
(2003) 10 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 24910 and 25382 of 2002

Md. Saleem

APPELLANT

Vs

Atomic Energy Education Society and Others

RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2003) 6 ALD 778 : (2003) 6 ALT 718

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : A.K. Jayaprakash Rao, in WP No. 24910 of 2002 and G. Ravi Mohan, in WP No. 25382 of 2002, for the Appellant; Nooty Ram Mohana Rao, for the Respondent

Final Decision : Allowed

Judgement

E. Dharma Rao, J.—The petitioners in both these writ petitions are working as Sweeper-cum-Farash in Atomic Energy Education Society. The petitioner in WP No. 24910 of 2002 was appointed as such on 6.3.1991 and the petitioner in the other writ petition was appointed in the year 1988 and they are discharging their duties in the respondent Society at Hyderabad. By virtue of the impugned orders, in public interest, the petitioner in WP No. 24910 of 2002 was transferred to Jaduguda, Mumbai and the petitioner in the other writ petition was transferred to Mysore. Assailing the correctness of these transfer orders, the petitioners have filed these two writ petitions, contending that the basic pay drawn by the petitioner in WP No. 24910 of 2002 is Rs. 3,200/- and he draws a gross salary of Rs. 5,000/- and his carry home salary is Rs. 3,300/- per month. The petitioner submits that though he is a low paid employee, he was transferred along with six others through proceedings dated 14.5.2002 from the third respondent college to AECS(E/M) Jaduguda, Mumbai, and in compliance of the same, the reported at the place. Thereafter, when there was no vacancy, he was again transferred to Anushakti Nagar, Mumbai and assigned the duties which are unconnected to his

nature of post, for which the petitioner was appointed, as a result of which the petitioner suffered serious ill-health and bed-ridden. It is further submitted that his family consists of wife and small children aged 5 years and studying at Hyderabad, that when he received phone call from his wife stating that she is unwell, he sought for the grant of leave and when it was refused, he was compelled to proceed to Hyderabad, as there is no elder member to look after his family and through telegram dated 10.9.2002 sought for leave. It is further submitted that the second respondent agreed to absorb the petitioner through their proceedings AEES-CAO-2002/8334 dated 2.1.2002 at Hyderabad, in pursuance of the decision taken in the meeting held on 20.7.2001. Contrary to the same, the petitioner was transferred. It is further averred that the juniors of the petitioners i.e., Mr. Narsing Rao, Mr. Raj Gopal and Mr. Sukesh were retained and accommodated in AECS-in School consequent to the alleged closure of AEJC College and therefore, submitted that retaining juniors at Hyderabad and transferring the senior members like the petitioners is discriminatory and prejudice to the petitioners' interest and offending Articles 14 and 16 of the Constitution. It is further submitted that though the 3rd respondent submitted a proposal dated 3.9.2001 to the first respondent to transfer our services to the Nuclear Fuel Complex, but the same was not acted upon and the low paid employees like the petitioners were mercilessly transferred to the Metropolitan City at Mumbai, which resulted in severe hardships in sustaining with meager salary where cost of living is at peak. It is also submitted that the Nuclear Fuel Complex has agreed to absorb such of those surplus staff as identified by the 3rd respondent college, but the first respondent while doing so, did not prepare any seniority list of the employees but retained junior employees in the third respondent college and illegally transferred the petitioners.

2. The case of the petitioner in WP No. 25382 of 2002 is similar. He was transferred by proceedings dated 4.9.2002 along with six others to AECS(E/M) College, Mysore, though he is also low paid employee. Though he reported to duty at the transferred place, as there was no vacancy, he was assigned duties which are not connected to his post and as such he fell sick and consequently he came to Hyderabad on leave.

3. In reply to the averments made in the affidavits, the respondent No. 1 filed counter-affidavit raising usual objection that the Atomic Energy Education Society was registered under the provisions of Societies Registration Act, 1860 and also under the Bombay Public Trust Act, 1950 and it is an autonomous body. As per the objects and reasons, the said society runs various schools for the benefit of the children of the employees of the Department of Atomic Energy and others. It is further submitted that the Society has a responsibility of running about 30 schools at 14 different stations in different parts of India. It is also stated that the schools are primarily meant for the children of the employees of the Department of Atomic Energy, but also provide education to several other categories of children, including the children of weaker sections of the society and, therefore, it does not come within the meaning of Article 12 of the

Constitution of India and the writ petition is not maintainable. It is further averred that it is a settled principle of law that the Society does not fall within the meaning of State in terms of Article 12 of the Constitution, in view of the following judgments:

