
(1997) 08 RAJ CK 0037
In the Rajasthan High Court
Case No : C.W.P. No. 2197 of 1989

Sanwarmal Pansari

APPELLANT

Vs

Churu Wholesale Upbhokta Sahkari Bhandar Ltd. and Another

RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1998) 2 LLJ 1198 : (1997) 3 RLW 1526 : (1998) 1 WLC 692 : (1997) 2 WLN 385

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Rajesh Joshi, for the Appellant; R.L. Jangid, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—Petitioner claims that he is a salesman and working with the respondent Society, which is registered under the Rajasthan Cooperative Societies Act, 1965, hereinafter called "the Act". He claims the pay scale of Rs. 1020.50 per month, a revised grade of salesman which is paid to other salesmen, who are similarly situated on the principle of equal pay for equal work enshrined under Article 39 (d) of the Constitution of India.

2. The respondents have raised a preliminary objection that the society is not amenable to writ jurisdiction and therefore, this writ petition is not maintainable.

3. Learned counsel for the petitioner submits that the petitioner had earlier filed three writ petitions, details of which have been mentioned in earlier part of the writ petition, as the said writ petitions had been entertained by this Court and respondents never raised any objection, the respondents cannot raise this plea nor the Court can find him non-suited only on this ground. It is settled law that estoppel does not lie against law. Moreover, even if the respondents have not raised this issue earlier, they are not debarred from raising it this time, In Hotel Balaji and Ors v. State of Andhra Pradesh and Ors. 1993 AIR SC 1048 the

Hon"ble Supreme Court has observed that to perpetuate an error is no heroism. To rectify, it is the compulsion of judicial conscience. Thus, the preliminary objection is found to be untenable. The issue involved is no more res integra as it has been considered by various Courts from time to time.

4. A Full Bench of Allahabad High Court considered this aspect in Radha Charan Sharma v. U.P. Cooperative Federation and Ors. 1982 LBEC 89 and after considering a catena of judgments of the Supreme Court and other Courts came to the conclusion that the Co-operative society was not amenable to the writ jurisdiction as the bye-laws framed by the Co-operative societies did not have any statutory force and no rule involving a duty of public nature was violated.

5. In Ram Lakhan Pathak v. District Assistant Registrar, Cooperative Societies Kanpur and Ors. 1996 (I)E & SC 32 Allahabad High Court has held that in such a case the conditions of service of the employees are not governed by any statutory rule or regulations. The Co-operative society is not an authority within the meaning of Article 12 of the Constitution nor it is an instrumentality of the State nor it exercises statutory power or discharges statutory power or discharges statutory public duties and writ petition is not maintainable against a Co-operative society.

6. Similar view has been taken by the Karnataka High Court in Workmen of Kampli Co-operative Sugar Factory Ltd. Vs. Mgt. of Kampli Co-operative Sugar Factory Ltd. and Others, and it has been held that such rights are purely of a private nature and the same cannot be challenged in writ jurisdiction and inspite of the fact that the expression "governmental function" may suffer from vagueness and indefiniteness, the activity of manufacturing sugar cannot fall within the ambit of public duty or Governmental function as the production of sugar is being done only with the view to earn profit to the members of the society.

7. In Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, the Supreme Court observed that the bye-laws of a Co-operative society framed under the provisions of the Act do not have any force of law as the bye-laws contemplated by the Act govern the internal management, business or administration of the society and they may be binding upon the persons affected by them. The bye- laws providing for the service conditions of the employees of the society may be binding between the society and its employees in the same manner as conditions of service provided for in contract between the parties. The Court observed as under:

"The bye-laws that can be framed by the society under the Act are similar in nature to the Article of Association of a company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law."

8. A Constitution Bench of the Supreme Court in Sabhajit Tewary Vs. Union of India (UOI) and Others, took the view that the society does not have a statutory

character and it is merely a society incorporated in accordance with the provisions of the Societies Registration Act in spite of the fact that the statute provides for management etc. by the Government of India, reason being that the Government has to control to the extent that the governing body shall frame, amend and repeal the bye-laws etc. strictly in accordance with the purposes for which the society has been formed. The said society was found to have its existence independent from the Government and the law relating to Corporations.

9. In Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], the Apex Court after considering the law on the subject held that if "the functions of the institutions are of public importance and related to the governmental functions it may be treated as a State or State instrumentality. However, it was further clarified that State Control does not render such bodies as State under Article 12 nor the financial contributions by the "State" is conclusive.

