
(2011) 02 AHC CK 0378
In the Allahabad High Court
Case No : Service Single Case No. 668 of 2011

Miss Vandana Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Societies Registration Act, 1860 — Section 14

Citation : (2011) 3 ADJ 119

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Devendra Kumar Arora, J.—This fresh petition has been taken up after permission of the Court granted on 4.2.2011

2. Heard Sri B. K. Singh, learned Counsel for the Petitioners and the learned Standing Counsel appearing on behalf of opposite parties.

3. By means of present writ petition, the Petitioners have approached this Court challenging the impugned advertisement dated 2,2.2011, published in "The Indian Express" newspaper, as contained in Annexure No. 1 to the writ petition.

4. Submission of learned Counsel for the Petitioners is that the Committee of Management of Yashoda Rastogi Girls Inter College, Asharfabad, Lucknow (hereinafter referred to as "College") is a Government aided college recognised by the U.P. Board. The State Government by means of order dated 31st January, 2011 accorded approval for making appointment of 12 vacant posts of Assistant Teachers in primary section of the College as per the provisions of Regulation 10 of Ch. II framed under U.P. Intermediate Education Act, 1921 as well as Government Orders issued from time to time. The College issued an advertisement on 2nd February, 2011 calling candidates for interview to be held on 8th February, 2011.

Further submission of learned Counsel for the Petitioners is that the advertisement has been made in violation of the provisions of regulation 10 of Ch. II framed under U.P. Intermediate Education Act, 1921. It has also been submitted that the advertisement does not disclose the nature of the posts i.e. whether the posts are substantive in nature or short term and whether the College is Government aided or a private institution. It has also not been mentioned in the advertisement as to whether reservation policy for selection would be followed or not and no qualification has been mentioned in the said advertisement. Learned Counsel further submitted that minimum two weeks prior notice in three newspapers is mandatory for submitting of applications. As per Intermediate Education Act, 1921, the minimum age limit is 23 years but maximum age limit has not been defined and the opposite parties failed to describe the relaxation in age for the SC/ST and Other Backward Caste candidates. Due to the said illegalities, there is a lot of confusion and all the eligible candidates have been deprived to submit their applications. Every citizen has a right to apply for any post in any institution and the opposite parties cannot deny equality before the law within the territory of India. The Respondents are going to make collusive appointments of the teachers of their close relations.

5. It is also submitted by learned Counsel for the Petitioner that all the Petitioners are M. A. B. Ed. and, as such, they possess requisite qualification for being appointed as Assistant Teacher in any institution and if they are selected, they would not be entitled for payment of salary for the reason that the advertisement is illegal and the appointments will not be approved by the educational authorities.

6. Taking into consideration the relief claimed by the Petitioners and the fact that there is neither any pleading nor any averment to the effect that the opposite party No. 4 is a "State" within the meaning of Article 12 of the Constitution of India, a query was made from the learned Counsel for the Petitioners regarding maintainability of the writ petition. Learned Counsel for the Petitioners submitted that since opposite party No. 4 receives financial grant from the State Government, as such, they are required to make appointments in pursuance of the regulations framed under U.P. Intermediate Education Act, 1921, therefore, present writ petition is maintainable against the illegal advertisement issued by the opposite party No. 4.

7. Learned Standing Counsel, while opposing the writ petition, submitted that since by means of present writ petition the Petitioners are challenging only the advertisement issued by a private institution and no action of the State Authorities, or authorities of the Education Department has been challenged, the same would not be maintainable.

8.1 have considered the submissions of learned Counsel for parties and gone through the record.

9. The basic question which requires consideration in the present writ petition is as to whether writ petition is maintainable against the Committee of Management of Yashoda Rastogi Girls Inter College, Asharfabad, Lucknow or not, which is a private institution, managed by a Society registered under the Societies Registration Act and whether the College in question is "State" within the meaning of Article 12 of the Constitution of India.

Hon"ble Supreme Court in a leading case in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, has held that not only such organization should be financed by State but also the State should have deep and pervasive control over day to day functioning of the body. The financial aid granted by Government to an establishment cannot be sole criteria to decide as to whether an establishment is a State within the ambit of Article 12 of the Constitution of India or not. The para 9 of the judgment reads as under:

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 of 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.

In the case of *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, the Constitution Bench of Hon"ble Apex Court affirmed the test formulated in *Ajai Hasia's* case (supra) in the following words:

The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* 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.

In the case of Federal Bank Ltd. Vs. Sagar Thomas and Others, Hon"ble Supreme Court held that power under Article 226 of the Constitution of India should not be exercised against the private bodies. However, in the event of violation of certain statutory provisions in certain condition, mandamus may be issued for compliance.

The relevant portion of the judgment reads as under:

Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the constitution. But in certain circumstances a writ may be issued to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislation like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say, the Air (Prevention and Control of Pollution) Act 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provisions by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

While examining the scope of Article 12 of the Constitution of India and interpreting word "other authorities" enshrined in Article 12 the Hon"ble Apex Court in the case of Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, followed the test laid down by majority opinion of Constitution Bench in the case of Pradeep Kumar Biswas (supra). Their Lordship had reiterated that while holding a body as "State" or instrumentality agency of State, it must be seen that the control of the State is not only regulatory but it should be deep and pervasive.

10. The control of the State should be in such a manner that day to day functioning of the establishment concerned is watched, supervised and controlled by the various departmental authorities of the State Government.