1. Ghanendra Singh Lodhi v. AEES, High Court of Judicature, Patna, Ranchi Branch, (CWJC 2166/1996)
2. SLP No. 20768/1997 filed by the Teachers of AEES, confirming the judgment and order dated 1.9.1997 passed by the High Court of Patna in the above case.
3. Order passed in WP No. 690/1998 in the case of Jyotimala Laxmichand Das v. AEES, at High Court of Judicature, at Mumbai
4. Order passed in WP No. 1320/99 -Sri Taffazul Hussain v. AEES, passed by the High Court of Judicature of Mumbai

It is also submitted that the petitioners also accepted the terms and conditions specified in the offer of appointment dated 25.2.1991, paragraph 10 of which specifies that in case of any dispute or claim against the Society in respect of his service or any contract arising out of or flowing from the offer of appointment, the Courts at Mumbai alone shall have the jurisdiction. Therefore, in view of the acceptance of the stipulated terms and conditions in the appointment order, particularly with reference to paragraph No. 10, this Court has no jurisdiction to entertain the writ petition. It is further submitted that as per terms and conditions of the appointment order only, the petitioners were transferred and the matters relating to transfers, as held by the Apex Court, should not be interfered with since it is an administrative act. Similarly Writ Petition No. 15019 of 2000 was dismissed by this Court. It is further submitted that the Society is managing four schools at Hyderabad viz., (1) Atomic Energy Junior College. (2) Atomic Energy Central School No. 2, (3) Atomic Energy Central School, No. 3 and (4) Atomic Energy Central School No. 4 and since the schools have shrunk gradually in recent years and from 1995 onwards there was a rapid fall in the student strength. Hence, the respondent had to close down the Atomic Energy Central School No. 4 and the student strength of all the schools put together came down from 7000 to 2400. It is further submitted that the Atomic Energy College has been closed down from the academic year 2002-2003 due to fall in the student strength. It is stated that presently, there are only two schools run by the society at Hyderabad viz., Atomic Energy Central School No. 2 and School No. 3, which are single shift school require large size adjustments of the staff and therefore, due to unusual conditions at Hyderabad, the respondents were left with no other alternative but to transfer Group-D employees instead of retrenching them. It is also submitted that more than 100 teaching and non-teaching staff who had been rendered surplus by virtue of closing down of the two institutions were transferred and posted to other institutions and the petitioners are one among such employees. The allegation that juniors of the petitioners were retained at Hyderabad is denied. With regard to the contention

raised by the petitioners that the Nuclear Fuel Complex has initially agreed to absorb Group D Employees belonging to Atomic Energy Department, Hyderabad, called for a detailed list of employees working in Atomic Energy Central School at Hyderabad; but subsequently, vide their letter dated 6.7.2002 the Nuclear Fuel Complex authorities informed the respondents that since the Group-D Employees of AEES were borne on autonomous establishment, their transfer to NFC, which is a Government Organisation, was not found feasible as per Rules. It is further submitted that since the writ petitions filed in similar circumstances were dismissed, it is prayed to dismiss both the writ petitions.

4. On the basis of the above stated facts and circumstances of these cases, it has to be considered whether the respondent society, which was registered under the Societies Registration Act and under the Bombay Public Trust Act, 1950, falls within the meaning of State or Instrumentality of State, under Article 12 of the Constitution of India and amenable to extraordinary writ jurisdiction under Article 226 of the Constitution.

5. To consider the validity of this objection raised by the learned Standing Counsel for the respondent, it is apt to look into the Memorandum of Association and Bye-Laws of the Society.

6. The Society was registered under Registration No. F 1854 (Bombay) dated 31.12.1969 as Charitable Institution under the Bombay Public Trust Act, 1950 and under Registration No. 23/69 dated 21.2.1969 as a Society under the Registration of Societies Act, 1860, with the aims and objects of establishing and running Educational Institutions such as Schools, Colleges, etc., for students who are willing to be taught through the media of Institution adopted by the Society from time to time and to promote or engage in any other activity in the attainment of the aims and object of the Society. Its membership is open to the personnel of the Department of Atomic Energy and its constituent units, Department/Public Undertaking and Aided Institutions. We need not deal with this issue in detail, as it is not relevant for the purpose of these cases.

