

(1999) 05 AHC CK 0072
In the Allahabad High Court
Case No : Special Appeal No. 344 of 1999

Jagveer Singh

APPELLANT

Vs

Chairman, Co-operative Textile Mills Ltd., Bulandshahr and
another

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 226(1A), 266(1)
General Clauses Act, 1897 — Section 2(42)
Industrial Disputes Act, 1947 — Section 10A
Penal Code, 1860 (IPC) — Section 21

Citation : (1999) 3 AWC 2349 : (1999) 2 UPLBEC 1251

Hon'ble Judges : N.K. Mitra, C.J.; S.R. Singh, J

Bench : Division Bench

Advocate : R.C. Shukla, for the Appellant; Vinod Misra, for the Respondent

Judgement

N.K. Mitra, C.J. and S.R. Singh, J.—Present special appeal has Its genesis in the writ petition which was instituted by the appellant for the relief of quashing the order dated 12.2.1999 whereby the appellant was suspended from service in contemplation of the disciplinary proceeding. The counsel for the respondents raised a preliminary objection before the learned single Judge that the writ petition was not maintainable firstly, on the ground that the Co-operative Textile Mills, Sahkari Nagar, Bulandshahr being a Co-operative Society was neither "State" nor "Instrumentality of State" within the gamut of Article 12 of the Constitution and hence it was not amenable to writ jurisdiction of this Court and secondly, on the premises that the respondent-Co-operative Society was not discharging any statutory duty while passing the impugned order of suspension. The preliminary objection raised on behalf of the respondents received countenance of the learned single Judge and accordingly, the writ petition was dismissed vide judgment and order impugned herein however, studded with the observation that the order dismissing the writ petition would not operate as an impediment in the way of the petitioner in making representation before the

appropriate authority in terms of bye-law No. 25 of the U. P. State Textile Co-operation (Disciplinary Proceedings) Bye-laws, 1978.

2. We have heard Sri R. C. Shukla for the appellant and Sri Vinod Misra for the respondents.

3. The first question that surfaces for consideration is whether the respondent-society comes within the purview of "State" within the meaning of the term used in Article 12 of the Constitution quoted hereinbelow :

"12. Definition.--in this part, unless the context otherwise required, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

4. The inclusive language in which the word "State" has been defined in Article 12 would evince that the definition is not exhaustive. The expression "other authorities" also leads to the same conclusion. The expression "other authorities" In, our view, embraces within its sweep and ambit, every public authority exercising statutory powers ; every authority created by or under statute ; and even a non-statutory authority exercising public functions. The main principle evolved is that of "instrumentality or agency" of Government-a concept wider than a "department of Government". In *Ajay Hasia v. Khalid Mujib* AIR 1981 SC 481 wherein Regional Engineering College-a Registered Society was held to be "State", following tests were formulated for determining whether an entity is an "instrumentality or agency" of State :

"(1) One thing is clear that if the entire share capital of the corporation is held 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 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 a instrumentality or agency of Government."

In order to qualify Itself to become an "instrumentality or agency" of State, it is not essential for a juristic entity or body to satisfy all the tests aforesated and in a given case, one or a combination of more than one of them may suffice. Let us examine if the respondents-society can be characterised as an instrumentality or agency of State judged on the touchstone of any of the tests aforesated. One of

the tests enunciated in *Ajay Hasia* (supra) is "Existence of deep and pervasive State control". A conspectus of various provisions of the U. P. Cooperative - Societies Act, 1965 would reveal existence of deep and pervasive State control over the affairs of every co-operative society registered under the Act.

