
(2015) 01 DEL CK 0150
In the Delhi High Court
Case No : Writ Petition (C) 269/2001

Naresh Kumar Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 01 DEL CK 0150

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Rekha Palli and Punam Singh, for the Appellant; K.R. Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.S. Teji, J.—This writ petition has been filed by the petitioner for issuance of appropriate writ, order or direction in the nature of Certiorari quashing the impugned order dated 06.04.1998, passed by Youth Hostels Association of India (hereinafter referred to as respondent No. 2) whereby his services were terminated and for passing of any other or further orders in the circumstances of the case.

2. The facts giving rise to the present writ petition are that the petitioner was appointed as Accounts Assistant with Respondent No. 2 on 25.04.1975 and was promoted to the post of Programme Assistant and then to the post of Programme Officer w.e.f. 01.04.1981. The petitioner was re-designated as Programme Executive and was appointed as Executive Secretary vide order dated 09.02.1989. On 22.01.1991, Respondent No. 3-Sh. N.P. Sehgal was appointed as Assistant Secretary. The respondent No. 2 employed respondent No. 4-Sh. S.L. Prajapathi as Director (Programme and Marketing) w.e.f. 01.02.1998. On 06.04.1998, the petitioner received one month's notice of termination under clause 9(2) of the Staff Service Rules, 1991 which reads as under:

"It has been decided to abolish the post of Executive Secretary (PandM) in the Association as a measure of economy and administrative grounds. Consequently your services are no longer required with effect from the afternoon of 6th May 98.

This letter may, therefore, be treated as one month notice required as per Clause 9(ii) of the Staff Service Rules, 1991 of the Association."

The services of the petitioner were put to an end on the ground that the post of Executive Secretary (PandM) had been abolished as a measure of economy on administrative grounds. The petitioner claimed his termination as illegal and based on mala fide grounds inasmuch as the respondent No. 2 appointed two persons in place of the petitioner for doing the same job. It is claimed that the respondent No. 2 is a society performing public functions and is under the control of Ministry of Human Resources and Development and gets financial grants from them. It is further claimed that the representative of the Ministry takes an active part in the functioning of respondent No. 2.

3. Ms. Rekha Palli, counsel for the petitioner and Mr. K.R. Gupta, counsel for respondent No. 2 were heard in the matter who took us through the case law and the record of the case.

4. From the writ petition and the counter affidavit, the first and the foremost question arises for consideration is whether the respondent No. 2 is a "State" to make the petitioner amenable to Article 226 of the Constitution of India and whether the Union of India (hereinafter referred to as respondent No. 1) is a necessary party.

5. The contention of the petitioner is that as per objects of the respondent No. 2, there is supervisory control of Department of Youth Affairs and Sports, Government of India over the respondent No. 2 in promoting youth hostel movement. A Central Policy Committee was set up by the Government of India to promote youth hostel movement which has been represented by National Chairman of the respondent No. 2. Government of India is also having financial control on the respondent No. 2 as a sum of Rs.3.2 million had been granted by the Department of Youth Affairs and Sports to respondent No. 2 and the audit of respondent No. 2 was conducted by Auditor General, Central Revenue. The Staff Service Rules, 1991 are also on the lines of CCS Rules of the Government which governs the staff employed with respondent No. 2.

6. In support of the contentions raised, the petitioner has referred to judgment reported in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, in which it was observed that 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 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. On similar point,

judgments reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Brahma Chellaney Vs. Union of India and Others, have been referred.

7. The respondent No. 1 has filed the counter affidavit. It was contended that they have no administrative or supervisory control over respondent No. 2 inasmuch as the service conditions of its employees are concerned. It is specifically mentioned that the role of Ministry of Youth Affairs and Sports is limited to the extent of sanctioning of grants for various activities and the Ministry exercises only checks for proper utilization of grants only.

8. There is no rejoinder by the petitioner to the counter affidavit of respondent No. 1. Thus, the respondent No. 1 is not a necessary party as it has no supervisory or administrative or financial control over the affairs of the respondent No. 2.

9. Learned counsel for the respondent No. 2 has contended that the respondent No. 2 is not an "authority" as contemplated by Articles 12 and 226 of the Constitution of India. Reliance has been placed on the pronouncement of Supreme Court reported in Lt. Governor of Delhi and Others Vs. V.K. Sodhi and Others, Relevant para from the judgment reads as under :

"As we understand it, even going by paragraph 40 of the judgment in Pradeep Kumar Biswas (supra), which we have quoted above, we have to consider the cumulative effect of all the facts available in the case. So considered, we are inclined to hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. As we see it, the High Court has not independently discussed the relevant rules governing the functioning and administration of SCERT. It has proceeded on the basis that in the face of Pradeep Kumar Biswas (supra) decision, the decision in Chander Mohan Khanna (supra) must be taken to be overruled and no further discussion of the question is necessary. But in our view, even going by Pradeep Kumar Biswas (supra), each case has to be considered with reference to the facts available for determining whether the body concerned is a State or other authority within the meaning of Article 12 of the Constitution of India. So considered, we find that the Government does not have deep and pervasive control over the working of SCERT. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to SCERT and there is no further governmental control. In this situation, we accept the submission on behalf of the appellants and hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. After all, the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the State. We reverse the finding of the High Court on this aspect." Counsel for respondent No. 2 further referred to judgment of Hon'ble Apex Court reported in Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, Lucknow vs. Chandra Kiran Tyagi. Relevant para from the

judgment reads as under :

"From a review of the English decisions, referred to above, the position emerges as follows: The law relating to master and servant is clear. A contract for personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. This is the normal rule and that was applied in *Barbar's case*, 1958-1 All ER 322 and *Francis' case*, 1962-3 All ER 633. But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant. This was the position in *Vine's case*, 1956-3 All ER 939." 10. Resume of the Progress made by respondent No. 2 during the 1980s shows that respondent No. 2 is a registered Society under Societies Registration Act. Its objects are to help young people to acquire a greater knowledge, love and care of the countryside, its beauty spots, historic sites, buildings etc., by providing hostels or other simple accommodation in their travels; to foster friendly relations between the rural and urban people; to promote inter-State and international contacts by providing a meeting ground in the homely, healthy atmosphere of youth hostels; to imbibe reverence for all life, nature and its creation; and to organise trekking programmes, cycle trails, environment preservation programmes, games, sports and other like activities.

