(1988) 11 DEL CK 0030

In the Delhi High Court

Case No : C.W. 876 and 877 of 1988

Krishan Sharma and P.S. Ghose APPELLANT

Vs

Bal Bhavan Society India RESPONDENT

Date of Decision : 08-11-1988

Acts Referred:

Citation : (1988) ILR Delhi 642

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Sukima Ghosh and Ranjan Mukherjee, for the Appellant; Lily Thomas, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bahri, J.—These two writ petitions involve about questions of facts and law and thus are being disposed of by this judgment.

2. Bal Bhavan Society India is a Society registered under the Societies Registration Act of 1860. Petitioner Krishan Sharma was appointed as Artist by the said Society on June 17, 1974 and was made permanent on July 6, 1979 and was also granted Selection Grade. There exists a Bal Bhavan Staff Welfare Society and Shri Krishan Sharma was elected as Joint Secretary of that Association on March 14, 1987.

3. P. S. Ghose in the other writ petition was appointed as Research Assistant by the said Society on January 2, 1973 and was made permanent on January 2, 1975 and was granted Selection Grade on March 1, 1984. He was elected as Secretary of the Association on March 14, 1987.

4. The said Staff Union had made a representation to the Director of the Bal Bhavan Society on April 3, 1987 for grant of bonus according to the new pay scale but no reply was received and on April 30, 1987, during lunch hour, a peaceful demonstration was held by the members of the staff at the gate of the Bal Bhavan Society, and on May 1, 1987 again a protest meeting was held. On

May 2, 1987, the services of these two petitioners were terminated by the Bal Bhavan Society. The orders of termination show the background in which their services were terminated. It was mentioned that salaries of the staff had been paid in accordance with the Fourth Pay Commission recommendations with effect from January 1, 1986. There were certain anomalies and the matters were being considered again and the Chairman of the Managing Board of the Society also personally made efforts to get the anomalies removed and the Ministry concerned had not acceded to the request being made and it was conveyed to the members of the staff. It was mentioned that Shri Krishan Sharma & P. S. Ghose incited/organized and participated in the demonstration and made inflammatory speeches and slogans were raised for closing the Bal Bhavan and procession was taken against the Bal Bhavan and offices of the Chairman and the Directors of the respondent--Society were burnt. The Bal Bhavan Board considered all these facts and found that they amount to serious misconduct and these petitioners resorted to demonstration deliberately to denigrate the administration and to overawe the management at the time when the All India Bal Bhavan Directors Conference was in progress and even they had influenced the children to participate in such ugly demonstration totally violating the basic principles for which the Bal Bhavan was set up and thus services of both the petitioners were terminated with a direction to pay the three months salary in lieu of the notice period.

5. These orders of termination have been challenged by filing the present writ petitions pleading that the services have been terminated on false and frivolous grounds arbitrarily and on mala fide grounds and it is a case of victimisation of both the petitioners as they were the office bearers of the Welfare Association and they were pressing for justice for the staff with regard to pay scales. They had pleaded that such orders were served on six employees on similar facts and the Society had imposed on the other employees the penalty of withholding of an increment for the period of three years in respect of the four employees while services of the petitioners have been terminated arbitrarily. It is pleaded that these orders have been passed in utter disregard of basic principles of natural justice and no hearing of whatsoever nature has been granted to the petitioners before passing the impugned orders. They have pleaded that the petitioners have sought the review of the impugned orders from the Board of Directors but no communication has been given to the petitioners with regard to their review petition. It has been pleaded that the respondent-Society is covered by the definition of "State" given in Article 12 of the Constitution of India and thus the writ petitions are maintainable against respondent-Society. It has been pleaded that the impugned orders are in fact orders of dismissal from service and such orders could not be passed without holding disciplinary proceedings. It was also pleaded that the other similar placed employees have been visited with minor penalties of withholding increments while these two petitioners have been punished with extreme penalty of dismissal and thus the impugned orders are inequitable and are liable to be struck down on that ground as well and it is

prayed that the impugned orders be quashed by issuing the writ of certiorari and writ of mandamus be issued that the petitioners be re-instated with all back wages and other benefits.