5. The respondent-society being a co-operative society registered under the provisions of the U. P. Cooperative Societies Act, 1965 (in short the "Act") is a body corporate as visualised by Section 9 of the Act and concededly, it is affiliated to U. P. Cooperative Spinning Mills Federation Limited which is an apex society within the meaning of Section 2 (a-4) of the said Act. The petitioner being employed as a supervisor in the respondent society is "an officer of a co-operative society" within the meaning of the term as defined in Section 2 (o) of the Act and that being the position, he is a "public servant" within the meaning of Section 21 of the Indian Penal Code as visualised by Section 124 of the Act. The registrar Co-operative Societies, Uttar Pradesh has the power to remove or expel a person from membership of a co-operative society u/s 27 (2) ; get the Committee of Management reconstituted as visualised in the proviso to Section 29 (3) ; supersede/suspend the Committee of Management u/s 35 ; seize the records, etc. u/s 37 ; get the accounts of every co-operative society audited as provided in Section 64 : hold an enquiry into the constitution, working and financial condition of a cooperative society ; make an order of surcharge u/s 68 and remedy the defects u/s 69 of the Act. Registrar has also the power to frame regulations to regulate the appointments and other conditions of service including the disciplinary control of the employees in a co-operative society or a class of co-operative societies by virtue of the power vested in him u/s 121 of the Act. Section 122 empowers the State Government to constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-. operative societies, or a class of cooperative societies, and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society. The State Government is under statutory obligation to encourage and promote co-operative movement in the State as envisaged by Section 44 of the Act. Involvement of co-operative societies in various spheres of developmental activities which otherwise fall within the domain of the State would thus become inevitable. Therefore, if the test of deep and pervasive State control is applied to the respondent society, it would qualify itself to be characterised as an instrumentality or agency of State regard being had to public nature of its function.

6. However, even if co-operative societies registered under the provisions of the Act and the Rules made thereunder are not held to be "State" within the meaning of Article 12 of the Constitution of India, regard being had to the public nature of their functions, we have no hesitation in holding that co-operative societies registered under the provisions of the U. P. Co-operative Societies Act,

1965 and the Rules framed thereunder do satisfy the requirement of being "authority" within the meaning of Article 226 of the Constitution of India. It cannot be gainsaid that the term "authority" has been used in Article 226 of the Constitution of India in a liberal sense unlike the term used in Article 12 of the Constitution of India. By virtue of various provisions contained in U. P. Co-operative Societies Act, 1965 including those relating to audit, enquiry and surcharge contained in Chapter VIII and the power to annul any resolution passed by the Committee of Management or general body of any co-operative society as visualised by Section 128 of the Act, the Registrar exercises control over co-operative societies and as stated herein above, the Registrar is also vested with the power to determine terms and conditions of employment including disciplinary control of employees in a co-operative society or a class of co-operative societies and. therefore, co-operative societies registered under the provisions of the U. P. Co-operative Societies Act, 1965 cannot claim immunity from judicial superintendence and control of the High Court under Article 226 of the Constitution. The Registrar, it may be noted, is appointed as such by the State Government as provided in Section 3 of the said Act. The cooperative society, therefore, cannot be equated with an individual and being engaged in various activities of public interest, the co-operative societies cannot claim impunity in respect of their actions vis-a-vis their employees from judicial superintendence and control of the High Court under Article 226 of the Constitution of India. In our opinion, co-operative societies registered under the Act are as much bound as State to follow the fundamental principles of reasonableness, fairness and transparency which, under the scheme of our Constitution, are fundamental to governance of any democratic institution. Accordingly, we are of the considered view that co-operative societies are amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India in respect of an adverse order passed against their employees irrespective of whether the action has been taken in exercise of any statutory power or in exercise of any power under any contract of service and the learned single Judge fell into error in dismissing the writ petition as not maintainable.

7. The view we are taking finds support from the case law referred to here in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , the Supreme Court held as under :

"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 Courts 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 Courts 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."

8. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , a two-Judge Bench of the Supreme Court was considering the question of :

"Issue (of) a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the appellant-Trust and its trustees to pay to the respondents their due salary and allowances etc. In accordance with the Rules framed by the University and to pay them compensation under a certain Ordinance of the University."

The essence of the attack on the maintainability of the writ petition under Article 226 by the appellant therein was that it being a Trust registered under the Bombay Public Trusts Act. 1950 was not amenable to writ jurisdiction of the High Court. In other words, the contention was that the Trust being a private institution against which no writ of mandamus could be issued. In support of the contention, the appellant referred to two decisions of this court : *Executive Committee of Vaish Degree College v. Lakshmi Narain* and *Dipak Kumar Biswas v. Director of Public Instruction*. The court held as under :

"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 owned 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." (Emphasis is ours).

And finally it said 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."

(Emphasis is ours).

9. The Supreme Court in *Praga Tolls Corporation v. C. A. Imanul* (1969) 1 SCC 685 (pp. 700-701, para 21) held :

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statutes under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II, p. 52 and onwards).

(Emphasis is ours).

