(1983) 03 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3460 of 1982

P. Krishna Rao APPELLANT

Vs

Andhra Pradesh Co-operative Central Agricultural Development Bank Ltd. RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:

Companies Act, 1956 — Section 617

Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : (1984) 1 LLJ 475

Hon'ble Judges : Ramanujulu Naidu, J

Bench : Single Bench

Judgement

1. This is a petition filed under Art. 226 of Constitution for issue of a writ of mandamus or any other appropriate writ or order or direction directing the respondent not to give effect to the proceedings of its Managing Director dated 29th April, 1982 transferring the petitioner of its Regional Office, Adilabad after declaring the same as illegal, void and bad in law.

2. The respondent herein, the Andhra Pradesh Co-operative Central Agricultural Development Bank Ltd., hereinafter called, "the Bank", is a society deemed to be registered under the A.P. Co-operative Societies Act, 1964. The Bank is the apex institution for the Co-operative Agricultural Development Banks in the State. The Bank finances its constituents for the agricultural development of the State. The controlled share capital of the Bank is held by the Government of Andhra Pradesh.

3. The petitioner was first appointed as a Peon on 18th May, 1959 in the Head Office of the Bank at Hyderabad and he continued to work in the same capacity till 3rd August, 1972. He was promoted to the post of Telephone Operator subject to his acquiring S.S.C., or equivalent qualification within a period of two years from the date of his assumption of charge as Telephone Operator. Though he could not acquire the qualification he was subsequently confirmed as Telephone Operator with effect from 4th August, 1973. He put in a total service

of about 23 years inclusive of his service as Telephone Operator for teen years. The Managing Director of the Bank transferred him and posted him as a Junior Clerk in the Regional Office of the Bank at Adilabad by his proceedings dated 29th April, 1982.

4. The petitioner alleges that he is the founder member of the A.P.C.C.A.D. Bank Employees'' Union and was an office-bearer of the Union for more than six years. From September, 1980 to 31st March, 1982 he held the post of Deputy General Secretary of the Union. During his tenure as an office-bearer of the Union, several issues for the welfare of the employees were taken up with the Management and most of the demands were conceded by the Management much to their dislike. The very raising of the demands by the Union was not taken to kindly by the Management. The Management therefore bore grudge against the office-bearers of the Union and was indulging in victimising them. Some of the issues amongst others taken up by the Union with the Management are in respect of transfer of employees against the agreement entered into between the Union and the Management and implementation of certain provisions of earlier agreements relating to promotions and bifurcation of cadres. In the month of August, 1981 the Union was constrained to serve a notice on the Management to strike work for implementation of the agreements between the Union and the Management. While so, election to the office-bearers of the Union for the period from April, 1982 to March, 1984 were held on 10th April, 1982. There were two panels of contestants for the said elections. One panel consisted of members supported and fielded by the Managing Director of the Bank. The other panel consisted of members set up by the activists of the Union. The petitioner contested for the post of Vice-President of the Union while Mr. Franklin John contested for the post of President of the Union. Mr. Prabhakara Rao, Mr. K. Ramamohan Rao and Mr. K. Sambasiva Sastry contested for the post of General Secretary, Deputy General Secretary and Treasurer respectively, of the Union. Voting at the elections in the Head-Office was by means of secret ballot whereas in the Regional Offices, twenty-two in number situated in the mofussil districts, it was by means of postal ballot. The Management Director actively interfered with the conduct of elections and exercised undue influence over the Regional Officers and the Assistant Regional Officers to ensure success to the contestants fielded by him. Though as many as 130 out of 192 voters in the Head-Office supported the panel of contestants set up by the Union as many as 80% of the voters stationed at the Regional Offices were forced to mark their ballots in favour of the contestants fielded by Managing Director, coerced and threatened as they were by him and his henchmen. The result was obvious and all the contestants set up by the activities of the Union were defeated. What is more, Franklin John was suspended from service on 23rd February, 1982 three days after he filed his nomination. Immediately after the elections, the Managing Director indulged in victimisation of the contestants set up by the activists of the Union and their supporters. Sri K. Ramamohan Rao and Sri K. Sambasiva Sastry were transferred from the Head-Office to Mahaboobnagar and Vijayawada respectively. The

petitioner was transferred and posted in the Regional Office, Adilabad. Smt. Seetha, Staff Assistant of the Regional Office at Vijayawada was transferred to the Regional Office, Eluru as she refused to hand over her ballot paper to the Regional Officer, Vijayawada at the elections. Three more ladies serving in the Head-Office were also transferred as they supported the petitioner and the other contestants set up by the activist of the Union.

