
(2006) 08 MP CK 0049
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2148 of 2003

Rekha Mathur

APPELLANT

Vs

Principal Secretary, Co-Operative Department and others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2)

Citation : (2007) 1 MPLJ 581

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : Amit Verma, for the Appellant; Jaideep Singh, Government Advocate for Respondent Nos. 1 and 3 and Greeshm Jain, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.

By filing this petition under Articles 226/227 of the Constitution of India the Petitioner has challenged the order dated 11-9-2002 (Annexure P/1) by which she has been compulsorily retired and also the order dated 15-2-2003 (Annexure P/2) by which the disciplinary proceedings are initiated against her by the second Respondent.

The Petitioner contends that she was working on the post of "Internal Audit Officer" with the second Respondent M.P. State Co-operative Housing Federation Ltd. She alleges that the order of her compulsory retirement and the initiation of the disciplinary proceeding against her are contrary to law and being ex facie illegal are liable to be quashed by this Court.

The second Respondent contends that the Petitioner being employee of it which is a Housing Co-operative Society, she has got an alternative and efficacious remedy of approaching the competent authority u/s 55(2) of the M.P. Co-operative Societies Act (for short "Act"), 1960 for the relief's claimed in this writ

petition. The second Respondent also contends that in this writ petition several disputed question of facts are involved which cannot be gone into by this Court. The second Respondent also raised a preliminary objection, placing reliance on the Full Bench decision of this Court passed in the case of Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahkari Maryadit and Anr. 1993 MPLJ 786 and also on the judgment of the Supreme Court in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, as to the maintainability of this writ petition. According to the second Respondent, this Court has no jurisdiction to issue writ against a co-operative society in regard to the reliefs claimed by the Petitioner.

In the case of Dinesh Kumar Sharma (supra) the Full Bench of this Court held as under:

A co-operative society registered u/s 9 of the M.P. Co-operative Societies Act is not an instrumentality and agency of the State under Article 12 of the Constitution of India. It is immaterial whether the society is created by a statute or is under a statute. The enquiry has to be not as to how the juristic person was bora but as to why it was brought into existence. Normally such societies will not be amenable to writ jurisdiction except in cases where according to the provisions of the statute or rule or regulations framed under the Act by which the society is governed a statutory or public duty is imposed on it and enforcement of the same is sought. If the society or its officers act in violation of statutory provisions and/or fail to discharge statutory public duty, a writ would lie for enforcement of statutory obligations and public duty. Petitioners, who were holding the posts of Village Organisers under a co-operative society registered u/s 9 of the M.P. Co-operative Societies Act were transferred and sent on deputation. They challenged the transfer orders by preferring writ petition under Article 226 of the Constitution on the ground that the transfer orders mala fide being in violation of statutory service rules governing the terms and conditions of employment. The societies whose objects were betterment of economic conditions of agriculturists and milk producers raised preliminary objection contending that as they were not rendering any important public service nor carrying out governmental activity and governmental functions of vital importance, they were not "the State" within the meaning of Article 12 of the Constitution of India and hence were not amenable to writ jurisdiction.

Sale of milk or dairy products is not a monopoly business of the State. There was no deep pervasive State control over the societies. The State Government was not holding the entire share capital nor was the financial assistance of the State of such a nature so as to meet the entire expenditure of the societies. The societies were not performing governmental functions nor was any Government department transferred to the societies. Hence, the societies were not amenable to the writ jurisdiction of the High Court.

In the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. (supra) the Supreme Court has held that for coming within the purview of Article

12 the form in which the body is constituted, namely, whether it is a society or co-operative society or company, is not decisive. The real status of the body with respect to the control of Govt, would have to be looked into. The various tests laid down in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In paragraphs 9 and 10 the Supreme Court further observed as follows:

Learned Counsel appearing on behalf of the contesting Respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. The Learned Counsel appearing on behalf of the Appellant, on the other hand, submitted that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty. Reference in this connection may be made to the decisions of this Court in *Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of *K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg.* and *VST Industries Ltd. v. Workers' Union* the same principle has been reiterated. Further, in the case of *VST Industries Ltd.* it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.

Learned Counsel appearing on behalf of the Appellant in the alternative submitted that in the present batch of appeals, there are disputed questions of facts as according to the contesting Respondents, they had worked for more than 240 days whereas the stand of the Mill was that from the day the contesting Respondents joined, in not a single year, the Mill was functional for a period of 240 days and during the years in question, the functioning of the Mill was between 45 days to 199 days. Further, according to the contesting Respondents, some of them were permanent and others seasonal but according to the Mill all the employees were seasonal workmen. In our view, these are disputed questions of facts which cannot be decided in writ jurisdiction and the same can be decided by the Courts constituted under the provisions of the Act. For the

foregoing reasons, we are of the view that the High Court was not justified in entertaining the writ applications.

Having regard to the aforesaid legal position the nature of service which the second Respondent is rendering, in my considered view, the second Respondent is not rendering any public service or Government activity and therefore, it is not the State within the meaning of Article 12 of the Constitution of India. There is no averment about deep pervasive State control over the second Respondent nor that the State Government is holding the entire share capital nor that there is such a financial assistance by the State Government so that the entire expenditure are being made by the State. It is also not the case of the Petitioner that any Government Department has been transferred to the second Respondent. The Petitioner is not seeking any directions against the second Respondent for performance of any statutory public duty nor she is claiming the relief of enforcement of statutory obligations and public duty. The Petitioner who was employed with the second Respondent is seeking relief in regard to her relationship with the second Respondent as master and servant.

In the circumstances, having regard to the relief claimed, the writ petition against the second Respondent is not maintainable and is accordingly dismissed. However, it would be open for the Petitioner to seek redressal of her grievance u/s 55(2) of the Act before the competent authority by raising a dispute. In the event of submission of such dispute within 30 days it shall not be dismissed by the said authority on the ground of limitation. It is also expected from the authority to decide the dispute, if submitted, expeditiously. No orders as to costs.

C.C. within seven days.