

(1997) 09 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20645 of 1997

Mohd. Aliuddin Ahmed and Another

APPELLANT

Vs

General Manager, Nalgonda Ranga Reddy Co-op Milk
Producers Union Limited, Mother Diary, Hayathnagar,
Hyderabad

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1998) 1 ALD 414 : (1998) 1 AnWR 266

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : Mr. G. Dasaratharami Reddy, for the Appellant; M/s. P.V. Eswaraiah and P. Balarami Reddy, for the Respondent

Judgement

1. The petitioners have questioned the action of the respondent in not allowing HRA and deducting the same from the salary of the petitioners in respect of Quarters said, to have been allotted to the petitioners even though they have not occupied the same.

2. Before going into the merits of the contentions advanced by the petitioners in support of the relief claimed in the above writ petition, the question as to maintainability of the writ petition has to be decided. The respondent, in the instant case, is Milk Producers Union, a Cooperative Society registered under the A.P. Cooperative Societies Act, 1964.

3. A Division Bench of this court in Writ Appeal No. 1498 of 1995 considered a similar contention with regard to the maintainability of the writ petition in the light of the several tests laid down in the Full Bench decision in Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another Vs. N. Seetharama Raju, with regard to the question whether writ was maintainable even against a similar Milk Producers Union -cooperative society. The Division Bench thereafter held as under :

"... the learned Counsel for the respondent submitted that since the union was carrying on the operations which were carried on by a Government department initially under the "operation flood"" scheme and all the assets had come from the Government and the expenditure was being met by the Government and there was also deep and pervasive State Control of its activities, the union must be considered to be an instrumentality of the State. On the facts of this case, we are unable to accept this contention. GO.Ms.No.242, dated 23-6-1986 which evidenced transfer of all the assets of the federation to the Union with the employees, show that those assets no longer belong to the Government. In fact even at the time when the Federation was found, the assets ceased to be that of the Government. The G.O. further stipulated that there will be no State support to underwrite their losses and the Government loans will be repayable by the Union, thus establishing an independent private entity. The transfer agreement also stipulated that the employees will be permanently absorbed in the Union and none of them shall be repatriated to the Federation. Thus, an employee ceased to be in Government service and became an employee of the Union/ District Cooperative Society. No doubt, the agreement between the federation and the Union spells, out various functions of the Union which was to be supervised by the Federation and provides that the Union shall abide by the directions issued by the Federation or the Government in the conduct of the business, but the stress is on business which is not a Government function viz., procurement and supply of milk and in that regard the Union will be subject to the policy decision of the Government. That alone will not make it either governmental function or the administration of deem and pervasive State control. We find, therefore, that none of these tests are actually satisfied. It is also interesting to note that one of us (M.N. Rao, J) had held in Andhra Pradesh Dairy Development Co-operative Federation Ltd. Workers Union Vs. Guntur Dt. Milk Producers Cooperative Union Ltd., that a cooperative society was amenable to writ jurisdiction. That judgment was specifically over-ruled by the full bench. When an Appeal against that judgment came up, that part of the order holding that writ petition was maintainable against a society was not challenged and writ appeal was dismissed in W.A.No-1777 of 1989. In the circumstances, we must hold that the union which was only a successor entity to the federation being a Cooperative Society is not an instrumentality of the State within the meaning of Article 12 of the Constitution and the writ petition is not maintainable.""

4. Another Division Bench of this High Court in W.A.No.28 of 1990 dated 8-11-1994 also considered the question of maintainability of a writ petition against the Guntur District Milk Producers Cooperative Union Limited wherein the petitioners had approached the Court seeking declaration of seniority basing this case upon Bye-laws framed by the Respondent - Cooperative Society. While holding that the writ petition was not maintainable, the Division Bench held as under :

"The learned Counsel for the appellants brings to our notice a Full Bench decision of this Court in Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and

another Vs. N. Seetharama Raju, , deciding the rights accruing under Bye-laws of a Cooperative Society to be not open for adjudication in petitions under Article 226 of the Constitution of India The Writ Petition, hence, was not maintainable before this Court which consequently makes the appeal also not maintainable. The judgment under appeal, must, however, be held to have not created any rights or liabilities in favour of the Parties, the petition itself being not maintainable."

5. In the light of the above judgments of the Division Bench, it has to be held that the respondent Milk Producers Union, a cooperative society is not amenable to writ jurisdiction being neither a State nor an instrumentality of State.

6. Learned Counsel for the petitioner, however, brought to the notice of this Court another judgment of a Division Bench in W.A.No.234 of 1997 dated 21-3-1997 between V. Venkateswara Rao and others v. Government of Andhra Pradesh and others. The 3rd respondent in that Appeal is the Godavari Cooperative Milk Producers Union Limited. The appeal arose out of the judgment of a learned single Judge who dismissed the Writ Petition holding that the writ petitioners were employees of a private body and not amenable to writ jurisdiction. In the appeal, however, while setting aside the orders of the learned single Judge, it was directed that the writ petition be restored and admitted to hearing. A perusal of the said judgment shows that the question of maintainability has been left open for being decided in accordance with law. The relevant observations of the Division Bench are to the following effect :

"... we are inclined to set aside the impugned order and restore the writ petition for hearing in accordance with law, including on the question of maintainability and by adverting to the issue whether, as per the service conditions, petitioner appellants shall be enjoying the status of an employee under a State as they enjoyed initially when they were appointed in the service. The impugned order is accordingly set aside."

7. The Division Bench in Writ Appeal No.234 of 1997 has not, however, decided the question as to whether the Writ Petition is maintainable against the Cooperative Society - Godavari Cooperative Milk Producers Union Limited. The said question was left open to be decided in accordance with law.

8. For the reasons aforesaid, it has to be held that the above Writ Petition is not maintainable and is accordingly dismissed.