

(2001) 05 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 1305 of 2000

Samir Kumar Ghosh and Others

APPELLANT

Vs

West Bengal Essential Commodities Supply Corporation Ltd.
and Others

RESPONDENT

Date of Decision : 09-05-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 19, 21

Citation : (2001) 3 CALLT 193

Hon'ble Judges : Mohammad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Ashok De, for the Appellant; Samapti Chatterjee and Chaitali Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. The petitioners 73 in number are all employees of respondent Corporation which is "a Government Company incorporated under the Companies" Act and carries on business predominantly Government activity of a monopolistic nature".
2. The petitioners have inter alia prayed for a direction to the respondents to forbear from giving any effect of further effect to the carrier advancement scheme as amended in 1998 and the order dated March 10, 2000 passed by the Managing Director being annexures "K." and "M" respectively to the instant writ application.
3. The back ground facts of the case are that the Government of West Bengal by its memorandum No. 6075-F dated June 21, 1990 introduced a career advancement scheme (annexure "F").
4. The Board of directors of respondent Corporation by its Memorandum dated 6.8.1993 introduced "a career advancement scheme for its employees" (for short

CAS93) keeping in mind the principles adopted by the State Government in respect of their employees as laid down in Government of West Bengal, Finance Department Audit Brach No. 6075-F dated 21.6.90, No. 9735-F dated 10.10.1990 and No.1021-F dated 30.1.1992".

5. While adopting the career advancement scheme in 1993, the Board of Directors implemented the said scheme w.e.f. 1.4.1989 against the 14 scales of pay that allegedly were in existence in the company as per ROPA 1991. The benefit under ROPA 1991 itself was given with effect from 1.4.1991.

6. According to the petitioners, the General Manager of the company by an office note dated November 6, 1997 put a stop to all the proposals on the ground that the CAS was implemented ignoring the embargo. Thus, according to the petitioners, begun the process of amendment of CAS 93.

7. Whether according to the respondent, at the time of implementation of the said scheme (CAS" 93), some bonafide mistake/irregularity was made by the Corporation, thus instead of offering the next higher scale, the promotional scale was given in the name of career advancement scheme. About 300 employees enjoyed that promotional benefit in the name of career advancement scheme. The majority employee wanted a clarification. This is sought to be illustrated by an example of an employee who was in the scale of Rs. 1260-2610/ "-", he was offered the scale of Rs. 1500-3410/- overlooking the middle scale that was Rs 1390-2970/- scale. According to the respondents on November 6, 1997, the General Manager suggested that a Committee be constituted to enquire into the irregularities of the career advancement scheme dated August 6, 1993.

8. On December 29, 1998, a draft memorandum amending the career advancement scheme was adopted. It was specifically stated in the said amendment that:

(i) All the pay scales (1 to 21) as provided for in the ROPA Rules, 1991 as applicable to the employees of the under takings/Organization of the State be hereby adopted in the Corporation while extending the CAS to its employees;

(ii) The draft Memorandum as amended and placed before this Board be approved for the employees of the Corporation;

(iii) The Pay and allowances of such employees as have been provided with the benefits of CAS-93 under the previous (sic) memorandum approved hereinabove;

(iv) The pay of the employees as fixed under provisions of previous memorandum of CAS has to be adjusted with reference to this amended memorandum and any excess of pay if drawn earlier and found so by virtue of the present fixation under revised memorandum has to be absorbed in future increments;

(v) The impact as well as financial implications of introduction of CAS-93 be examined in detail and placed before the Board showing its effect on all

individuals already receiving the benefits of CAS for taking necessary action subsequently, action on (3) and (4) above be also intimated after putting detailed notes to the Board for subsequently taking appropriate necessary action as per (3) above;

On January 6, 1999, CAS as amended was introduced.

9. According to the petitioners by implementation of the amended CAS 1999, instead of the 14 scales of pay, all 21 scales of pay, which did not exist in the company, were introduced, it is contended that the result was that the benefit given to the employees under the CAS 1993 was affected. The amended scheme was brought in retrospectively with the effect from 1.4.1989. The employees were affected not only in terms of money but also in terms of scales of pay, which would be down graded.

