

(1986) 01 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 965 of 1979

Pant Raj Sachdev

APPELLANT

Vs

The Indian Red Cross Society and Others

RESPONDENT

Date of Decision : 30-01-1986

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226
Punjab Civil Services (Punishment and Appeal) Rules, 1970 — Rule 10, 11, 14, 16, 17
Red Cross Society Act, 1920 — Section 10, 11, 13, 2, 3

Citation : (1987) 1 ILR (P&H) 41

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : J.L. Gupta and Rakesh Khanna, for the Appellant; M.R. Agnihotri and Deepak Agnihotri, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—The Petitioner was appointed as Assistant Secretary, District Red Cross Branch, Roopnagar, in March, 1967. He was promoted to the post of Executive Secretary,—vide order dated May 17, 1971, Annexure P. 1. As per the resolution No. 3 dated October 10, 1968 adopted by the District Red Cross Branch, Roopnagar, the services of its employees including the Petitioner were governed by the Punjab Civil Service Rules. On his request, he was appointed as Executive Secretary of the District Red Cross Branch, Ferozepur,—vide order dated 8th October, 1976 Annexure P. 2. The Deputy Commissioner, Ferozepur, who is the President of the District Red Cross Society, Ferozepur, ordered termination of his services without assigning any reason,—vide his order dated 29th April, 1977 Annexure P. 3. On his representation dated 9th May, 1977 Annexure P. 4, the Governor of Punjab, who is the President of the State Branch of the Red Cross Society (hereinafter called "the Society") passed an order dated 15th May, 1977 Annexure P. 5 staying termination of his services. Respondent No. 3, however, did not comply with this order. He submitted another representation Annexure P. 6 but with no result. Then he submitted another

representation dated 12th July, 1977 Annexure P-7 to the Chief Minister, Punjab, who is the Chairman of the Society. The Chief Minister,--vide his order dated 29th November, 1977 Annexure P. 8 accepted his representation and ordered his reinstatement. In spite of this, he was not permitted to rejoin his post. He submitted subsequent representations dated 10th February, 1978 and 17th September, 1978 Annexures P. 9 and P. 10 respectively. He continued visiting the office of Respondent No. 3 but he was not permitted to join duty. He, therefore, filed the present writ petition praying for quashing of the order Annexure P. 3 and for a writ of mandamus directing Respondent No. 3 to implement the orders Annexures P. 5 and P. 8 and for a declaration that he continues to be in service of the Respondents. Written statement was filed by Respondent No. 3 wherein, inter-alia, it was contended that the Petitioner's services were terminated after going through various allegations regarding defalcation of Red Cross money, mismanagement of Red Cross affairs, Lack of sense of responsibility, absence without leave and negligence in the discharge of his duties and that the termination of his services as ordered by the President of the District Red Cross Society, Ferozepur, was confirmed by the Executive Committee of the Society in its meeting held on 10th May, 1977.

2. Mr. Agnihotri learned Senior Advocate, appearing for the Respondents, raised a preliminary objection to the effect that the writ petition was not maintainable against the Red Cross Society. On the other hand, Mr., J.. Gupta, Senior Advocate, appearing on behalf of the Petitioner, countered this plea by contending that the District Red Cross Society, Ferozepur, was admittedly constituted under the provisions of Red Cross Society Act, 1920 (hereinafter called "the Act"), He invited my attention to the different provisions of the Act to show that the President of India heads the Indian Red Cross Society. The Governor of Punjab is the president of the Punjab Branch of the Red Cross Society while the Chief Minister of Punjab is its Chairman The Deputy Commissioner, Ferozepur, is the President of the District Red Cross Society, Ferozepur. According to him, since the Red Cross Society is constituted under a statute and is headed by high Government functionaries, it is an authority and consequently a "State" and, therefore, the writ petition against it is maintainable.

3. It is trite to mention that before the Petitioner seeks the protection of this Court invoking exercise of its extraordinary jurisdiction under Article 226 of the Constitution on the ground of infringement of his Fundamental Rights to equality before law and equality of opportunity in the matter of employment guaranteed by Articles 14 and 16 of the Constitution respectively, he has to establish that the Red Cross Society is a "State" within the meaning of Article 12 of the Constitution. No doubt the Society is established and constituted under the Act as has been duly admitted by the Respondents, but that by itself would not give it the character of "State". This is, in fact, no longer treated as a determining factor. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, it has been held:

It is immaterial for determining whether a Corporation is an authority, 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 why 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 or it may be a society registered under the Societies Registration Act 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.

