

(1969) 04 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 453 of 1968

K.C. Thomas

APPELLANT

Vs

R.L. Gadeock and Another

RESPONDENT

Date of Decision : 07-04-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Societies Registration Act, 1860 — Section 3, 6, 8

Citation : AIR 1970 Patna 163 : (1969) 17 BLJR 942 : (1970) 1 LLJ 599 :
(1969) 2 PLJR 438

Hon'ble Judges : N.L. Untwalia, J;B.N. Jha, J

Bench : Division Bench

Advocate : S.P. Srivastava, for the Appellant; S. Sarwar Ali and Shashi Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Illachi Devi (D) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others, AIR 2003 SC 3397 : (2004) 97 CLT 284 : (2003) 4 CTC 98 : (2003) 1 JT 428 Supp : (2003) 8 SCALE 190 : (2003) 8 SCC 413 : (2003) 4 SCR 62 Supp : (2003) AIRSCW 4824 : (2003) 6 Supreme 981

Untwalia, J.—There is only one petitioner in this case. The two respondents are -- (i) Principal, Sainik School, Tilaiya, district Hazaribagh and (ii) the Chairman, Board of Governors, Sainik School Society, Central Secretariat, New-Delhi. The petitioner's case is that the Sainik School Society was formed in 1961 and was registered under the Societies Registration Act, 1860 (Act 21 of 1860 hereinafter called the "Act"). The control of the Society is vested in the Board of Governors. The purpose of the Society is to run a type of public school for preparing boys for entry into the National Defence Academy and other walks of life. The Society aforesaid started the Tilaiya Sainik School in September, 1963. On 1st October, 1965, the petitioner was appointed as an Upper Division Assistant in the Tilaiya

Sainik School by the then Principal of the School. The appointment was in a permanent staff of probation for one year or more at the discretion of the Principal and it was with effect from 8th October, 1965. The petitioner's case in the sixth paragraph of the petition is that he was appointed in accordance with the letter dated 1st October, 1965, enclosed with which was a typed copy of the service conditions as an appendix. The petitioner accepted the same and signed appendix B. The letter of appointment along with the enclosures is annexure 1 to the writ application. The petitioner was confirmed in due course after expiry of the period of one year's probation and was appointed Office Superintendent on a permanent basis which post he held until he was dismissed by the first respondent by the impugned order dated 13th June, 1968, a copy of which is annexure 6 to the writ application. The petitioner has stated various facts in his petition to show that respondent No. 1 has wrongly dismissed him from service in violation of the rules of the Society governing the service conditions of the Tilaiya Sainik School and in a mala fide prejudicial manner. It is not necessary to go into the details of those facts as, in my opinion, this application, for the reasons to be stated hereinafter has to fail on a short point.

2. In his petition the petitioner nowhere claimed that he was holding any civil post under the Union or a State or, that he was a member of the Civil Service of the Union or a State nor did he claim that he had the protection of Article 311 of the Constitution of India. By attacking the order of dismissal made by respondent No. 1 on several other grounds, the prayer in the petition was to quash the impugned order (annexure 6) by grant of a writ of certiorari.

3. A counter affidavit was put in by respondent No. 1 challenging the various facts and grounds of attack on the dismissal order made by him, against the petitioner. As I have not thought it necessary to refer to those facts in any detail, I do not propose to state the facts stated in the counter affidavit either. An affidavit in reply was filed by the petitioner. In the fifteenth paragraph of the affidavit in reply, the statement made by the petitioner is--

"That the Sainik School is founded and managed by a Board formed by the members of the Central Government and the Government of Bihar and the Chairman of the Board of Governors is the Defence Minister of India and the finance for the running of the School is supplied by the Central Government and the Government of Bihar and the employees are, according to the School authorities themselves, amenable to rules of Civil Service Conduct Rules and the deponent is therefore, entitled to the protection of Article 311 of the Constitution of India and the contentions made in paragraph No. 35 of the counter affidavit is not correct."

4. Mr. S. P. Srivastava, learned counsel for the petitioner, stressed in the first instance that the petitioner was holding a civil post under the Union and was entitled to the protection of Article 311 of the Constitution. The procedure prescribed in that Article was not followed and, therefore, he submitted that the order must be quashed. In the alternative, his submission was that even If he is

not able to go to the extent of seeking protection of Article 311 of the Constitution, the order of the first respondent being in violation of the Rules of the Society governing the Tilaiya Sainik School, being in violation of principles of natural justice and being mala fide, should be quashed by an appropriate writ because the first respondent or his order is amenable to our writ jurisdiction. Although the memorandum of association along with rules and regulations of Sainik Schools Society was not annexed to the writ application or to any affidavit, learned advocate for the petitioner produced it for our perusal. As is the case of, the petitioner, Sainik School Society was registered under the Act, Section 1 of the Act provides that any seven or more persons associated for any literary, scientific, or charitable purpose may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-Stock Companies (leaving aside the various State amendments in this regard) form themselves into a Society under this Act. u/s 2, the memorandum of association has to contain the name of the Society, the objects of the Society, the names, addresses and occupations of the governors, council, directors etc. or other governing body to whom, by the rules of the Society, the management of its affairs is entrusted. A copy of the rules and regulations of the Society has got to be filed with the memorandum of association.