10. The amended CAS 1999 was questioned by the petitioners herein by moving a writ application being W.P. No. 368 of 1999. The same was disposed of by an order of Altamas Kabir, J. dated March 11, 1999 whereby directions were inter alia issued to give the petitioners a reasonable opportunity of being heard and to place the respective cases, the company shall thereafter proceed to take consequential steps in accordance with the law. It was made clear that in the event any decision is taken by the company for recovery of any amount, the same is not to be given effect to for a fortnight from the date of communication of such decision (annexure "I")

11. In pursuance of the said directions, petitioners were heard by a Committee of Officers deputed by the then Managing Director of the Company. A decision was taken rejecting the contention of the petitioners for the reasons stated therein and it was reiterated that cases in which the promotional scale benefits were wrongly granted under the CAS 1993 would continue to be reviewed and recovery of over paid amounts, if any, required pursuant to such exercise will be affected. The said decision being annexure M at Pg 140 has been assailed in the instant writ application.

12. Mr. Ashok Dey, appearing along with Mr. Sudip Sanyal and Mr. A. Bose. Learned advocates on behalf of the petitioners contended that the underlying factors which led to the amendment of CAS 1993 as contained in the resolution (annexure "K" at Pg. 125) are inter alia that the CAS 1993 contained certain provisions not in consonance with the provisions of the CAS of the State Government employees. The very basic and guiding principles on which the CAS for the employees of the corporation was contemplated, as a result in the 108th meeting of the Board of Directors the same came of be detected subsequently. It contained elements of superfluous financial burden on the Corporation, administrative incongruities and its continuance is fraught with further financial and administrative implications. The implementation of ROPA 1991 ignoring the pay scales as recommended by the 3rd Pay Commission led to a situation inconsistent with the guiding principles of the CAS 1993.

13. Mr. Dey submitted that the aforesaid premise is entirely wrong, being autonomous the earlier Board of Directors at the 57 Board meeting resolved not to give effect to the recommendations of the Pay Committee. The Board of directors are bound by the Articles of Association of the Company and are the final arbiters in taking a decision as to determination of pay scale and other service conditions of the employees. In exercise of their aforesaid powers, the Board of Directors did not make a replica of the Government CAS but drew on the model (in principle) and implemented it according to the needs of the respondent corporation. It was, therefore, contended that Board of Directors were perfectly within their right and powers to formulate the CAS 1993 and as there being no provision in Articles of Association for being bound by Government directives on the point nor was there any need for obtaining previous sanction of the Government for implementing the CAS 1993.

14. On the other hand, the stand of the respondent Corporation appears to be that even in the year 1993 and before implementation of the CAS, it was noted by the then Chairman that the CAS may be sent to the Government for their opinion. Reliance has been placed upon the instructions contained in Chief Secretary's Circular No. 4236 (32-F) dated 3.5.1974 and No. 8178 (44-F) dated 19.7.1984 to the effect that in all cases of extending pecuniary benefits to the employees of Government undertakings etc. approval of the Government is always to be obtained before benefits are granted. The respondent Corporation being a Government company, it was submitted, is required to be guided by the directions of the Government.

15. It cannot be disputed that once it is held, as it should be that the respondent Corporation is a "State" within the meaning of Article 12 of the Constitution, it would clearly show that it was under the control of the State Government. Therefore, notwithstanding the fact that the respondent Corporation is governed by its Memorandum of Association, the power or authority of the State to give directions to it and for the establishment to comply with the same is implicit unless discretion has been thereby conferred upon the establishment. Merely because an earlier Board of Directors have taken a decision, in the matter pertaining to the grant of concession under CAS of its employees, it cannot be said that the subsequent Board of Directors of the company cannot for valid reasons review such administrative policy decision of the previous Board. No specific statutory provision is required for adoption or implementation of the directives of the State Government in relation to its undertakings over which it has deep and pervasive control where such directives are issued as a policy of the State and intended for implementation by the various State undertakings.

16. What has, therefore, to be considered in the instant matter is whether the subsequent decision taken by the Board of Directors by amending the CAS 1993 is ultra vires of arbitrary.

17. The very foundation of the respondents case in affecting amendments to the CAS 1993 is that in formulating the same bonafide mistake/ irregularities were

committed by the Corporation. The factors which led to the amendment have already been noticed supra. Further, it is demonstrated, as averred in the affidavit-in-opposition that instead of offering the immediate next higher scale, the promotional scale was given in the name of career advancement scheme. The earlier Board was expected to but did not adhere to the accepted rules and procedures of the State Government in the matter of financial, commercial and administrative subjects. The earlier Board of Directors overlooked 21 scales for implementing career advancement scheme and such mistake being of a perennial nature was required to be rectified.