5. The petitioner further alleges that he is not liable to be transferred to any of the Regional Office as there is no post of Telephone Operator sanctioned therein. To circumvent the difficulty, the petitioner was transferred and posted as a Junior Clerk in the Regional Office at Adilabad. Though the pay-scales of a Telephone Operator, a Driver and a Junior Clerk are the same the qualifications required to possess by them and the nature of duties to be performed by them are quite different. Also the posts of a Telephone Operator and a Junior Clerk are distinct. A Junior Clerk should possess a minimum education qualification equivalent to a pass in Matriculation. The petitioner does not possess the necessary minimum educational qualification to hold the post of a Junior Clerk. A Junior Clerk is expected to peruse and scrutinise a number of documents couched in English Language, with which the petitioner is not well conversant. Actuated by mala fides, the petitioner was transferred and posted as a Junior Clerk by the Managing Director of the Bank. The impugned action of the Managing Director was both arbitrary and discriminatory and thereby violative of Arts. 14 and 16 of the Constitution.

6. In the counter-affidavit filed by the Managing Director of the Respondent-Bank it is alleged that the conditions of service of the staff of the Bank are governed by "Service Regulations" framed in exercise of the powers conferred under Bye-law No. 42(g) of the Bye-laws of the A.P. Co-operative Central Agricultural Development Bank Limited, that the same are contractual in nature and not statutory in character and that in exercise of the powers conferred under Regulation No. 34 the petitioner was transferred. Regulation No. 7 groups the posts of Junior Clerk, Telephone Operator and Bradma Operator in one category. The petitioner being the seniormost employee in the said category was transferred. The petitioner is not entitled to question the same by way of a writ petition and the writ petition is not maintainable in law. The petitioner worked as a Telephone Operator up to 24th September, 1976 and thereafter was posted as Shroff in which capacity he worked from 24th September, 1976 to 8th November, 1976 with an additional allowance of Rs. 50/- per month. Later he was posted as a Junior Clerk in the "Records Section". Subsequently in the proceedings dated 15th January, 1977 he was posted in the "Mortgage Bonds Section". He was again posted as a Telephone Operator and worked as such from 4th March, 1977 to 14th November, 1977. From 14th November, 1977 to 3rd March, 1979 he again worked as a Junior Clerk in the "Mortgage Bonds Section". From 3rd March, 1979 to 7th September, 1979 he worked as a Telephone Operator. On 7th September, 1979 he was again posted to work as a Junior Clerk in the "Mortgage Bonds Section" where he worked up to 29th April, 1982. Thereafter he was

transferred to the Regional Office, Adilabad, he being the seniormost person. Transfer of other employees were not effected by way of victimisation but were effected in the usual course they being the seniormost. Sri K. Ramamohan Rao, and Sri K. Sambasiva Sastry were transferred to Mahaboobnagar and Vijayawada respectively they being seniors. Sri Franklin John was suspended on a complaint received from the President of the Primary Agricultural Development Bank. Naglonda alleging misappropriation of the funds of the Bank and other irregularities on his part. As the number of ladies employed in the Bank increased recently, four of them were transferred as per their seniority. Smt. J. Seetha being the seniormost in the Regional Office at Vijayawada was transferred. However on a representation made by her, she was re-posted to Vijayawada.

7. It is further averred in the counter-affidavit filed by the Managing Director that every Regional Office is provided with a telephone which is to be operated by some employee or the other and that normally a Junior Clerk operates the same. The petitioner was posted as a Junior Clerk as early as in 1976 and has been working as a Junior Clerk ever since, though with intermittent breaks. As one post of a Junior Clerk at Adilabad was vacant, the petitioner being the seniormost in the category of Junior Clerk in the Head-Office was transferred and posted. Under the Resolution dated 16th November, 1972 passed by the Board of Directors of the Bank the posts of Junior Clerks, Bradma Operator and Telephone Operator are grouped and included in one category and the posts are interchangeable. It is true that according to the "Service Regulations", which came into force on and from 7th September, 1979 a Junior Clerk must possess a minimum educational qualification of a pass in Matriculation. But under the very same Regulations a Junior Clerk and a Telephone Operator are included in one and the same category.

