
(2004) 02 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1903 of 2004

Mani Enterprises

APPELLANT

Vs

Vasavi Co-operative Urban Bank Limited and Others

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2004) 2 ALD 501 : (2004) 3 ALT 349 : (2004) 53 SCL 255

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : G. Anandam, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a proprietary concern engaged in civil construction works. The petitioner availed over draft facility (Account No. 34) from M/s Vasavi Co-operative Urban Bank Limited ("Vasavi Bank"), first respondent herein in October, 2000. He has also mortgaged the property belonging to him and his wife as a security for the said loan facility. The petitioner could not pay the amount for various reasons and therefore petitioner's account was classified as Non-Performing Asset (NPA). In order to liquidate the outstanding loan given by Vasavi Bank, the petitioner approached M/s "The Associates" a subsidiary of Citi Financial, Himayathnagar branch to take over the loan of Vasavi Bank. "The Associates" by letter dated 13.9.2003 informed that an amount of Rs. 15,50,000/- is sanctioned subject to certain conditions including mortgaging the property of petitioner. The petitioner therefore allegedly addressed letters on 27.11.2003, 16.12.2003, 26.12.2003, requesting Vasavi Bank for permission to clear the principal outstanding amount with loan facility availed from M/s "The Associates." The same was rejected by Vasavi Bank.

2. It appears that at the time of availing loan under the loan rules, the petitioner

was required to subscribe 41 "A" class shares of Vasavi Bank worth about Rs. 41,000/-. The petitioner subscribed those shares. He has also kept some amount in fixed deposit receipts of Vasavi Bank. The petitioner states that in the proceedings dated 7.3.2003, as per proceedings, it is permissible for Vasavi Bank to adjust the share capital amount as well as the amounts towards redemption of FDRs for liquidating the loan. The petitioner also requested the bank to adjust the share capital amount as well as FDRs amount towards loan, in vain. Therefore, petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution praying for a writ of mandamus directing respondents to consider the representations of petitioners dated 27.11.2003, 16.12.2003 and 26.12.2003 for liquidating outstanding amounts against petitioner and also direct the bank to seek approval of Reserve Bank of India for adjusting all amounts covered by FDRs. Vasavi Bank represented by its Chief Executive Officer, Registrar of Co-operative Societies, Hyderabad and the Manager, Person Incharge of Vasavi Bank are arrayed as party respondents to the writ petition. The three representations referred to hereinabove are addressed by the petitioner to the Manager, Person Incharge, Vasavi Bank, Vasavi Seva Kendram, Hyderabad, from which bank petitioner availed over draft facility. Therefore, though the Registrar of Co-operative Societies is made a formal party, in effect a writ of mandamus is sought to Respondents 1 and 3 namely Vasavi Bank. No direction is sought against second respondent.

3. The writ petition filed against a private bank or a Co-operative Urban Bank, is not maintainable. Vasavi Co-operative Bank is registered as a financing bank under the provisions of A.P. Co-operative Societies Act, 1964. The same is not a creation of statute nor established under the provisions of statute. It is a body or association of private persons with a common objective, registered under the statute for the purpose of regulation keeping in view the public interest. Merely because, a Co-operative Urban Bank is regulated or controlled by the provisions of validly made legislature, it cannot be said that such body discharges public functions or vested with public duty. The precedents in this regard in British Common Law jurisdiction as well as in the field of Indian Administrative Law are galore. It is not necessary to resort to copious reference and excerption from various decisions. A reference to few of them would be suffice.