6. In the common counter-statement filed by the respondent-Society dated July 18, 1988 in opposition to these two writ petitions, a preliminary objection was raised that writ petitions were not maintainable as Union of India has not been made a party. It was also averred that the respondent-Society has been founded by Department of Education and is funded by Central Government and is under the financial control of the said Department but regarding internal matters and functioning of the Bal Bhavan which is a school, the Society is autonomous and is not under the administrative control of the Government with respect, to discipline, control of staff and students. It was pleaded that the services of the petitioners were terminated under Rule 16 of the revised Rules applicable to the petitioners. Reference is made to the facts which led to the Board in terminating the services of these two petitioners. It was emphasised that the petitioners had participated in their agitational approach creating havoc in the campus and they have involved the children also in their ill-advised agitation and such a conduct of the petitioners, who arc the teachers employed for imparting education to the children could not be tolerated. It was pleaded that their services were terminated in order to quell the disturbances created by them in the Bal Bhavan. It was reiterated that the petitioners were found unsuitable as teachers and thus they have been rightly removed. In this counter the averments of the petitioners is that the respondent-Society is covered by definition of State not controverter .I have heard the arguments on merits and had kept the matter pending for judgment and thereafter respondents filed another common additional affidavit in which a plea was taken that in fact respondents Society is not covered by the definition of "State" given in Article 12 of the Constitution of India. This common affidavit is dated September 29, 1988. As this common affidavit makes reference to only a memorandum of association and rules and regulations of the respondent-Society, I re-listed the case for further arguments and detailed arguments were heard again.

7. So the first question which arises for decision in the present writ petitions is whether the respondent-Society is covered by the definition of the "State" given in Article 12 of the Constitution or not. It is admitted by the respondent-Society that the present Society has been sponsored by Government of India and is being funded completely by the Central Government and there is complete financial control of the Central Government over the affairs of the respondent-Society. The Society has been constituted with the aims and objects of setting up Bal Bhavans for providing opportunities to the children for educational and personality developments and to encourage the talent and to promote social and cultural contacts of children of all the classes and communities. Society also is to promote other associations, organisations and institutions having similar objects. Society is entitled to acquire immovable properties and receive grants, subscription and donations for the purpose of Society. The Society, however, is

debarred from selling, leasing out, exchanging or otherwise transferring the properties and assets of the Society movable or immovable without prior written permission of the Government of India. [See 3(xii) Bal Bhavan Society India, Memorandum of Association Rules, Regulation and Service Bye-Laws]. On winding up or dissolution of the Society, the assets and the properties of the Society are to be dealt with in the manner as determined by the Government of India. (Rule 5) The affairs of the Society are to be managed and conducted by the Board of Management according to the Rules and Regulations of the Society framed and approved by the Government of India. Previous sanction of the Government of India is required for any change in the rules and regulations. There were initially nine members of the Society which included the then Prime Minister, Joint Secretary, Ministry of Education, Joint Secretary. Ministry of Finance, Joint Secretary, Ministry of Works & Housing, Adviser in Maternity & Child Welfare, Ministry of Health, Chief Secretary, Delhi Administration and two private Members mrS. Tara Ali Baig and Mrs. E. Gauba and one Dr. R. V. Ramakrishna, Director of Bal Bhavan, Delhi. The rules and regulations provided that members of the Society shall be the Chairman of the Society and Vice Chairman of the Society to be appointed by the Government of India and a representative of Ministry of Education, Ministry of Finance, a representative from each of the State and Union territories where the Bal Bhavans may be functioning sponsored by the respondent-Society and one member to be co-opted by the Board and four members to be nominated by the Chairman and the Director was to be Member-Secretary of the Board of Management. The Chairman and Vice Chairman were to hold office for a term of live years and members to be nominated by the Chairman shall hold office for a period of three years but the moment Chairman ceases to hold office, the members nominated by him were also to cease to hold office. The other members were to hold office during the pleasure of the Chairman. The office bearers of the Society included Chairman, Vice Chairman, a Financial Adviser who was to be representative from Ministry of Finance, a treasurer and a Secretary. It was also provided that Board of Management was to manage the affairs of the Society but in respect of expenditure, they were to exercise the powers subject to limitations as may from time to time be laid down in these Rules and Regulations or the Byelaws and the decision of the Govt. of India. The Board of Management was net entitled to create posts carrying pay scale beyond Rs. 1600 P.M. without the prior approval of the Ministry of Education and Ministry of Finance. Then there have been incorporated provisions regarding budget, bankers of the Society and audit of accounts which show complete control of the Govt. of India on such matters. The accounts are to be audited by the Comptroller and Auditor General of India or by any person authorised by him. The Society could not change its purpose without the approval of the Government of India. Keeping in view all these provisions I have to see whether the respondent Society can be termed to be an instrumentality or agency of the Government of India. It is not necessary to refer to various cases decided by the Supreme Court laying down different factors which are to be kept in view to see whether a particular Corporation or a Society can be treated to be in instrumentality or agency of the Government except to the latest judgment of the Supreme Court in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, . The question which arises in the said case was whether the institute of Constitutional and Parliamentary Studies registered under the Societies Registration Act is or is not a State within the meaning of Article 12 of the Constitution. A few of the tests called out from the judgment in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, which are as follows are re-produced.

