

(2007) 05 AHC CK 0102
In the Allahabad High Court

Prithvi Raj Bhardwaj

APPELLANT

Vs

Secretary, Sugar Industries and Cane Development/
Chairman, Governing Body, U.P. Council of Sugar Cane
Research, Director, U.P. Council of Sugar Cane Research/
Secretary, Governing Body, U.P. Council of Sugar Cane
Research and State Government

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2008) 5 AWC 4420 : (2008) 1 UPLBEC 10

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Judgement

Ashok Bhushan, J.—Heard Sri Vashistha Tiwari, learned Counsel, for the petitioner, Sri Siddhartha Singh appearing for respondents No. 1 and 2 and Sri Piyush Shukla, learned Standing Counsel, appearing for respondent No. 3.

2. By this writ petition, the petitioner has prayed for a writ of mandamus directing respondent No. 2 to prepare and send the pension papers of the petitioner to respondent No. 1 forthwith and pay the pension and general provident fund after his retirement. A writ of certiorari has also been prayed for quashing the order dated 22nd November, 1997 of the State Government and the letter dated 10th September, 2004 issued by respondent No. 2.

3. Brief facts necessary for deciding the writ petition are; the U.P. Council of Sugar Cane Research Society (hereinafter referred to as the Council) is a registered society under the Societies Registration Act, 1860. The Council was earlier under the department of Agriculture. In the year 1992 it was brought under the control of Cane Commissioner. The State Government took a decision on 15th December, 1976 that Cane Research Organisation be now given an autonomous status and be registered as a society. The Chief Minister was to be the Ex-Officio President of the General Body and the Minister of the Cane

Development was to be the Vice President. The Director Sugar Cane and Research Society was to be Secretary. In pursuance of the Government order the Society was registered with the memorandum of association. The Rules and Regulations of Council were also framed and registered. The recruitment rules were also framed governing the recruitment and other conditions of service of the employees. The petitioner was appointed on 19th July, 1979 as Senior Statistical Assistant in the Council. The petitioner was thereafter selected for higher post, namely, Chief Statistical Officer in the Council. A notice was given to the petitioner informing that he shall attain the age of superannuation on 31st August, 2004. Before his retirement the petitioner filed this writ petition praying for a mandamus that respondent No. 2 be directed to prepare the pension papers of the petitioner and sent the same to respondent No. 1 for payment of pension and general provident fund to the petitioner after his retirement.

4. A counter affidavit has been filed both by respondents No. 1 and 2 and the State Government. The respondents No. 1 and 2 in their counter affidavit have stated that in view of the Government order dated 22nd November, 1997 the petitioner is not entitled for pension and other retiral benefits. A copy of the Government order dated 22nd November, 1997 has been filed, which was written in response to the letter of the Council dated 28th February, 1994, in which it has been stated that the employees of Council are not entitled for all the retiral benefits. In the counter affidavit it was stated that petitioner has been paid the fund, gratuity and other dues. The stand of respondents No. 1 and 2 in the counter affidavit is that petitioner is not entitled for payment of pension in view of the Government decision. A rejoinder affidavit has been filed to the said counter affidavit in which reference to the resolutions of the governing body dated 12.1.1988, 27/28.2.1989, 25.4.1995, 25.11.1997 and 1.8.1998 have been brought on the record pertaining to (decisions taken with regard to pension, provident fund etc. A counter affidavit has also been filed by the State of U.P. stating that petitioner is not entitled for pension. Reference of the Government order dated 22nd November, 1997 has been made in the counter affidavit. It was further stated that petitioner has already received amount of provident fund, gratuity and leave encashment. It was stated that pension and other retiral benefits were not accepted by the Finance Department and consequently Government order dated 22nd November, 1997 was issued. It was also stated that employees of the Council are not government servants and the Council is not State within the meaning of Article 12 of the Constitution of India.

5. Sri Vashishtha Tiwari, learned Counsel for the petitioner, in support of the writ petition, raised following submissions:

(i) The Council is State within the meaning of Article 12 it being receiving substantial finance from the State of U.P. and State having deep and pervasive control over the functioning of the Council writ can be issued against respondents No. 1 and 2 under Article 226 of the Constitution.

(ii) The recruitment rules have been framed by the governing body with the

approval of the State Government and Rule 21 of which Rules provides for provident fund, gratuity and pension. According to Rule 21 same rules on the employees of the Council with regard to provident fund, gratuity and pension are applicable, which are applicable to the employees of the State of U.P., hence the petitioner is fully entitled for payment of pension also.