7. Insofar as the Management of the Society is concerned, the affairs of the society shall be managed by a Governing Council consisting of Chairman, Secretary, Treasurer and such other members not exceeding twelve as the Chairman may decide. Rule 3(a)(i) mandates that the Chairman of the Society shall be nominated by the Chairman, Atomic Energy Commission/Secretary, Department of Atomic Energy notwithstanding the stipulation under Rule 2 on the terms and conditions that may be decided by him and such a nominee shall automatically be a member of the Society and in case he is already not so, in the absence of existence of such a nomination, the Chairman shall be elected in the Annual General Meeting from among the core members of the Society. Rule 3(a)(ii) mandates that the Society shall have a Full Time/Part Time Secretary, who shall be nominated by the Chairman of the Society with the approval of the Chairman, Atomic Energy Commission/ Secretary, Department of Atomic Energy notwithstanding the stipulation under Rule 2, on terms and conditions that may

be decided by him and approved by the Chairman, Atomic Energy Commission/Secretary, Department of Atomic Energy and such a person shall be a non-member Secretary, if he is not in the employment of Department of Atomic Energy or its constituent units of Department/Public Undertakings or Aided Institutions. Rule 3(a)(iv) says that notwithstanding the stipulation under Rule 2, the Chairman may with the approval of the Chairman, Atomic Energy Commission/Secretary, Department of Atomic Energy, appoint two of the other Members of the Governing Council from amongst academicians of standing. Clause (viii) of this Rule states notwithstanding anything contained in this Rule or any other Rules in these bye-laws, Chairman, Atomic Energy Commission/Secretary, Department of Atomic Energy shall have full powers at any point of time to reconstitute the Governing Council, the Local Managing Committee for outstation Schools and any other Committees provided for in these Rules and upon such reconstitution, the earlier members of the said Council/Committee include its Chairman, Secretary and the Treasurer as the case may be shall cease forthwith to be members of the said bodies or hold office; Rule 3(b) says that the term of office of the Members of the Governing Council is for not more than three years and the member is eligible for re-nomination for more than one term, but no member shall be eligible to hold the office for more than two terms. Rule 8 deals with funds and properties of the Society. It mandates that the Society will be wholly funded by the Department of Atomic Energy and the funds of the Society will be utilized only in furtherance of the Aims and Objects of the Society; that the funds of the Society shall be invested in the name of the Society in such manner as may be decided by the Governing Council.

8. The Governing Council so formed shall manage the institutions run by the Society and to frame Rules and Regulations for their working and shall raise the funds by means of subscription, donations, loans, legacies and by conducting concerts and entertainments, grants-in-aid, etc., to administer the funds and properties of the Society placed at the disposal of the Society; etc.

9. A plain reading of these Rules and Regulations of the Society makes it clear that it is ultimately the Chairman, Atomic Energy Commission or the Secretary, Department of Atomic Energy, who holds the total control over the Management. Evidently, under Rule 3(a)(i) the Chairman of the Society shall be nominated by Chairman, AES/Secretary, Department of AE, notwithstanding his membership of the Society under Rule 2. The Chairman of the Society may with the approval of the Chairman, AES/Secretary, Department of Atomic Energy, appoint two of the other Members of the Governing Council from amongst academicians of standing. Further Rule 3(a)(vi) mandates that the Chairman of the Society may constitute an Academic Advisory Committee to recommend and advise the Society on matters relating to the improvement of academic programmes and the academic Advisory Committee shall be chaired by the Chairman, Atomic Energy Education Society. Further, Full Time or the Part Time Secretary shall be nominated by the Chairman of the Society with the approval of the Chairman, Atomic Energy Commission/Department of Atomic Energy notwithstanding his membership

under Rule 2 and the terms and conditions shall be decided by him with the approval of the Chairman, Atomic Energy Commission/ Secretary, Department of Atomic Energy. Evidently, though there is provision of Governing Council, its functions under the very teeth of the Chairman, Atomic Energy Commission/ Secretary, Department of Atomic Energy and thus the powers conferred on the Governing Council are indirectly supervised and controlled by the Chairman, Atomic Energy Commission/ Secretary, Department of Atomic Energy. Therefore, apparently though the Society is registered under the provisions of Societies Registration Act, 1860 and also under the Bombay Public Trust Act, 1950, it is being wholly funded by the Department of Atomic Energy and indirectly the total control is also with the Chairman, Atomic Energy Department/Secretary, Department of Atomic Energy. As stated earlier, though the Society is registered under the Society Registration Act and Bombay Public Trust Act, its aims and objects and the nature of functions it is discharging, clearly suggest that they are very much connected to the affairs of the Department of Atomic Energy. Therefore, I have no hesitation in holding that the petitioners herein and other teaching and non-teaching staff, who are working under the management of Society, are the employees of the Department of Atomic Energy. Therefore, a plain reading of these Rules, Regulation and Bye-laws satisfy the requirements to bring the Society within the definition of State or Authority appearing in Article 12 of the Constitution of India. None of the decisions sought to be relied on by the learned Standing Counsel for the respondents elucidates this aspect. Evidently, this issue was not dealt with in those decisions and the Courts held that the respondent Society is an Autonomous body and writ jurisdiction is not amenable to such a Society. Therefore, I am of the considered view that those decisions cannot have binding effect.

