
(1981) 04 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 662 of 1970

Mohd. Abbas Khan

APPELLANT

Vs

Bal Bhavan Board and Others

RESPONDENT

Date of Decision : 23-04-1981

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1982) 3 DRJ 56

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

(1) The petitioner was appointed on 21-7-57 as a physical instructor in the Bal Bhavan and National Children's Museum, respondent No. 1. The said respondent is registered under the Societies Registration Act and manages the Institution known as Bal Bhavan and National Children's Museum at New Delhi. Vide Union of Indians resolution dated 10th March, 1955 the institution known as Bal Bhavan was founded. The Administration and Management of Bal Bhavan has been vested in the Board of Management established and constructed under the said resolution of the Union of India. By an order dated 10.1.69 the petitioner was suspended on the ground that disciplinary proceedings against him were contemplated. A chargesheet dated 10.1.69 containing 13 charges was served upon him. The petitioner was required to give his reply to the charges within the 15 days. The three-member committee appointed in this behalf started its enquiry against the petitioner on 8.3.69, completed its proceeding on 11.5.69 and submitted its report on 26.5.69. The Chairman of respondent No. 1 agreed with the findings of the enquiry committee and provisionally came to the conclusion that petitioner was not a fit person to be retained in service. The petitioner was given an opportunity to make a representation on the penalty proposed to be imposed, namely, that of dismissal from service. The petitioner made a representation, in which it was contended that principles of natural justice have been violated and sufficient opportunity has not been given to him to put forth his defense and that he had not been heard. By an order dated

9.7.69 the petitioner was compulsorily retired. The review filed by the petitioner against the said order was rejected by the Board. The petitioner, Therefore, filed this writ petition challenging the validity of the order of his compulsory retirement after departmental enquiry had been held against him.

(2) Contentions :- Apart from other contentions the main contention of the petitioner was that principles of Natural Justice have been vocative in the case as he was not given an opportunity to put forth his defense. Even the cross-examination by the petitioner of the former Director of the Institution was stopped. The contention of the respondent was that the respondent No. 1 is a society registered under the Society Registration Act and is not amenable to writ jurisdiction and that even though respondent No. 1 is an authority within the meaning of Article 12. service bye-laws framed by the society are not statutory in character and, Therefore, no writ can be issued to the respondent society to give effect to non-statutory bye-laws. The relationship between the party is that of a master and servant and, Therefore, no writ can be issued as the services of the servant have been terminated by the master.

(3) Held That :- Following *Ajay Hasia etc. v. Khalid Mujib Sehravardi and others* 1981 S.C. 487 wherein it was held by the Supreme Court that where a corporation or Society was an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the fundamental rights as the Government. It was held that a writ petition is maintainable against an authority under Article 226 of the Constitution. All that has to be seen is whether the respondent Society is to be regarded an instrumentality or the agency of the State or not. As already noted the Society was established by a resolution of the Union of India. As per the said resolution the Society is to be managed by a Board of Management. The Board is to consist of Chairman, four representatives of the Government of India, a representative of Delhi Administration, four members to be nominated by the Chairman, not more than one person to be co-opted by the Board and the Director of Bal Bhavan was to act as the Secretary of the Board of Management. The Chairman and the Treasurer are to be appointed by the Government of India though the Director is appointed by the Chairman. The Rules and Regulations are to be made by the Board of Management but they are to be subject to approval of the Government of India. According to the Memorandum of Association the Society cannot sell, lease, exchange or otherwise transfer all or any portion or portions of the property or assets of the Society without prior written permission of the Government of India. The Budget of the Society is to be submitted for sanction of the Government of India and even the accounts are to be audited by the Comptroller and Auditor-General of India. The reading of the said Rules and Regulations as well as the memorandum leave no manner of doubt that respondent No. 1 is under the full control of the Government of India and is an instrumentality or the agency of the Central Government and is, Therefore, an authority within the meaning of Article 12 of the Constitution of India and, Therefore, amenable to the writ jurisdiction of this

court. The contention of the respondents was rejected.

(4) Even if it be assumed that the bye-laws are not statutory, nevertheless the bye-laws and C.C.A. Rules were meant to be followed by the respondent Society. That apart, the petitioner was a confirmed employee of the respondent. Even apart from bye-laws, principles of natural justice demanded that a regular enquiry should have been held or a fair opportunity should have been granted to the petitioner to defend himself. On 8th March, 1969 the petitioner was specifically informed by the Chairman that the petitioner would have an opportunity to examine witnesses in his defense. No such opportunity was granted. The petitioner was never asked as to whether he would like to lead any evidence. The cross-examination by the petitioner of the former Director of the respondent institution was stopped in the middle when the Presiding Officer stated that former Director was not being examined as a witness. The protest of the petitioner to the abrupt closure of the enquiry met with no success. The action of the respondent was completely arbitrary. Acting arbitrarily would amount to breach of Article 14 of the Constitution 1981 S.C. 487 and 1974 S.C. 555 referred to).

(5) Further held that non-giving of an opportunity to examine witness and taking such a report of the committee to be a valid report and taking action thereon is clearly violative of principles of Natural Justice and is void and arbitrary. Such arbitrary act would be clearly violative of the petitioner's fundamental rights under Articles 14 & 16 of the Constitution and the petitioner can successfully challenge such an arbitrary action on the part of respondents by filing the present writ petition under Article 226 of the Constitution. Even though the relationship between the petitioner and the respondent may be that of a master and servant but if an authority, within the meaning of Article 12 of the Constitution, commits a breach of any of the fundamental rights of the petitioner he can challenge such an action and in such a case court would be within its jurisdiction and power to grant appropriate relief.