(iii) The pension has been paid to one Suman Rathi wife of Om Prakash Rathi for which the State Government has also issued a letter dated 2nd December, 1994 for payment of all retiral benefits. Certain other employees were also paid pension by the Council.

6. Sri Siddhantha Singh, learned Counsel appearing for respondents No. 1 and 2, submitted that Council being a registered Society under the Societies Registration Act, 1860, is not a State within the meaning of Article 12 of the Constitution of India. The Council is an autonomous body, hence no writ lies against the Council. It is further contended that pension has not been paid to any employee of the Council and in case of Smt. Suman Rathi pension was paid in view of order of this Court by which the claim was disposed of. The State Government does not provide any finance for payment of pension. No employee of the Council is being paid pension and the claim of the petitioner is without any substance.

7. Learned Counsel appearing for the State contended that Council being an autonomous body is not department of the Government nor its employees are Government servant so as to entitle for the pension. The State Government has already clarified that employees of autonomous body, i.e., Council are not entitled for pension.

8. I have considered the submissions and perused the record.

9. The first issue, which is to be considered, is as to whether the Council is State within the meaning of Article 12 so as to make it amenable to the writ jurisdiction of this Court. Before answering the said question, it is necessary to look over the constitution, composition and functioning of the Council. Learned Counsel for the parties have made available the memorandum of association, Rules and Regulations, the recruitment ruler, as well as the copy of the Government order dated 15th December, 1973 and 23rd November, 1998 and placed reliance on them for their respective submissions.

10. The Government order dated 15th December, 1976 is a Government order by which the State Government took a decision for constitution of the Council. The Council was earlier part of the Agriculture Department, which from 1972 was brought under the-control of the Cane Commissioner with the object that cane research and cane production be interrelated for purpose of cane development. It was felt that although some progress was made but the cane research be made more open so as to take the services of the scientist without administrative constrains. It was decided to get it registered as society under the Society Registration Act, 1860 with Chief Minister as President of General Body and

Minister of Cane Development as Vice President. The Government order further provided that in the general body the Commissioner and Secretary of the Sugar Industry and Cane Development and other Government departments including Agriculture Universities be brought. The Director was made the Chief Executive Officer of the Council. The employees, who were working in the Cane Research Organisation have been treated on deputation in the Council and they were being paid the same salary and allowances, which they were receiving as a Government servant. The permanent employees have been treated on deputation till they are absorbed in the service of the Council. Paragraph 3(6) of the Government order provided that those employees who are absorbed in the Council service, the Government will bear the financial responsibilities of the pension in which family pension is not included and the gratuity in proportionate to their eligible service under the State. For rest the responsibility will be of the Council. Paragraph 6(1) of the Government order provided that employees after their absorption shall stop making contribution in their provident fund and the amount deposited in their provident fund will be transferred in the new provident fund account under the control of the Council. The Government order dated 15th December, 1976 was subsequently modified by the Government order dated 23rd November, 1978 by which order Clause 6(8) of the Government order dated 15th December, 1976 was substituted by new clause which provided that employees absorbed in the service of the Council shall be treated to have been retired on retiring pension and be paid the proportionate pension, gratuity including death-cum-retirement gratuity payment of which shall be made and it will be open for the employees to receive other retirement benefits available in the Council in addition to above.

11. The memorandum of association indicates that majority of the members who constituted the society were State Officers including Commissioner and Secretary, Sugar Industry and Cane Development, the Cane Commissioner, U.P., the Commissioner and Secretary, Finance Govt. of U.P. or his nominee. The rules and regulations of the Council were also registered. In general body most are the Government servants including the Chief Minister and Minister of the Cane Development as President and Vice President. The President has been vested with wide power with regard to conduct of the business of the society. The governing body consisted of seven members as provided under Rule 35 out of which two are non official from general body to be nominated by the Chairman. The Chairman of the governing body is the Commissioner and Secretary, Sugar Industry and Cane Development U.P. Rule 56 provides for fund of the Society, which is extracted below:

56. Fund of the Society The funds of the Society shall consist of the following:

(1) Income from the Purchase Tax realised under the U.P. Sugarcane (Purchase & Supply) Act 1953 Section 5.

(2) Lump sum and recurring grants made by the State Government of India or any other body.

(3) Income from investments.

(4) Income from other sources.

