(2018) 10 GAU CK 0008

In the Gauhati High Court

Case No : Civil Writ Petition No.3368 Of 2011

Kamesh Salam APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 12, 226

Citation : (2018) 10 GAU CK 0008

Hon'ble Judges : L.S. Jamir, J

Bench : Single Bench

Advocate : S G Bhattacharjee

Final Decision : Allowed

Judgement

1. This writ petition was disposed of by an Order dated 05.06.2014 by quashing the Order of termination of the petitioner dated 1.06.2011 issued by

the Chairman of Cane and Bamboo Technology Centre and Secretary, North Eastern Council. On appeal by the Cane and Bamboo Technology

Centre and Others, the Honâ??ble Division Bench of this Court by Order dated 06.01.2017 passed in W.A. No. 65/2015 with WP(C) No. 5988/2014

set aside the Order of this Court dated 05.06.2014 and remanded the matter back to consider the question of maintainability of the writ petition as to

whether the Cane and Bamboo Technology Centre is a state within the meaning of Article 12 of the Constitution of India or is an authority within the

meaning of Article 226 of the Constitution of India.

2. Heard Mr. S. K. Medhi, learned Senior Counsel assisted by Mr. A. Das, learned counsel for the petitioner as well as Mr. D. C. Chakraborty,

learned counsel for all the respondents.

3. Mr. S. K. Medhi, learned Senior Counsel appearing for the petitioner submits that the Cane and Bamboo Technology Centre (CBTC) was set up in

Guwahati as a Secretariat to implement the UNDP funded project called Cane and Bamboo technology upgradation and networking. The said project

was a pioneer project solely dealing with the Cane and Bamboo sector in the country. The project was implemented by UNIDO concentrating on

employment generation, restoration of ecology and economic development specially to the rural poor where the Department of Science and

Technology (DST), Government of India was the Executing Agency. The CBTC was registered as a society under the Societies Registration Act,

1860 on 21.07.2004 with representatives of the North Eastern Council and Government Officials of Nagaland, Assam, Meghalaya, Tripura and

Mizoram. The CBTC also receives funds from the Government of India, various State Governments and some other agencies and some Private

Sector Organisations on the basis of specific projects allotted and sanctioned to CBTC by them from time to time for carrying out projects. The

members of CBTC would indicate that all the members are Government servants holding responsible posts under various Governments and the

restructuring of the governing body of the CBTC which was done with immediate effect from 20.07.2007 would make it clear that the CBTC is an

instrumentality of the State and amenable to the writ jurisdiction of this Court.

Funds are allotted by the Government on a project wise basis and from the service charges, the day to day expenses and maintenance of the CBTC is

made. The entire functioning of the CBTC is dependent on the service charges and from the funds allotted by the Government on project wise basis

and out of the income derived by CBTC in the implementation of the projects that the payment of salaries and wages to the employees of CBTC are

being made. This would indicate that most of the funding is done by the State Government and Central Government agencies. He also submits that

even assuming but not admitting that CBTC is not a State or an instrumentality of the State under Article 12 of the Constitution of India, the

amenability to the writ jurisdiction of this Court under Article 226 of the Constitution is not strictly dependent on whether an institution is a state or an

instrumentality thereof and that it depends on the nature of the duties and functions performed by the said institution. Therefore, in the present case, the CBTC performs public duties inasmuch as it is admittedly engaged for public benefits. In that view of the matter, he submits that the present writ petition is maintainable and he places reliance in the case of Board of Control for Cricket in India Vs. Cricket Association of Bihar and Ors. reported in (2015) 3 SCC 251.