8. The allegations of mala fides and victimisation are stoutly denied by the Managing Director of the Bank. He also denies having set up or fielded a panel of contestants of his choice at the elections having used his good offices or exercised his influence to secure their victory at the elections.

9. It is urged on behalf of the respondent that the petitioner''s service is contractual in nature and not statutory in character, that under Bye-law No. 42(g) of the Bye-laws of the A.P. Co-operative Central Agricultural Development Bank Limited, the Board of Directors of the Bank is empowered to frame Service Regulations for the staff of the Bank and also the Centralised Cadre of the Service for Agricultural Development Banks with the approval of the Registrar and that under Regulation No. 34 of the said Regulations so framed the employees of the Bank are liable to be transferred or posted during their service from one section to another and from one place to another within the State. Reliance is placed upon the decision in Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others, . In the said case the question that fell for consideration was as to whether a writ could issue under Art. 226 of the

Constitution against a Society registered under the Punjab Co-operative Societies Act, 1961 that set aside a list of selected candidates at the instance of the aggrieved appellants therein who were not included in the list. The High Court of Punjab and Haryana held the writ petition to be incompetent, directed at it was against a Co-operative Society. On appeal, their Lordships of the Supreme Court observed (at p. 207) :

"The writ petition, stripped of embroidery and legalistics, stands naked as a simple contract between the staff and the Society, agreeing upon a certain percentage of promotions to various posts or an omnibus, all-embracing promises to give a quota to the existing employees. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellent is that the remedy of Art. 226 is unavailable to enforce a contract qua of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Art. 226 in the event of a breach of a contract, by-passing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction."

10. It may be noted that in the aforesaid case an agreement entered into between the staff and the Society was sought to be enforced. No statutory duty or sovereign obligation or public function of the Society was questioned.

11. The A.P. Co-operative Central Agricultural Development Bank Ltd., is governed by the provisions contained in Chapter XIII of the A.P. Co-operative Societies Act, 1964 specially devoted to "Agricultural Development Banks". S. 84(b) of the Act defines ''Central Agricultural Development Bank'' as meaning the A.P. Co-operative Central Land Mortgage Bank Limited originally formed under S. 3 of the A.P. Co-operative Central Land Mortgage Bank (Formation) Act, 1961. S. 84(a) of the Act defines ''Board'' as meaning the Board of Directors of the Central Agricultural Development Bank S. 86(1) of the Act enacts that the Registrar, or where the Government appoint any other person in that behalf, such person, shall be the Trustee for the purpose of securing the fulfillment of the obligations of the Central Agricultural Development Bank to the holders of debentures issued by the Board. S. 86(2) of the Act lays down that the powers and functions of the Trustee shall be governed by the provisions of the Act and by the instrument of trust executed between the Central Agricultural Development Bank and the Trustee as modified from time to time by mutual agreement between the Board and the Trustee. S. 90(1) of the Act provides for guarantee by the Government of principle of, and interest on, debentures issued under the A.P. (Andhra Area) Co-operative Land Mortgage Banks Act 1934. S. 102 of the Act enacts that it shall be competent for the Collector on application being made to him in that behalf by

an Agricultural Development Bank to recover all sums due to the Bank, including the cost of such recovery. Powers of distraint and sale of properties of the defaulting members of the Bank are conferred under Ss. 103 and 104 of the Act. S. 114-A of the Act empowers the Board of the Bank, subject to such rules as may be made by the Government in that behalf constitute a centralised service of such categories of employees of the Agricultural Development Banks as may be prescribed including the power of appointment, transfer and disciplinary action in respect of the employees included in such service. S. 116-B of the Act employers the Government to give directions to a Society or class of societies or an appointment committee constituted under S. 116-A of the Act to make provision for the reservation of appointment or posts under any such Society in any cadre created under the said section in favour of or for the grant of any special concessions in the matter of appointments to any such posts or cadre to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the Society or the appointment committee shall be bound to comply with such directions and to give effect to any provisions so made. In other words the Government are empowered to issue directions to the Bank to give effect to the beneficial provisions enshrined in the Constitution in favour of the Scheduled Castes, the Scheduled Tribes and the Backward Classes.

