

(1997) 11 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11754 of 1997

P. Narsimha and Others

APPELLANT

Vs

A.P. Dairy Development Cooperative Federation Limited and
Another

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 25

Citation : (1998) 2 ALD 167 : (1998) 1 ALT 275

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. M. Panduranga Rao, for the Appellant; Mr. V. Eswaraiah, SC, for the Respondent

Judgement

1. The three petitioners herein were appointed as Scavengers in the respondent Corporation in the year 1989. When attempts were made by the respondents to terminate their services, they approached this Court by way of a Writ Petition No.6857 of 1991 seeking regularisation of their services. Pending regularisation, they also sought in W.P.M.P. No.8533 of 1991 an interim direction to continue them in service and pay salaries regularly. The said writ petition was disposed of by this Court on 8-8-1996 with the following directions.

"In the circumstances, I am of the opinion that it is sufficient to give a direction to the respondents to consider the case of the petitioners for absorption in terms of G.O.Ms. No. 212 dated 21-4-1994 and pass appropriate orders within 2 months from the date of receipt of a copy of this order. There is already an interim direction to continue the services of the petitioners pending the writ petition. This interim direction shall continue in force until appropriate orders are passed as mentioned."

2. According to the petitioners, the respondents passed orders in proceedings No.7580/Admn.III/02/96 dated 14-10-1996 stating that there are no sanctioned posts and their representation for regularisation cannot be considered. The

petitioners claim that though the order was passed on 14-10-1996, the respondents continued them, while extracting work from them till 29-5-1997, on which date without any order being passed, they were thrown out of employment. Therefore, they approached this Court again under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the respondents in not allowing the petitioners to work without issuing any order of termination and further sought for a declaration that the method adopted by the respondents amounts to unfair labour practice and is illegal and arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India besides violative of Section 25F of Chapter V-A and V-B of the Industrial Disputes Act and consequently sought a direction to the respondents to regularise their services in the category of Scavengers (latrine cleaners) with all consequential benefits and pass such other orders.

3. This Court was prima facie satisfied with the contentions raised by the writ petitioners and therefore granted interim directions in W.P.M.P.No. 14124 of 1997 on 12-6-1997 to continue the petitioners as Scavengers (latrine cleaners) by paying the pay-scales attached to the said post pending disposal of this writ petition.

4. Reacting sharply to the interim directions granted by this Court, the respondents have filed a vacate petition in WVMP.No.1894 of 1997 seeking to vacate the interim order forthwith. When the vacate petition (WVMP No.1894 of 1997 in WPMP No. 14124 of 1997) came up for hearing in the interlocutory matters, the learned Counsel appearing for the respondents (vacate petitioners) insisted for vacating the interim directions and the learned Counsel appearing for the writ petitioners tried to sustain the interim directions granted by this Court contending that if the interim directions are vacated, without deciding the main writ petition itself, the petitioners who are scavengers working in the respondent Corporation right from 1989 without their services being regularised, would be put to irreparable injury and therefore pleaded this Court to dispose of the writ petition itself finally. At that stage, both the learned Counsel agreed to have the matter for final hearing and thus the matter is heard at length and is being decided by this Court.

5. The three petitioners who are working as scavengers, cleaning the bathrooms and latrines in the office of the respondent Corporation right from 1989 onwards, have not found favour from the respondents in their endeavour to get their services regularised so that they can lead a better life, are before this Court. This is the second attempt made by them. The respondents in order to deny the reasonable request of the petitioners for regularisation, have taken a plea that the respondent Corporation is not a State within the meaning of Article 12 of the Constitution and therefore the writ petition is not maintainable.

6. Through out the length and breadth of the counter and additional counter filed by the respondents, they tried to say that the respondent unit is a society registered under the Societies Act and therefore, their acts cannot be challenged

in the High Court under Article 226 of the Constitution of India.

7. In the context of the respondents contending that their actions cannot be called in question before the High Court under Article 226 of the Constitution of India, this Court is called upon to examine whether the petitioners herein who are the scavengers working in the respondent-Corporation be thrown out of the Court only on the ground that a writ cannot be maintained against the respondent-Corporation which claims that it is not a State amenable to writ jurisdiction or this Court is to hold that the respondents action is also amenable to writ jurisdiction.

8. India acquired independence on 15-8-1947. Even after 50 years of independence, the respondent-Corporation viz., the A.P. Dairy Development Cooperative Federation Limited represented by its Managing Director whose share-capital is owned by the Government, could be permitted to say that it is not a State within the meaning of Article 12 of the Constitution and could it be allowed to say that their actions are not amenable to writ jurisdiction and whether it is justifiable to throw the petitioners out of this Court, who are scavengers rendering their services in the respondent-Corporation right from the year 1989 and who seek regularisation of their services, only on the ground that their grievances cannot be adjudicated under Article 226 of the Constitution of India.

