(2001) 04 DEL CK 0137

In the Delhi High Court

Case No : C.W. No. 3434 of 2001

R. Gopinath APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2001) 92 DLT 530

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : K.R. Sachdeva, for the Appellant; V.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—In view of the preliminary objection raised by the respondents, the question that was argued before me and that arises for my consideration at the present stage is, whether the respondent No. 1 is a "State" or "other authorities" as contemplated under Article 12 of the Constitution of India and whether the present writ petition is maintainable against the said respondent.

2. The petitioner has preferred the present writ petition in this Court seeking for relief in the nature of quashing the constitution of the Selection Committee for making recommendations for appointment to the post of Director General, Consultancy Development centre .

3. An advertisement was released and published for filling up the post of Director General, Consultancy Development Centre by the respondent No. 2, the Chairman of the Consultancy Development Centre . The petitioner applied for his consideration as against the said post. A Selection Committee was constituted for making selection to the aforesaid post. The present petition was thereafter filed by the petitioner on the ground that the Selection Committee is improperly constituted and that the petitioner apprehends bias by certain members of the

Selection Committee.

4. A preliminary objection was taken by the respondents as against the maintainability of the aforesaid writ petition on the ground that the Consultancy Development Ccentre which is headed by its Chairman is not a "State"/"other authorities" within the meaning of Article 12 of the Constitution of India. In support of the aforesaid objection, reliance was placed on the various Clauses of the Memorandum and Articles of Association of the respondent No. 2, the Consultancy Development Centre . It is stated that the Consultancy Development Ccentre is an autonomous body and is a Society registered under the Societies Registration Act. In paragraph 2 of the counter affidavit, it is stated thus:

".....The respondent No. 2/Ccentre is partly funded by the Department of Scientific and Industrial Research (DSIR) and rest of the funds are generated by the respondent No. 2 through its own programmes and activities. The Governing Body of the respondent No. 2/Ccentre comprises 27 members. out of these, 16 members are elected members from amongst 3 categories of members of the Consultancy Development Centre , namely Corporate, Institutional and Individual. The members also include the nominees of Planning Commission, Federation of Indian Export Organization, Consulting Engineers Association of India, Department of Scientific & Industrial Research, National Research Development Corporation and Institute of Management Consultants of India. Except as stated above, respondent No. 2/Ccentre is partly funded by the Department of Scientific & Industrial Research, there is no control of the Department of Scientific & Industrial Research on the day-to-day activities of the Ccentre . As per the Memorandum and Articles of Association of the Ccentre , the Secretary, Department of Scientific & Industrial Research or his nominee is the ex-officio Chairman of the Ccentre ..... It would be seen from Annexure R-1 hereto that there is not control of the Government on the Ccentre and even the control of the government to the extent as to the proper utilization of its financial grant would not render the respondent No. 2 as State within the meaning of Article 12 of the Constitution of India....."

In view of the aforesaid objections and statements made in the counter affidavit, I am required to consider as to whether the Respondent/Centre is a "State" and/ or "other authorities" within the meaning of Article 12 of the Constitution of India.

5. In Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, , it was held by the Supreme Court that, there are tests formulated by several cases of the Supreme Court to find out whether an institution is a "State" although there cannot indeed be a strait-jacket formula. It was also held that it is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be "State" and in a given case, some of the features may emerge so body and prominently that a second view may not be possible whereas, there may yet be other cases where the matter would be on the broader line and it would be difficult to take one view or the other outright.

It was also held that in a Welfare State governmental control is very pervasive and in fact touches all aspects of social existence and in the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. In the said case, the Supreme Court was called upon to determine as to whether the Institute of Constitutional and Parliamentary Studies was a State so as to come within the purview of "other authorities" in Article 12.

The said Institute was registered under the Societies Registration Act and the objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislatures with the requisite knowledge and experience for better functioning. The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions and the annual contribution from the government had been substantial and the said source practically constituted the main source of funding, although some amount used to come from other sources. In the background of the aforesaid facts it was also held by the Supreme Court that the said Institute is neither an agency nor instrumentality of the State so as to come within the purview of "other authorities" in Article 12 of the Constitution.

6. Reference could also be made to another decision of the Supreme Court in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . In the said decision, it was held by the Supreme Court that the National Council of Educational Research & Training is not a State within the meaning of Article 12 of the Constitution of India. It was also held that as the activities of the National Council of Educational Research and Training comprise undertaking several kinds of programmes and activities connected with the co-ordination of research extension services and training and dissemination of improved educational techniques, collaboration in the educational programmes and preparation of and publication of books such activities are not wholly related to governmental functions. It was also found that its Executive Committee could enter into arrangements with Government, public or private organizations or individuals in furtherance of the objectives of the implementation of programmes and is free to apply its income and property towards the promotion of its objectives and implementation of its programmes and government control is confined only to the proper utilisation of the grant given by it which is one of the sources of its funds. It has also held by the Supreme Court that the organization is not State within the meaning of Article 12 but is largely an autonomous body. It was further held in the said decision that, the State control, however, vast and pervasive is not determinative of the fact that such body is a State under Article 12. It was also held that the financial contribution by the State is also not conclusive. It was also held that 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".