12. The test for determining a body as to whether it is State within the meaning of Article 12 are well settled. The Constitution Bench of the Apex Court in *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, after reviewing the earlier judgments laid down following in paragraph 18, 21, and 22:

18. It is in the above context that the Bench in *Ramana Dayaram Shetty case* laid down the parameters or the guidelines for identifying a body as coming within the definition of "other authorities" in Article 12. They are as follows:-

(1) [O]ne 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) [W]here 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 State-conferred or State-protected.

(4) [E]xistence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(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.

21. Thereafter the larger Bench of this Court in *Pradeep Kumar Biswas* after discussing the various case-law laid down the following parameters for gauging whether a particular body could be termed as State for the purpose of Article 12:

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be State within the meaning of Article 12. The question in each case would be- whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

22. Above is the ratio decidendi laid down by a seven-Judge Bench of this Court

which is binding on this Bench. The (acts of the case in hand will have to be tested on the touchstone of the parameters laid down in Pradeep Kumar Biswas case. Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biaswas case for a body to be a State under Article 12. They are:

(1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.

13. The Apex Court referred to and relied on the Seven Judges judgment of the Apex Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002) 5 SCC 722. From the ratio of the judgment of the Apex Court, as noticed above, it is clear that question in each case is to be considered on the basis of the facts available as to whether in the light of the cumulative facts as established the Council is financially, functionally, administratively dominated, by or under the control of the Government.

14. From the facts, noticed above, it is apparent that the Council was constituted by the State Government itself and the same functions were entrusted to the Council, which were performed by the Government department, i.e., Cane Research Organisation. The employees of the State Government working were treated to be on deputation in the Council. The Chief Minister is the President of the General Body and the Minister of cane Development is the Vice President. The funds, as noticed above under Rule 56 are mostly from the State Government, Income from the purchase tax realised under the U.P. Sugarcane (Purchase & Supply) Act, 1953 is the main source of revenue, which is nothing but State revenue, apart from which the grants from the State Government and the Government of India are also received by the Council. Administratively and functionally the Government has deep and pervasive control since the governing body is chaired by the Commissioner and Secretary, Sugar Industry and Cane Development. The functions of the Council are nothing but functions of the State Government towards research and cane development.

15. One more relevant fact needs to be noticed in this context. In Government order dated 15th December, 1976 it has been specifically stated, in paragraph 1, that Governor of the State gives approval for constitution of the Council similar to Indian Council of Agriculture Research. The question as to whether the Indian

Council of Agriculture Research is State within the meaning of Article 12 came for consideration before the Apex Court in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . The ICAR was originally an attached office of the Government of India similar to the Council in State of U.P. The Apex Court in that case held that ICAR is State within the meaning of Article 12. From above it is clearly established that in the light of the cumulative facts the Council can safely be held to be State within the meaning of Article 12.

16. Before proceeding further, it is relevant to consider as to whether there is any liability of the State Government with regard to payment of pension of the employees of the Council. As noted above, the Council came into existence in pursuance of the Government decision dated 15th December, 1976 The State Government employees working in the Cane Research Organisation were treated to be on deputation and by virtue of paragraph 6(8) it was provided that they after being absorbed in the Council shall be entitled to proportionate pension, gratuity till they were on deputation in the Council. The said paragraph 6(8) was subsequently amended by order of the Government dated 23rd November, 1978. which provided that employees, who are absorbed in the Council will be treated to retire on retiring pension under Fundamental Rule 56(E) and they will be paid proportionate pension, gratuity which they can receive in addition to the benefits they are entitled to the Council. Thus the Government's intention was clear that after even the Government employees are absorbed in the Council there will be no further liability of the Government with regard to payment of their pension and the Government liability was limited till the date those employees were treated on deputation. Paragraph 6(10) further clarifies that no contribution will be made by the State Government employees after their absorption in the Council and new provident fund account shall be opened under the control of the Council. When this was the position with regard to the employees of the State Government, who were on deputation in the Council, that there was no liability of the State Government after then absorption in the Council, there is no occasion for State Government taking any liability with regard to employees who were directly appointed in the Council. The petitioner was an employee, who was directly recruited in the Council on 9th July, 1979. The petitioner was thus employee of the Council and there is no liability of the State Government for payment of pension with regard to the petitioner.

