

(1994) 06 GAU CK 0023

In the Gauhati High Court

Case No : Civil Rule No's. 344, 348 and 496 of 1994

Ksh. Dinesh Singh and Others

APPELLANT

Vs

Chairman, Manipur Tribal Dev. Corpn. and Others

RESPONDENT

Date of Decision : 29-06-1994

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12

Citation : (1995) 1 GLR 122

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : T. Nandakumar, B.P. Sahu and Manichandra Oinam, for the Appellant; Ashok Potshangbam, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—In these batches of writ petitions the order dated 11th March, 1994 terminating the services for the Petitioners without showing cause has been assailed. Common questions of facts and law has arisen in all the Civil Rules are the same and as such they are being disposed of by this common judgment.

2. I have heard Mr. B.P. Sahu, learned Counsel for the Petitioners in Civil Rule No. 344 of 1994. Mr. T. Nandakumar, learned Counsel for the Petitioner in Civil Rule No. 343 of 1994, Mr. Manichandra Oinam, learned Counsel for the Petitioners in Civil Rule No. 496 of 1994 and Mr. Ashok Potshangbam, counsel for the Respondents in all the Civil Rules.

3. Mr Ashok Poishangbam raises the preliminary objection regarding the maintainability of the writ petitions. According to Mr. Ashok the Manipur Tribal Development Corporation Ltd. (M.T.D.C. Ltd.) is a private limited Company registered under the Companies Act and as such it is not a state or instrumentalities of the state within the meaning of the Article 12 of the Constitution of India. According to him, therefore, any action taken by the Corporation is not amenable to the writ jurisdiction. In this connection, the

counsel has taken me to various provisions contained in Memorandum of Articles of Association of the Company. He has particularly referred to Article 4(1) which says that the Company is a private Company. Article 5 which deals with authorised share capital of the Company, Article 51 which deals with the power of the Government with the sanction of the Company in general meeting, Article 56 which deals with the borrowing powers of the Directors of the Company, Article 57 which deals with the powers of the Directors to secure the payment or repayment of the Company, Article 61 which deals with the powers of Directors to call extra ordinary general meeting, Articles 74 & 75 which deals with the constitution of Finance Committee of the Company and Article 87(a) which deals with the power of the Directors to make appointment of officers of the Company. According to Mr. Ashok, the aforesaid Articles of Association would clearly show that the Board of Directors control the Company and the state has no authority over the control of the Company and as such the Company is not a state within the meaning of Article 12 of the Constitution.

4. As against this Mr. T. Nandakumar counsel for the Petitioners submits that the Board of Directors are all government officers and appointed by the Government. The entire funding of the Company are by the State Government and therefore the Company is a private limited Company of the Government and is a "state/instrumentalities of the state" within the meaning of Article 12 of the Constitution of India. In this connection, counsel for the Petitioners has referred to Article 4(ii), 82, 83, 88, 94 and 97 of the Articles of Association of the Company.

5. Article 4(i) provides that the Company is a private limited Company. Article 4(ii) provides that the Company shall be a Government Company as defined in Section 617 of the Act. (Emphasis supplied). Proviso to Article 4(ii) provides that 90% of the total subscribed share capital of the Company shall be held by the Government of Manipur or its nominees and balance shall be subscribed or held by the financial institutions sponsored by the state or Central Government. This shows the entire funding of the Company is by the Government/instrumentality of the State.

6. Article 82 deals with the constitution of the Board of Directors and appointment of the Board of Directors. The Board of Directors consisted of 4 members including the Chairman. All the members of the Board of Directors including the Chairman are the officers of the Government of Manipur. Article 83 deals with the remuneration of the Directors and states that the remuneration of the Directors shall be determined by the Governor from time to time. Article 94 deals with the powers of the State Government regarding the Chairman and Vice Chairman of the Board of Directors and provides that the power of the appointment of the Chairman and Vice Chairman is vested with the State Government of Manipur.

7. This apart, Article 97 provides non-obstant clause and says that notwithstanding anything contained in the Articles of Association, the State

Government may from time to time issue directive or instructions as it may think fit in regard to the financial and conduct of the business and affairs of the Company. This shows the entire management of the Company is under the overall control of the State Government.

8. The Division Bench of this Court had occasioned to deal with the similar question, whether the Assam Co-operative Apex Bank Ltd. is a state or instrumentalities of the State within the meaning of Article 12 of the Constitution of India, in *Shri Surendra Nath Kalita Petitioner v. Assam Co-operative Apex Bank Ltd. and Ors.* Respondents (1989) 1 GLR 424. The Division Bench of this Court after hearing counsel of the parties laid down the following test to say that the Co-operative Bank is a state within the meaning of Article 12 of the Constitution.

(1) The State Government is the Chief funding source for financial resources of the bank;

(2) Composition of the Administrative council and the Board of Directors of the Bank is dominated by representative appointed by the State Government;

(3) Important rules and regulations for management of bank and also regulation of the conditions of services of the members of the staff require approval of the State;

(4) The Bank has to comply with directions of the State Government on important matters;

(5) The Chief Executive of the Bank namely the Managing Director is appointed by the State;

(6) The State Government has got power to reconstitute the Board of Directors as has been done in the year 1986.