10. A Full Bench of Andhra Pradesh High Court in Shri Konaseema Cooperative Central Bank Limited AIR 1990 AP 171 has held that if the petitioner invokes the writ jurisdiction of the High Court, he must satisfy the Court that he is seeking enforcement of a statutory public duty. Moreover, nomenclature by which the rules, regulations or bye-laws known is immaterial. The relevant determining factor is its essential nature which can be determined by applying the test whether the same can be termed as delegated legislation. The Court after examining the various provisions of the Cooperative Societies Act of Andhra Pradesh came to the conclusion that the bye-laws framed there, were framed by a delegatee of legislature. The Court considered the judgments of the Supreme Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and came to the conclusion that as the society was not doing any governmental function or had been of any and pervasive State control was not there, the society could not be found to be "State" within the meaning of Article 12 of the Constitution of India. The public authority must be a body which has legal authority to determine the question affecting the statutory rights or obligations of other persons as individuals. Such body must be the creation of the statute and its powers and duties are defined by the statute e.g. legal authorities, statutory undertakings and corporations. When an authority protects only the private rights of its individual members it cannot be said to be performing the public duty.

11. However, the Court held that if the duty imposed on body, whether expressly or by implication was a public duty and the body was exercising public law function, the decision of that body would be amenable to judicial review. Applying all those tests, the Court examined the nature of the Cooperative society involved in that case and came to the following conclusion:

"It has no duty towards public. Its duty is towards its members only. It has no power to take action, or pass any order affecting the rights of the members of

the public. The binding nature of its order and action is confined to its members and to its employees. It is neither a statutory body nor governed by a statute. Its functions are also not akin to governmental functions...Even If... it can be characterized as a public body, even so the contract of service between it and the writ petitioner cannot be treated as belonging to public law field. It is a pure and simple contract of service, regulating, circumscribing and governing the State relationship...."

12. The Full Bench summarised the following legal propositions.

"(1) If a particular Cooperative society can be characterised as a "State" within the Constitution It would also be an "authority" of Article 226 of the meaning of Article 12 of the Constitution. In such a situation the order passed by a society against its employees in violation of the bye laws can be corrected by way of the writ petition...

(2) Even if a society cannot be characterized as a "State".. even so a writ would lie against it to enforce a statutory Public duty which an employee is entitled to enforce against the society..... What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.

(3) The bye-laws made by a Cooperative society registered under the Cooperative Societies Act do not have the force of law. They are in the nature of a contract, terms of contract between the society and its employees or between the society and its members as the case may be. Hence where a society cannot be characterised as State, the service conditions of its employees, governed by bye-laws cannot be enforced through a writ petition."

13. A Full Bench of Allahabad High Court in *Aley Ahmad Abidi v. District Inspector of Schools, Allahabad and Ors.* AIR 1977 All 331 placed reliance upon the judgment of the Supreme Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, wherein it has been held that the writ of mandamus can be issued to a person requiring him to do a particular thing which appertains to his office and is in the nature of his public duty and came to the conclusion that unless there is legal obligation or a duty imposed by the statute, the violation of the same shall not render the person amenable to writ jurisdiction.

14. In *Chakradhar Patel Vs. Samasingha Service Co-operative Society Ltd. and Others*, a Division Bench of the Orissa High Court held that the termination of the services of an employee of a Co-operative society cannot be challenged in writ jurisdiction. While deciding that case, reliance had been placed on the judgment of the Supreme Court in *Executive Committee of Vaish Degree Cottege, Shamli v. Laxmi Narain* (1916 II LLJ 163).

15. Similarly a Full Bench of Kerala High Court in *P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others*, held that the Cooperative societies are not the creation of the Cooperative Societies Act and they are not statutory bodies. They are merely

functioning in accordance with the provisions of the Act as the institutions would have legal existence even if the Cooperative Societies Act was not in force. There is no deep and pervasive State control, the management is under the effective control of a committee elected by the members of the societies and thus, such societies are not amenable to the writ jurisdiction.

16. Similar view has been taken by the Full Bench of Madhya Pradesh High Court in *Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others*, However, it was held that if there is violation of any statutory provision or rule, the writ can be issued in such an appropriate case.

17. In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, the Supreme Court has categorically held that where dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, the appropriate forum may be a Civil Court and appropriate remedy would be civil suit.

18. The instant case is examined in the light of the above. Section 4 of the Act reads as under:

"Societies which may be registered subject to the provisions of this Act, a Co-operative Society which has as its object the promotion of the economic interests of its members in accordance with the Cooperative principles...."