12. It may be noted that Bye-law No. 42(g) of Bye-laws framed by the Board of Directors of the Bank empowers the Board to frame service regulations for the staff of the Bank and also the Centralised Cadre of the Service for Agricultural Development Banks with the approval of the Registrar derives authority under S. 116-B of the Act. Regulation No. 34 of the Regulations so framed by the Board of Directors of the Bank making the employees of the Bank liable to transfer or post from one section to another or from one place to another within the State relied upon by the respondent is therefore statutory in character and did not contractual in nature.

13. It is also urged by Sri K. G. Kannabiran and not disputed by the learned counsel appearing for the respondent that the authorised share capital of the Bank is Rs. 10 crores out of which a sum of Rs. 7 1/2 crores was contributed by the Government of Andhra Pradesh. The objects and functions of the Bank enumerated under Bye-law No. 3 of the Bye-laws framed by the Board of Directors of the Bank more fully extracted hereunder also leave no doubt that the Bank is a statutory body wholly controlled and managed by the Government and that it is therefore an ''authority'' within the meaning of Art. 12 of the Constitution.

14. In Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, the U.P. State Warehousing Corporation constituted under the Madhya Pradesh State Warehousing Corporation Act (28 to 1956) subsequently replaced by the Madhya Pradesh Act. 58 of 1962 was held to be an ''authority'' within the meaning of Art. 12 of the Constitution of India, it being a statutory body wholly controlled and managed by the Government of Madhya

Pradesh.

15. In Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, the question which came for consideration was as to whether the Regional Engineering College, Srinagar, a Society registered under the Registration of Societies Act, 1898 was an authority falling within definition of ''State'' under Art. 12 of the Constitution of India. Their Lordships of the Supreme Court observed :

"We may point out that it is immaterial for this purpose whether the Corporation is created by a statute or under a statue. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The Corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the Companies Act, 1956 or it may be a Society registered under the Societies Registration Act, 1960 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Art. 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a Corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Art. 12.

It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Art. 12, it may be elevated to the position of "State" for the purpose of Arts. 209 310 and 311 which find a place in Part XIV. The definition of "State" in Art. 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Art. 36, to Part IV, it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV of any other provision of the Constitution."

Proceeding further their Lordships added :

"It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an "authority" falling within the definition of "State" in Art. 12. Is it an instrumentality or agency of the Government ? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu and Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by the Society are also required to have the prior approval of the State and Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person and any member of the Society other than a member of the Society other than a member representing the State or Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in-charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or the agency of the State and the Central Governments and it is an ''authority'' within the meaning of Art. 12."

Their Lordships concluded :

"If the Society is an "authority" and therefore "State" within the meaning of Art. 12, it must follow that it is subject to the constitutional obligation under Art. 14.

* * * *

Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Art. 12, Art. 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

16. In B. Satyanarayana and Others Vs. State of Andhra Pradesh and Others, , a Full Bench of this Court was called upon to decide as to whether the A.P. State Irrigation Development Corporation and the A.P. Leather Industries Development

Corporation could be termed as instrumentalities or agencies of the State so as to fall with in the definition of "State" in Art. 12 of the Constitution. Their Lordships of the Full Bench enumerated the following principles culled out by Krishna Iyer, J. in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

1. 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. Exercise of "deep and pervasive State control" may afford an indication that the Corporation is a State agency or instrumentality.

3. It may also be a relevant factor - whether the Corporation enjoys monopoly status which is State conferred or State protected.

4. 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.

5. 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.