10. I am fortified in my view that the Respondent Educational Society falls within the parameters required by law, to term it as an Instrumentality of State, by the ratio that emerges from the decision of the Apex Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, wherein majority of Their Lordships have laid down the tests to determine the question as to a body when can be said to fall within the scope of a State. Their Lordships held that the question in each case would be whether on facts the body is financially, functionally and administratively dominated by or under the control of the Government and such a control must be particular to that body and must be pervasive and if that is in affirmative, then that body is a State. Therefore, the facts and circumstances narrated above certainly satisfy the tests laid down by the Apex Court in *Pradeep Kumar Biswas*'s case that the Society is financially, functionally and administratively dominated by the Atomic Energy Department through its Chairman by way of nominating the Chairman of the Governing Council. Thereafter with the prior approval of the Chairman, Atomic Energy Commission/ Secretary, Department of Atomic Energy, appoint two of the other Members of the Governing Council, from amongst academicians of standing entire funding is made by the Department of Atomic Energy. Therefore, as stated

earlier, the Society squarely falls within the meaning of State or the Instrumentality of State, under Article 12 of the Constitution of India.

11. Having held so, I shall now deal with the proposal submitted by the 3rd respondent dated 3.9.2001 to the first respondent to transfer the petitioners' services to Nuclear Fuel Complex. Evidently, the said proposal to absorb Group - D employees of the Atomic Energy Central Schools, Hyderabad was accepted and their details were also called for vide letter dated 6.7.2002, but subsequently it was not acted upon on the ground that such employees were borne on the autonomous establishment and their transfer to Nuclear Fuel Complex, which is a Government Organisation is not feasible, as per Rules. Having held that the Society is discharging the functions of the Department of Atomic Energy and the petitioners are discharging functions connecting therewith, though they were appointed by the Society, there existed Master and Servant relationship between the petitioners and the Department of Atomic Energy, I hold that such a rejection by the Nuclear Fuel Complex to absorb the petitioners solely on the ground that they are working on the rolls of an autonomous establishment is bad in law.

12. Now adverting to the merits of these cases, normally this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, does not interfere with the matters relating to transfers unless it is demonstrated that such an administrative action was attributed with mala fides. Having regard to the fact that the petitioners are working from 1988 at Hyderabad and that they are in low paid brackets and as their transfer to Metropolitan Cities like Mumbai and Mysore will add to their miseries leaving their families at Hyderabad, more particularly having regard to the acceptance of the proposal by the Nuclear Fuel Complex to absorb Group-D employees, but for the fact that the petitioners are on the rolls of an autonomous body, which is now negated by virtue of this judgment, in those circumstances, there shall be a writ of mandamus to the respondents to consider and implement the proposal dated 3.9.2001 mooted by the 3rd respondent to the first respondent to transfer the services of the petitioners to the 2nd respondent, which has expressed willingness to absorb the petitioners by letter dated 2.1.2002.

13. Furthermore, it is the admitted case of the respondents that the Society was registered with the objects and reasons of running various schools for the benefit of children of the employees of the Department of Atomic Energy and others. Further the schools are primarily meant for the children of the employees of the Department of Atomic Energy, but also provide education to several other categories of children including the children of weaker sections of the society. If those are the objects and reasons of the Society and it is running 30 schools at 14 different stations in different parts of the country including at Hyderabad, as per the statistics of the Municipal Corporation of Hyderabad, there are more than 250 slums in the twin cities of Hyderabad and Secunderabad and since the impugned order is passed for the downfall of intake of the students in the schools run by the respondent Society, therefore, adhering to its objects and reasons and

as it has undertaken to impart education to the employees of the Atomic Energy Department and children of the weaker sections, it should have adopted one or more of such slums in the twin cities to impart education to the children of the inhabitants of said slums, which would have been in consonance of the Directive Principles of State Policy enshrined under Article 47 of the Constitution, to provide compulsory education upto the age of 14 years. Therefore, I am unable to understand the reasons in not trying to implement the objects and reasons of the Society by the respondents to impart education to the children of the weaker sections, who are living in the slums and below poverty line, situated in the twin cities of Hyderabad and Secunderabad, to achieve its objects. Therefore, it is left to the respondents to take a decision to proceed and practically implement the objects and reasons for which the Society is registered.

14. Accordingly, the impugned transfer orders are set aside and the writ petitions are allowed with the above direction. Three months time is granted for this exercise. No order as to costs.