7. I may also appropriately refer to the decision of the Division Bench of this Court in Y.L. Ahuja v. Institute of Applied Manpower and Research and Ors. reported in 1996 (1) 2nd Delhi 415, wherein it was held that the said Institute which is a Society registered under the Societies Registration Act is not an instrumentality or agency of the Government falling under Article 12 of the Constitution. In the decision in Shri Y.L. Ahuja (supra), the Institute raised funds by issuing appeals for money and from gifts, donations, subscriptions or otherwise and also includes fees charged from training programmes and from consultancy advice services rendered by it and also by Government grants. The Society is also fee to apply its income and property towards the activities of the Institute in its own way except to the extent that Government control may be only to the extent that Government grants are properly utilised subject to the limitation as may be imposed by it. The Governing Body of the Institute comprises of government employees from various Ministries as well as representatives of various organizations, autonomous, public and private establishments and the affairs of the Institute are managed by an Executive Committee comprising of governments servants as well as representatives of public and private organizations. The Institute is not shown to have its origin from any government department and it is an autonomous body. In the said context it was held that its position and status is similar to that of National Council of Educational Research and Training. Reference may also be made to a very recent decision of the Division Bench of this Court in National Agricultural Co-operative Marketing Federation of India Ltd. Vs. Nafed Processed Food Cooperative Marketing Federation of India Employees Union and Others,

8. In the light of the aforesaid decisions rendered by the Division Bench of this Court and the Supreme Court, I may now proceed to determine and decide as to whether the respondent/Ccentre could be said to be a State/other authorities as envisaged within Article 12 of the Constitution of India.

9. The present Centre is a Society registered under the Societies Registration Act. It has its Memorandum and Articles of Association. A brief reference to such relevant clauses of the Memorandum and Articles of Association has already been made. In Clause 3 of the memorandum and Articles of Association, the aims and objectives of the ccentre have been specified. One of the objectives of the Ccentre is to promote growth of consultancy profession in the country. The various aims and objectives mentioned in the said Memorandum and Articles of Association make it crystal clear that the Ccentre is an autonomous agency funded for the development and promotion of consultancy capabilities in the country. The aims and objectives imply that the purpose of the Institute is to build up a national database on consultants and for consultancy training in Consultancy Management in the Manufacturing and Service Sectors. The Ccentre aims to work and act as a liaison agency between Consultants and the Government and to co-operate with, encourage and support the relevant activities of the existing organization like FIEO, NACE and ACE and to organise a Data Bank to collect, store and disseminate information on national and

international issues of relevance to consultancy profession or the consultants themselves. It also strives for engagement of Indian Consultants, both in Public and Private Sectors, by the Government as well as private and public sector undertakings for all projects and their due recognition at various levels.

10. One of the aims of the Ccentre is to do all that is necessary, incidental or ancillary to the aims and objectives of the Ccentre , including the right to acquire, receive and hold property of any kind, to enter into contract for in connection with the purposes of the Ccentre , to raise monies and funds in such manner as may be deemed fit for and on behalf of the Centre , and to employ staff. It is also provided that the income and property of the Ccentre , derived shall be applied solely for the promotion of the objectives thereof as set forth in the Memorandum of Association and no portion of the income and property of the Ccentre shall be paid or transferred directly or indirectly, by way of dividends, bonus or otherwise by way of profit to persons who at any time are or have been members of the Ccentre . The members of the Governing Body to whom the management and affairs of the ccentre are entrusted are mentioned in the said memorandum of Association. Except for two members who are government servants the rest are members drawn from Private Sector or Public Sector Consultancy Centres. It is also clear that the centre would function under the guidance of the aforesaid members of the governing Body. The General Body of the ccentre was to be composed of the Institutional members, Individual Members, Corporate Members, Patron Members and Founder Members. An yearly fee is to be paid by the aforesaid Members to continue their memberships and the Chairman should be ex-officio Secretary from the Ministry of Science & Technology or his nominee. The Governing Body of the Ccentre is to consist of not more than 27 Members and the nominees of Planning Commission, FIEO, NACE/ACE(I), DSIR, NRDC and IMCI shall be on the Governing Body of the Ccentre . The accounts of the Ccentre is to be annually audited by a qualified Auditor to be appointed by the Ccentre and the accounts so audited shall be included in the Annual Report of the Ccentre and shall be circulated to members. The Governing Body is also given the power to accept the management of any endowment or trust fund or subscription or donation, provided that it is unaccompanied by any condition inconsistent or in conflict with the objectives of the Ccentre .

11. The aforesaid clauses of the Memorandum and Articles of Association would indicate that the facts of the present case are similar to the cases in the light of which the aforesaid decisions were rendered by the Supreme Court and the Division Bench of this Court. The Governing Body of the Institute comprises the Chairman who is ex officio Secretary from the Ministry of Science & Technology or his nominee whereas the other members could be representatives of various organisations, autonomous, public and private establishments. The affairs of the Institute are to be managed by the Governing Body who could also accept donations from outside agencies. The Ccentre does not have its origin from any Government Department and its objectives are not wholly related to Government

functions or obligatory functions of Government, for the Ccentre was established for the development and promotion of consultancy capabilities in the country. Therefore, the position and status of the Ccentre is similar to that of National Council of Educational Research & Training and that of Institute of Applied Manpower and Research.

12. Under the aforesaid circumstances, I am of the considered opinion that the Ccentre is not an instrumentality or agency of the government and also cannot be described as "State" or "other authorities" as envisaged under Article 12 of the Constitution of India. The preliminary objection is accordingly upheld and the present writ petition is dismissed as not maintainable in view of which it would not be necessary to go into the merits of the controversy as raised in the petition.

There shall, however, be no order as to costs.

Writ Petition dismissed.

