
(1988) 07 CAL CK 0030
In the Calcutta High Court
Case No : C.S. No. 3852 (W) of 1986

Sasti Kanta Hati

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-07-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1988) 2 CALLT 407

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Dhruba Kumar Mukherjee and Kamal Krishna Chakrabarti, for the Appellant; Milan Bhattacharya and Indranarayan Jash, for Respondent Nos. 4, 5 and 6, for the Respondent

Judgement

Paritosh Kumar Mukherjee, J.—The instant writ petition was moved on behalf of Sasti Kanta Hati, a Salesman and In charge of a unit of Burdwan Wholesale Consumers' Co-operative Society Limited (hereinafter referred to as the said Society), challenging, inter alia, the initiation of the departmental proceedings against him, contained in memo dated February 5, 1988 (which is Annexure "K" to the writ petition) and continuance of the order of suspension from service, communicated by the Memo, dated February 24, 1986, by the Chairman of the Domestic Enquiry Committee and the Director of the-said Society (which is Annexure "N" to the writ petition). This writ petition was admitted and this Civil Order was issued by Umesh Chandra Banerjee, J., on March 14, 1986, and at the time of admission of the writ petition, the learned Judge granted limited injunction and thereby had given liberty to the respondents to continue the enquiry against the petitioner in the usual course, but restrained the respondents from passing any Final Order, without the leave of the Court and the petitioner was directed to communicate the Order to the non-appearing respondents, along with copy of the writ petition.

2. Thereafter, the. matter was mentioned before me on behalf of the learned

Advocate for the petitioner in presence of the learned Advocate for the respondents, for early hearing and disposal of the writ petition on December 1, 1987, and was being heard before me after the application for amendment of the writ petition filed by the petitioner was allowed by me.

3. A preliminary objection about the maintainability of the writ petition has been raised on behalf of the State by Mr. Milan Kumar Bhattacharya learned Advocate, inter alia, to the effect that no writ lies against a Co-operative Society as such, and strong reliance was placed upon a recent decision of the Supreme Court in the case of Tekraj Vasandi alias K. L. Basandhi v. Union of India & Ors, reported in A.I.R. 1983 S.C. 469, wherein the Supreme Court analysing the earlier cases, including Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , on the point as to whether writ lies on societies registered under the Societies Registration Act.

4. In paragraph 10 of the said judgment, Ranganath Mista, J. speaking for the Court observed as follows :

"In Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, an Engineering College was also a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898 and the question that fell for consideration was whether it was an authority within the meaning of Article 12. The Court found that the Memorandum of Association of the Society in 1.3 set out the objects for which the Society was incorporated and they included among other things establishment of the college with a view to providing instruction and research in such branches of engineering and technology as the college may think fit and for the advancement of learning and knowledge in such branches. Reference was made to the Memorandum of Association, the objects and the powers of the State Government to make appointments and to the fact that the State Government with the approval of the Central Government had the power to take such action and to issue such directions as are necessary in respect of all matters relating to the functioning of the college as noticed in the review of the activities. The , Court also took note of the fact that the founding members of the society were enumerated in Clause (9) of the Memorandum and they were the Chairmen to be appointed by the State Government with the approval of the Central Government, two representatives of the State Government, one representative of the Central Government, two representatives of the all India Council for Technical Education to be nominated by the Northern Regional Committee, one representative of the University of Jammu and Kashmir, one non-official representative of each of the Punjab, Rajasthan, Uttar Pradesh and Jammu and Kashmir States and to be appointed by the respective Governments in consultation with the Central Government and the principal who shall also be the ex officio Secretary. The rules of the Society were referred to with a view to finding out the details of functioning. Sabhajit Tewary Vs. Union of India (UOI) and Others, was referred to and distinguished and the tests laid down in the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

were approved."

5. In the said case, the Supreme Court having quoted from Ajay Hasia's and International Airport Authority's cases, laid down 6 criterions, which are as follows:

(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government."

(2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is State conferred or State protected."

(4) "Existence or deep and pervasive State Control may afford an indication that the corporation is a State agency or instrumentality.""

(5) "If the functions of the corporation are of public importance and closely related to governmental functions it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government."

6. In paragraph 13 of the said judgment, the Supreme Court observed as follows:

"It is time to turn to the facts of the present case to find out as to what the conclusion should be when the tests formulated by the several cases of this Court referred to above are applied. There cannot indeed be a strait jacket formula. 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". In a given case some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the border line and it would be difficult to take one view or the other outright."

7. In Tekraj's case (supra), it appears, Ranganath Misra, J. speaking for the court in paragraph 13 of the said judgment sought to distinguish the decision of Constitution Bench of five Judges of the Supreme Court, although their Lordships in fact did not and could not distinguish the facts, in this case, before Their Lordships and Their Lordships" decision, being a decision of a Bench consisting of 2 Judges could not override the view of the earlier Constitution Bench decision of 5 Judges, in Ajay Hasia's case (supra), which is still a good law, in terms of the provisions of Article 141 of the Constitution.