17. The second submission of the petitioner's counsel that petitioner is entitled for payment of pension is based on Recruitment Rule 21. Recruitment Rule 21 pertains to provident fund, gratuity and pension, which is as follows:

18. Rule 21, as quoted above, provided that on the employees of Council same rules regarding provident fund, gratuity and pension will be applicable which are applicable on the employees of the State Government or as amended in future or subject to Government orders and directions issued from time to time in that regard. A plain reading of Rule 21 indicates that Council's employees were liable to be dealt similarly with regard to payment of provident fund, gratuity and pension

as the Government servants are dealt. The stand taken by respondents No. 1 and 2 in the counter affidavit is that respondent No. 1 being an autonomous body is not part of the Government department and no pension is payable. It has been stated that none of the employees of the Council have been paid pension. The petitioner in the rejoinder affidavit has brought various resolutions of the governing body of the Council with regard to payment of provident fund and pension. The resolution dated 27/28th February, 1989 has been filed along with the rejoinder affidavit in which governing body has resolved that officers and employees of the Council be given the benefit of G.P.F./Pension. Subsequently again the governing body's decision dated 25th April, 1995 has been brought on the record. On 25th April, 1995 it was decided that proposal for payment of G.P.F. and pension be sent to the State Government. The last resolution, which has been filed, is dated 1st August, 1998, which recorded that governing body was informed that the matter was referred to the State Government in 1994 and the State Government has taken a decision in 1997 that all retirement benefits to the officers and employees shall be made from own resources of the Council and no finance will be provided by the State Government. The Council decided that the State Government be requested to re-examine the matter. From the resolutions of the governing body it is clear that Council has although in 1989 decided to extend the benefit of C.P.F. and pension but that matter was referred to the Government, which was rejected in the year 1997 and thereafter again the governing body of the Council has written to the Government to re-examine the matter. The Council has clearly noted in its resolution dated 1st August, 1998 that Government has made it clear that retirement benefit shall be paid by the Council from its own resources. The course of action adopted by the Council after 1st August, 1998 has not been brought on the record.

19. The State Government has taken a decision that employees of the Council are not entitled for all retirement benefits. This was communicated by the letter dated 22nd November, 1997. Rule 21 of the Recruitment Rules refers to the rules applicable to the Government servant for payment of fund, gratuity and pension. The later part of the Rule also clearly indicates that Government orders and directions issued in that regard from time to time shall also be applicable.

20. Petitioner's counsel has also contended that one Suman Rathi has been paid the pension. Reference to the direction of this Court dated 11th July, 1994 in Writ Petition No. 20790 of 1994 (Annexure-6 to thewp) has been made from a perusal of which it is clear that this Court has only disposed of the writ petition directing the Director to decide the representation within three months. The letter of the Government dated 2nd December, 1994 did not specifically direct for payment of pension but only directed for deciding the claim according to rules. Again letter dated 3rd August, 1995 refers to Rule 21 and by the said letter the Government directed the Council to Act in accordance with Rule 21 and inform the High Court also. These two letters cannot be read as the decision of the Government to pay pension to the employees of the Council. The categorical stand of the Council is that the employees of the Council are not being paid pension. The petitioner has

also brought on the record as Annexure RA-1. copy of the pay bill form from which it is sought to be shown that two ladies, namely, Smt. Prabha Viswakarma and Smt. Kiran Srivastava are being paid the family pension.

21. From the facts as noted above, it is clear that the State Government, has no liability to pay pension to the officers and employees of the Council. The governing body of the Council although decided to pay pension and gratuity but sent the proposal to the State Government, which was not accepted by the State Government for payment of pension to the officers and employees of the Council. The last resolution, which has been brought on the record of the governing body being resolution dated 1st August, 1998 again requested to the State Government to re-examine the matter. In the resolution it has been noticed that the Government has made it clear that the retirement benefits to the employees of the Council be made from the own resources of the Council. There are no sufficient materials on the record to come to a definite conclusion with regard to specific stand of the Council for payment of pension. In the resolution dated 1st August, 1998 the governing body requested the Government to re-examine the matter. Thereafter no subsequent facts have been brought on the record.

22. In view of the facts brought on the record, specially the resolution of the governing body annexed along with the rejoinder affidavit, it is in the ends of justice that the governing body of the Council may take a decision with regard to payment of pension to the petitioner and other officers and employees of the Council. It is also not known as to whether any pension scheme has been actually enforced and implemented for the employees of the Council. As noticed above, the State Government has no liability to pay the pension to the officers and employees of the Council.

23. In view of the foregoing discussions, the relief claimed in the writ petition cannot be granted to the petitioner by this Court. However, a case has been made out for issuing a direction to respondent No. 1 to take a fresh decision with regard to entitlement of pension to the petitioner and other officers and employees of the Council expeditiously, preferably within a period of four months from the date of production of a certified copy of this order.

24. With the aforesaid direction the writ petition is disposed of.