
(2000) 08 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 4284 of 1996

Passang Tsering

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 12

Citation : (2000) 3 GLJ 248 : (2000) 2 GLT 696

Hon'ble Judges : P.G.Agarwal, J

Bench : Single Bench

Advocate : M.K.Choudhary, P.Kalita, G.K.Bhattacharyya, B.K.Sharma,
B.Chakraborty, Advocates appearing for Parties

Judgement

1. Heard the learned counsel for the petitioners and the learned counsel for the State of Arunachal Pradesh.
2. This writ petition has been filed by 24 numbers of petitioners who are all employees of Arunachal Pradesh Cooperative Union and Arunachal Pradesh Cooperative Training Centre, hereinafter referred as the Union for the purpose of convenience.
3. The case of the petitioners is that they are employees of the Cooperative Union which is under the pervasive control of the State of Arunachal Pradesh who also contributes and control their finances. The Union was established in the year 1969 and it is managed by a Executive Committee under the control and supervision of the Registrar of Cooperative Societies. The Union receives a meagre amount of subscription from its members cooperative societies and 75 % of the total requirement of fund comes from the State of Arunachal Pradesh. The scales of pay and the salaries of the employees of the Union have always been at par with the State Government employees and in the matter of conditions of service they are similarly placed with the State Government employees. The revision of pay of the employees of the State of Arunachal Pradesh was made in the year 1986 and the benefits of the revision was also extended to the

employees of the Union. But in the year 1993 although the employees of the State of Arunachal Pradesh were given the benefits of revised pay, the employees of the Union were deprived of the same. The representation was submitted time and again but the prayer was rejected. According to the petitioners they are entitled to get the benefits including the Dearness Allowance at the enhanced rate from time to time, medical reimbursement, LTC, liveries, interim relief and other benefits extended to the State Government employees of Arunachal Pradesh. The petitioners therefore prayed for a writ of Mandamus directing the respondents to extend the above benefits.

4. Respondents have filed affidavit in opposition stating inter alia that the Union is a cooperative society registered under section 135 of the Arunachal Pradesh Cooperative Societies Act, 1978. The General Body of the said society is the supreme authority and day to day work is looked after by the Executive Committee. The State of Arunachal Pradesh does not have any control over the Union and it also does not exercise any control over the financial resources of the Union. The Registrar of Cooperative Societies does not supervise the functioning of the Union. Further the employees of the Union are appointed by the Union itself and their pay and allowances and other service conditions are decided by them. The Union does not obtain prior approval of the State for creation of posts or for providing pay scale etc and regarding other benefits admissible to the employees of the Union is concerned, these are laid down after taking into account the financial viability. The grant in aid is provided by the State but due to over staffing it has resulted in the present mess and as the petitioners are not State employees, the respondent State is not liable to pay or release more amount or treat them as Government employees.

5. Learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the writ petition on the ground that the petitioners are not the Government employees and as such they have no legally enforceable right against the State and as the State Government is no way connected with the matter, no Writ of Mandamus can be issued.

6. Learned counsel for the writ petitioners on the other hand submits that the writ petition is maintainable and the jurisdiction of the High Court can not be ousted on such pleas. Petitioner has placed reliance on the following observations of the Apex Court in the case of *Air India Statutory Corporation, etc vs. United Labour Union & others** reported in AIR 1997 SC 645 :

?The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the *qui vive* is to mete out justice in given facts.?

7. Learned counsel for the petitioners has also drawn attention of this Court

to the observations of the Apex Court in the case of *K. Krishnamacharyulu & others vs. Sri Venkateswara Hindu College of Engineering & another*, reported in

AIR 1998 SC 295. In the above case the dispute was whether the remedies available under the Industrial Disputes Act or under Article 226. The Apex Court held that under Article 226 the jurisdiction part is very wide.

