left open the question as to whether the entire area of a State was also Intended to be included in the phrase "local area." But the portion italicized above, coupled with the dictionary meaning of the word "local," seems to indicate that the word " local" signifies something belonging to or confined to a particular place and relates only to a portion of the people of a State or their property. In Brojendra Kishore Rai Chaudhuri v. Khalil Nagancht 29 I.C. 885 also it was observed that the term '' local'' is frequently applied to an area smaller than an entire estate or country as a whole.

10. It, therefore, appears that the expression " local fund " occurring in Clause (30) of Section 4 of the Bihar and Orissa General Clauses Act must be given a somewhat restricted meaning as the fund of an authority which function in a part of a State and cannot include an authority like the board which exercises its functions throughout the State of Bihar. In my opinion, therefore, neither the dictionary meaning nor the provisions of Rule 573 of the Bihar Treasury Code, Vol. I, will be of any help to the petitioner.

11. I may also refer in this connexion to two decisions where the expression " local authority " has been construed. The Madras High Court in Madras State Electricity Board v. Commissioner of Labour and Ors. 1961 I LLJ 297 held that the Electricity Board is not a local authority for the purposes of the Madras Shops and Establishments Act. With respect, I am inclined to follow this view. The Madhya Pradesh High Court also in Daudayal Onkarlal Vs. Gulabchand Shankerlal and Others, held that the Life Insurance Corporation will not be a local authority for the purposes of Section 14(1)(f) of the Madhya Bharat Municipalities Act, 1954, They observed that the expression " local authority " must be construed as referring to an authority which exercises

some of the functions and powers of Government with reference to a locality; it should be a miniature Government for a limited purpose and area.

Even on this principle the board cannot be said to be a local authority.

12. It may also be useful to refer to entry 5 in list 2 of the Constitution which is as follows:

Local Government, that is to say, the constitution and powers of municipal corporations, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.

In this entry the expression "local authorities " must, in the context, be construed as referring to authorities exercising some form of governmental activity in a smaller area within a State. This entry may, therefore, be helpful in construing the expression " local authority " occurring in the General Clauses Act.

13. For these reasons, the petition is dismissed with costs. Hearing fee Rs. 100.

R.J. Bahadur, J.

14. I agree.