9. In the instant proceeding (1) the Board of Directors are all Government Officers of the State of Manipur (2) 90% of the fund of the Corporation are contributed by the State Government and the rest 10% are contributed by the Financial Institutions, sponsored by the State or Central Government. (3) The Chairman and Vice-chairman are appointed by the State Government (4) The State Government has overall control of the Corporation. This apart, Article 4(ii) provides that the Company shall be a Government Company Therefore, I have no doubt in my mind that the Company is a Government Company and a State/in (sic) of the State within the meaning of Article 12 of the Constitution of India and its actions are amenable to writ jurisdiction.

10. Having resolved to this point, I now advert to the next question as to whether the impugned order dated 11th March, 1994 is violative of the principle of natural justice. The order impugned runs as under:

Whereas the Board of Directive MTDC Ltd. discussed on 5/3/94 the Memorandum/ Agenda on the financial of M.T.D.C. Ltd. and various appointments made with and without approval of the Board of Directors, MTDC Ltd. in the post; and

Whereas Article 74 and 87 of Association of the MTDC Ltd. appointments of salaried staff and post creation of the Corporation is to be made by the Financial Committee or Board of Directors of the MTDC Ltd., and

Whereas there are as many as 78 officers and staff of the Corporation whose posts were created and appointed without the approval of the Finance Committee or Board of Directors of MTDC Ltd. ; and

Whereas the Board of Directors of the MTDC Ltd. resolved on 5/3/94 that out of 112 staff of the Corporation, the 78 staff whose appointments were made without the approval of the Board of Directors MTDC be and are terminated with payment of their back salaries and wages due to them;

Now, therefore, in pursuance of the resolutions aforesaid, the following employees are hereby terminated from their services with immediate effect.

11. A cursory reading of the order impugned clearly appears that no opportunity of showing cause has been afforded to the incumbents whose services are sought to be terminated. From the list of index filed in C.R. No. 344 of 1994 at the time of hearing would show that most of the services of the terminated incumbents have been regularised. It also shows that some of them have put in service as many is about 13 years and some of them have put in about 5 years of service by now.

12. Keeping in view of the vast expanding horizon of the rule of natural justice and in view of the catena of decisions of the Apex Court, the services of the (sic) could not have been terminated in the manner in which it is sought to be done, without affording them of any opportunity of showing cause.

13. By now it is well settled principle of law that no order to the detriment of the incumbents could be passed without complying with the rule of natural justice, even if the order of appointment of the Government servants are passed without jurisdiction. Avoiding multiplicity see Shrawan Kumar Jha and others Vs. State of Bihar and others,

14. From the impugned order it appears that two reasons have been assigned, necessitating the termination of the services of the Petitioners. One reason being the financial constraints of the Company, the other reason being that the appointment of the Petitioners are made without the approval of the Board of Directors as enjoined under Memorandum of Articles of Association of the Company.

15. Regarding first reason, the State can not take the plea of financial constraints and deprive the citizens of Constitutional rights. It is the bounden duty of the State to manage its financial institution properly and the citizens can not be deprived of its Constitutional rights because of financial constraints of the State. The Apex Court in Khatri and Others Vs. State of Bihar and Others, quoting from the words of justice Blackmun in Jackson v. Bishop humane consideration and constitutional requirements are not in this day to be measured by dollar

considerations had observed in paragraph 5 of the judgment that the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty. Financial constraints of the State, therefore, can not be the ground for terminating the services of the Government servants, if they are otherwise eligible to hold the posts.

16. With regard to the second reasons from the index filed by the Petitioners it appears that most of the appointments and promotions of the Petitioners were made pursuant to the resolution and was approved by the Board of Directors. If that be so it is un-thinkable that the services of the Petitioners were terminated in the manner it has been sought to be done.

17. It is, however, contended by Mr. Ashok Potshangbam that the services of the Petitioners were terminated pursuant to the memorandum of agreement entered into between the Petitioners Employees Association and the Management of the Corporation. In such a situation according to the Council requirement of the Rule of natural justice is not warranted. Counsel particularly referred in Paragraph 2 of the agreement runs as under:

For proper and healthy functioning of the Corporation, appointment without post creation and obtaining the Board of Directors approval to that effect be examined for further course of necessary action.

The submission of Mr. Ashok potshangbam is unacceptable for more than one reasons, because the agreement particularly the paragraph 2 of the agreement as quoted above has no relevancy with the termination of the services of the Petitioners association. Secondly, even if assuming the agreement has some relevancy paragraph 2 of the agreement does not empower the board of Directors to terminate the services of the Petitioners Association.

18. In the result, the impugned order dated 11th March, 1994 terminating the services of the Petitioners association with immediate effect are hereby quashed and set aside. The Respondents are directed to take back the Petitioners into the Service forthwith. Applying the principle of "no work no pay" the Petitioners shall not however, entitle the back wages for the period for which they were not on duty. Accordingly, these butches of writ petitions are allowed, Parties are, however, asked to bear their own costs.