
(1986) 08 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3969 of 1984

K.N. Chopra and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-08-1986

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 38

Citation : (1987) 2 ILR (P&H) 41

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Ved Parkash Sharma, for the Appellant; K.K. Cuccuria, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—This petition was originally filed by as many as six retired employees of the Punjab State Co-operative Supply and Marketing Federation Limited, Chandigarh, Respondent No. 3 (hereinafter called the MARKFED"), praying, inter-alia, for a writ of mandamus directing the MARKFED to pay them salary in lieu of unavailed earned leave to their credit up to the maximum of 180 days. When the petition came up for motion hearing before the Division Bench on 5th September, 1984, it was recorded in the order that each of the six Petitioners had an individual claim and as such no joint writ was competent and that the Learned Counsel for the Petitioners had stated that the petition should be treated on behalf of Petitioner No. 2. Notice of motion was issued to the Respondents and ultimately it was admitted on December 3, 1985, and was directed to be set down for bearing within six months.

2. B.D. Sharma Petitioner No. 2 was employed as Manager with the MARKFED. On attaining the age of superannuation he retired from service on 31st March, 1980. He claims that the MARKFED is an instrumentality or agency of the State Government and as such it is "an authority" and, therefore, "State" within the meaning of the expression in Article 12 of the Constitution of India. The terms

and conditions of his service were governed by the statutory rules known as the Punjab State Supply and Marketing Co-operative Services (Common Cadre) Rules, 1967 (hereinafter called "the Common Cadre Rules"). Section 84-A of the Punjab State Co-operative Societies Act, 1961 (for short "the Act") provides for framing of the Common Cadre Rules with the prior approval of the Registrar, Co-operative Societies, Respondent No. 2. Rule 4.1 stipulates that every employee shall be entitled to one day's earned leave for every 15 days of employment during the year. If an employee does not in any one year take the whole of the leave allowed to him, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding year. Clause (e) of this rule before its amendment provided that if any employee is discharged or dismissed from service or leaves service during the course of the year he shall be entitled to leave with wages or wages in lieu of unavailed leave at the rates laid down in the said rule. The Punjab Government decided to allow certain relief to its employees,--vide letter dated 15th December, 1967. The Board of Directors of the MARKFED took a decision,--vide Annexure Petition 1 to allow to its employees the same relief as granted by the Punjab Government to its own employees. It was further decided that in future the relief allowed to its employees by the Punjab Government shall be granted to all the employees of the MARKFED automatically. In the year 1977, the MARKFED amended Rule 4.1(e) of the Common Cadre Rules, which was duly approved by Respondent No. 2. By this amendment, it was provided that wages in lieu of learned leave for every fifteen days employment subject to a maximum of 30 days shall be paid to its employees on discharge or dismissal or retirement from service or leaving the service, as the case may be. The Punjab Government,--vide letter dated 12th September, 1978 Annexure P 2 decided to allow such payment in lieu-of unutilised earned leave to its employees? on the date of retirement subject to a maximum of 180 days and this decision was made effective from 30th September, 1977. The Board of Directors of the MARKFED following the decision of the Punjab Government approved Agenda Item No. 15 in its meeting held on 21st January, 1983 to allow encashment of unavailed earned leave to its employees on retirement to the extent of 180 days,--vide Annexure P 3 and submitted the same to Respondent No. 2 for according approval so as to amend Rule 4.1(e) *ibid*. The Petitioner claims that in spite of the fact that the then Registrar, Co-operative Societies, Punjab,. Shri C.L. Bains, had approved the amendment in the Common Cadre Rules with effect from 30th September, 1977,--vide his order dated-13th February, 1984 recorded on the file the office of Respondent No. 2 issued a letter dated 1st June, 1984 Annexure P 7,--vide which the facility of encashment of leave was made effective from 21st January, 1983, i.e. the date when the Board of Directors of the MARKFED had approved the proposal. The Petitioner contends that, by so limiting the relief of encashment of the unavailed earned leave-to the employees retiring on or after 21st January, 1983 he has been discriminated against. He has been wrongly deprived of the facility of encashment of unavailed earned leave on his retirement on 31st March, 1980 and this action of Respondents Nos. 2 and 3 is violative of the rule of

equality and equal protection of laws as also the principle of equal opportunity in the matter of employment as guaranteed by Articles 14 and 16 of the Constitution.