(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 State conferred or State protected.

(4) Existence or 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 are 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.

It was observed in this judgment that there cannot be indeed a straight jacket formula and it is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be a State. In a case some of the features may emerge so boldly and prominently that a second view may not be possible and there may yet be other cases where the matter would be on the border-line and it would be difficult to take one view or the other outright. In the cited case after making reference to objects and rules and regulations of the said Society it was found that the objects of Society were not Government business and the Society was not found to be funded out by Government funds alone and as a matter of fact it was found that some money was coining from other sources including foreign funds being made available to the Society and it was held that the said Society was not covered by the definition of State given in Article 12 of the Constitution. It was observed in this judgment that in a welfare State the Government control is very pervasive and in fact touches all aspects of social existence and in the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental Society into an agency or instrumentality of the State. It was observed that a broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion.

8. The counsel for the petitioner has drawn my attention to certain observations made in Sheela Barse Vs. Secretary, Children''s Aid Society and others, . The question which arose in this case before the Supreme Court was with regard to proper management and keeping all Remand Homes and Observation Homes as required by the various Children Acts. It was observed in this judgment that every Society must Therefore devote full attention to ensure that Children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the Society when they grow up and it was observed that a Society managing such Children Homes should be treated as a State within meaning of Article 12 of the Constitution as it is undoubtedly an instrumentality of the State on the basis of the tests laid down by the Court. In a recent case the Supreme Court dealt with the Society running All India Sanik Schools reported as All India Sanik Schools v. Ministry of defense, 1988 (4) S.C. 22. It was held in this case that the said Society is performing government functions of giving training to students so that they can become part of the army of the country and thus the said society which is running such a school is covered by the definition of the State. In the present case the Bal Bhavan has been set up for providing facilities for the proper education of the children so as to develop their personalities and to activate their talent and also promote social and cultural contacts amongst the children of all the classes and communities. The various provisions of the Memorandum of Association Rules and Regulations noted in detail above show the complete financial control of the Central Government over the affairs of the Society. The members of the Managing Board also are mostly nominees of Central Government and at least three members have to be high officials of the Ministries of the Central Government. The Chairman and Vice Chairman are to be nominated by the Central Government. The Rules and Regulations and the Byelaws of the Society cannot be changed without the prior permission of the Central Government. Admittedly the Society is sponsored by the Ministry of Education and is being fully funded by the Central Government. So in my view, keeping in view the tests enumerated above and particularly the observations made by the Supreme Court in the case of Sheela Barse (supra), a conclusion must be reached in the present case that the respondent-Society is an instrumentality or agency of the Government of India, hence is covered by the definition of State and I hold accordingly.