5. The Society is registered u/s 3 of the Act. Certain consequences follow to distinguish it from an unregistered Society. Section 5 says that the properties belonging to a Society registered under the Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such Society. The matter as to how suits can be filed by and against a Society has been provided in the sixth section of the Act. It enables the filing of a suit by or against the Society in the name of certain office bearers or trustees as may be determined by the Rules and Regulations of the Society or in the name of such person as may be appointed by the governing body for the Society. For the purpose of emphasising the point which I am going to decide, I think it necessary to refer only to one more section. I.e., the eighth of the Act and to no other. That section provides that if a judgment is obtained against a person or officer named on behalf of the Society, such judgment cannot be put in force against the property or against the body of such persons or officer but can be put in force against the property of the Society.

6. The names and addresses of the members of the governing body to whom the management of the Society was entrusted as required by Section 2 of the Act, were given in Article 4 of the memorandum of association. It shows that almost all the members were either ministers or secretaries of the Central Government or ministers or secretaries of various State Governments. The names of members were also given in Article 5 who having associated themselves for the purpose described in the memorandum of association agreed to subscribe their names to the memorandum. In the Rules and Regulations provision was made as to who would be the members of the Society and that again would show that most of the members were either ministers and secretaries of the Central Government or

State Governments. Some of the outsiders were to be nominated by the Chairman who was the Union Minister of Defence.

7. The question as to what is exactly the legal character of a Society registered under the Act has been the subject matter of consideration in several decisions with reference to relevant decisions of the English Court under Friendly Societies Act or the Trade Union Act. The gist of those decisions is that a Society registered under the Act is not body corporate or a corporation having a distinct legal entity from the members constituting it in the sense a company incorporated under the Indian Companies Act has or a Society registered under the Co-operative Societies Act has, yet it has its own identity, personality or entity which, for all purposes is not identical with that of the members constituting it. A Society when registered comes into existence as a registered Society and has properties of its own. Although legal title in the properties may vest in the trustees or Board of Governors yet the equitable title, to use the English Phraseology, vests in the Society.

A person serving under the Society or, in any of the institutions started by the Society in accordance with its objects is an employee of the Society under the control of the Board of Governors. His service conditions are regulated by the rules and regulations framed by the Society which undisputedly in this case, empowered respondent No. 1 to appoint the petitioner and under certain circumstances, to dismiss him by following certain rules. Nowhere it is suggested by the petitioner that the rules governing his service conditions were those framed in accordance with Article 309 of the Constitution. Had I been able to say that the society is a full-fledged corporate body or a corporation, numerous decisions were there to say that in such a situation, even if the ownership of the corporation or the control of its management was in the Government, an employee of the corporation cannot be an employee of the Union or the State. In this connection, I may only refer to the case of Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd. and Another, and Ranjit Kumar Chatterjee Vs. Union of India (UOI) and Others, in which various other cases have been discussed.

8. The difficulty in applying the ratio of all those cases on all fours is that the Society registered under the Act is not a body corporate as held by the Supreme Court in The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, . In many cases decided by various High Courts, a view had been taken that Section 6 of the Act is an enabling provision and the Society registered under the Act can sue and be sued in its own name: vide A.S. Krishnan Vs. M. Sundaram, Satyavart Sidhantalankar Vs. The Arya Samaj, P. B.N. College Committee v. Govt. of Andhra Pra-desh AIR 1958 A P 773 and Radhasoami Satsang Sabha Vs. Hans Kumar Kishanchand, . In none of those cases, however, there was any occasion for decision of the question as to whether a registered Society registered under the Act is distinct in all respects from the members constituting it or whether all the members in their own names

could file the suit or be sued in respect of a matter relating to the Society. Bhagwati, J., if I may say so with respect, discussed this point elaborately in the Bombay case, referred to above: AIR 1943 Bom 516 His Lordship took the view that once a Society is registered under the Act, "the Society enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued."