4. The Court of Appeal in {R. (on the application of Heather and Ors.) v. Leonard Cheshire Foundation} (2002) 2 All ER 936, was considering Section 6 of the Human Rights Act, 1998 which required all "public authorities" should strictly comply with the provisions of the said Act. A question arose before the Court of Appeal (Civil Division) as to whether Leonard Cheshire Foundation (LCF) which is a charitable foundation established for providing accommodation is a public authority within the meaning of Section 6(3)(b) of the Human Rights Act. The facts in the said case are these. Elizabeth Heather and Hilary Callin were claimants to whom the local authority owed a duty to provide accommodation u/s 21 of the National Assistance Act, 1948. The local authority under the said Act made arrangements to accommodate both the claimants in a home run by the

LCF. The claimants were indeed patients in the said home for about 17 years. LCF decided to cease to operate the home in the form in which it existed. The residents who could not be accommodated at the home were to be relocated in community based units. They applied for judicial review of the decision of the LCF to close the home. They contended that while providing accommodation to them, LCF was exercising functions of a "public nature" within the meaning of Section 6(3)(b) of the Human Rights Act, 1998. Section 6(3)(b) defined "public authority" for the purpose of Section 6 in these terms: "In this section, "public authority" includes....(b) any person certain of whose functions are functions of a public nature....." The Judge, before whom application for judicial review came up, dismissed the same holding that LCF was not a public authority within the meaning of Section 6(3) of the Human Rights Act. The Court of Appeal, placed reliance on the earlier judgment of Lord Woolf C.J. in *Poplar Housing and Regeneration Community Association Limited v. Donoghue* (2001) 4 All ER 604 : (2002) QB 48 : (2001) 3 WLR 183 and by a unanimous decision (rendered by Lord Woolf, CJ) dismissed the appeal holding that LCF was not local authority nor it can be said to exercise statutory powers in performing functions of a public nature. It was held (see head note) as under:

The role that the foundation was performing manifestly did not involve the performance of public function. The fact that it was a large and flourishing organization did not change the nature of its activities from private to public. While the degree of public funding of the activities of an otherwise private body was relevant to the nature of the functions performed, it was not by itself determinative of whether the functions were public or private. The foundation was not standing in the shoes of the local authority. Section 26 of the 1948 Act provided statutory authority for the actions of the local authority, but provided the foundation with no powers. The foundation was not exercising statutory powers in performing functions for the claimants. The fact that, if the foundation were not performing a public function, the claimants would not be able to rely on Article 8 as against it could not change the appropriate classification of the foundation's function. Accordingly, the appeal would be dismissed, although it had been appropriate to bring to the Court by way of judicial review the question whether the foundation was performing a public function.

5. The seven-Judge Bench of the Supreme Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, , considered the question whether the Council of Scientific and Industrial Research (CSIR), is a State within the meaning of Article 12 of the Constitution of India. The earlier decision of the Constitution Bench of five Judges of Supreme Court in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, , had earlier taken a view that CSIR is not an "authority" within the meaning of Article 12 of Constitution and therefore a writ petition is not maintainable. The Supreme Court reconsidered the said judgment in *Pradeep Kumar Biswas*, case (supra). The Supreme Court in its majority decision reviewed the important case law on the points and came to conclusion that CSIR is a State within the meaning of Article 12 of the

Constitution and overruled Sabhajit Tiwari's case (supra). It was held:

The picture that ultimately emerges is that the tests formulated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

6. As held by the Supreme Court, every legal entity of public character does not necessarily become an "authority" within the meaning of Article 12 of the Constitution. Even if a body or organization is a creature of statute, unless such body or organization is entrusted with governmental functions, fundamental to the life of people, the same cannot be treated as "authority" "instrumentality" and "agency" for the purpose of Article 12 of the Constitution. A person alleging an entity to be a State must satisfy the Court of brooding presence of Government or deep and pervasive control of the Government duly demonstrating the real source of governing power.

7. In *Federal Bank Ltd v. Sagar Thomas* AIR 2003 SCW 4995 : 2004 (1) Sup 25, the Supreme Court considered the question as to whether a private bank falls within the definition of State or local or other authorities under the control of Government within the meaning of Article 12 of the Constitution. The Court referred to relevant case law as well as the provisions of Banking Regulation Act, 1949, and held that notwithstanding the regulatory power in relation to private bank vesting the Government as well as Reserve Bank of India, a private bank does not attain the status of "State" and cannot be treated as performing any public duty. The relevant passages from the judgment are as under:

Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided u/s 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character

though it would be so for acquiring authority.