17. Adopting the said test, their Lordships added by way of clarification the following few principles emerging and logically flowing from the various decisions of the Supreme Court referred to by them :

"(i) In applying the above tests, it is not very must relevant whether the Corporation is created by a statute or is incorporated under a statute; e.g., Companies Act, Societies Registration Act etc. The fact that a Corporation is a statutory Corporation may perhaps be a factor supporting the conclusion of the Corporation being an instrumentality or agency of the State; but it does not follow that every statutory Corporation is ipso facto an instrumentality or agency of the State. Similarly, even Government Company (see its definition in S. 617 of the Indian Companies Act) cannot be called an instrumentality or agency of the State. Again the above tests have to be applied :

(ii) It is not necessary that all the test pointed out above should be satisfied. It would be a question to be determined in a given case on an aggregate of the relevant circumstances. For instance, if a Corporation is created and the functions of an existing department of the Government are transferred to it, it would no doubt be a strong factor supporting the conclusion of the Corporation being an instrumentality or agency of the Government; but what different would it make if instead of doing that, the State creates a Corporation by contributing its total share capital, by retaining total control over it, and by calling upon such Corporation to undertake a fresh activity of a public nature and for the benefit of the public ?

(iii) If a Corporation is vested by law with power to give directions, the disobedience of which is publishable as a criminal offence or is invested with the power to make Rules and Regulations and to administer or enforce them to the detriment of the citizens and others, they would be themselves be ''authorities'' within the meaning of Art. 12. In such cases, the further test whether they are instrumentalities or agencies of the Central or State Government is unnecessary. They may be or may not be. This test becomes relevant in case of Corporation - statutory or otherwise - which are not clothed with the powers aforementioned, and which therefore can be brought within the purview of definition only by treating them as instrumentalities or agencies of the Central or State Government, as the case may be. If after applying the aforementioned tests, the Court comes to the conclusion that they are instrumentalities or agencies of the Central or State Government, as the case may be, then their activity shall be deemed to be, and can be termed as ''State action'' and must conform to and answer the rights and injunctions enshrined in Part III of the Constitution. We must make it clear that all this is relevant only for the purposes of Part III and that, by treating a Corporation an instrumentality or agency of a Government, the Corporation does not cease to be a distinct legal entity, nor do its employees become the employees of that particular Government.

(iv) A writ, order or direction can issue under Art. 226 to such Corporation, both for enforcement of fundamental rights and also for enforcement of a statutory right."

18. As already stated the various provisions of the A.P. Co-operative Societies Act, 1964 and the Bye-laws framed by the Board of Directors of the respondent-Bank copiously referred to supra led to no other conclusion except that the Bank is an instrumentality or an agency of the Government of Andhra Pradesh and therefore an authority within the meaning of "State" occurring in Art. 12 of the Constitution of India. The Bank is therefore amenable to the jurisdiction of this Court under Art. 226 of the Constitution of India and the contention put forward by the learned counsel appearing for the respondent-Bank to the contra must therefore be rejected.

19. As already stated the petitioner was first appointed as a Peon on 18th May, 1959 and was promoted to the post of Telephone Operator on 3rd August, 1972 subject to his acquiring S.S.L.C. or equivalent qualification within a period of two years from date of assumption of charge as a Telephone Operator. He was subsequently confirmed as a Telephone Operator with effect from 4th August, 1973 though he could not acquire the qualification. He was never appointed as a Junior Clerk though during short spells he performed the duties of a Junior Clerk when the exigencies of administration demanded. He could not be appointed as a Junior Clerk for lack of minimum general educational qualification. The Board of Directors of the Bank at its meeting held on 16th November, 1972 reorganised the pattern of the staff of the head-office consequent upon decentralisation of administration and the cadre consisted of :

Cadre No. of Posts 1. Deputy Managers (Asst. Secretaries) 16 2. Senior Officers 15 3. Junior Officers 98 a) A.D.O/L.As 62 b) Superintendents 36 4. A.D.Ds. (Agriculture) 5 5. Staff Assistants (including one Telephone Operator) 113 6. Stenos 19 7. Typists 11 8. Junior Clerks (including Bradma Operator, 1 Telephone Operator & Shroff) 17 9. Drivers 14 10. Peons 40 11. Watchmen (including 2 Watchmen for Guest Rooms) 14

It may thus be noted that Bradma Operator, Telephone Operator and Shroff are grouped in the category of Junior Clerks, the total number of posts then sanctioned being 17.