In the *The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another*, the Supreme Court does not seem to have either approved this view or disapproved it. What it laid down was that the Bombay decision did not proceed to the extent of saying that the Society registered under the Act is a corporation in the sense of being incorporated as the term is legally understood. Yet I am inclined to think that in the limited sense of possessing a different legal entity the view of Bhagwati, J. finds ample support from the decision of the House of Lords in *Bonsor v. Musician's Union* 1956 AC 104 a case which has been noticed by the Supreme Court in the Tibia College case. Lord Morton of Henryton and Lord Porter in their speeches had clearly opined that a registered trade union though not an incorporated body, was capable of entering into contracts and of being sued as a legal entity distinct from its individual members. Lord Keith of Ayonholm, who had agreed with the majority view in some respects, did not dissociate from the view of Lord Morton of Henryton and Lord Porter in this regard, rather, he was inclined to think that a registered trade union, though not an incorporated body, may be called a separate legal entity while, at the same time, remaining an unincorporated association of individuals which, as the majority view was, as not distinguishable at any moment of time from the members of which, it was at that time composed.

S. K. Das, J. (as he then was) delivering the leading judgment on behalf of the Court in the Tibia College case, referred to the majority view expressed in 1956 A. C. 104 only for the purpose of showing that a society registered under the Act is not a body corporate but is still an unincorporated body of persons. The problem has got to be viewed differently in different context. A Society registered under the Act may not be a body corporate, quite distinct from its members. But without going into the debatable question as to whether it would have its own legal entity or not, suffice it to say that yet it has got a separate existence for many purposes. It is no doubt true, as is the case of the petitioner, that most of the members constituting the Society were ex officio holders of office in the Central Government or various State Governments, yet, when they agreed to form a Society they brought into existence a new body called the Sainik Schools Society to raise funds either from the Government as the memorandum of article shows or from other sources to start Sainik Schools, to control its management through the Board of Governors, as also through the local Board of Governors and not to leave the control in the hands of either the Central Government, or the State Governments.

The very fact that Chief Ministers of various States had combined with the

Defence Minister of the Centre to form a Society, indicates that the control or management of the Society or its institutions was not to be left in the hands of any Government either the Central or of any one State. It could not be so left. And that is the reason that for the purposes of establishing institutions like Sainik Schools, a new body was formed in the shape of a registered Society under the Act. As soon as that new body was formed, any person agreeing to serve under the Society or in any of its institutions must be deemed to hold the post under the Society and not to hold any civil post either under the Union or the State.

9. Adverting once more to the decision of the House of Lords in the case of 1956 AC 104 referred to above it is to be noticed that none of the English cases discussed therein had gone to the extent of saying that a registered Society of the kind with which we are concerned in this case was a corporate body. Even short of that, the earlier case decided by the House of Lords in the Taff Vale Rly. Co. v. Amalgamated Society of Rly. Servants 1901 A C 426 was interpreted to mean that such a Society was a legal entity by three of the Noble and Learned Lorda while the remaining two of their Lordships said that it has used that expression for the purpose of deciding the suability only. One thing is clear to me that position of registered Societies or unregistered Societies cannot be on the same footing. There cannot be any doubt that a registered Society can sue and be sued in its own name, can own its own property and can employ its own servants. In such a situation, if I may draw an analogy from the case of partnership, as was done by the House of Lords in Bonsor's case for deciding the point at issue, it may be said that the Governor, acting on behalf of a State, through his authorised officer, may enter into a partnership with A and B, say to carry on a business. Although the partnership firm will have no separate legal entity, yet, it will have its separate existence, owning its property separately and employing its servants separately. It is difficult to imagine that the servants of such a partnership will be civil servants under the State getting the protection of Article 311 of the Constitution.

10. Applying the tests laid down by a Bench of this Court in Lachmi and Others Vs. Military Secretary to the Governor of Bihar and Another, it is also to be noticed that the petitioner, in no sense, can be said to be holding a civil post under the Union or a State. I, therefore, hold that the main argument put forward on behalf of the petitioner must fail. It is accordingly, rejected.

11. The impugned order is the order of the Principal of the Sainik School. On a parity of reasons which I have discussed for holding that the petitioner is not holding a civil post under the Union or any State, it is manifest that the Principal is also an employee of the Sainik School established by the Sainik Schools Society, registered under the Act. The remedy of writ sought for by the petitioner against him is not an appropriate remedy. Moreover, he has filed his appeal against the order of the Principal before the authorities of the governing body. Before any reasonable time elapsed to enable the authorities to dispose of his appeal on merits, in hurry he seems to have rushed to this Court and filed the

present writ application on 5th July, 1968. I do not think it necessary or advisable to say any word in regard to the merit of the petitioner's case challenging the order of dismissal passed by respondent No. 1 as that may prejudice either party, either to the appeal filed by the petitioner or to a suit, if the petitioner is advised to file one.

12. In the result, this writ application fails and is dismissed but there will be no order as to costs.

B.N. Jha, J.

13 I agree.