19. Section 6 of the Act provides for application for registration and it lays down the conditions including that the application for registration shall be accompanied by three copies of the proposed bye-laws of the society. u/s 8, the Registrar of the society has been empowered to register the society if it fulfils the conditions including the conditions that the proposed bye-laws are not inconsistent with the provisions of the Act and the Rules. Section 13 provides for the amendment of the bye-laws of a Cooperative society and it provides that the Cooperative society may amend its bye-laws. The only rider is that such amendment would also be registered under the Act. u/s 14 of the Act, the Registrar has the power to require the society to make the amendment under certain circumstances within a stipulated period. Section 35 provides for to nominee of the government on the committee whereas Section 35-A provides for additional nomination and appointment of Chief Executive Officer by the Govt. in certain cases; Section 35-B provides for appointment of Executive Officer and Section 36 provides for removal of committee or member thereof by the nominee of the Govt. but his remuneration shall be paid out of the funds of the Cooperative society and shall hold the office during the pleasure of the Govt.

20. Rule 8 of the Rajasthan Cooperative Societies Rules, 1966 hereinafter called "the Rules" provides for the subject matter of the bye laws which includes in Sub-rule (m) the mode of appointment of the committee and appointment and removal of other officers and employees.

21. Rule 8(2) (a) of the Rules reads as under:

"the method of recruitment, the conditions of service and the authority competent to fix, revise or regulate the scales of pay and allowances of paid officers and employees of the society and the procedure to be followed in the disposal of disciplinary cases against them."

22. Mr. Joshi has fairly conceded that the bye-laws have been framed but the same are not on record.

23. A reply to the writ petition was filed on September 20, 1989, and a specific plea has been taken that the society is not amenable to writ jurisdiction. Petitioner has chosen not to controvert the same. No rejoinder to the reply has been filed. Petitioner has chosen not to place the said bye-laws on record and, thus, it is not possible for the Court to examine the nature and character of the bye-laws but it is clear from whatever has been said above that the very purpose of establishing a society is to promote the economic interest of its members. It is a creation of the committee of management of the Cooperative Society and mere requirement of registration of the society would not change its nature. The society does not perform any statutory duty nor does it perform any act, which may be termed as governmental function. It merely remains a private person and simply because a society functions in consonance with the provisions of the Act, it cannot be a statutory authority as the existence of the society is not dependent upon the statute and it can exist even if the Act is not in force. Therefore, neither the society owes its birth to the statute nor it depends for its existence upon the statute. The bye-laws, though not produced and could not be examined, might be in the nature of article of association of a company or a document providing for general terms and conditions of contract/agreement between the parties. It is in fact the substance and not nomenclature which is the determining factor. The society is not performing any public duty as it does not relate to public functions of the public authority and it does not include the matters of private details relating to individual, which may be incidence of a contract and the natural corollary or it may be that a person discharging public duty generally should hold a public office. Mr. Joshi has fairly conceded to the extent that the society cannot enforce its rules of bye-laws against the general public or to the persons not being the members or employees of the Cooperative societies and, thus, it remains a matter between two private parties, which certainly cannot be enforced through writ jurisdiction. Thus I am of the considered opinion that the respondent Society is not amenable to writ jurisdiction.

24. Even on merit, I find no substance for the reason that the respondents have made a specific case in their reply that the petitioner is facing criminal charges for embezzlement and also the disciplinary proceedings for the same charges. On the issue of the equal pay for equal work, the respondents have submitted as under:

"Salesmen are getting distinct amount of salaries. As submitted above, every increase in the salary amount is made by the Board of Directors on the appraisal

of the work of the particular employee. Since no grade has been prescribed for salesman, therefore, no question arises for regular payment and making revision of grade . Few salesmen getting good salary are having good service record whereas in the case of the petitioner, he is facing one disciplinary enquiryh and the other a trial for embezzlement of Bhandar''s money. As such, this case cannot be put on equal footing of other salesmen."

25. Moreover, the Court cannot decide the issue of entitlement of equal pay for equal work unless the parties place sufficient material before the Court to reach the conclusion to take a definite decision: (Vide K. Vasudevan Nair and others Vs. Union of India and others, and Union of India (UOI) and Others Vs. Secretary, Madras Civil Audit and Accounts Association and Another, . In the instant case, petitioner has not controverted the allegations of embezzlement nor on the question of parity of work. Sufficient material has not been placed on record to examine the said issue.

26. Thus, in view of the above, the petitioner is devoid of any merit and hence dismissed. However, there shall be no order as to costs.