3. The State of Punjab and the Registrar, Co-operative Societies, Punjab, who are impleaded as Respondents Nos. 1 and 2 to the petition, have not filed any written statement to controvert the averments made in the petition. The petition has, however, been contested by the MARKFED, Respondent No. 3.

4. The assertion of the Petitioner that the MARKFED is "an authority" and thus "State" within the meaning of Article 12 of the Constitution has been denied. It has been asserted that the MARKFED is a co-operative society duly incorporated under the Act. On this basis, it is contended that no writ petition against it is maintainable on the ground of violation of Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution. Some preliminary objections have been taken to the effect that the Petitioner retired from service on 31st March, 1980 and the petition had been filed after nearly four years and as such it was belated. The MARKFED being a co-operative society is not amenable to the writ jurisdiction of this Court. It is further contended that the relief claimed is purely for money and for a claim of money a writ petition cannot be maintain-ed. It has not been disputed that the resolution Annexure P, 1 was passed by the MARKFED to afford the same relief to its employees which is granted in future by the Punjab Government to its own employees. It is, however, pointed out that the letter of the Punjab Government dated 15th October, 1967 related to dearness allowance only and had nothing to do with the encashment of leave. It is further contended that the Common Cadre Rules were not framed by virtue of Section 84-A of the Act. It is, however, admitted that amendment to the Common Cadre Rules can be effected only with the approval of the Registrar, Co-operative Societies. It has been further maintained that since,--vide letter Annexure P. 7 the amendment to Rule 4.1(e) has been made effective with effect from 21st January, 1983, the same cannot be given retrospective effect and the Petitioner cannot be allowed the facility of encashment of" unavailed earned leave since he retired long before the amendment to the said rule became operative.

5. I have heard the Learned Counsel for the parties. The points that have come up for consideration and on which alone the Learned Counsel for the parties have addressed arguments before me are the following:

(1) Whether the MARKFED is "an authority" and, therefore, "State" within the expression of, Article 12 of the Constitution?

(2) If so, whether amendment to Rule 4.1(e) of the Common Cadre Rules providing facility of encashment in lieu of unavailed earned leave to its employees by the MARKFED, who retired from service on or after 21st January, 1983, is discriminatory qua the Petitioner, and is thus violative of Articles 14 and 16 of the Constitution.

6. As regards point (1), the position of law is now well settled by the judgments

of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *Som Parkash Kekhi v. Union of India and Anr.* A.I.R 1981 S.C. 212 and *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . In a Full Bench judgment of this Court in *Pritam Singh Gill v. State of Punjab and Ors.* 1982 (2) ILR P&H 40, after an elaborate discussion of the principles laid down by the Supreme Court, it was held that once it is established that a body is an instrumentality or an agency or projection of the State, then its mere legal garb, with which it is clothed, namely, whether it is a co-operative society, or a company, or a society registered under the Societies Registration Act, ceases to have dominance. In a way the law now pierces the veil of mere form to arrive at the kernel of true substance. The various tests laid down by the Supreme Court may not be individually decisive and their cumulative effect in each case has to be taken into account. If on the basis of those tests the inevitable conclusion is reached that a co-operative society is in essence an instrumentality of the State, then the mere fact that it was registered under the Act, would in no way render it immune to the writ jurisdiction. Where a society registered under the Act is in essence an instrumentality or agency of the State, it would become amenable to the writ jurisdiction under Article 226 of the Constitution in the same manner as the State itself is.