18. It cannot be disputed that a policy decision being an administrative decision once taken can be reviewed. It is also well settled that a mistake can be rectified. CAS 1993 (annexure "G") itself states that the said scheme was made by the Corporation keeping in mind the principles adopted by the State Government. However, in the formulation and thereafter in the implementation thereof. The Respondent Corporation did not adhere to the scheme as propounder by the State instead it made a scheme of its own with regard to the reduced number of pay scales. Apart from the anomalous situation so created, some employees were given benefits to which they were not entitled to. In the name of career advancement certain employees were allowed to enjoy promotional scale ignoring the next higher scale. By the impugned amendment i.e. by bringing in CAS 1999 parity is sought to be restored with the CAS as applicable to West Bengal State Government employees. Such action cannot be said to be either arbitrary or illegal. A Government undertaking adopting procedures or rules which are similar or as are applicable to Government or to similar Government undertakings, such adoption of scheme cannot be said to be either arbitrary or illegal, unless of course the scheme as framed by the State is itself the subject matter of challenge. Such is not case on hand.

19. Mr. Dey, learned advocate for the petitioner contended that a writ Court in exercise of its jurisdiction of judicial review of the decisions taken by a Board of Directors has merely to confine itself to seeing whether such action was ultra vires their power. In other words, it is the contention of Mr. Ashok Dey that the powers of the Board of Directors being wide, judicial review of their action is limited to seeing whether the power exercise by the earlier Board was within the realm of their discretion.

20. Mr. Dey elaborated the above submissions very lucidly. It was submitted that the CAS 1993 was implemented under valid powers and it is. therefore, submitted the same could not be faulted for not strictly adhering to the Government model or based on certain other Government directives. The decision of the latter Board is in itself irrational as it is based on irrelevant consideration of the aspect as to whether the former Board followed the Government model or not, since the former Board had the autonomy to disregard Government orders. Therefore the present Board was acting within its jurisdiction but by misconceiving the powers of the earlier Board was making an

error of law within its jurisdiction. Relaying upon the quotes of prof Wade, it was contended that this would be a void exercise of power.

21. Elaborating the above submission it was contended by Mr. Dey that the Board was asking itself the wrong question while analyzing the actions of the earlier Board, which had propounded and implemented the CAS 1993. That earlier decision of 1993 could not have been faulted for ignoring the "embargo" of the State Government in the matter of extending pecuniary benefits with approval of the State Government. It was further submitted that while vesting the Board with such powers as in Article 76(5) of the Articles of Association of Respondent Corporation, the State has not kept room for Government interference but had left it to the discretion of the Board. Under such powers policy was framed by the earlier Board to implement the CAS in its own way. There could be nothing wrong in this. Therefore, the resolution of the latter Board faulting the earlier decision on the ground of the Government embargo or the model was not followed in its entirety was wrong. The exercise of power is nothing but an improper exercise of power since the dominant purpose is based on a former resolution of the Board for not acceding to Government embargo or Government model the dominant purpose is bad.

22. It was further submitted that the Board while adopting the resolution to amend the CAS 1993 was submitting to a over-rigid policy of invalidating the act of the previous board only because it did not conform to the Government embargo or not followed the Government model. The present Board was falling foul by maintaining an over-rigid policy. It was also fettering its own discretion and was faulting the earlier Board for not fettering their discretion while formulating the CAS 1993.

23. The aforesaid contentions and submissions of Mr. Ashok Dey are quite plausible and well reasoned and would have commended acceptance, but they overlook the fact that the latter Board enjoys equal autonomy and powers any, even an obligation to rectify any mistake or procedural irregularities that may have been committed by the earlier Board. The contentions also overtook the fact, as already noticed supra, that the respondent establishment being a State within the meaning of Article 12, it was under the control of the State Government and was bound by the directives issued by the State. The latter Board has sought to rectify the anomalies by adhering to the policy propounded by the State with regard to career advancement scheme as applicable to its employees. Unless the action of the latter Board can be found fault with on well settled principles of illegality, irrationality, malafides or on principle of ultra vires, in my considered view, it would be wrong to interfere with the decision taken by the Board (CAS 1999). The impugned decision cannot be interfered with merely on the ground as contended by Mr. Dey that the previous Board acted within its jurisdiction when in fact it flouted the principle of adhering to State CAS model and the procedural norms in exercise of that power. I cannot accede to the submissions that the present Board by misconceiving the power of the earlier

Board was making an error of law and thereby rendering exercise of its own power void. The board it must be remembered was exercising administrative powers of rectifying mistakes and anomalous situation arising therefrom. The exercise of power was administrative in character. The impugned action cannot be characterized as judicial or quasi-judicial so as to be circumscribed within the parameters and principles based on which a judicial/quasi judicial authority is to examine "error of law within jurisdiction".