4. In the light of the above principles, we have to examine the provisions of the Act and the Rules made there under. The Act was brought on the statute book soon after the 1st World War. Its object was to provide for future administration of the various monies and gifts received from the public for the purpose of medical and other aid to the sick and wounded and other purposes of a like nature during the war and more especially for the administration of the monies and property held by a Committee known as the Joint War Committee, Indian Branch, of the Order of St. John of Jerusalem in England and the British Red Cross Society, and to constitute an Indian Red Cross Society with a view to the continuation in peace time, on a wider basis and with a wider purpose, of the work carried on by the said Committee during the war, and to provide for the affiliation therewith of other Societies and Bodies having similar objects. Section 2 of the Act lays down that the first Members of the Society shall be nominated by persons who immediately before the commencement of the Act were Members of the Joint War Committee, Indian Branch, of the Order of St. John of Jerusalem in England and the British Red Cross Society at a meeting. The number of Members to be so nominated shall not be less than 25 or more than 50. Section 3 provides for appointment from among the Members nominated u/s 2, the Managing Body of the Society, the Members of which shall hold office as such until a new Managing Body is appointed as provided by the Act. The number of the Members of the Managing Body shall not be less than 10 or more than 30. Section 6 of the Act lays down that upon the nomination of the first Members of the Society and the appointment of the Managing Body, the British Red Cross Society shall be dissolved and all its movable and immovable property shall vest in the Society and shall be applied by the Managing Body to the objects and purposes set out in the Act and all its debts and liabilities shall be transferred to the Society and shall thereafter be discharged and satisfied by the Society out of the aforesaid property. Section 4 of the Act provides for constitution of the Society as a Body corporate under its name having perpetual succession and a common seal with power to hold and acquire property movable and immovable and to sue or be sued by its name. Section 5 of the Act empowers the Managing Body of the Society to make rules for the management, function, control and procedure of the Society. Section 7 of the Act lays down the purposes to which

the Managing Body may in its discretion apply the funds of the Society. The purposes enumerated therein are--

...for the relief of sickness, suffering or distress caused by the operation of war in India or in any other country in which Expeditionary Forces from India may, from time to time, be employed and for purposes cognate to that object and in maintaining the Red Cross Depots for military purposes.

It further provides that the income only of the property vested in the Society but not the corpus or any part thereof be applied for the relief of sickness or suffering in India, whether due to the operation of war or not, or in pursuance of any of the objects set forth in the 1st Schedule. Section 10 vests the managing Body with the authority to determine in all cases what matters properly fall within the scope of Clause (b) of Section 7. Section 11 allows the Managing Body to receive and hold gifts of whatsoever description either for the general purpose of the Society or for any particular purpose and apply the same for the purposes specified. Section 9 of the Act vests the power in the Managing Body to affiliate to the Society any other society or body whether constituted in India or in any other country having all or any of the objects and purposes referred to in Section 7 and may provide for the allocation and distribution of funds, through such society or body, to or for any such objects or purposes.

5. The Rules framed under the Act provide for membership of the Society. Besides the President of India who shall be the President of the Society, Honorary Vice-Presidents shall be subscribers of Rs. 10,000 or upwards to the funds of the Society, and Members elected by the Managing Body to be Honorary Vice Presidents. The membership besides this includes Patrons, Vice Patrons, Members, Associate Members, Institutional Members and their qualifications are enumerated in Rule 4 to 10 of Chapter I of the Rules. Rule 11 provides that a General Meeting of the Society shall be held once a year at the headquarters of the Government of India upon a date (or dates) to be fixed by the President. It further provides that Members of the Managing Body, five member delegates nominated by each State Branch Committee, one member delegate nominated by each District Branch Committee, Member delegates nominated by State and District Branches on the basis of one delegate for every 1000 members on their rolls, and associate member delegates nominated by these Branches on the basis of one delegate for every 5000 Associate Members on their rolls shall be entitled to attend the annual meeting. Annual report, the annual accounts and budget shall be presented, considered and adopted and an auditor elected at the annual general meeting. The constitution of the Managing Body and its membership is elaborated in Rule 14. Likewise, its powers and functions are elaborated in Rules 16 to 26. The Managing Body is further given the powers to appoint from among its Members, its Executive Committee and also other committees such as a Finance Committee, a Medical Committee and their functions are also elaborated in the rules. Again, establishment of Maternity and Child Welfare Bureau and the machinery for its management is also detailed therein.

6. In fact, the constitution of the Society under the Act and its functioning was considered in *Sarmukh Singh v. Indian Red Cross Society* 1985 Lab IC 1072 and it was observed that the Society was incorporated for humanitarian purposes only. The aim was to continue in peace time on a wider basis the work which was being done by the Indian Branch of the British Red Cross Society and the Joint War Committee of the Order of St. John of Jerusalem. The predominant object is to give relief to the disabled, sick or wounded soldiers during the war time and also to provide relief from sickness, suffering or distress in India, whether due to the operation of war or otherwise. In *Ajay Hasia's case* (supra), the Supreme Court summarised the tests laid down in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, as under:

(1) One thing is clear that 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. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

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

4. Existence of deep pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

5. If the functions of the corporation are of public importance and closely related to governmental functions, it would be relevant factor in classifying the corporation as an instrumentality or agency of Government.

6. 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.