10. In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], , the Supreme Court speaking through a Bench of three Judges said : (SCC pp. 435-36, para 60) :

"60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication has gradually marginalised and became obliterated. In *L.I.C. v. Escorts Ltd.* (SCC at p. 344), this Court in para 102 had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the Instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of L.I.C. should record reasons for accepting the purchase of the shares? it was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with

public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M. C. Mehta v. Union of India*."

11. In *Ram Saran v. State of U. P. and others* (1998) 3 UPLBEC 1860, one of us (S. R. Singh, J.) had an occasion to go into the tenability of the question as to maintainability of writ as against the co-operative society registered under the provisions of the U. P. Co-operative Societies Act, 1965. The court held therein, inter-alia, as under :

"A co-operative society registered under the Co-operative Societies Act, 1965 and the Rules made thereunder may be a private body but it certainly caters to the needs of public and the employees being the arm of the society cannot be dealt with by the society in an arbitrary manner. Absence of arbitrariness in action by bodies performing public function is a facet of Article 14 of the Constitution. Violation of Article 14 by public bodies will give rise to a cause of action under Article 226 of the Constitution."

12. Article 226 of the Constitution is phrased in a language of very wide amplitude, which does not admit of any limitation or restraint on the powers of the High Court. The High Courts in India being Courts of unlimited jurisdiction, repository of all judicial power under the Constitution except what is expressly excluded, have jurisdiction to issue to "any person or authority including in appropriate cases, any Government within those territories directions, orders or writs, including writs in the nature of habeas corpus mandamus, prohibition, quo-warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose." in a recent case *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, , the Supreme Court after considering many of its previous decisions referred to above on the point held as under :

"The language of Article 226 does not admit of any limitation on the powers of the High Court of the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In *Rohtas Industries Ltd. V. Rohtas Industries Staff Union*, it was submitted before the Constitution Bench that an award u/s 10A of the Industrial Disputes Act, 1947 savours of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The court said as under : (SCC pp. 88-89, paras 9-10).

"9. The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person--even a private individual--and be available for any (other) purpose--even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1A) reiterates the targets of the writ power as

inclusive of any person by the expressive reference to "the residence of such person", but it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a China shop. This Court has spelt out wide and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is Justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

(Emphasis is ours).

10. Many rulings of the High Courts, pro and con. were cited before us to show that an award u/s 10A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar. J. (as he then was) in *Engineering Mazdoor Sabha* (SCR at p. 640) which hail the argument against the existence of jurisdiction. The learned Judge clarified at p. 640 :

"Article 226 under which a writ of certiorari can be issued in an appropriate case. Is. In a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of courts or tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed u/s 10A is not a tribunal under Article 136 in a proper case, a writ may lie against his award under Article 226."

(Emphasis is ours).

* * * * *

27. In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a division between public law and private law. Prima facie from the language of Article 226, there should not appear to exist such a division. To understand the explicit language of the article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo

warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (i) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a China shop" in the exercise of its jurisdiction under Article 226."

13. In *Pukhraj Mantri v. U. P. Co-operative Spinning Mills Ltd.* 1992 1 UPLBEC 664, the question was whether the writ petition was maintainable against the federation. One of us (S. R. Singh, J.) held the petition to be maintainable and observed as under ;

"It is a matter of public policy that an employee of public body is governed by fair and reasonable rules of service. The right of an employee of a public institution/body to be governed on fair and reasonable terms and conditions of service is, in fact, in the nature of fundamental right and such right necessarily carries with it the right to approach this Court under Article 226 of the Constitution for an appropriate writ in the event of the public body violating the right of the employee or committing breach of its obligation to act or deal reasonably and fairly with its employees."

14. There is a Full Bench decision in *Radha Charan Sharma v. U. P. Co-operative Federation.* (1982) UPLBEC 89, reliance on which has been placed by the learned single Judge in support of his conclusion that the respondent-society is not

instrumentality of State and that the writ petition is not maintainable against it but the same is no longer quotable as a binding precedent in view of recent Supreme Court decisions referred to here-in-above particularly the latest one in U. P. Stale Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey (supra).

15. As a result of foregoing discussion, we are persuaded to the view that the learned single Judge fell into error in holding that the writ petition was not maintainable against the respondent society. By this reckoning, the judgment under challenge commends itself to be set aside.

16. In the result, the appeal succeeds and is allowed. The matter is relegated for decision afresh to the learned single Judge on merits.