In our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution.

8. In *Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju* AIR 1990 AP 171 (FB), the Full Bench of this Court considered this question whether a writ petition lies against any society and if it does in what circumstances. The conclusions of the Full Bench on these questions are as follows :

(i) If a particular Co-operative Society can be characterized as a "State" within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an "authority" within the meaning, and for the purpose of Article 226 of the Constitution, in such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness.. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a "State", has to act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws.

(ii) Even if a Society cannot be characterized as a "State" within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a "person", or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.

(iii) The bye-laws made by a Co-operative Society registered under the A.P. Cooperative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its employees, or between the Society and its members, as the case may be. Hence, where a Society cannot be characterized as a "State", the service conditions of its employees governed by bye-laws, cannot be enforced through a writ petition. However, in

the matter of termination of service of the employees of a Co-operative Society, Section 47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishments Act; but, in an appropriate case, this Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.

(iv) Mandamus, certiorari and prohibition are public law remedies. They are not available to enforce private law rights.. Every act of a society which may be a "State" within the meaning of Article 12, does not necessarily belong to public law field. A society, which is a "State", may have its private law rights just like a Government. A contractual obligations, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into contract, however, Article 14 operates, as explained by the Supreme Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, and *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, .

9. Another Full Bench in *SUM. Prasad Vs. Andhra Pradesh State Federation of Co-operative Spinning Mills Ltd., Hyd. and Others*, , considered the question whether A.P. State Federation of Co-operative Spinning Mills is a "State" within the meaning of Article 12 of the Constitution. The Court referred to *Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju*, (supra) as well as the relevant case law on the subject and observed as under:

In *U.P. State Co-operative Land Development Bank Ltd., v. Chandra Bhan Dubey*, , relied on by Mr. Panduranga Rao the Apex Court held that the U.P. State Co-operative Land Development Bank is instrumentality of the State as it is controlled by the State Government and service conditions of its employees are statutory in nature. Yet again in *Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another*, , the Apex Court after referring to the case of *Chandra Bhan Dubey* (supra) observed :

.....The conclusion is irresistible that the defendant Bank is undoubtedly an instrumentality of the State. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee, it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross violation of principles of natural justice, then the third exception to the general principle that contract of personal service, cannot ordinarily be specifically enforced.....

The aforementioned decisions of the Apex Court therefore clearly lay down a distinction as to Co-operative Societies which are merely registered under Co-operative Societies Act on the one hand and those Co-operative Societies

although registered under the Cooperative Societies Act are fully funded and controlled by the State and conditions of service of its employees are governed by the statutory rules.

10. In *P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others*, , a Full Bench of Kerala High Court, in *Banabihari Tripathy v. Registrar, Co-operative Societies*, AIR 1988 Orissa 31 (FB), a Full Bench of Orissa High Court also took the view that a Co-operative Society is not "State" within the meaning of Article 12 of the Constitution of India.

11. In *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others*, , the Supreme Court considered the question whether a Co-operative Sugar Factory registered under the U.P. Co-operative Societies Act, 1965 is a State within the meaning of Article 12 of the Constitution of India. After referring to earlier decisions as well as the recent decision of Constitution Bench (Seven Judges Bench) in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (supra)*, the Supreme Court while holding that Co-operative Sugar Factory is not a State, observed as under:

From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a Co-operative Society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, bye-laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter- affidavit filed on behalf of the State and it was averred that majority of the shares were held by canegrowers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter-affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non-traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has nowhere been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self-generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar.

12. The Vasavi Co-operative Bank no doubt obtained licence from the Reserve

Bank of India. Nevertheless keeping in view the law laid down by the Supreme Court, it cannot be treated as a "State" for the purpose of Article 12 of Constitution and mandamus cannot be issued to Vasavi Bank as the same does not perform any public duty.

The writ petition, for the above reasons, is not maintainable and it is accordingly dismissed. No costs.