24. In matters pertaining to fixing pay scales or fitment of employees in various scales and grades is a matter of policy just like propounding a promotion policy and prescribing rules and conditions therefore. A writ Court rarely interferes where the question of validity of a particular policy is questioned. A policy once formulated is not good forever. It is perfectly within the competence of the authority to change it, re-change it and readjust it according to the needs and requirements or the compulsions of circumstances. The board of the respondents' establishment having formulated CAS 1993 can change it or re-change it when it is not trammled by any statute or rule.

25. It was then contended that CAS 1999 was given effect to even before the petitioners were heard. Enough hearing was given on the basis of the Court's order referred to supra, Mr. Dey contended that post-decisional hearing is no hearing at all. The decision had been taken before and further hearing on the subject was foreclosed. It was also sought to be contended that the Managing Director and not the Board took the decision to continue with the amended CAS after hearing. This argument, in my view, is no longer available to the petitioners in view of the orders passed in W.P. No. 368 of 1999 dated March 11, 1999. The directions of Court in that case were to the following effect:

"Accordingly, I dispose of this application with leave to the respondent Company to continue with the review of the Career Advancement Scheme as implemented and the benefits given thereunder but after giving the petitioners a reasonable opportunity of being heard and placing their respective cases. The Company shall, thereafter proceed to take consequential steps in accordance with law."

(Emphases added)

26. The petitioner did not place their respective case liberty for which purpose was granted by Court. Instead they questioned the power of the Board to amend the scheme on grounds akin to those as raised in the instant writ petition. The petitioners failed to establish before the respondents authority that there arose no anomaly or incongruity in the matter of granting of concession under CAS '93 in the case of any individual or that by the amended CAS '99 any of the petitioners had been denied their rightful claim or entitlement or there was any invidious discrimination in the matter of implantation of CAS '93 with respect to any of the petitioners.

27. Lastly, Mr. Dey submitted that the benefits that were granted to the employees of the company could be not taken away with retrospective effect.

The answer to the said submission lies in determining whether the benefits were granted to the employees of the company under a valid scheme or under a mistake either with regard to the formation of the scheme being not in accord with the State scheme or for reasons of procedural irregularity in that no prior approval of the State was taken for deviating from the scheme.

28. The impugned CAS 1999 is retrospective in operation. It has been specifically stated in the said scheme that the same shall be deemed to have been in existence from 1.4.1989. The retrospectivity has been given with the effect from the date CAS 1993 was brought into operation. The amendment to the scheme as noticed supra is with the view to rectify the mistake. The irregularities or mistakes in the formation and implementation are sought to be rectified from the date the scheme has come into operation. The defects and anomalies are sought to be rectified with retrospective effect. The effect is being given to the career advancement scheme by making it comparable with those of other State undertakings. The Supreme Court in *Process Technicians and Analysts' Union Vs. Union of India and others*, observed that the scheme as amended by the Bharat Petroleum Corporation Ltd. (determination of conditions of services of employees) was valid though made retrospective in effect. It was held that the power conferred has enabled the Government to make conditions of services of the employees comparable with those of other private sector companies. In the present case, the position is not very different. The scheme in the instant case is made comparable with those of the State employees and other West Bengal State undertakings.

29. The principle that an amendment, which takes away the vested rights of employees is void, is not applicable to the instant case. The amendment as noticed supra in the instant case is neither unreasonable nor arbitrary or discriminatory violating Articles 14 and 16 of the Constitution. It is not as though the pay scales to which the petitioners were entitled to have been altered to their disadvantage retrospectively. The concession granted under the CAS mistakes, by the amendment, the said rectification has been made with retrospective effect. It is not as though the original pay scales to which the petitioners are entitled to and had vested right is being altered to their disadvantage. The concession or benefit conferred by the CAS 1993 is sought to be remedied and rectified. Any payments made pursuant to the CAS 1993 under such mistake can be recovered on the principle that the same was paid under a mistake that it was due when, in fact it was not due.

For the reasons aforesaid, the writ application is liable to be and is accordingly dismissed and Rule is discharged. All or any interim orders shall stand vacated forthwith. However, on the facts and circumstances of the case, there shall be no order as to costs.

30. Petition dismissed