(2001) 11 DEL CK 0042

In the Delhi High Court

Case No : Suit No. 689 of 2000

Indian Potash Ltd. APPELLANT

Vs

Potash Research Institute RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2002) 95 DLT 712 : (2002) 61 DRJ 526

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Sudhir Makkar, for the Appellant; P.V. Palli Rekha Palli and Poonam Singh, for the Respondent

Judgement

J.D. Kapoor, J.—On the application under order 7 Rule 11 CPC moved by the defendants, following preliminary issue was framed:-

1) Whether the suit does not disclose any cause of action and if so its effect? OPD.

2. The relevant facts to decide the aforesaid issue in right perspective need to be recapitulated in brief.

3. The plaintiff is a Join Sector Company under the Administrative Control of Department of Fertilisers, Union Ministry of Chemicals & Fertilisers. The plaintiff states that over 90% of the equity of the plaintiff company is held by Government funded State co-operative Federations and Public Sector Companies. The plaintiff in furtherance of its objective of doing research in the field of agriculture and fertilisers decided to float a Society for the said purpose. Accordingly defendant No. 1 society was formed and registered under the Societies Registration Act, 1860. The primary objective of the defendant No. 1 as per memorandum of association and rules and regulations have been detailed in para 3 of the plaint.

4. The plaintiff was the prime funding agency for the defendant No. 1 society.

Between the year 1977 to 1982, the plaintiff contributed nearly Rs. 4.50 crores towards the funding of the Institute which was primarily utilized for construction of building for office, laboratories and residential complex and purchase of research equipment etc. About Rs. 2.5 crores was retained by the Institute as the corpus which is invested in deposits with Public Sector undertakings. A further sum of Rs. 75 lakhs was contributed by the Indo Candadian Agriculture Extension Project which was being implemented by the plaintiff at that time. The annual budget of the Institute was estimated to be nearly Rs. 45 lakhs which was to be met out of the income from interest on deposits.

5. The plaintiff being the prime funding agency for the defendant, it has a genuine and bonafide concern to ensure that the functioning of the Institute is oriented towards its aims and objects and that the funds of the Institute are not misutilised for personal gain. It is further alleged that the objectives of the Institute have been completely relegated to the background and the Institute is presently not making any contribution to the field of agriculture which was the prime objective of the Institute. In fact, the Institute has been functioning without a Director since 1996 and most of the scientists associated with the Institute have resigned during this period and vacancies arising out of their resignation have not been filled up by the defendant. The callous manner in which the affairs of the Institute are being managed is demonstrable from the fact that no effort has been made by either of the defendants to fill up the vacant posts of the scientists.

6. It is further alleged that in a meeting held on 4.8.1990 which was attended by Mr. K. jacob John, Mr. T.R. Chadha, Mr. S.L. Thakor besides defendant No. 2, the Governing Council passed a resolution to the effect that Mr. Sohan Singh (defendant No. 2) shall be the chairman of the Institute for life. The Governing Council further approved in this meeting dated 26.9.1990 that defendant No. 2 in his capacity as Chairman of the institute be provided with a residential accommodation in PRII complex free of cost and that he be given electricity, telephone as well as transport facility with driver. It is alleged that the decision of Mr. K.J. John and Sh. S.L. Thakore in consenting to the resolution that the second defendant be made the Chairman for life was obviously influenced under the duress of the prospective appointments of both the said persons as the Managing Directors and that the second defendant had a role in writing their annual confidential reports would have a bearing on their selection/appointment.

the apprehension of the plaintiff regarding the mismanagement of the affairs of defendant No. 1 Institute was further substantiated when the plaintiff learnt that one Smt. Harleen Singh, the daughter-in-law of defendant No. 2 has also been enrolled as a member of defendant No. 1 Institute and has also been elected as a member of the Governing Council. The misuse of the funds of the Institute is also borne out by the fact that except Chairman who is entitled for one car, no other employee of the Institute is authorised or has actually used a vehicle of the Institute. Still during 1999-2000, Rs. 3,00,000/- are shown as repairs and maintenance of Chairman''s motor vehicle which by any logic is exceptionally high. What is worse is that the provision for motor vehicle repairs and maintenance for 2000-2001 has been put at Rs. 3,50,000/-. Similarly very high amounts are being incurred year after year quite unjustifiably on repairs of building.