7. These tests in the International Airport Authority's case (supra) have been summarised in *Som Prakash Rekhi's* case (supra) in the following words:

The preponderant considerations for pronouncing an entity as State agency or instrumentality are--

- (i) financial resources of the State being the chief funding source;
- (ii) functional character being governmental in essence;
- (iii) plenary control residing in Government;
- (iv) prior history of the same activity having been carried on by Government and made over to the new body; and
- (v) some element of authority or command.

8. Thus, in the present case we are to find out whether the above tests are satisfied in the case of MARKFED on the basis of the material placed on the record of this case and if so whether cumulative effect thereof lead's one to conclude that the MARKFED is "an authority" and, thus, a "State".

9. It has been asserted in the petition that out of the total share capital of Rs. 996.17 lacs of the MARKFED, the State of Punjab holds share capital of the value of Rs. 935.92 lacs. No doubt, in reply to this assertion it has been averred in the written statement that the balance-sheet after checking has been re-opened and according to the present position the capital investment of the State Government is Rs. 885.35 lacs against the total share capital of Rs. 998.12 lacs. Besides, it has been admitted by the MARKFED that for the loans taken by it from the

commercial banks for its day to day activities the Punjab Government stands guarantee for the repayment of such loans to the financial institutions. The guarantee fee is, however, paid by the MARKFED. Thus, in my view, the first test that the financial resources of the State are the chief funding source of the MARKFED is satisfied.

10. The Petitioner has categorically averred that in a brochure issued by the MARKFED for the year 1982, it has described itself as an important instrument of the Government implementing socioeconomic programmes, playing a significant role in establishing market prices, integrated development of rural areas, generating employment and earning foreign exchange. There is no denial to this averment in the written statement filed by the MARKFED. The Petitioner has further asserted that ever since the year 1975 no profit whatsoever has been shown by the MARKFED and the loss is being borne by the State Government by providing to it financial assistance directly or indirectly. There is again no denial to this averment. All that has been stated in the reply by the MARKFED is that it had shown a good amount of profits in its balance-sheets for the period from 1967 to 1975. In other words, it is admitted that the MARKFED had been showing loss ever since 1975 and the same has been borne by the State Government through financial assistance. It is, thus, clear that the functional character of the MARKFED is governmental in essence. Being a welfare State, Respondent No. 1 is implementing socio-economic programmes through the agency of MARKFED. In spite of the fact that for the last many years the MARKFED has been financially suffering losses, these have been made up one way or the other by Respondent No. 1. Thus, the second test also, in my view, stands satisfied.

11. To substantiate that the plenary control of the MARKFED resides in the State Government, Respondent No. 1, the Petitioner has mentioned an instance of a meeting held on 5th November, 1982 under the chairmanship of the Chief Minister of Punjab in which the Finance Minister, the Co-operation Minister, the Financial Commissioner, and the Secretary to Government, Punjab, Finance Department, besides the Managing Director and other functionaries of the MARKFED also participated. The working of the MARKFED was reviewed keeping in view the financial involvement of the State Government to the extent of 94 per cent of the total share capital of MARKFED, it was decided that a directive be issued that the MARKFED employees should be paid travelling allowance, dearness allowance, house rent allowance, capital compensatory allowance, conveyance allowance, leave travel concession, etc., strictly at the rates sanctioned by the State Government. The fact that this meeting was held has not been denied by the MARKFED. It is, however, asserted that its employees are being paid the aforesaid allowances and concessions according to its own rules and not at the rates sanctioned by the State Government. It has not been disputed that with regard to sale of fertilizers in the State of Punjab, the State Government promotes schemes and implements them through the MARKFED. u/s 26 of the Act, the State Government has the right to nominate three Directors on

