
(1989) 01 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 434 of 1979

Nihar Sengupta	Vs	APPELLANT
Union Territory of Arunachal Pradesh and Others		RESPONDENT

Date of Decision : 06-01-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1990) 1 LLJ 184

Hon'ble Judges : A. Raghuvir, C.J.; J. Sangma, J

Bench : Division Bench

Advocate : A. Sarma and A.B. Choudhary, for the Appellant; J.P. Bhattacharjee and M.K. Sarma, for the Respondent

Final Decision : Allowed

Judgement

1. Nihar Sengupta the writ petitioner was appointed as a Store Keeper of Central Cooperative Society at Jalan Nagar, Dibrugarh on Feb. 1, 1961. He was later promoted in the month of Oct., 1968 and posted as Manager in Tangsa Co-operative General Stores Ltd. He states he was discharging duties faithfully and was not adversely noticed by any of his superiors. On Jan. 17, 1975 in recognition of his good services he was accorded three advance increments raising his pay from Rs. 325/- to 400/-. Four years later he was terminated from service on March. 26, 1979. The order of termination recites: "In the interest of the Co-operative movement the services of Shri Nihar Sengupta, Manager, Tangsa Co-operative General Stores Ltd., Changlang is hereby terminated with immediate effect. Shri Nihar Sengupta shall be entitled to one month's salary in lieu of notice. The amount of salary payable to Shri Nihar Sengupta shall be adjusted against dues payable by him to the Tangsa Co-operative General Stores Ltd., Changlang as revealed in the periodical Audit Reports and up-to-date verification of accounts of the Tangsa Co-operative General Stores Ltd. Changlang". The termination order is assailed in the writ petition on the ground that he was unfairly dealt with by his employer. He was not given any

opportunity do defend himself. He was not even given notice before the impugned order was passed.

2. In opposition to the writ petition it is averred that the termination order was passed in terms of Clause (2) of the appointment order dt. June 29, 1973 as he was a temporary employee.

3. The appointment order recites: "Shri N.Sengupta, s/o Shri. J.M. Sengupta village C/O S.Sengupta, P.O. State Bank of India. P.S. Namrup in Namrup (Assam) District is hereby appointed temporarily as Manager Grade II in the scale of pay of Rs. 200-20-220-EB-20-260-EB-20-300-EB-25-425/- p.m. now posted at Tangsa C.G.S Ltd., Changlang with effect from the date of his joining on the following terms and conditions: 1. The post does not carry allowances at present. 2. That the appointment is purely temporary and may be terminated on one month notice from the side of the employer. 3. That Shri N. Sengupta has to serve the aforesaid Co-op. Society for a minimum period of three years if required to do so by the Co-op. Society. 4. That Shri N. Sengupta has to furnish cash security amounting to Rs. 700/- or in case security cannot be provided the proportionate amount considered necessary shall be deducted from the monthly salary to build up to that cash security of Rs. 700/-. 5. That Shri. N.Sengupta in addition to above, shall have to furnish a security bond from permanent Govt. servant of the Arunachal Pradesh/Assam who is agreeable to mortgage his property for performance of the terms and conditions of the bond. 6. That the security deposit furnished by Shri N. Sengupta shall be confiscated by the Society, if the incumbent leaves the services without permission". The above order recites the appointment is temporary and can be terminated on one month notice by the employer. Further Clause (3) recites he is required to work for a minimum period of three years if required to do so by the Co-operative Society.

4. The question raised in opposing the writ petition is in respect of the status of the Cooperative Society. It is averred the employer society was incorporated under the Arunachal Pradesh Co-operative Societies Act, 1979 (Act No.3 of 1979). The Society is not a State within the meaning of Article 12 of the Constitution of India. This Court therefore has no authority to pass or issue any direction or writ against a Co-operative Society.

5. We may take up that question as to the status of the Co-operative Society as it pertains to the power and authority of this Court. Two authorities have been cited by the learned counsel for the employer in support of the contention - a decision of Full Bench of Kerala High Court reported in P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others, Agril. (co-operation) Department Trivandrum. That court held a Co-operative Society incorporated under the Kerala Cooperative Societies Act, 1969 is not amenable to the jurisdiction of Article 226 of the Constitution of India and held (p.316): "The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal

existence even if the Co-operative Societies Act was not in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the Societies does not vest in the Government or in the representatives of the Government. The management is under the effective control of a Committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the Societies is not "an imprint of State under Article 12." (Para 29)

6. The Counsel next referred to another decision reported in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, where a concession was given before the Supreme Court that the employee will be given opportunity to defend himself. Nevertheless a request was made the issue as to their status may be decided by the Supreme Court. Having regard to the submission the Supreme Court appointed a Counsel for the employee and reviewed all authorities decided earlier to Dec. 10, 1987.

