

(2006) 03 DEL CK 0209
In the Delhi High Court
Case No : WP (C) 2742 of 2001

Manoj Lakhatakia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 130 DLT 658 : (2006) 90 DRJ 553

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sanjeev Sahay and Amit Sharma, for the Appellant; Barkha Babbar and K.K. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioner in this case has challenged an order terminating him from the services. The order was issued by the second respondent Shastri Indo Canadian Institute, (hereafter called the Institute).

2. The factual compass for decision of this case is narrow. The Institute is a charitable organisation, incorporated in Canada; it has its offices in Calgary and New Delhi. The petitioner claims that financial control of the Institute is with the Government of India which also funds it in terms of Memorandum of Understanding signed for the purpose. The institute was founded in 1968 with a grant from the Central Government. Its Advisory Councils are in India and Canada.

3.The petitioner was originally working in the Indian Administrative Service (IAS) and upon being offered the position as Administrative Director w.e.f. 16th June, 1997, he accepted appointment for four years at a salary of Rs. 25,000/- per months on probation.

4. The petitioner states that he was appointed as a permanent employee on 17.9.1998. In terms of his appointment as a regular employee, he was entitled

to all the permissible allowances medical and retirement benefits, office car etc. The petitioner claims that on account of malicious intention of certain vested interests, false and frivolous complaints were made against him to the Board of Directors. He approached authorities but in stead of even furnishing a copy of the complaint, the Executive Committee of the Institute constituted an enquiry. It is alleged that the petitioner asked to proceed on leave; he was never furnished any documents or made aware of any charges. It is also claimed that the third respondent who has been imp leaded as a party due to allegations of mala fide, attended the meeting of the Institute as a nominee of the Central Government. He insisted that the petitioner ought to be removed.

5. On 17.9.2000, the petitioner was issued with a letter by the President of the Institute, stating that his services were no longer required. The letter also mentioned that the appointment was contingent upon the renewal of the Memorandum of Understanding between the Institute and the Government of India. Since there was no renewal after April 1999, the petitioner's services were terminated. By a letter dated 16.11.2000, the Institute informed the petitioner that an amount of Rs. 789801.94 was due and payable; subsequently after adjusting certain dues payable by the petitioner, an amount of Rs. 6,34,515.30 was paid.

6. Mr. Amit Sharma, learned Counsel for the petitioner attacked the impugned order as arbitrary and amounting to legal malice. It was submitted that the petitioner had given up important public assignments in his capacity as an encoder officer of the IAS but was dealt with most shabbily and arbitrarily. Learned Counsel submits that the ostensible reason for dispensing with the services, namely, non-renewal of the MOU was no reason at all. In fact, approval for renewal had taken place in principle and the execution of the agreement was a mere formality. Counsel submitted in the past too, persons had been continued in employment pending execution of the MOU. The petitioner could, Therefore, not be singled out and hostilely discriminated against.

7. Learned Counsel submitted that the Institute was funded to a substantial degree by the Central Government who placed its nominee in the Governing Council and, Therefore, it could not behaved in a discriminatory and whimsical manner as it did in the present case.

8. Mr. K.K. Mohan, learned Counsel appearing for the Institute relied upon the averments in the counter affidavit to say that the Institute is neither State under Article 12 of the Constitution of India nor is it amenable to jurisdiction under Article 226 of the Constitution. It is submitted that the Institute is constituted under Canadian law, controlled and governed by rules and regulations applicable in Canada. Reliance has been placed upon a copy of the registration letter in that regard. It is submitted that the head quarters of the Board of Directors of the Institute are located in Canada. The India office was established solely as a result of the MOU. It is averred that the Institute receives major funding from the Government of Canada through the Canadian International Development Agency;

it is not subject to the audit of the Comptroller and Auditor General of India. Counsel further submits that the President of the Institute has his office in Canada and is a Professor from one of the major member University of Canada. The Institute has a Board Membership of 25 of whom only two are Indians.

9. Counsel relied upon the initial Memorandum of Understanding entered into between the Institute and the Indian Government in 1968 whereby an initial grant of Rs. 30 lakhs was agreed to be paid. It was submitted that the purpose of the grant by the Government of India was to facilitate bilateral exchange of skills and strengthening of Indian and comparative studies in Canada while instituting prizes, awards and fellowships in various areas of academics.

10. A reading of the objects of the institute appear to be to render assistance to scholars studying in Canada in various academic fields. it is claimed that the petitioner's appointment was purely contractual and he cannot claim the benefit of permanent employment with the respondent institute, which in any event, is dependent on funding, in terms of charter, and dependent on aid and grant, governed by the laws of Canada.

11. The above facts show that the Institute is not amenable to Indian law; it is not even subject to the control of the Central Government or any State instrumentality. The copies of the MOU between the Institute and the Central Government, no doubt, show that there is a certain amount of funding by the Central Government through grants. The grants in turn appear to be spread over for the duration of the MOU. For instance, if the MOC is for three years and an amount of Rs. 50 lakhs is payable, the amount would be spread over the period for three years. The objective of the Institute is to facilitate the work of scholars visiting Canada in various Universities and fostering Indian studies and also helping Indian students in Canada. This seems to be a part of reciprocal arrangement with the Canadian authorities.