8. In my view, High Court, in exercising writ jurisdiction is as much bound by the

view taken by Constitution Bench of 5 Judges of Supreme Court, as we are also bound by some sort of distinction made by two learned Judges of that Court, in the facts and circumstances of a particular case, before them,

9. In the result, in deciding the preliminary objection raised by the State, a particular decision of the Supreme Court may be of no avail to this Court, but the most question to be decided, inter alia, is that the, nature of function, which the respondents are discharging together with the nature of duty, that is, if the power exercised by the respondents is "Statutory Power" ?. If the duty discharged by the respondents is a "Public Duty" ? If such discharge of function of the respondents involves a function affecting some "Legal Right" and/or "Constitutional Right" of the individual or the general public ?

10. In my view, it is in these circumstances, a writ will certainly lie against such Authority or Statutory Body or a Government Company or a Limited Company or a Co-operative Society or a Corporation or a Registered Society or even against a private individual, in appropriate cases.

11. The best illustration can be given out of 5 constitutional writs, which we have borrowed from Anglo Saxon Jurisprudence, the "Writ in the nature of quo warranto", which has often been issued even in respect of a "Person, occupying a "Public Office", to explain before the Court, under what authority he is functioning. So, the writ is being issued against a "Person". So that "Person" need not be "an Authority", within the meaning of Article 12.

12. In this context, Mr. Mukherjee has placed reliance on a Division Bench judgment reported in Chittaranjan Mahato v. A. K. Chakraborty 89 CWN 553 delivered by M. M. Dutt, J, (as His Lordship then was) sitting with myself, on February 11, .1985.

13. It has been held in that case, that in the case of Statutory Body, there is no personal element because of their impersonal character. This principle which is applicable to a Statutory Body will also apply to a "Corporation", a "Co-operative Society", a "Government Company" or an "Educational Institution" which is an Institution or Agency of the Government and comprehended in the expression "other Authorities" in Article 12.

14. Applying these principles, the Division Bench held that writ lies against "sponsored Colleges" and also for particular reasons that provisions of Section 3(1) of the West Bengal Universities (Control of Expenditure) Act, 1976, not only controls the financial matters of the Universities, but also the colleges affiliated to the University, in the State of West Bengal, State has taken the financial control, although the said Act of 1976; has since been repealed.

15. He also strongly relied on a decision reported in 1986 Lab IC 925, Sk. Alauddin v. District inspector of Schools, wherein, it has been held that writ petition of a teacher for not allowing him to perform his duties, is maintainable.

16. Accordingly, I do not propose to refer the single Bench judgments referred by

Mr. Milan Kumar Bhattacharya, learned Advocate for the State of West Bengal, in the cases of Moktaruddin Khan v. Midnapore Co-operative Bank Ltd. and Ors. reported in 1988(1) C. H. N. 293 and also another judgment reported in 1988(1) C.H.N. 339, since the said judgments were based on Tekraj Vasatndi's case (supra).

17. As I am inclined to follow the decision of the Constitution Bench judgment in. Ajay Hasia's case, I overrule the preliminary objection raised on behalf of the State about the maintain- ability of the writ petition and proceed to examine the merit of this case.

18. On merit, Mr. Mukherjee argued in support of the writ petition that the disciplinary proceedings and the order of suspension were bad, as the writ petitioner having earlier discharged from criminal case, as such, the respondents are estopped from issuing any show cause notice for the self-same cause of action.

19. In the second place, he has submitted that the charge sheet in the departmental enquiry has been issued with "Closed mind".

20. Thirdly, he contended that the charges were vague, ambiguous and not specific and, as such, no effective reply could be given to such charges.

21. I have gone through the "Charge-sheet", contained in Annexure "K" to the writ petition and I am of the view that some of the items of charges are vague, but since the learned Judge at the time of entertaining the writ petition did not grant any interim order staying further proceeding of the enquiry and no appeal has been preferred against such order, I do not find any reason to interfere with the enquiry and the charge sheet at this, belated stage, more so, the enquiry might have advanced and concluded but Final Order is awaiting decision of this court.

23. At the same time, I am of the view, that if the enquiry is not concluded, within 4 months from the communication of this Order, by the respondents, the petitioner will be deemed to be reinstated in service, as from the date of issuance of the Chargesheet 2 years and few months have already been passed and a person should not be kept "Under Oder of Suspension" on the basis of such vague and indefinite charges for indefinite period by the said respondent Society.

24. The respondent Society and its directors are directed accordingly to complete the enquiry within 4 months from the communication of this order in respect of the writ petitioner and pass reasoned order, particularly relating to allegations of discrimination in the matter of initiating fresh enquiry by picking and choosing petitioner only, but leaving Md. Matin, in respect of each of the charges and communicate the same to the writ petitioner in case the guilt is found. The petitioner is also directed to co-operate with the enquiry and shall not take any adjournment, on any ground whatsoever. Jn case the petitioner is not found guilty, the petitioner should be reinstated and the period of suspension should be

treated as period spent on duty.

25. The writ petitioner will be entitled to take his defence in the remaining part of enquiry even the same has been concluded regarding exoneration of the charges from the Criminal Court and the order of acquittal during enquiry which has been disclosed by way of amendment of the writ petition before hearing of the writ petition and the respondents authorities will consider the same in the matter of passing Final Order against the petitioner by recording independent reasons in support thereof if the same has not been taken before the Departmental Enquiry.

26. The writ application is thus disposed of.

27. All interim Orders are vacated.

28. There will be no order as to costs.