7. We need not extract the ratio held in the long line of cases except to state the Supreme Court reviewed the cases and held "there cannot be a strait jacket formula" and that all tests should be satisfied for reaching the conclusion either for or against holding an institution to be "State". In a given case some of the features may emerge so boldly and prominently that a second view may not be possible". There may yet be other cases "where the matter would be on the border line and it would be difficult to take one view or the other "outright". In para 12 it is stated how the Constitution of India came to be drafted after long political struggle. In paras 13-16 it is stated how the employer, called I.C.P.S. in short, was formed. Then with reference to the objects of the I.C.P.S., it was stated how the funds were collected and finally it was concluded I.C.P.S. was not a State within the meaning of "other authorities" under Article 12 of the Constitution of India.

8. The learned counsel for the employer in the instant case relied on this judgment to analyse the Arunachal Pradesh Co-operative Societies Act, 1979 (Act No. 3 of 1979) as the employer is incorporated under the Act 3 of 1979. The Counsel urged that if we apply test the instant Society is not "other authorities" within the meaning of Article 12 of the Constitution of India.

This Court in Civil R.338 of 1979 considered the Assam Co-operative Societies Act, 1949 in detail and noted the Registrar can dissolve or reconstruct the administrative council, managing body or a committee of the Society, require every office bearer to furnish information and produce documents, cause audit of the accounts, hold enquiry into the constitution, working and financial condition of a registered society, settle disputes, cancel registration, and act as appellate authority, under different Sections of the aforesaid Act. Sections 39A, 39B, 43, 65(7), 80(3), 92, 94, 95, 99 and 100 of the Act were tested. It was held by a Division Bench -"The control exercised over the registered societies by the Registrar of Cooperative Societies is writ large on the face of the Act. A Registrar is authorised under the Act inter alia to dissolve or reconstruct the administrative

council, managing body or any committee of any society (Section 36); require every office bearer to furnish information and produce documents mentioned in Section 45, cause audit of the accounts (Section 55), hold enquiry into the constitution, working and financial condition of a registered society (Section 60), settle disputes (Section 64), cancel registration (Section 65), act as appellate authority u/s 80 etc. Further it was held: a) large scale financing by the Government; b) taking up of governmental function of distribution of essential commodities at just and uniform price; c) maintenance of public distribution system; d) assurance of support price to the growers; e) collection of levy etc. from millers/dealers as agent of the Government;" f) carrying of activities under State protection, or by virtue of the monopoly rights conferred by the Government; g) undertaking of activities on instruction of the Government; h) management of the affairs by a Board consisting of large number of Government officials; i) practice of constituting ad hoc Boards by the Registrar or the Government; the measure of control over all registered societies by the Registrar and the Government under the provisions of the Act, impelled them to infer a Society incorporated under 1949 Act is a State within the meaning of Article 12 of the Constitution.

The above decision was followed in another case on 14th November, 1988 in Civil R. 1161/86 wherein a Division Bench applied the tests to Assam Co-operative Societies Act of 1949 and held the society was an authority within the meaning of Article 12 of the Constitution of India.

9. We have scrutinised the provisions of the instant Act 3 of 1979 of Arunachal Pradesh. The entire format of the Act contains the division of chapters on the model of 1949 Act. It would be merely adding to the bulk of the judgment to analyse the same provisions of the Act over again which has been done by this Court with reference to the 1949 Act. We respectfully agree with the reasoning in the judgment of this Court in Civil Rule 338 of 1979 disposed of on 8th March, 1982 and the decision in Civil Rule 1161/86 on 14th November, 1988 and applying the above test we have no hesitation to hold in the instant case that the Society incorporated is a State within the meaning of Article 12 of the Constitution of India. In that view we are unable to follow the Kerala Full Bench case. (1988-II-LLJ-307). We have followed the tests laid in the case of Tekraj (1988-I-LLJ-341) and applied the tests in that case to the Act 3 of 1979 and held a Society incorporated under that Act is a State within the meaning of Article 12 of the Constitution.

10. The next question to be considered is whether the impugned order was sustainable in law. We have earlier indicated the employee was not heard, no notice was given to him, no enquiry was held before terminating him from the service. The learned Counsel for the employer however argued that as per Clause 2 of the appointment order the appointment is temporary and he may be terminated on one month's notice. We have scrutinised the impugned order in view of the contention. There is no payment of one month's salary made. The

order does not appear to have been passed pursuant to Clause 2 of the appointment order as the order recites he is not a fit person in the co-operative movement.

11. The learned counsel for the respondents stated this Court could look into the circumstances set out in the affidavit and construe the same to have been passed pursuant to Clause 2 of the appointment order. The Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, stated: "Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. (Para 9). On a perusal of the impugned order it is seen the employer considered the writ petitioner not a fit person to continue in service. They are entitled to form an opinion, but that does not mean the Manager of a Society can be terminated from service without any opportunity and enquiry as required under the law.

12. It is not necessary to consider some of the cases which have been cited by the learned counsel for the petitioner as all the cases have been reviewed by the two Judges of the Supreme Court in *Tekraj's* case (*supra*) which has been referred to earlier.

13. For the aforesaid reasons, the writ petition is allowed, the impugned order is quashed. The respondents are directed to pay costs of Rs. 250/- to the petitioner. This order would not prevent the respondents to issue notice and to pass appropriate orders in accordance with law.