12. In the judgment reported as Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, the Supreme Court indicated that tests are to be considered while seeing whether a body is State under Article 12 or not. The ratio in this decision was considered in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, The Court held as follows:

6. The point raised is no longer rest integra as the same is concluded by decisions of this Court. In the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, a Constitution Bench of this Court, while approving the tests laid down in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, as to when a corporation can be said to be an instrumentality or agency of the Government, observed at pp.736-37 which runs thus: (SCC para 9)

9. The tests for determination as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the

judgment in the International Airport Authority case (supra) These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

- (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. (SCC p.507, para 14)
- (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. (SCC p.508, para 15)
- (3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p.508, para 15)
- (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)
- (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. (SCC p.509, para 16)
- (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. (SC p.510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case (supra), be an "authority" and, Therefore, "State" within the meaning of the expression in Article 12.

7. In the case of Pradeep Kumar bids was v. Indian Institute of Chemical Biology (2002) SCC 111 , a Bench of Seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case and approved in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, for determining as to when a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12 of the Constitution. There the Bench referred to the case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an

autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this Court in *The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers' Association and Another*, where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government.

The Court further held as follows:

8. 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 cooperative 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.

Considering the ratio of nominees of the State Government and the Management of the committee, the Court held: (para 8)

8 ...Under the bye-laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less a deep and pervasive one....

A contention was raised on behalf of the original writ petitioners that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ proceedings could be entertained against it as mandamus could be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. On the other hand, the Mill contended that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty. In this connection, the Court held :

9 ..Reference in this connection may be made to the decisions of this Court in *Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani* in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of *VST Industries Ltd. Vs. VST Industries Workers' Union and Another*, the same principle has been reiterated. Further, in the case of *V.T. Industries*

Ltd., it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.

13. In view of the facts discussed above, the mere circumstance that some grants are released to the Institute by the Central Government and a couple of its nominees sit on the Board of Directors in my opinion do not necessitate a conclusion that it falls within the description of State. There is nothing on record to show that the State in its larger sense that is the Central Government or any of its agencies have functional, financial or administrative control over the Institute. It, Therefore, does not fall within the definition of State under Article 12 of the Constitution.

14. The next question whether the Institute is amenable writ jurisdiction under Article 226 and whether it performs any public duties.

15. This question was considered in *G. Basi Reddy Vs. International Crops Research Instt. and Another*, the High Court had ruled that the International Crops Research Institute ("ICRISAT" in short) was not amenable to writ jurisdiction under Article 226 of the Constitution. On appeal, considering the earlier decisions and the scope for issuance of writ under Article 226 of the Constitution by the High Court, the Supreme Court held, (by paras 25 to 29):

25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, The claim as made by the appellant in his writ petition is founded on Arts. 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a "State" or authority within the meaning of Art. 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in *Pradeep Kumar bids was v. Indian Institute of Chemical Biology and Ors.* (2002) SCC 111 in which we said:

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

26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfill any of these tests. It was not set up by the Government and it gives its

services voluntarily to a large number of countries besides India. It is not controlled by not is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot Therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.

27. It is true that a writ under Article 226 also lies against a "person" for "any other purpose". The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any one of the writs mentioned would according to well established principles issue.

28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty VST Industries Ltd. Vs. VST Industries Workers" Union and Another, ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corporation v. C.V. Imanuel AIR 1960 SC 1306, this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

...an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute (See Sohanlal Vs. The Union of India (UOI),

29. We are Therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT.

16. The words "any person or authority" used in Article 226 are not restricted to statutory authorities and instrumentalities of the State; they include any person/body performing public duty. The nomenclature of the institution is irrelevant; of relevance is the nature of the duty imposed on the body. The duty is vis positive

obligation owed by the concerned person or authority to the affected party, irrespective of the means by which such a duty is imposed. In *Federal Bank Ltd. Vs. Sagar Thomas and Others*, the Supreme Court had occasion to examine the entire issue, in the context of an employment dispute, to decide whether a private bank was amenable to writ jurisdiction. The court concluded that it was not amenable to writ jurisdiction, merely because the government was performing similar functions, or that such functions were subject to regulatory control or supervision, through statutory process.

17. The question again debated by the Supreme Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, the Court had again emphasised that the duty cast upon the body may be either statutory or otherwise. But there must be a public law element in such action. The Court was faced with a challenge to termination of contractual appointment. It was concluded that no public duty had been disclosed entitling exercise of jurisdiction under Article 226 of the Constitution of India.

18. In this petition, there is no indication to show that the post held by the petitioner was a public post or that he was discharging duties that were of a public character. That his functioning was in connection with the work of the institute which was partly funded by the Government of India, by itself is not sufficient to conclude that the employment and termination of employment involved before law elements. I am, Therefore, satisfied that the Institute, namely, the second respondent is not amenable to jurisdiction under Article 226 of the Constitution of India. This conclusion is also supported by the earlier reasoning to the extent that the Institute was incorporated in Canada, its functioning is subject to the laws applicable in Canada and has its Head Quarters in that country.

19. In view of the foregoing reasons, I am of the opinion that the petitioner cannot claim any of the reliefs sought in these proceedings.

20. The writ petition is accordingly dismissed. No costs.