9. It has to be seen that the Dairy Development activities were originally looked after by the Animal Husbandry Department which was a part of Government. It is admitted that a separate Dairy Development Department was formed during the year 1970-71 in the name and style "Andhra Pradesh Dairy Development Corporation Limited" set up on 2-4-1974 and the Dairy Development Department was abolished from 1-8-1974. On the establishment of the Corporation, the Government department was transferred to the Dairy Development Corporation. The Government of Andhra Pradesh issued G.O.Ms. No 647 F&RD Department transferring the Government servants to the Dairy Development Corporation. The Cooperative Federation was formed by the Government of Andhra Pradesh by G.O.Ms. No.551 F&RD dated 10-12-1980. According to the said G.O. the Government decided to transfer all the current assets along with liabilities of the A.P. Dairy Development Corporation Ltd to the A.P. Dairy Development Co-operative Federation Limited. In Paragraph 8, the status of the Organisation at different periods is indicated. Admittedly, an amount of Rs.18.15 crores has been invested by the Government as on 31-3-1996. The respondent Federation obtained loans from NCDC and grants from NDDB/Central Government. Admittedly, the entire share capital is owned by the Government. When the entire share capital is owned by the Government, I do not think that the respondent Federation could still say that it is not a State within the meaning of Article 12 of the Constitution of India whose actions are not amenable to writ jurisdiction. Whether a Co-operative Society or a Federation or for that matter a Unit is a State amenable to writ jurisdiction or not has been considered by the

Apex Court in a series of decisions, one among them 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, . While examining the intricacies, his Lordship Justice K.K. Mathew held that Statutory Corporations carrying on business of public importance are authorities within the meaning of Article 12 despite the fact that they have no power to issue binding directions entailing penal consequences.

10. In Ramana Dayaram Shetty v. International Airport Authority of India, AIR 1979 SC 1629, Article 12 was considered elaborately and the Apex Court held that there are several factors which may have to be considered in determining whether a Corporation is an agency or instrumentality of Government. The factors referred to by the Apex Court are:

- (1) whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance;
- (2) whether there is any other form of assistance given by the State, and if so, whether it is of the usual kind or it is extraordinary;
- (3) whether there is any control of the management and policies of the Corporation by the State and what is the nature and extent of such control;
- (4) whether the Corporation enjoys State conferred or State protected monopoly status; and
- (5) whether the functions carried out by the Corporation are public functions closely related to governmental functions,

The Court further held that the particularisation of relevant factor is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the Corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests. The learned Judge pointed out that the aggregate or cumulative effect of all the relevant factors has to be taken into account.

11. In yet another case in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , the Constitution Bench of the Supreme Court considered whether a society registered under the Societies Registration Act is an "authority" falling within the definition of "State" in Article 12. The Court held at Para 11 as follows :

"We may point out that it is immaterial for this purpose whether the Corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but it has been brought into existence. 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, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 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 Article 12."

There are many other decisions of Supreme Court where the expression "authority" in Article 12 of the Constitution of India has been considered.

12. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Apex Court considered the concept of issuance of a Mandamus at Para 21 which is as under :

"Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this Law, Professor De Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative Act 4th Ed.P. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

Thus, it is clear from the series of decisions that even though a Corporation is not created under a statute, yet its functions are public functions. Their actions are amenable to writ jurisdiction. Since the employment under the Corporation is a public employment, an employee would get a status which would enable him to obtain declaration or continuance in service if he was dismissed or discharged contrary to the regulations.

13. In the additional counter filed by the respondent Corporation in pages 4 and 5 at para 10 the details of source of funds so far obtained have been indicated. Item No.1 indicates that an amount of 8.90 crores share capital from the Government of Andhra Pradesh is obtained. Item No.2 shows that an amount of 9.25 crores share capital is obtained from the Government of A.P. Item 3 and 4 indicates that loans of Rs.6.13 crores and 170.07 crores have been obtained

from NCDC and NDDB. Item No. 5 shows that an amount of Rs.11.12 crores has been obtained from NDDB/Central Government by way of grants. Thus, it is seen that the bulk of the investments are only from either the State Government or the Central Government owned financial institutions. Interestingly, the Managing Director of the respondent Corporation is an IAS Officer, appointed by the Government of Andhra Pradesh on deputation basis from time to time. Thus, it cannot be said that the respondent Corporation is not a State amenable to writ jurisdiction, I hold that the respondent Corporation (sic Federation) is a "State" within the meaning of Article 12 of the Constitution of India amenable to writ jurisdiction and is not a private body owned by few private people.

14. In view of the above discussion, the principal submission that the respondent Corporation is not a "State" and a writ is not maintainable against the Corporation in this Court under Article 226 of the Constitution of India is rejected.

15. The next question is what is the relief the petitioners could be granted by this Court.

16. The respondents have taken an interesting stand by contending that there are no posts of Scavengers in the Corporation and therefore, the petitioners' services cannot be regularised in the category of Scavengers.

