(1989) 03 KAR CK 0027

In the Karnataka High Court

Case No : W.P. No. 2473/1989

Jayadev and Another — APPELLANT

Vs

Secretary, K.L.E. Society and Others — RESPONDENT

Date of Decision : 14-03-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1989) 3 KarLJ 567

Hon'ble Judges : P. P. Bopanna, J

Judgement

Bopanna, J.-In this petition the petitioners have challenged the validity of the elections held for electing the Members of the Board of Management of the 1st respondent/Society known as Karnataka Liberal Education Society. The 1st petitioner had contested the elections held on 28-1-1989 and on 29-1-1989 and he was not successful in the contest. The 2nd petitioner is an ordinary member as also a voter. They have filed this joint petition challenging the results of the elections to the Office bearers of the Society held on the aforesaid dates at Hubli and Belgaum respectively and have sought for a writ in the nature of mandamus to Respondents 3 to 19 who are elected as Members, directing them not to attend the meeting and not to call for any meeting of the Society till the disposal of the writ petition and for other incidental reliefs. They have also sought for a declaration that the election rules of the Society, viz., Clause 1, sub-clause (5) is null and void as it is contrary to law.

2. When this petition came up for preliminary hearing, caveat was entered by Respondents 2 and 12 and the learned counsel Mr. G.P. Shivaprakash took notice and opposed the grant of interim relief. Subsequently Respondent-1 also entered appearance through its learned counsel Mr. Shivaraj Patil. Both the learned counsel raised a preliminary objection as to the maintainability of the petition on the ground that the 1st respondent/Society being a Society registered under the Societies Registration Act, 1960, and under the Bombay Public Trust Act, 1950, the Society is not an Authority under Article 12 of the Constitution and hence this Court at the threshold itself should dismiss the petition as not maintainable. This

question whether the Society is an Authority within the scope of Article 12 of the Constitution was argued for a considerable length of time by both parties and the learned counsel for the petitioners in the course of his arguments submitted that he would be in a better position to meet the preliminary objection raised by the contesting respondents, if they filed their statement of objections. With a view to facilitate the learned counsel for the petitioners to argue on this point in a more convincing manner, I directed the contesting respondents, viz., Respondents 1, 2 and 12 to file their statement of objections. Accordingly, they have filed their objections and the petitioners have filed an elaborate rejoinder meeting the various averments in the statement of objections.

3. On the pleadings of the parties, the first question that has to be determined is whether the Society is an Authority within the scope of Article 12 of the Constitution. The law that governs the tests for determining whether the Society registered under the Societies Registration Act or registered under any other statutory enactment comes within the scope of Article 12 of the Constitution is laid down by the Supreme Court in Ajay Hasia Etc. V. Khalid Mujib Sehravardi and Others Etc. (A.I.R. 1981 S.C. 487). That was a case in which admission to a certain educational institution was challenged on the ground that the procedure adopted by that society which was an educational institution in granting admission to certain students was arbitrary and, therefore, violative of Article 14 of the Constitution. A preliminary objection, as in this case, as regards maintainability was raised in that case. The Society is an educational society like the one before this Court and the same was registered under the Societies Registration Act. The Supreme Court on the facts pleaded and proved came to the conclusion that the society in question was an authority within the scope of Article 12 of the Constitution and accordingly, the preliminary objection raised was overruled. We are not concerned with the facts therein or the final result in that case. But, we are concerned now with the tests prescribed by the Supreme Court for determining whether a society registered under the Societies Registration Act would come within the ambit of Article 12 of the Constitution. In para 9 of the judgment, the Supreme Court observed as follows:

"The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority''s case (AIR 1979 SC 1628). 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 it 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 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 governmental 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 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."

Learned counsel for the petitioners has relied on this decision of the Supreme Court to drive home the point that Respondent-1/Society is an authority. But the point for consideration is whether the petitioners have proved to the satisfaction of this Court that the tests prescribed by the Supreme Court have been satisfied by the material produced before this Court.