7. It is quite evident that the funds of the Society are mainly constituted by gifts and donations. It does not have any share capital which might be said to be held by the Government, nor the financial assistance to it by the State is so much as to meet almost its entire expenditure. No doubt, the President of India, the Governors of the State, the Chief Ministers and the Deputy Commissioners at the district level head the hierarchy of the Society and its Branches but the State as such does not have deep and pervasive control over the Society. In fact, most of the Members of the Society are private individuals who volunteer their services to subserve the objects and purposes of the Society. Its functions are not "closely related to governmental functions". Thus, the tests (1), (2) and (4) to (6) above are not at all satisfied in the case of the Society. For these reasons, the Society cannot be termed to be an "authority" and, therefore, "State" within the meaning of the expression in Article 12 of the Constitution.

8. Mr., J.L. Gupta, the learned Counsel for the Petitioner, however, contended that

the Petitioner is not seeking to enforce his Fundamental Rights. He, on the other hand, complains that there has been infraction of the Punjab Civil Service Rules applicable to the Petitioner and his services have been terminated in violation of the rules of natural justice. He contends that for redress of thus grievance of the Petitioner, his writ petition is maintainable and the Society is amenable to the writ jurisdiction of this Court. In support of his contention, he relied on the Division Bench judgment of the Rajasthan High Court in *Indian Red Cross Society v. R.N. Kaul and Ors.* D.B. Special Appeal No. 65/78 decided on 21st January, 1980 (4) and in particular to the following observations therein:

Keeping in view the ratio decidendi laid down in *Ramana v. I.A. Authority of India* (supra), we have no hesitation in holding that the Rajasthan Branch of the Indian Red Cross Society is not an authority within the meaning of Article 12 of the Constitution of India. The Society has been created by a statute. If the statute is not there, the Society cannot exist. The statute gives an exclusive domain and monopoly to the Society to act in a particular sphere. The assets which fell to the share of Pakistan were transferred u/s 13 of the said Act. The share which fell to the share of Burma was allocated by the Red Cross Society (Allocation of Property) Act, 1936. As stated earlier, the Constitution provides that the Governors shall be the Patron-in-Chief, Chief Minister would be the President, Health Minister would be the Chairman and Director of Medical and Health Services would be the Vice, Chairman, Clause 44 of Annexure Rule 2/2 clearly states that the services of all the employees shall be governed by the rules which are in force for the employees of the State of Rajasthan. All these factors lead to the irresistible inference that though the Indian Red Cross Society is not an authority as envisaged under Article 12 of the Constitution of India, yet it is amenable to the jurisdiction of this Court under Article 226 of the Constitution.

9. He also canvassed support for his contention from *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others*, , I find that there is no escape from the conclusion that although violation of Fundamental Rights enshrined in the Constitution emanating from the impugned action of the Society cannot be made a ground of attack, the writ petition on the ground of infraction of the Service Rules and the rules of natural justice can be maintained against the Society. In this view of the matter, I think it is imperative to examine the legality of the impugned order terminating his services.

The order Annexure P. 3 is in the following terms:

The services of Shri Pant Raj Sachdeva, Executive Secretary, District Red Cross Branch, Ferozepur, are hereby terminated with immediate effect since these are no longer required.

On the facts of it, this order is innocuous but when read with the written statement filed by Respondent No. 3 its complexion is completely changed. In para 8 of the written statement, Respondent No. 3 asserted as under:

Services of the Petitioner were terminated by the then President, District Red

Cross Society, Ferozepur, after going through various allegations relating to defalcation of Red Cross money, mismanagement of Red Cross affairs, lack of sense of responsibility, absence without leave and negligence in the discharge of his duties.

10. Looked at in the background of the above allegations, it is more than evident that the impugned order Annexure P. 3 was passed by way of punishment. Admittedly, he was holding a substantive appointment as Executive Secretary. Penalty of removal from service on the basis of the allegations made in para 8 of the written statement of Respondent No. 3 could be imposed on him only by taking resort to the procedure laid down in Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, i.e. by service of a charge-sheet on him, securing his reply thereto, conducting an enquiry in accord with the settled principles of natural justice if he denied the allegations levelled against him, and then on securing report of the enquiring authority to serve him with a show-cause notice if he was found guilty with regard to the quantum of punishment proposed and then alone the impugned order could be passed. The Respondents could not, in disregard of the Punjab Civil Service Rules, which admittedly govern the services of the Petitioner, and in flagrant violation of the rules of natural justice order termination of his services. Somewhat recalcitrant attitude adopted by Respondent No. 3 by disregarding the orders Annexure P. 5 of the Governor, Punjab, who is the President of the State Branch of the Society, and again the orders Annexure P. 8 of the Chief Minister, Punjab, who is the Chairman of the State Branch of the Society, has also to be taken notice of. In this view of the matter, the impugned order Annexure P. 3 terminating the services of the Petitioner is clearly in violation of the Rules governing his service and also contrary to the basic principles of natural justice and has to be quashed.

11. Consequently, this writ petition is allowed with costs, the impugned order Annexure P. 3 terminating the services of the Petitioner is quashed, a writ of mandamus is issued directing Respondent No. 3 to implement the orders Annexures P. 5 and P. 8. He shall be entitled to all the consequential reliefs which flow from quashing the orders of termination of his services. The costs are assessed at Rs. 500.