

(2013) 10 DEL CK 0117

In the Delhi High Court

Case No : Writ Petition (C) No. 6357 of 2012 and CM 16968/12

Sandeep Kumar Jindal

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0117

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.M. Sudan, for the Appellant; Ankur Chhiber, for R-1 and Mr. Yoginder Handoo, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner who was working with the respondent no. 2-Air Force Naval Housing Board. The issue which arises is that whether respondent no. 2 is a State, or whether it is doing a public duty/public function, for a writ to be maintainable under Article 226 of the Constitution of India.

2. So far as the respondent no. 2 not being a State is concerned, this issue is no longer res-integra and a Division Bench of this Court has in the case of Lt. Col. Ashok M. Chacko Retd. Vs. Union of India & Ors. in W.P. (C) 16699/2006 decided on 2.6.2010 squarely dealt with this issue and held the respondent no. 2 not to be a State or an instrumentality of State.

3. I am bound by this judgment and therefore I hold that the respondent no. 2 is not a State for a writ being maintainable under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner has argued that various issues were not argued before the Division Bench and therefore, this Court should hold that respondent no. 2 is a State. In my opinion, I do not think I can override a view

taken by a Division Bench of this Court merely because certain arguments were not addressed before the Division Bench in Lt. Col. Ashok M. Chacko Retd's (supra) case. This issue probably can only be decided by a Division Bench and not by this Court. However, in the interest of justice, I have examined the following submissions which have been urged on behalf of the petitioner to contend that respondent no. 2 is a State:-

(i) The Board of respondent no. 2 undoubtedly comprises as governing body members officers of Air Force and Navy who by virtue of their being such highly placed officials in the Air Force and Navy become members of the Board and therefore, government control exists.

(ii) Government has given land at subsidized rates and consequently government funding exists for the respondent no. 2 to be a State or instrumentality of State.

(iii) Various employees of the government are deputed for work to the respondent no. 2 and which shows that respondent no. 2 is an instrumentality of State.

5. So far as the first argument is concerned, the same is without any merit because surely simply because government servants are members of a society, government does not exercise control over the society on the aspect of "control" which is so required for the entity to be a State or an instrumentality of State. Government servants are members of many clubs or societies or associations, but simply for that reason of their being members of such clubs, societies or associations, such societies or associations or clubs cannot be a State or an instrumentality of State because government does not intend to exercise control on such employees as members of clubs, societies and associations. I therefore reject the argument that since highly placed officials of Air Force and Navy are members of the governing board of respondent no. 2, respondent no. 2 is an instrumentality of State. The members are members in their individual capacities and not as representatives of the State. There is no such regulation in the rules of respondent no. 2 of exercise of governmental control.

6. Even the second argument is without any merit that land has been given at concessional rates to make the respondent no. 2 an instrumentality of State. This is because, for example, government gives lands to many private cooperative societies for house building at concessional rates, but, obviously only for this reason that the private societies and many multistoried cooperative societies are given land at concessional rates, respondent no. 2 does not become an instrumentality of State just because it has received land at concessional rates. I therefore, reject the argument that the land being given at subsidized rates to the respondent no. 2 will make the respondent no. 2 a State or an instrumentality of State. Government does not intend to exercise its dominant control or a pervasive control by allotment of land and therefore allotment of land at subsidized rates will not make the respondent no. 2 a State or instrumentality of State.

7. The third argument of government employees being employees of respondent no. 2 is also rejected as I asked the counsel for the petitioner to show me any document that government servants are deputed for working to the respondent no. 2 and in response to which counsel for the petitioner could not point out to me any document to show that government servants have been deputed by the government for working with the respondent no. 2-society. Also it is a moot point as to how many employees have been deputed and therefore what is the so called extent of government funding. In the absence of any document, a self serving averment cannot make the respondent no. 2 an instrumentality of State more so because a Division Bench in the case of Lt. Col. Ashok M. Chacko Retd. (supra) has decided otherwise.

8. In view of the above, respondent no. 2 is not a State or an instrumentality of State and therefore a writ under Article 226 of the Constitution of India does not lie.

9. Counsel for the petitioner thereafter sought to contend that respondent no. 2 is doing a public duty or public function and therefore, writ is maintainable. Even this argument is without any merit because surely housing is not a public function or public duty. Housing is a normal commercial business activity, and which is performed mainly by private individuals and bodies. May be in certain cases government also provides housing however, merely because of that reason, the activity of housing does not become a public duty or public function. Therefore, I hold that respondent no. 2 cannot be said to be doing a public duty or a public function for a writ to be maintainable. In view of the above, the writ petition is without any merit and is accordingly dismissed, leaving the parties to bear their own costs.