20. In supersession of the resolution dated 16th November, 1972 "Service Regulations" were framed by the Bank in exercise of the powers conferred under Bye-law No. 42(g) of the Bye-laws of the Bank. Regulation No. 7 categorises the posts as under :

I. Managing Director II. Manager, Chief Accounts Officer III. Deputy Manager, Chief Technical Officer. IV. Senior Officer. V. Junior Officer (Technical) Junior Officer (Non-technical) VI. Staff Assistant, Stenographer; Typist, Draughtsman. VII. Junior Clerk, Telephone Operator and Bradma Operator. VIII. Driver, Mechanic. IX. Attender, Watchman, Gardener

Though the posts of Junior Clerk, Telephone Operator and Bradma Operator are no doubt grouped in Category No. 7 the posts are distinct and different and the qualifications for appointment to the posts are also different as borne out by Schedule I appended to the Regulations. Schedule I lists out as many as 13 categories of posts. The post of Junior Clerks are listed in Category No. 12 while the posts of Bradma Operator and Telephone Operator are listed in Category No. 13. It is nowhere provided in the Service Regulations that the posts of Telephone Operator and Junior Clerks are interchangeable. Admittedly no post of Telephone Operator is sanctioned in any of the Regional Offices of the Bank Situated in the State. The petitioner is therefore not liable to be transferred to any of the Regional Offices of the Bank. The explanation offered in the counter-affidavit filed by the Managing Director of the Bank that a Telephone is installed in the Regional Office, Adilabad, that one employee has to necessarily operate the Telephone, that normally a Junior Clerk handles the Telephone and that the petitioner though transferred and posted as a Junior Clerk will in effect perform the duties of a Telephone Operator is only invented for the purpose of sustaining the transfer and posting of the petitioner as a Junior Clerk in the Regional Office at Adilabad.

21. In the counter-affidavit filed by the Managing Director of the Bank it is urged that the petitioner and the other employees including four ladies were transferred either from the Head Office or from the Regional Offices in the usual course, they being the seniormost working at the respective Head-Office or the Regional Offices. The petitioner, who contested for the post of Vice-President of the Union was transferred to Adilabad on 27th March, 1982 a fortnight before the

scheduled elections to the Union. On 29th April, 1982, a fortnight after the elections were held, Sri K. Ramamohan Rao, who contested for the post of Deputy General Secretary of the Union and Sri K. Sambasiva Sastry, who contested for the post of Treasurer of the Union were transferred from the Head-Office to Mahaboobnagar and Vijayawada respectively. On the same day Sri A. Bhaskara Rama Rao, who contested for the post of President after Sri Franklin John was placed under suspension was transferred from Kakinada to Visakhapatnam. Smt. G. Seetalakshmi, Kumari J. Vasantha and Smt. J. Munnabai claimed to be supporters of the contestants set up by the Union were transferred from the Head-Office to Srikakulam, Kakinada and Naglonda respectively. From the list of staff assistants working at the Head-Office as on 1st April, 1982 furnished by the Bank it is seen that several others who put in more number of years of service in the Head-Office than Sri K. Ramamohan Rao and Sri K. Sambasiva Sastry were not disturbed. Also several ladies senior to Smt. G. Seetalakshmi, Kumari J. Vasantha and Smt. J. Munnabai working in the Head-Office as on 1st April, 1982 were not transferred. It is thus evident that the petitioner and the other contestants at the elections except Sri M. Prabhakara Rao and their supporters including three ladies were transferred either on the eve of the elections or immediately after the elections. The plea of the petitioner that the transfers were arbitrarily resorted to and effected by the Managing Director of the Bank by way of Victimisation rings true.

22. In Syndicate Bank Ltd. v. The Workmen [1966 II L.L.J. 194] their Lordships of the Supreme Court held :

"It is true that if an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such as order or transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power again by law."

In P. Pushpakaran v. Chairman, Coir Board [1979 I L.L.J. 139] a single Judge of the Kerala High Court observed :

"The right to transfer an employee is a powerful weapon in the hands of the employer. Sometime it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

23. The aforesaid observations made by the learned Judge apply to the case of the petitioner with all force and I have little difficulty in holding that the

impugned transfer of the petitioner is by way of victimisation for his activities in the Union and is in mala fide exercise of the power vested in the Managing Director of the Bank. I therefore set aside the impugned order. A writ of mandamus shall issue against the respondent as prayed for. The writ petition is accordingly allowed with costs. Advocate''s fee Rs. 250/-.