8. The facts in the present case are more or less identical with the case of

Sahabuddin Choudhury vs. State of Assam & others reported in 1993 (2) GLJ 51. Like the present petitioners, the petitioner in the above referred decision was also trained by Assam Cadre Management Cooperative Society Ltd and the question that arose for consideration before the Full Bench was that whether a writ would lie against the cooperative society. Referring to catena of decisions of the Apex Court in the case of Sabhajit Tewary vs. Union of India & others, AIR 1975 SC 1329; Ramanna Dayaram Shetty vs. The International Airport Authority of India & others, AIR 1979 SC 1628; Som Prakash Rekhi vs. Union of India & another, AIR 1981 SC 212; Ajay Hasia & others vs. Krialid Mujib Sehravardi & others, AIR 1981 SC 487; PK Ramachandra Iyer & others vs. Union of India & others, AIR 1984 SC 541; Central Inland Water Transport Corporation Ltd & another vs. Brojo Nath Ganguly & another, AIR 1986 SC 1571; Tehraj Vasandi @ KL Basandhi vs. Union of India, AIR 1986 SC 469; Chander Mohan Khanna vs. National Council of Educational Research & Training & others, AIR 1992 SC 76 it was observed :

?The Court indicated that Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression State. A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of welfare State, independent institution, corporation and agency are generally subject to State control, and therefore State control, however, vast and pervasive is not determinative. Financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State".?

9. Referring to the case of Surendra Nath Kalita vs. Assam Cooperative Apex Bank Ltd & others, (1989) 1 GLR 424 (1989 (1) GLJ 54) and Lakshi Prasad Chaliha vs. The Managing Director, Stated & another, Civil Rule No. 338 of 1979 the Full Bench held that under the Cooperative Societies Act, the Registrar of Cooperative Society exercises supervisory power and control over all cooperative societies governed by the Act and as such the claim of the petitioner that the Registrar of Cooperative Society shall supervise or control the affairs of the society is not sufficient to bring the society under the purview of instrumentality of the State" for the purpose of Article 12 of the Constitution. Referring to the evidence in the above case this Court held that the said cooperative society is not amenable to writ jurisdiction of the Court.

10. In the instant case the petitioners have not placed the Bye Laws of the

said cooperative society to incorporate any pervasive Government control over the functioning or the finance of the society. In para 14 of the affidavit in opposition the respondents have stated as follows :

?14. That your deponent begs to submit that:

(a) The Union appoints its employees and no approval of the Govt. for that purpose is necessary. Thus, there is no question of providing grant in aid to Cooperative Union for paying them salary etc at par with the Govt. employees.

(b) The Govt. appoints its employees following the procedure such as, advertisement of posts, conducting of screening test/interview. But this is not so in the case of Cooperative Union employees.

(c) The appointments have been made in the Union without any yardstick in regard to work load and as a result, surplus staff are retained without any justification.

(d) Though RCS suggested to freeze the dues of DA @ 83% to the employees of Union but employees are paid DA @ 105%. Besides, Union maintains more staff than shown in Govt. order granting subsidy.

(e) Union have not framed any scales and service rules for their employees though they were suggested several times.

(f) The fund of the Union, as per its Byelaw clause 6, is derived from following sources:

(a) Subscription from members.

(b) Grants and subsidy from Govt.

(c) Education fund from cooperative societies.

(d) Donation/contribution.

(e) Subscription from District Coop. Unions.

(f) Income from consultancy service fee etc.

But the Union has failed to collect funds from sources other than Govt. Reasons for such sad State of affairs are best known to Union only.?

11. Respondents have further stated that no prior Government approval is required or taken by the Secretary for creation of any post and also there was no prior Government approval for revision of pay scales by the Union. Government is to provide grant subject to the availability of fund and on earlier occasion as the funds were available more funds were released; but in view of the present financial condition of the State, the respondent State of Arunachal Pradesh is not in a position to provide more grant and as such the request was turned down and the Union was accordingly informed.

12. In view of the above it is held that the petitioners who were members of the Union, are not Government employees and they are not entitled to the pay and salaries of the Government employees of the State of Arunachal Pradesh. The Union is a cooperative society and they are at liberty to provide their own pay scales considering their capacity, financial condition and other relevant factors. No case for issue of direction as prayed for has been made out and accordingly the writ petition is dismissed.