11. The test laid down in Ajay Hasia (supra) has been reiterated by Apex Court in the Constitution Bench judgment in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, While interpreting Article 12 of the Constitution of India, Hon"ble Supreme Court held in Zee Telefilms Ltd. (supra) that the intention of the constitutional framers while incorporating Article 12 was to treat such

authority as instrumentality of State which has been created by law and has got certain power to make laws, frame rules and regulations and must be under deep and pervasive control of the State Government. The para 10 of the judgment reads as under:

10. From the above, it is seen that the intention of the constitution framers in incorporating this article was to treat such authority which has been created by law and which has got certain powers to make laws to make rules and regulations to be included in the term "other authorities" as found presently in Article 12.

12. The dictum of Pradeep Kumar Biswas (supra) and Zee Telefilms (supra) has been reiterated by Hon"ble Supreme Court in the judgment in Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, and it has been held by Hon"ble Apex Court that unless test indicated in Ajai Hasia"s case (supra) is complied with, a Cooperative Society may not be treated as "State". The fundamental right guaranteed under Part III of the Constitution of India are normally enforced against the State action or action by other authorities who may come within the purview of Article 12 of Constitution of India. Power under Article 226 of Constitution of India may not be exercised against the private bodies. Accordingly, it has been held that the Cooperative Society constituted by the members of a voluntary association shall not be State being governed by own by-laws.

13. The relevant portion of the judgment of Zoroastrain Coop. Housing Society Ltd. (supra) is reproduced as under:

The fundamental rights in Part III of the Constitution are normally enforced against State action or action by other authorities who may come within the purview of Article 12 of the Constitution. It is not possible to argue that a person has fundamental right to become a member of a voluntary association or of a Cooperative Society governed by its own by-laws. So long as this position holds, we are of the view that it is not possible, especially for a Registrar who is an authority under the Cooperative Societies Act, to direct a Cooperative Society to admit as a member, a person who does not qualify to be a member as per the by-laws registered under the Act. Nor can a Registrar direct in terms of Section 14 of the Act to amend the bye-laws since it could not be said that such an amendment, as directed in this case is necessary or desirable in the interest of the Appellant society. What is relevant u/s 14 of the Act is the interests of the Society and the necessity in the context of that interest. It is not the interest of an individual member or an aspirant to a membership.

14. The Hon"ble Supreme Court in the matter of G. Basi Reddy Vs. International Crops Research Instt. and Another, while examining the similar issue, pleased to observe that a writ petition under Article 226 will lie only when the Petitioner establishes her or her fundamental right or some other legal right has been infringed by the authority which falls within the meaning of Article 12 or against

a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty.

The Full Bench of this Hon"ble Court in the matter of Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, considered the question "Whether Committee of Management of an Intermediate College is a statutory body and if so, whether a writ petition filed against it will be maintainable " The Full Bench answered in the following words:

The Committee of Management of an Intermediate College is not a statutory body. Nevertheless, a writ Petition filed against it, is maintainable if such petition is for enforcement of performance of any legal obligations or duties imposed on such committee by a statute.

15. Another Full Bench of this Court in M.K. Gandhi and Ors. v. Director of Education (Secondary), U.P., Lucknow and Ors. (2005) 3 UPLBEC 2187, considered the judgment of Aley Ahmad Abidi's case (supra) and re-affirmed the view.

16. The Committee of Management of a private institution is normally governed by its own bye-laws although Government provides grant in aid for making payment of salaries to the teachers and staff of the school but it lacks deep pervasive control over the Committee of Management. The rights and duties of the members of the Committee of Management are governed by its bye-laws framed under the Societies Registration Act. The interference of the Government is only regulatory to the extent it pays salary to the teachers and staff. The administrative control over the school and its staff or teacher remains in the hands of the office bearers and members of the Committee of Management or its general bodies. Even the school building and its infrastructure are maintained by the Committee of Management and members of the Society in accordance to its bye-laws.

17. On the analysis of the aforesaid legal position, this Court comes to the conclusion that private school, may be getting grant in aid from the State Government, shall not be a "State" within the meaning of Article 12 of the Constitution of India and, hence, writ petition shall not be maintainable.

18. Apart from the above, a perusal of the advertisement as contained in Annexure No. 1 to the writ petition as well as Annexure No. SA-1 to the Supplementary Affidavit, shows that the advertisement has been published in "The Indian Express" and "Hindustan" newspapers which have wide circulation in State of U.P. and the College has clearly mentioned in the advertisement the number of posts in general, and in reserved category and also indicated that the age and educational qualification will be as per the present Government Orders. Therefore, the submission of learned Counsel for the Petitioners that nothing has been mentioned regarding reservation as well as age & qualification, is contrary to the said advertisement.

19. A perusal of the regulations reveals that the educational authorities have been given ample power and authority to examine the validity of the appointment including the procedure for making the selection. The appointment letters to the selected candidate can only be issued after approval of the competent district education authority and any illegality in the process of selection and appointment can be raised before the educational authorities by the aggrieved person.

From perusal of the writ petition, it appears that the only aim of the Petitioners is to get the whole selection process deferred and only relief claimed is for quashing of the advertisement issued by the Committee of Management of Yashoda Rastogi Girls Inter College, Asharfabad, Lucknow. The Petitioners without approaching the educational authorities rushed to this Court in mere apprehension.

20. In view of the aforesaid legal and factual position, the present writ petition is not maintainable and accordingly the same is hereby dismissed.

21. No order as to cost.