4. Mr. Gachinamath, learned counsel for the petitioners, who argued this point with great vehemence, submitted that the documentary evidence produced by the petitioners, viz., (1) the Agreement entered into between the Government of Karnataka on the one hand and the Management on the other; (2) the proceedings of the Karnataka Legislative Assembly dated 24-6-1977 pursuant to the calling attention to matters of urgent public importance which included the irregularities and malpractices said to have been committed by the society in question; (3) the Budget Estimates for 1989-90 prepared by the Society which indicated in unmistakable terms that the various institutions under the Society, viz., S.K. & H.S.K. Science Institute, Hubli; P.C. Jabin Science College, Hubli; J.T.College, Gadag; G.I.B. College, Nipani; S.N.College, Bangalore; S.S.M.S.College, Athani and B.K.College, Chikodi, had received Government grants amounting to Rs. 4,00,000/-, Rs. 1,60,000/-, Rs. 4,20,000/-, Rs. 12,000/-, Rs. 3,00,000/-, Rs. 6,00,000/-, and Rs. 70,00,000/- respectively; and (4) the provisions of the Grant-in-aid Code of the State Government more particularly Rules 8 and 9 and the relevant provisions of the Constitution and Rules framed by the Society under the relevant provisions of the Societies

Registration Act, would prove beyond all doubt that the Society is an Authority for the purpose of Article 12 of the Constitution and, therefore, this writ petition is maintainable.

5. I will take up the first test prescribed by the Supreme Court in Ajay Hasia''s case (AIR 81 S.C. 487), i.e., whether the entire share capital of this Society is held by the Government. It is not so. The Government have given certain grants as noticed earlier in the budget estimates prepared by the Society for 1989-90. The Government must have given such grants under the Grant-in-aid Code which is a non-statutory Code to encourage the Society to pursue its policy of disseminating education in this State by establishing various colleges for the benefit of a particular locality or a particular community. It cannot be said that by virtue of the grants made by the Government to certain colleges managed by the Society, the entire share capital of the Society is held by the Government. Even assuming that the Society gets certain financial assistance not directly but indirectly through its colleges, it cannot be said by such financial assistance the Society has abdicated its rights of control over these institutions managed by it and at every stage it has to go to the Government for necessary directions or advice or orders for running its day-to-day affairs.

6. The second test i.e, where the financial assistance is so much as to meet almost entire expenditure of the Society, it would afford some indication of the Society being impregnated with governmental character, is also not satisfied from the material on record. The agreement on which Mr. Gachinamath relied is an agreement between the State Government and the Management of a particular institution established by the Society which is the recipient of Government grants under the Grant-in-aid Code. It is a proforma agreement. But, I take it that is one of the agreements signed by the management of the particular institution run by the Society.

The preamble to the agreement reads as under:

"Whereas the Management is the owner of and is in full control and management of the institution mentioned and described in the Schedule I hereto (hereinafter called the ''Institution'') together with all properties moveable and immovable belongings are pertaining to the Institution. Whereas the Management exercises its authority to maintain order and discipline among the employees and students of the institution and has obtained from each employee an Agreement in the form contained in the Schedule II hereto binding him to the faithful observance of the Code of Conduct prescribed therein.

Whereas the Management and the Government have agreed to certain terms and conditions with regard to (1) the payment of salaries to employees of the Institution (2) the collection and use of fees from students (3) recruitment of employees admission of students (4) certain powers and duties of Management as herein contained;

Now these presents witness and it is hereby mutually agreed as follows: "

The above preamble to the agreement, viz., Annexure G, nullifies the case of the petitioners that the Government has full control over the management of the Society. The Government has conceded in the preamble that "the Management exercises its authority to maintain order and discipline among the employees and students of the Institution" and that "the Management is the owner of and is, in full control and management of the Institution mentioned and described in the Schedule I hereto". So, the limited purpose of this agreement is to ensure that the grants that the Management gets from the Government are utilised properly for the payment of salaries of the employees. For that limited purpose the Director, viz., the Director of Collegiate Education, or the Director of Public Instruction or the Director of Pre University Education or the Director of State Educational Research and Training, plays a limited role for ensuring the proper disbursement of the salaries to the Teachers and the other employees of the Society. The relevant Clause No. 7 in the agreement may be noticed:

"The Director shall have power to operate the Joint Account in any manner he may decide, including amending, cancelling, withholding or postponing any payment or deduction ordered by the Principal. In particular, the Director shall have power to stop the Principal''s salary for violation of any duties cast on him under this Agreement or for any payment to employees who are not in service or on duty with the prescribed instruction load."