4. On merits, learned Senior Counsel for the petitioner submits that the petitioner No. 1 was appointed as Secretary of the Society to be confirmed by the CBTC by a Communication dated 06.04.2004 issued by the Secretary, North Eastern Council. Thereafter, the petitioner No. 1 was performing his duties to the best of his abilities and satisfaction to all concerned. In the meantime, the CBTC has been registered as a Society under the Societies Registration Act, 1860 on 21.07.2004. In between the year 2009 to 2011 some unfounded allegations were made against the petitioner No. 1 regarding mismanagement of the affairs of the CBTC and therefore, the respondent No. 3 constituted an Enquiry Committee against the petitioner No. 1 to go into the problems confronting the petitioner No. 2 and to recommend a clear implementable and transparent policy to set the organisation right. The petitioner No. 1 by a reply dated 18.03.2011 pointed out in detail refuting all the allegations. Further, by a Letter dated 06.05.2011, written by the petitioner and addressed to respondent No. 6 stated that the action demanded by the respondent No. 4 is beyond the competence of the respondent No. 4 without any supporting documents.

However, by an Order dated 21.06.2011 issued by the respondent No. 3, the service of the petitioner No. 1 was terminated in pursuance to Proviso to Sub-Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (â??Rules of 1965â? in short). Further, by another Office Order dated 21.06.2011 issued by the respondent No. 3, the respondent No. 4 was directed to take charge of CBTC with immediate effect till alternative arrangements are made. It is submitted that there is no Rule/ Contract/Agreement between the respondent No. 3 and the petitioners for which no disciplinary action as contemplated under the law can be imposed on the respondent No. 1 by the respondent No. 3 in the manner that has been done. The petitioner No. 1 being the lawfully appointed head of the petitioner No. 2 is not under the control of the respondent No. 2 and respondent No. 3 nor under any authority of the Central Government and nor is he under the Central Government services and therefore, terminating

the service of the petitioner under the Provisons of the Rules of 1965 is not tenable in law. In that view of the matter, he submits that the Order of

termination of the petitioner dated 21.06.2011 as well as the Order dated 21.06.2011 directing the respondent No. 4 to take temporary charge of

petitioner No. 2 be set aside and quashed.

5. Mr. D. K. Chakraborty, learned counsel for the respondents on the other hand submits that the CBTC was registered as a Society under the

Societies Registration Act, 1860 on 21.07.2004 with 11 (Eleven) members. He submits that the CBTC is functioning as a Non-Government

Organisation (NGO) for promotion and development of the Cane and Bamboo Technology sector in the North Eastern region and all employees of the

CBTC are being engaged on contractual basis and the CBTC is not receiving any fund from the Government of India for the purpose of payment of

salaries, wages, allowances etc. to its employees and also for day to day running of the organisation. He also submits that no fund is received by the

CBTC for making non plan expenditures like payment of salaries, wages, etc. from the Government of India.

The CBTC only receives funds from the Government of India, various State Governments and some other agencies and Public Sector Organisations

on the basis of specific projects allotted and sanctioned to CBTC by them from time to time for carrying out the projects. These are all project based

funding and are based on the detailed project report submitted by the CBTC from time to time. It is only from the income derived by the CBTC from

the implementation of these projects that payment of wages to its employees and administrative expenditures of CBTC are being made. He therefore,

submits that the CBTC cannot be considered to be a State under Article 12 of the Constitution nor is it amenable to the writ jurisdiction under Article

226 of the Constitution of India.

6. On merit, learned counsel for the respondents submits that after appointment of the petitioner by the Letter dated 06.04.2004, the NEC has been

providing funds to CBTC for specific purpose from time to time. Further, other Government Organisations and other authorities have also been

providing funds to CBTC for undertaking various projects from time to time. The NEC and the respective Governments are vitally interested and concerned in the execution of various schemes and projects by CBTC and also for proper utilization of funds granted by them to the CBTC. In the

meantime, various allegations were made by different State Governments of the region as well as by some other Organisations against the petitioner

No. 1 regarding mismanagement of the funds of the CBTC and his functioning as its Director/Executive Director in between the years 2009 to 2011.

On the basis of the said allegations, an enquiry was conducted into the affairs of CBTC by the respondent No. 4 on the direction of the respondent

No. 3 and a report was duly submitted on 21.01.2011 to the respondent No. 3. As per the report dated 21.01.2011 there is gross mismanagement of

CBTC and therefore, recommendation was made that the Chairman of CBTC may constitute an Enquiry Committee for making further enquiry in this

connection. Accordingly, the respondent No. 3, as Chairman of the CBTC constituted an Enquiry Committee consisting of 4 (Four) members to go

into the problems confronting the CBTC and to recommend a clear, implementable and transparent policy for the Organisation by a Notification dated

21.08.2011.