the Board of Directors of the MARKFED, who are styled as "Government nominees". The Chairman of the Board of Directors of the MARKFED is appointed by the State Government. Its Managing Director is almost invariably a high State Government officer in the Cadre of Indian Administrative Service. Section 26(4) of the Act provides that if there is a difference of opinion between the Government nominees and the other members of the Board of Directors, the matter shall be referred to the State Government for its decision and the decision of the Government shall be final. The decision of the Government so taken shall operate as if the same were the decision taken by the Board of Directors. Rule 28 of the Punjab Co-operative Societies Rules, 1963, framed under the Act vests the Registrar, Respondent No. 2, with the power to lay down conditions of service of the employees of co-operative societies. The Common Cadre Rules, which govern the service conditions of the employees of the MARKFED are made and can be amended, added to, or omitted from with the prior approval of the Registrar, Respondent No. 2 in view of the pro-visions of Section 84-A of the Act. The Learned Counsel; for the MARKFED invited my attention to Pritam Singh Gill's case (*supra*), wherein the Full Bench examining the provisions of Section 26 of the Act, when applied to the Punjab Co-operative Land Mortgage Bank, opined that the extent of control vested in the State Government thereunder was not sufficient to hold that its control is deep and all pervasive. In the present case, however, the Petitioner is not relying solely on the provisions of Section 26 of the Act. The additional factors noticed above coupled with the provisions of Section 26 of the Act indubitably demonstrate that the plenary control over the MARKFED resides in the State Government. Thus, the third testis also satisfied.

12. As regards the fourth and fifth tests summarised in Som Prakash Rekhi's case (*supra*), all that need be mentioned is that the development of agro-economy, which is aimed at improving the lot of the rural populace, generating employment potential amongst the rural, weaker and poor sections of the society, has since the dawn of Independence been part of governmental functions as the State assumed the role of a social welfare State. It is not out of place to mention here that Articles 38, 39, 43, 46 and 48 of the Constitution adumbrate some of the Directive Principles of State Policy which the State Government is enjoined to follow in its pursuit for attaining the true character of a socialist State, which the people of India have solemnly resolved to constitute as per the preamble to the Constitution. MARKFED is an instrumentality of the State which engages itself in some of these functions.

13. Thus, on a cumulative basis, I find that there is enough material in the present case to hold that the MARKFED is "an authority and thus "State" within the enlarged meaning of Article 12 of the Constitution.

14. Now coming to point (2), it is not disputed that in the proceedings of the meeting of the. Board of Directors of MARKFED" held on 23rd December, 1967 Annexure P. 1, it was resolved--

The relief as announced to be given to its employees by the Punjab Government,

as also which may be given in future, will be allowable to all employees of the MARK-FED automatically.

No doubt at the time of adopting the aforesaid resolution, the relief sanctioned by the Punjab Government to its employees,--vide letter dated 15th December, 1967, granting higher dearness allowance had come up for consideration before the Board of Directors, but the Board had adopted an unambiguous policy that in future whatever relief is announced by the Punjab Government for its employees would be allowable to all the employees of the MARKFED automatically. Thus, when the Punjab Government,--vide letter dated 12th September, 1978, Annexure P. 2 decided that with effect from 30th September, 1977, no deduction on account of pension and pensioner equivalent or other retirement benefits need be made from the cash equivalent payable in lieu of unutilized earned leave upto 180 days on the date of retirement on superannuation of its employees and allowed them to get cash payment in lieu of leave preparatory to retirement up to 180 days equivalent to leave salary in respect of the period of earned leave at their credit at the time of retirement on superannuation on or after 30th September, 1977, this benefit of cash payment in lieu of unutilised earned leave on the date of retirement, in view of the resolution Annexure P. 1, should have automatically been conferred by the MARKFED on its employees. No doubt, amendment to Rule 4.1(e) of the Common Cadre Rules became inevitable to make the employees of the MARKFED eligible to this benefit, necessary amendment to the said rule was proposed by a resolution adopted by the Board of Directors,--vide item No. 15 of the agenda in the 17th meeting of the Board of Directors of the MARKFED held on 21st January, 1983, Annexure P. 3. Again through a letter dated 2nd September, 1983, Annexure P. 5 addressed to the Registrar, Respondent No. 2, the MARKFED made it clear that requisite amendment in the rules should be made from the date from which the benefit of encashment of unavailed earned leave has been given to the superannuated employees by the Punjab Government, i.e., with effect from 30th September, 1977. The Petitioner has specifically averred in para 21 of the petition that Shri C.L. Bains, the then Registrar, Co-operative Societies, Punjab, had approved the amendment to the rules with effect from 30th September, 1977, vide his order dated 13th February, 1984, recorded on the file. It was, however, the office of Respondent No. 2 which while issuing letter dated 1st June, 1984, Annexure P. 7 mentioned therein that the amendment approved by the Registrar would come into effect from, 21st January, 1983 when the Board approved the proposal to extend the said facility to the employees of the MARKFED. Respondent No. 2 has not filed his written statement. Thus, the above averment goes unchallenged. The MARKFED in its reply has not specifically dealt with this averment.

