
(1995) 07 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule No. 397 of 1993

Praneswar Baishya

APPELLANT

Vs

Assam State Cooperative Marketing and Consumer
Federation Limited

RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 12

Citation : (1995) 2 GLJ 295 : (1995) 3 GLT 44

Hon'ble Judges : D.N.Baruah, J

Bench : Single Bench

Advocate : P.C.Deka, K.N.Choudhary, B.P.Bora, Advocates appearing for Parties

Judgement

1. In this, application under Article 226 of the Constitution, the petitioner has challenged the departmental enquiry, its report (Annexure IV) by which the petitioner was found guilty of the charges, subsequent order dated 13.12.90 (Annexure V) imposing punishment of reduction in rank with immediate effect with a direction that for three years the basic pay of the petitioner would remain stagnant at the rate he had been drawing or he would have been entitled to draw on that date and also Annexure VII appellate order dated 6.12.91 passed by the Managing Director, STATFED, dismissing the appeal and upholding the decision of the Disciplinary Authority.

2. For the purpose of this Civil Rule the facts as narrated by the petitioner may be stated as follows :

Respondent No. 1 Assam State Cooperative Marketing and Consumers Federation Ltd. (for short, STATFED) is an instrumentality of State and amenable to writ jurisdiction. Petitioner joined in the service under respondent No. 1 on 6.12.74 as Inspector. In the month of August, 1987 he was promoted to the post of Assistant Manager and at the material time he was Assistant Manager, I/C Food Storage Godown of respondent No. 1 at Amingaon. On 23.8.89 by Annexure I order the petitioner was placed under suspension pending drawal of

departmental proceeding. A show cause notice dated 30.1.90 was served on the petitioner by 2nd respondent. No list of documents and witnesses were furnished along with the show cause notice. He was charged with gross misconduct, insubordination in doing most irresponsible act by knowingly and deliberately violating the order dated 16.6.89 issued by the 2nd respondent. Although the petitioner was not supplied with copies of documents, he submitted his reply to the show cause notice denying all the charges. Shri BK Baruah, IAS (Retd) was appointed Enquiry Officer to enquire into the charges levelled against the petitioner Shri BK Bhattacharjee, Joint Manager, Accounts, STATFED was appointed Presenting Officer. According to the petitioner the Enquiry Officer did not follow the procedure prescribed under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 which is applicable to the employees of respondent No. 1. The Presenting Officer did not produce any witness or document. Without production of such document or witness the enquiry was concluded. Thereafter, the Enquiry Officer submitted Annexure IV report and agreeing with the findings of the Enquiry Officer who held the petitioner guilty of the charges, the Disciplinary Authority passed the impugned Annexure V order dated 13.12.90 imposing the penalty as indicated above. Being aggrieved, the petitioner preferred an appeal before the Appellate Authority i.e. the Board of Directors. In the memorandum of appeal the petitioner took several grounds, namely, that there was noncompliance of the procedure prescribed under Rule 9, that the petitioner had not done anything which could amount to misconduct and insubordination and that he carried out the order of his superior respondent No.3, etc. On merit also according to the petitioner there was nothing to indicate that he was guilty of the charges. In due course the Appellate Authority i.e. the Board of Directors passed the order rejecting the appeal and affirming the decision of the Disciplinary Authority. According to the petitioner the appellate order was passed mechanically and without application of mind. At least the appellate order does not reflect that the authority considered the grounds taken in the memorandum of appeal. Hence the present petition.

3. Respondents have filed affidavit in opposition controverting the allegations made by the petitioner and the petitioner filed reply affidavit.

4. Mr. PC Deka, learned counsel for the respondents has raised a preliminary objection as to the maintainability of the writ application inasmuch as according to Mr. Deka respondent No. 1 is not a "State" within the meaning of Article 12 of the Constitution and, therefore, not amenable to writ jurisdiction. In support of his contention Mr. Deka submits that the respondent No. 1 is engaged in commercial activities though some support is there from the Government, but it is not sufficient to bring the respondent No. 1 within the scope of Article 12. The control of respondent No. 1 is not with the Government, may be few Government officers are there in the Board of Directors. Mr. Deka further submits that the decision of the Division Bench of this Court in Lakshi Prasad Chaliha vs. The Managing Director, Staffed & another (Civil Rule No. 338 of 1979) regarding the status of respondent No. 1 was not approved by the Full Bench of this Court in

Sababuddin Choudhury vs. State of Assam & others, reported in 1993 (2) GLJ 51. In this connection Mr. Deka draws my attention to paragraph 8 of the judgment and submits that the observations made by the Full Bench in paragraph 8 clearly indicate that the decision rendered by the Division Bench in Lakshi Prasad Chaliha (supra) was not approved by the Full Bench. Mr. Deka also draws my attention to the case of Chander Mohan Khanna vs. The National Council of Education Research & Training & others, reported in AIR 1992 SC 76. In drawing my attention to paragraph 3 of the said judgment Mr. Deka submits that each and every organisation cannot be brought within the scope of Article 12 merely because it has some nexus with the Government. Mr. Deka also draws my attention to another decision of this Court in SK Banerjee vs. Union of India & 2 others, reported in (1995) 2 GLR 98 [1995 (1) GLJ 583], where in paragraph 14 it has been held by this Court that the position of law is very clear that merely because some Government officers are in the body of the management cannot make a particular institution an instrumentality of State within the meaning of Article 12 of the Constitution of India.