Clause 10 reads as under:

"No salary grant shall be paid in respect of any new Institution or any new course of study in an institution during the first three academic years after the commencement of the Institution or the course of study. The Director shall prescribe the minimum number of students per subject or combination of subjects for the eligibility of grant."

Para V of the agreement makes the position very clear about the control exercised by the Government. It reads as under:

"The Teaching Grant, the Grant towards the loss-of-fee income and the Equipment Grant that were being made to the Management by the Government all other payments under the Grant-in-aid Code heretofore in force shall be discontinued with effect from 1st October 1977 and the Management shall be eligible to receive from Government only the payments provided for in this Agreement. The Management shall continue to discharge its obligations in respect of all assets acquired out of grant-in-aid received pertaining to the period before 1st October, 1977."

From the terms of this agreement, it is evident that this is an agreement between the Government and a particular institution which is the recipient of Grant-in-aid and it is not an agreement between the Society and the Government. Therefore, this agreement is not of any avail to the petitioners to prove that the entire finances of the Society are funded by the Government. The 2nd document on which the learned counsel for the petitioners relied is Annexure

H, i.e., the proceedings of the Karnataka Legislative Assembly dated 24-6-1977. Mr. Gachinamath relied on these proceedings at page 263 of the report. There is a reference to an enquiry into the various allegations made against the Society and the Enquiry Officer appointed for the purpose has observed as follows:

"Administrator may be appointed to take over the administration of the Society under Section 27(A) of the Societies Registration Act."

Relying on this observation made by the Enquiry Officer Mr. Gachinamath contended that this Society is an Authority within the scope of Article 12 of the Constitution. I am unable to see how this Society becomes an Authority by the proposed appointment of an Administrator under Section 28(A) of the Societies Registration Act. The Enquiry Officer was making recommendations for enquiring into the affairs of the Society which is registered under the Societies Registration Act and he had observed that under Section 27(A) of that Act, an Administrator may be appointed to take up the administration. This observation which is reflected in the Assembly proceedings is neither relevant nor decisive for determining that the Society is an Authority. The next document on which Mr. Gachinamath relied is the provisions in the Grant-in-Aid Code, viz., Clauses 8 and 9. Rule 8 reads as under:

"The Management shall vest in the Principal of the Institution to transact with the Department the current business of the Institution on its behalf."

''Management'' means, under Section 6(c) of the Code, a person, a body of persons, a local body or a Registered Association, a Managing Committee or Committees managing one or more Institutions and registered and recognised as such by the Government. Rule 9(a) reads as:

"(i) The Management shall follow such Rules or Orders as may be made by Government from time to time regarding the reservations in favour of Schedule Caste/Schedule Tribe and other backward classes for (a) the recruitment and promotion to various categories of posts, and (b) the admission of students to Aided Private Engineering Colleges and Polytechnics in the Karnataka State.

(ii) In case, the Management fails to adhere to the guidelines in sub-para (i) the Government shall have the power to stop or disallow or withhold all or any of the payments due to the Management and/or to the employees under this Agreement and also to recover from the Management the amount found due to the Government under this Agreement."

On the plain language of Rule 9(A)(ii), it can be said that the purpose of these rules framed under the Grant-in-aid Code is to ensure that the grants made by the Government are properly utilised.