11. The Aims and Objects for the formation of respondent No. 2 show that the Society has been formed with the sole objective of helping youth of the country by providing hostels or other simple accommodation to acquire knowledge of the country; by providing a meeting ground in the homely, healthy atmosphere of youth hostels and to organise programmes and sports like activities. It further shows that a Central Policy Committee had been set up by the Government of India for promotion of Youth Hostel movement. The respondent No. 2 is represented on the Committee by its National Chairman.

12. The Aims and Objects for the formation of respondent No. 2 do not show that it is being controlled by the Government of India. Its formation is for providing hostel facilities to the youth of the country and representation in the Central Policy Committee by the respondent No. 2 is just for implementation of the policy of the Government. There is no administrative or supervisory control of the respondent No. 1 on the affairs of the respondent No. 2.

13. The CCS Rules are not applicable in the respondent No. 2, rather the respondent No. 2 has formulated its own rules and regulations known as Staff Service Rules, 1991, culminates into the functioning of its individual society and not as body of Union of India or in other words, cannot be termed as State from the contention made by the petitioner.

14. The Memorandum and Rules and Regulations of Association have been placed by the petitioner to press the contention that one representative from the Department of Youth Affairs and Sports, Department of Tourism and such other government has to be there on the National Council of respondent No. 2, which shows administrative and supervisory control of the government on the functioning of respondent No. 2. The relevant Clause V(A)(14) i.e. the Composition of National Council of respondent No. 2, reads as under:

"One representative each from the Department of Youth Affairs and Sports, Department of Tourism and such other governmental or non-governmental agencies as may be decided upon by the National Council from time to time."

15. The above quoted clause of the Composition of National Council shows that one representative each from the Department of Youth Affairs and Sports, Department of Tourism and such other governmental or non-governmental agencies may be the composition of the National Council. It nowhere provides that it is mandatory to have the representative of the government in the council of the respondent No. 2. Rather, the incorporation of clause V(A)(14) is enabling provision to have representative of the government or non-government organization, if so decided by the Chairperson, National Council. It shows that there is absolute control on the management and governance of the Society and not of any external body of the Department of Youth Affairs and Sports or Department of Tourism, Government of India.

16. The contention made with regard to financial control of respondent no.1 over respondent No. 2 does not found any basis from the pleadings of the parties. It shows that a sum of Rs.3.2 million was granted, but does not lead to the inference of financial control by the Government of India. Moreover, there is specific denial on the part of respondent No. 1 in its deposition made in the counter affidavit, having no rebuttal.

17. The contention of the petitioner that respondent no.2 got its audit of finances by Auditor General, Central Revenue, shows the financial control of respondent No. 1 over the functioning of respondent No. 2. The counsel for the respondent No. 2 vehemently argued that it was got done just for the authentication of the record being a non-government organizational society. This Court found substance in the arguments advanced by the counsel for respondent no.2 that mere audit of accounts of respondent No. 2 by Auditor General, Central Revenue would, ipso facto, not resulted into the financial control of government of India over respondent No. 2 and reaches to the conclusion that mere audit by Auditor General, Central Revenue is not sufficient to hold the control of respondent No. 1 upon respondent No. 2, more particularly when it has been so denied in the counter affidavit of respondent No. 1.

18. It would be pertinent to mention that initially the petitioner filed the civil suit bearing No. 281/1998 in the court of learned Civil Judge which was subsequently withdrawn on 21.09.1999. Order dated 21.09.1999 passed by learned Civil Judge reads as under :

"In view of the above statement, the suit is dismissed as withdrawn with liberty to challenge the impugned order of termination dated 6th April, 1998 by way of appropriate proceedings before the appropriate court. No orders as to costs. File be consigned to record room." 19. The act of the petitioner, ipso facto, shows that the petitioner made the claim under the Code of Civil Procedure and then subsequently filed the present writ petition on 10.01.2001, after a substantial delay, just to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India and the same has been opposed by the respondent No. 2.

20. From the discussion made above, this Court is of the view that the petitioner has failed to show the amenability to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as respondent no.2 cannot be termed as "State" for the purpose of writ revision as per the law laid down in judgments in case of Executive Committee of U.P. State Warehousing Corpn, Lucknow vs. Chandra Kiran Tyagi (supra) and Lt. Governor of Delhi and Ors. vs. V.K. Sodhi and Ors. (supra). The judgements referred by the petitioner are of no assistance in view of facts and circumstances and material available.

The respondent no.1 has been unnecessarily pleaded in the present petition just for claiming the amenability under Article 226 of the Constitution of India.

21. This Court is of the considered opinion that the writ petition is not maintainable in the present form under Article 226 of the Constitution of India to invoke the extraordinary jurisdiction of this Court. The writ petition is dismissed accordingly.

22. No order as to costs.