5. In reply to the submission of Mr. Deka, Mr. KN Choudhury, learned counsel for the petitioner submits that the arguments advanced by Mr. Deka have no force and there is no scope for reopening the matter as this has already been concluded by the decision of the Division Bench as well as the decision of the Full Bench of this Court. Mr. Choudhury also draws my attention to paragraph 8 of the judgment in Sahabuddin Choudhury (supra) and submits that the conclusion arrived at in Lakshi Prasad's case that the STATFED is an instrumentality of the State has been accepted by the Full Bench. It is true that the Full Bench did not approve the manner in which the conclusion was arrived at. On merit, Mr. Choudhury submits that the impugned enquiry was conducted in utter violation of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 (for short, 1964 Rules). Besides, the petitioner did not do anything requiring disciplinary action against him. He carried out the order of his superior. Mr. Choudhury further submits that the appellate order also suffers from various infirmities. According to him, appellate order is a nonspeaking order and it cannot sustain in law. The petitioner is entitled to know the reasons for rejection of his appeal. Mr. Choudhury draws my attention to Annexure V order and submits that this is a perverse order and it cannot sustain in the eye of law.

6. On the rival contentions of the parties the questions which fall for my consideration are (1) whether the STATFED is an instrumentality of the State and (2) whether punishment inflicted on the petitioner can sustain. Under Article 12 of the Constitution, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. This Article gives an extended meaning to the words "the State". Unless the context otherwise requires, "the State" will include not only the Executive and Legislative organs of the Union and the States, but also instrumentality of the State. The expression refers to

instrumentalities or agencies of the Government and Government Departments. But every instrumentality of the Government is not necessarily a Government Department. The expression also refers to every type of public authority, exercising statutory powers, whether such powers are Governmental or quasiGovernmental or nongovernmental and whether such authority is under the control of Government or not, and even though it may be engaged in carrying on some activities in the nature of trade or commerce.

7. In this case I have gone through the Byelaws of respondent No. 1. Almost half of its share capital is contributed by the State Government. Looking to the objects also it will appear that one of its objects is to carry on their State trade in agricultural produce and other essential commodities as agent of Government and undertakings in public and cooperative sectors for the distribution of controlled and noncontrolled commodities and other essential consumer goods from outside the State in suitable circumstances on behalf of the affiliated societies and other cooperatives. Besides this, Byelaw 29 (i) to 29 (vii) envisage that there shall be Government officers in the Board. Considering all these the Division Bench in Lakshi Prasad Chaliha (supra) held that STATFED was an instrumentality of the State and Full Bench also in Sahabuddin Choudhury (supra) approved the conclusion arrived at by the Division Bench. In view of the above, I have no hesitation to come to the conclusion that STATFED is an instrumentality of the State and comes within the purview of Article 12 of the Constitution.

8. By Annexure II the petitioner was charged with gross misconduct and insubordination. By Annexure III the petitioner denied all the charges and he explained under what circumstances he had to release the rice, but the Enquiry Officer without carrying for the evidence of the person at whose instance the petitioner had released the rice and without giving proper opportunity to the petitioner submitted his report. I find there is noncompliance of the procedure prescribed under Rule 9 of the 1964 Rules.

9. In view of the above, I hold that the proceeding was conducted without following the procedure prescribed and, therefore, Annexure IV report cannot sustain and on the basis thereof Annexure V order cannot be passed. Similarly, in the appeal also the Appellate Authority did not consider the grounds raised by the petitioner. At least Annexure VII order does not indicate that the Appellate Authority considered the grounds raised by the petitioner in the appeal. Considering all these I hold that Annexure IV enquiry report, Annexure V order of the Disciplinary Authority and Annexure VII appellate order cannot sustain in the eye of law. Accordingly, I set aside Annexure IV, V and VII. The petitioner shall be deemed to be in service holding the post prior to passing of Annexure V order and he shall be entitled to all the service benefits.

10. Mr. Deka now submits that the Management may be granted liberty to initiate fresh action. I have only set aside the Annexure IV enquiry report, Annexure V order of the Disciplinary Authority and Annexure VII appellate order.

It is for the management to take up any action, if so advised.

11. In the facts and circumstances of the case I make no order as to costs.