17. Under Chapter VIII of the A.P. Last Grade Service Rules framed under G.O.Ms. No.565, GAD, dated 24-10-1992 and category 8, the scavengers are included in the last grade services which include many other categories viz., attendants, cleaners, car drivers, drainage cleaners etc. It is not disputed by the respondents that the services of scavengers are not needed and the respondents themselves are cleaning their latrines and bathrooms. They have not stated in their counter that their toilets or latrines are cleaned by themselves and the services of the petitioners are no more required. It is pity that the respondents want the services of the petitioners but when the question of regularisation of their services comes, they are opposed to the view of regularising their services. This attitude is far from reality as the petitioners need to lead a reasonable life.

18. Article 21 of the Constitution of India which guarantees protection of life and personal liberty to all the citizens of this country says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law." Every person has to survive in the society. That survival shall be with dignity. The object of the Constitution when it says that no person shall be deprived of his life, leading an inhuman life is not the object of the Constitution. To lead a life with liberty, one needs sources to maintain a hale and healthy life. The source as far as the petitioners herein are concerned is only the job which has been offered to the petitioners by the respondents. May be, it is a scavengers job. The dignity of labour is guaranteed to the petitioners by the Constitution. The respondents cannot say that the dignity of labour is not guaranteed to the scavengers but it is only guaranteed to the officers of the respondent Corporation. It looks to me that the officers of the respondent

Corporation only think of themselves and feel that they are the only persons who are protected under the Constitution for leading a dignified life but not the scavengers who have been cleaning their bathrooms and latrines right from 1989. If it is a case that the respondents do not require the services of scavengers for cleaning their bathrooms and latrines, they could very well inform the petitioners that their services are no more required and they themselves would clean their bathrooms and then the petitioners cannot have any grievance. They may opt for any other avocation subject to the respondents following the proper procedure while terminating their services. In the case on hand, that is not so. What all the respondents say is that though they need scavengers to clean their bathrooms and latrines, their services cannot be regularised because there is no post as such. As discussed, the scavengers are recognised as last grade employees. It would be appropriate if the respondents treat them as last grade service employees and regularise their services.

19. It is also painful to see that even after 50 years of independence, the services of the last grade employees particularly the 3 Petitioners herein are not regularised and dignity of labour is a distant dream for them. It is high time that the respondents realise this and frame necessary rules to bring the petitioners herein under the "last grade service" and regularise their services without further waste of time.

20. As discussed, in order to lead a meaningful life as guaranteed to the petitioners under Article 21 of the Constitution, the petitioners need no sympathy from the respondents but as a matter of right their services are to be regularised. The principle of right to work has been accepted by the Constitution and therefore, the respondents cannot deny the petitioners their right to seek regularisation of their services in the "last grade service".

21. The respondents while opposing the writ petition under Article 226 of the Constitution have taken recourse to a decision of this Court in *Sri Konaseema Co-op. Central Bank Ltd v. N. Seetharama Raju*, AIR 1990 AP 171, In this case, a Full Bench of this Court was considering the benefit which accrued to the petitioners therein under the bye-laws of the Co-operative Society. The Full Bench examined that aspect and held that the bye-laws of the society cannot be called in question under Article 226 of the Constitution of India and a writ cannot be maintained in the High Court.

22. In the case on hand, the bye-laws of the respondent-Corporation have not been challenged. What is challenged is the action of the respondents in not regularising the services of the petitioners.

23. The respondents have to discharge a public duty and when an authority who has a public duty to discharge, fail to discharge the same, a writ of mandamus under Article 226 is available to such parties seeking redressal. I am fortified in my view by a decision of the Supreme Court reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvana Jayanti Mahotsav Smarak Trust and*

Others Vs. V.R. Rudani and Others, .

24. Having regard to the above discussion, I hold that the petitioners are entitled to seek relief under Article 226 of the Constitution of India. Consequently, the respondents are directed to regularise the services of the petitioners forthwith and pay salaries to them as last grade employees.

25. It is seen that on earlier occasion, the petitioners herein have approached this Court in WP No.6857 of 1991 seeking continuance of their services and further sought for regularisation of their services. That writ petition was disposed of on 8-8-1996 by this Court directing the respondents to consider the cases of the petitioners in terms of G.O.Ms. No.212, dated 21-4-1994. The request of the petitioners was rejected on the ground that there are no sanctioned posts in the category of scavengers. It would be fair to hold that the petitioners are entitled for regularisation from the date of the direction issued by this Court on earlier occasion i.e., from 8-8-1996 in the last grade services and are entitled to receive all necessary consequential benefits from thereon.

26. It is desired that the entire process of regularising the services of the petitioners herein and paying the difference of salaries to them shall be completed within a period of three months from the date of receipt of a copy of this order.

27. The writ petition is allowed with costs which are quantified at Rs.3,000/-.