15. Keeping in view the material on the record, I am, therefore,, of the view that the amendment to Rule 4.1(e) of the Common-Cadre Rules conveyed by Annexure P. 7 should take effect and be applicable to the employees of the MARKFED who retired from service on or after 30th September, 1977.

16. The matter can be looked at from another angle. The mere fact that the Board of Directors of the MARKFED took unduly long time to adopt the resolution Annexure P. 3 to extend the benefit to its employees as given by the Punjab Government to its own employees,--vide Annexure P. 2 should not deprive the Petitioner and" other employees of the MARKFED who retired on or after 30th September, 1977 of the benefit which by virtue of Annexure P. 1 they were entitled to. As laid down by the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , the fundamental principle underlying Article 14 of the Constitution is that it forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved. There is no intelligible differentia which distinguishes the employees of the MARKFED who retired from service on 30th September, 1977 or afterwards till 21st January, 1983, and those who retired from service on or after that date. Again, there is no rational nexus to the object to be achieved by the resolution Annexure P. 3 and the approval Annexure P. 7, by grouping together the employees who retired on or after 21st January, 1983 and leaving out the employees who retired earlier thereto, i.e., from 30th September, 1977 to 21st January, 1983. Thus, in my view, the last paragraph of the letter Annexure P. 7, which makes the approval of the Registrar, Respondent No. 2, to the resolution in question effective from 21st January, 1983, is wholly discriminatory and violative of Article 14 of the Constitution. I, therefore, equash the last paragraph of the letter Annexure P. 7 which reads--

It will come into effect from 21st January, 1983, when the Board approved the proposal to extend the facility of encashment of earned leave,

and hold that all the employees of the MARKFED who retired from service on attaining the age of superannuation on or after 30th September, 1977 are entitled to the benefit of cash payment in lieu of unutilised earned leave due to them on the date of their retirement subject to the maximum of 180 days leave.

17. Before parting with this judgment, I may refer to the following observations made by the Supreme Court in Inder Pal Yadav and Ors. v. Union of India and Ors. 1985 (2) L.R. 248 ,

There is another area where discrimination is likely to rear its ugly head. These workmen come from the lower grade of railway service. They can ill afford to rush to Court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to Court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for alitigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to

the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.

18. In this very context, I think it apt to reproduce the following observations of the Supreme Court in Shiv Dayal Shrivastava Vs. Union of India(UOI), ,

We would like to add that it is a manifest that in view of the enunciation of law by us in this judgment, the principles governing the cash equivalent of leave would apply not only to the Petitioner but also to Judges who have already retired or who may retire hereafter, from the date from which this facility was made available to the members of the Central Services holding the rank of Secretary to the Government of India or its equivalent.

19. In the light of the above observations of the Supreme Court, I direct Respondent No. 3 to allow the benefit of cash payment in lieu of unutilised earned leave on the date of retirement to all its employees who retired from service on attaining the age of superannuation on 30th September, 1977, and after that date subject to the maximum of 180 days" leave.

20. Consequently, I allow this petition in the above terms. The Petitioner shall be entitled to the costs of this petition which are assessed at Rs. 500/- and the MARKFED Respondent No. 3 shall be liable to pay the same.