9. The impugned orders of terminating the services of the petitioners are in the nature of punishment. The perusal of the order shows that services of the petitioners have been terminated by imputing misconduct to the petitioners. The impugned orders are on the face it stigmatic. It is true that employees of the respondent-Society are not covered by Article 311 of the Constitution of India as they do not hold any civil posts under the Government of India, still as the

Respondent-Society is amenable to the writ jurisdiction being the State under Article 12 of the Constitution, the respondent-Society could not have acted arbitrarily. Similar question arose in Civil Writ Petition No. 797 of 1985 Amarjit Singh v. Punjab National Bank decided on March 4, 1986 by H. L. Anand, J. and Sunanda Bhandare, J. (5) and it was held that the order of termination which causes aspersion on the employee could not be passed arbitrarily without following the principles of natural justice. In the said case the employees was removed from the service taking a resort to regulation which was similar to Rule 16 which permitted the respondent-Society to terminate the services of even a permanent employee without assigning any reason. Regulation 20 of the Service Regulations of the Punjab National Bank which gave such a power was held to be void. It was held that principles of audi alteram partem must be given effect to before passing a adverse order against an employee. In para 28 of the judgment this Court held that if the Regulation 20 empowered the Bank to terminate the services of an officer without casting any stigma then obviously the order of termination which ex facie is stigmatic or punitive in nature is outside the scope of Regulation. But if Regulation 20 empowers the authority to terminate the services without any reason then such a Regulation has to be struck down on the ground that the Regulation confers an unregulated and uncanalised power to terminate the services of any officer, including a permanent officer and such a Regulation is ultra virus Article 14 of the Constitution. In the cited case there was some argument whether the order of termination was stigmatic or punitive in nature or not. But in the present case the impugned orders on the face of it show that they are stigmatic and punitive in nature because they impute mis-conduct to the petitioners. This Court laid down that principle of audi alteram partem enjoined a reasonable opportunity of being heard being given prior to the decision and if the opportunity is to be reasonable and effective and real, it must be an opportunity before" the authority gives at its decision. The Court was also considering the possibility of giving post-decisional hearing but keeping in view the facts of that case it was held that such post decisional hearing would not meet with the requirement of rules of natural justice.

10. Counsel for the respondent has vehemently argued that it was not a fit case where the respondent-Society should give any opportunity to the petitioners because an ugly situation has been created by the acts of the petitioners and the respondent-Society was justified in not resorting to disciplinary proceedings contemplated by the rules and forthwith passing the termination order. She had made a reference to Article 311(2)(b)(c) and (d) of the Constitution of India where the Govt. is entitled to take a decision that in a particular case it would not be feasible to hold any disciplinary inquiry before passing the punitive order. The counsel for the respondent has contended that even under the said Constitutional provisions, the authority concerned has to record good reasons for reaching the satisfaction of the type mentioned above. In the present case no such reasons have been recorded in the impugned orders. The reasons cannot be now allowed to be supplied by any other way. It is not understood how the

disciplinary proceedings as contemplated by the rules could not be taken against the petitioners when such disciplinary proceedings have been taken against the other employees who also had similarly demonstrated. May be the petitioners were shown to be ring leaders but it was not necessary to distinguish the case of the petitioners from the case of other employees who also participated in the alleged ugly demonstrations.

11. I, Therefore, hold that the impugned orders are vitiated having been passed without affording an opportunity of hearing to the petitioners and are liable to be quashed. I allow both the writ petitions and quash the impugned orders and made rule absolute and direct that the petitioners be reinstated with all back wages and other benefits. However, the respondent-Society is not precluded from taking disciplinary action against the petitioners in accordance with the rules of the Society as given in Chapter X of the Service Rules. Petitioners shall have costs from the respondent-Society which I quantify at Rs. 500 in each case.