If they are not properly utilised, the Government has the power to stop or disallow or withhold all or any of the payments due to the Management and/or to the employees and also to recover from the Management the amount found due to the Government under the agreement. So, these rules found in Chapter III of the Grant-in-aid Code will not support the case of the petitioners. On the other hand, they establish that the Grant-in-aid Code which is not a statutory Code, has prescribed certain regulations for ensuring the proper utilisation of the amounts given by the Government under the said Code. But, that does not mean that the Government has control either over the finances of the Society or over the Management of the Society. The next document on which Mr. Gachinamath relied is the Budget Estimates for the year 1989-90. I have already noticed the amounts given as grants in the Budget Estimates for certain institutions owned by the Society. But, there is nothing to show in the budget estimates that the Government by virtue of the grants made by it has taken over the Management and control of these institutions. Perhaps, these figures shown in the budget estimates for the year 1989-90 of the Society were given for the information of the members of the Society. But, furnishing of these figures would not amount to total control over the affairs of the Society by the Government. The other documents on which Mr. Gachinamath relied are the Constitution and the Rules framed by the Society itself. Mr. Gachinamath relied on the rules framed by the Society for managing the Jawaharlal Nehru Medical College, Belgaum. In Chapter I of these rules, there is a reference to the appointment of Commissioner for Health & Municipal Administration and Secretary to Government, Health and Municipal Administration Department or the Director of Health & Family Planning Services, Bangalore, in his absence for the Governing Body. The very same rule provides for the additional Director of Health and Family Planning Services, Bangalore and two representatives to be nominated by the Board of Management of the Society of whom one shall be the Dean of the Medical College who shall be the Member/Secretary of the Governing Body. Under Chapter V which deals with the General Provisions, the Governing Body is empowered to appoint a commission every year to inspect and assess the progress made by the college in keeping with the standards laid down by the University and the Indian Medical Council. Under Rule 30 which deals with the funds and properties of the Society, there is a reference to the grant of current nature from the Government. Relying on these rules in the Constitution of this Society Mr. Gachinamath contended that this Society is totally controlled by the Government in respect of its finance and management and also the day-to-day affairs of the various institutions owned by it. If these rules are read along with other rules framed by the Society, it appears that the Society is an autonomous body and the control by the Government either over its finance or over its Management is minimal. The Board of Management of the Society consists of 15 members as per Clause 21. 12 members shall be elected by the General Body from amongst the members of the Society (excluding Life Members) out of whom at least 3 shall be from Benefactors, Grand Patrons, Patrons and Fellows and at least six shall be from the Ordinary Members. Three Life Members shall be on the Board of Management by rotation on the basis of Seniority from amongst ''the Life Members for a period of 2 & 1/2 years. Finance''s of the Society are controlled by Rule 30. Rule 30 reads as under:

"The funds of the Society shall be as under:

1. Consolidated Fund

2. Corpus Fund

3. Specific Fund

4. Current Fund."

What these funds are described under Rule 30(1), (2), (3) and (4). They read as under:

"1. Consolidated Fund:

This shall be created with an initial in alienable amount of atleast one crore of rupees. Not less than 10% of the annual revenue surpluses if any shall be created to this fund. The amount standing to the credit of consolidated fund shall be invested in Government approved securities.

2. Corpus Fund:

All donations, subscriptions, grants and any other receipts shall be credited to the Corpus Fund.

The Corpus Fund of the Society as far as practicable be used for the purpose of acquisition or immoveable properties such as lands and buildings including fixtures for the use of the Society or its Institutions. The Corpus Fund of the Society may also be used for the purchase of dead stock such as furniture, equipment for laboratories, Gymkhana, Quarters of the Staff and Students, Libraries (including books) or any other articles of a durable nature for the use of the Society or its institutions. To create endowments and to undertake welfare measures to the employees and their children.

3. Specific Funds:

Funds of a specific nature held by the Society such as Endowment Fund, Pension Fund, Family Benefit Fund, Gratuity Fund, Depreciation Fund, Provident Fund and such other funds of the Society or of the Institutions of the Society, shall be invested in Government approved securities separately.

4. Current Funds:

(a) Current Funds of the Society shall include:

i) Proceeds of the fees and fines,

ii) Interest accuring from the General and Consolidated funds.

iii) Money grants, such as proficiency grant, maintenance grants, salary grants of current nature from the Government and other public bodies.

iv) The current funds shall be used for current expenditure of the Society and its institutions. It may also be used for purchases and additions to the dead stock such as Library books, apparatus etc as decided by the Board of Management from time to time.

(b) Properties of the Society:

The properties of the Society shall include:

(1) The lands, buildings of all the Institutions and other lands and buildings not used for any particular institutions.

(2) All dead stock such as furniture etc. belonging to the Society and its Institutions.

(3) All Library books and Laboratory apparatus in the Society''s Institutions and the Head Office.

(4) All other property more or less of a permanent nature such as Printing Press etc.

(c) All funds shall be deposited in the name of the President in a proper Bank or Banks as approved by the Board of Management in accordance with the provisions of the Trust Act and Income Tax Act."

Functions and powers of the Board of Managements are provided under Rule 22 of the Rules. To quote only a few pertaining to functions and powers of the Board of Management:

"1. The Board of Management shall be the Chief Executive Authority of the Society and shall exercise strict control and supervision over the management of all the institutions of the Society.