7. Learned counsel for the respondents further submits that the Enquiry Committee has duly examined the relevant records and sought for necessary

clarification in this regards from the concerned persons including the petitioner No. 1. Thereafter, the Enquiry Committee has submitted its interim

report on 06.05.2011 and the final report on 03.05.2011 to the respondent No. 3, wherein recommendations were made for dismissing the service of

the petitioner No. 1 alongwith other recommendations. Thereafter, on consideration of the entire matter, the Order dated 21.06.2011 terminating the

service of the petitioner No. 1 was issued. It is submitted that the Order dated 21.06.2011 was passed after due consideration of the matter and

therefore, no interference is required. He, therefore, submits that there is no merit in the writ petition and the same deserves to be dismissed, both on

the issue of maintainability of the writ petition as well as on merits.

8. I have considered the submissions forwarded by the learned counsel for the parties.

9. On the maintainability of the present writ petition, this Court has considered the materials available on record. The affidavit filed by the respondent

Nos. 1 to 8 on 18.05.2017 has also been considered. In the said affidavit, there is no denial by the respondents that they receive funds from the

Government of India and various State Governments as well as NGOs on project wise basis and from the income derived by the CBTC for the

implementation of those projects that payment of wages and salaries to its employees and administrative expenditure of CBTC are being made. This

would indicate that the functioning of the CBTC is dependent on the funds from the Government of India, various State Governments and NGOs

against specific projects and from income derived from those projects the payment of salaries and wages to its employees and the administrative

expenditure of CBTC are being made.

10. This Court has also considered the audited balance sheet and the income and expenditure accounts of CBTC which are being submitted to various

authorities by the CBTC from time to time. Further, a consideration of the members of the Governing Body of CBTC would indicate that most of the

members are Government officials from the different North Eastern States including Sikkim. This would clearly indicate that though the CBTC may

be a registered society under the Societies Registration Act, 1860, they are performing public duties on the basis of fundings made by the Government

of India, various State Governments and NGOs. The functions of the CBTC would therefore, in my considered opinion are clear public functioning

which would make them amenable to the jurisdiction of this Court under Article 226 of the Constitution of India though it may not be a State under

Article 12 of the Constitution of India. In that view of the matter, I am of the considered opinion that the present writ petition is maintainable.

11. Coming to the merits of the case, after the petitioner No. 1 was appointed as Secretary of CBTC by the Communication dated 06.04.2004, there

were some allegations against the petitioner wherein an enquiry was held. A consideration of the affidavit-in-opposition filed by the respondents does

not indicate as to whether in the enquiry the petitioner has been given an adequate opportunity of hearing. Further, at paragraph 9 of the affidavit-in-

opposition filed by the respondent Nos. 1 to 4, 6 to 8 and 17 it is stated that there are no service Rules for the employees of CBTC and they are

serving in CBTC on purely contractual basis. It is also the clear stand of the respondents that the CBTC is a Society registered under the Societies

Registration Act, 1860.

The Order of termination dated 21.06.2011 would indicate that the petitioner was terminated invoking the Proviso to Sub -Rule (1) of Rule 5 of the

Rules of 1965. A consideration of the Rules of 1965 would clearly indicate that the same is not applicable to the petitioner who holds a post under the

petitioner No. 1 society. In that view of the matter, the impugned Order dated 21.06.2011 terminating the service of the petitioner No. 1 as well as the

Office Order dated 21.06.2011 appointing the respondent No. 4 to take temporary charge of CBTC Centre, Guwahati are set aside and quashed. The

respondents are directed to forthwith reinstate the petitioner as Secretary of CBTC alongwith all consequential benefits. The respondents are however

given the liberty to proceed against the petitioner No. 1 in accordance with law, if so advised.

12. Writ petition is allowed.

13. No cost.