7. It is further alleged that more than one audit firm has served the relationship with the Institute in the last few years out of frustration at the irregularities justifying the need for government audit into the affairs of the Institute as public money is being squandered for personal gains. Cause of action finally arose when on 14th March, 2000 the plaintiff sent a legal notice to the defendants requiring it to furnish relevant information and the defendants in their communication dated 27.3.2000 failed to furnish the requisite information. Declaration has sought against purported appointment of defendant No. 2 as a life time Chairman of defendant No. 1 and permanent injunction restraining defendant No. 2 from representing himself to be the chairman of defendant No. 1 and from doing anything in relation to the business of defendant No. 1 and also from selling, disposing of, alienating or encumbering in any manner any of the assets of defendant No. 1.

8. It is contended by Mr. P.V. Palli, learned senior counsel for defendant Nos. 1 & 2 that defendant No. 1 is an independent and autonomous Institute with its own governing council which his exclusive rights of management and control on the working of defendant No. 1 and Therefore from no where the plaintiff derives its alleged right to ask for any Explanation or information about internal affair of defendant No. 1 about which its governing council alone has the exclusive domain. It is further contended that since the plaintiff over the years has never contributed any amount for the working of defendant No. 1 and had paid some amounts only at the time of creation of society, it cannot clothe itself with the status of being the funding agency of defendant No. 1.

9. According to the plaintiff, it is directly and substantially connected with defendant No. 1-Institute; firstly because the plaintiff is the sole funding agency; secondly being the joint sector undertaking, there is public money which is invested in defendant No. 1-Institute; thirdly rules and regulations of the Institute are itself framed to ensure the representation of the plaintiff in the governing council of defendant No. 1; fourthly, plaintiff being the sole funding agency has a genuine and bonafide concern to ensure that functioning of defendant No. 1-Institute is oriented towards the aims and objectives of the Institute; and lastly there is no provision in the rules and regulations of the society providing appointment of any person as Chairman for life.

10. The rule provides that Governing Council from time to time may appoint any person to be the Chairman of the Institute for such period as the Governing Council may determine. So far as membership criteria is concerned, rule provides for ordinary membership and life membership. As regards Chairman of Governing Council, there is no provision for making his tenure for life. The

Chairman can be appointed by the Governing Council for a definite period.

11. The very fact that Institute was funded by the plaintiff-company and the plaintiff company is controlled by government of India and has its director in the Government Council shows that it has substantial interest in the affairs of defendants No. 1.

12. It is settled law that only on statement of facts disclosed in the plaint, the court has to find out whether the facts disclose any cause of action against the defendant or not. The defense of the defendants that it is a completely autonomous body and is governed by Governing Council and has its own constitution, cannot come to the rescue of the defendants as the facts disclosed in the plaint show that it was not only brought in existence but it was funded by the plaintiff which was public money.

13. Even if it is assumed that defendant-Institute has independent status it cannot be said for the purpose of cause of action that the plaintiff has no concern at all as to the affairs of defendant-Institute. The rules of the Institute prima facie show that the Chairman of the Institute cannot be appointed for life. The appointment has to be for a definite period. The Governing Council is the creature of rules and Therefore cannot traverse beyond the rules.

14. Wherever a rule provides for the appointment of a person as Chairman or for the purpose any office for a certain term, it has to be for a definite period. Word ''certain'' admits no uncertainty. Nor does it connote ''indefiniteness''. So much so if a rule provides appointment for ''indefinite period'' it by no stretch of imagination means for life. For making the appointment for life, the rule has to provide in specific term like ''membership'' that can be made for life.

15. However, tenure of any particular office like that of Chairman cannot be made for life. Any such rule militates against democratic or public policy. A person may become a member of a Institute for life but not its Chairman or even member of the Governing or Executive Council for life. No person, however competent or contributive may be, can be made head of the Institute for life. Such a provision not only abridges the lawful or natural right of other concerned individuals but also turns the Institute into one''s personal fiefdom. Such a concept is alien to the modern society and cannot be brooked or accepted in a civilized and democratic society.

16. Merely because a particular body has autonomous status does not mean that it is autocratic. Autonomy is provided for effective, profitable and transparent working of the Institute or organisation. It is not synonymous with arbitrary, capricious, irrational exercise of power or for self-aggrandisement.

17. Thus to say that the plaintiff who not only gave birth to the defendant but sustained it with funds and management has no concern for its welfare and Therefore no cause of action accrues to it in respect of defendant''s affairs particularly when public funds is involved, is neither legally nor factually

acceptable.

18. Cause of action with regard to reliefs being sought by the plaintiff does accrue to the plaintiff. plaintiff is neither an individual nor a private body. In such like cases every individual has locus standi.

19. In the result, issue has to be decided in favor of the plaintiff and against the defendants. However, any observation made in this order shall not tantamount to expression of opinion on merits of the case.

20. Renotify on 20th March, 2002.

21. Interim order to continue.