8. The Board of Management shall appoint Legal Advisory Committee consisting of not more than 5 practicing Advocates preferably residents of Belgaum to give legal advise to the Board of Management on disputes and legal aspects, when referred to them. The members of the Legal Advisory Committee shall not put in appearance against the Society.

26. To make recommendations to the General Body whenever necessary for taking any disciplinary action against any Life Members for misconduct or negligence of duty or breach of discipline on the recommendation of the Board of Life Members."

Under the General rules appearing at page 62 of the Constitution, a provision is made for the disposal of suits instituted against the Society. Under Clause (4) of Rule 33, no member or no employee of the society shall be entitled to institute any suit or take any legal proceedings, Civil or Criminal, in respect of the Management of Society''s affairs without notice to the Chairman of the Board of Management. Under Clause (7) of Rule 33, no suits shall be instituted, defended or compromised by or on behalf of the Society without the sanction of the Board of Management. Under Clause (8), no member of the Society shall be competent to institute any suit or proceedings against, the Society with regard to the Management of the Society''s Institutions. Clause (9) provides that every dispute touching the business affairs of the Society or any of its institutions shall be referred to arbitration. The validity of these rules have not been challenged by the petitioners, though, it appears to me that some of the rules may not stand the scrutiny of law inasmuch as they take away the right of a member to approach the Courts constituted under the relevant provisions of the Code of Civil Procedure. But, that is not a matter for consideration in this petition. However, I have referred to these rules to highlight the fact that the Management of the Society is completely governed by the rules framed by the Society in exercise of the powers conferred on it by the relevant provisions of the Societies Registration Act and from these rules, it is not possible to discern any control by the Government over the management of the Society or over its finances or over its power to take disciplinary action against the employees or the power to deal with the day-to-day affairs. In the circumstances, none of the tests prescribed by the Supreme Court in Ajay Hasia case are satisfied by the petitioners.

7. Mr. Gachinamath has made a grievance that in the statement of objections filed by the contesting respondents, they have not pleaded in so many terms about the Society''s financial affairs in order to make out that it is completely free from Government control. On the last date of hearing I had only directed these respondents to file their statement of objections. But, I had not called upon the contesting respondents to furnish any particulars in order to meet the case of the petitioners. The petitioners having approached this Court, prima facie, it appears to me that they have not placed the necessary material to satisfy this Court that this is a fit case for invoking the extraordinary jurisdiction under Article 226 of the Constitution and, therefore, it is not open to the petitioners to contend that the respondents should furnish the necessary particulars to meet their case.

8. In the view I have taken, the decisions cited by Mr. Gachinamath touching the jurisdiction of this Court to entertain the petition, when there is an alternative and efficacious remedy, do not require any serious consideration. Even otherwise, I am satisfied from the pleadings in the writ petition that the conduct of Respondent-1 as the Returning Officer requires a detailed examination of disputed questions of facts which cannot be done in this petition. There are very serious allegations against him. In the very nature of things, they cannot be investigated with reference to the affidavits and counter affidavits. That apart some of the aggrieved parties have filed civil suits and one such suit, O.S. No. 57 of 1989, is now pending before the Civil Judge, Belgaum. The reliefs claimed in that suit are almost identical to the reliefs claimed in this petition. Those suits are filed by certain members of the Society and Petitioner-1 is one of the defendants therein. Petitioner-1 who is primarily affected by the results of the election can agitate his case in that suit by supporting the case of the plaintiff in that suit. It is seen from the certified copy of the plaint that Petitioner-1 is Defendant No. 40 in the said suit. There is no bar in law for him to support the

plaintiff in that case or get himself transposed as plaintiff and seek the relief that he has claimed in this petition. For all these reasons, I am of the view that this petition is not maintainable and the same is liable to be dismissed at the stage of preliminary hearing itself.

9. I have earlier noticed that in view of the ruling of the Supreme Court in Ajay Hasia case, the other cases cited by the petitioners do not require any consideration. They rest on the facts and circumstances as they appear in those cases and they do not in any way advance the case of the petitioners in this petition. Therefore, a detailed reference to those cases, in my view, is not necessary.

10. Accordingly, this petition is dismissed at the stage of preliminary hearing.

Writ petition dismissed.

