

(1983) 12 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 3285 of 1982

Shamsudeen Abdul Rahim and another

APPELLANT

Vs

National Dairy Development Board, Anand and others

RESPONDENT

Date of Decision : 09-12-1983

Acts Referred:

Citation : (1984) 48 FLR 187 : (1982) 135 ITR 689(1) : (1984) 1 LLJ 496

Hon'ble Judges : H.N. Kantharia, J;D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

C.S. Dharmadhikari and H.H. Kanthari, JJ.—By this writ petition under Art. 206 of the Constitution of India, the petitioner challenged the legality and propriety of an order dated 18th October, 1982, passed by and on behalf of the National Dairy Development Board, Anand, Gujarat State (hereinafter referred to as "the Board") terminating the services of the Petitioner No. 1 with immediate effect. The relief prayed for by the petitioners is for setting aside the said order and reinstatement of Petitioner No. 1 with full back wages and continuity of service.

2. The facts giving rise to this writ petition are that Shamsudeen Abdul Rahim (petitioner No. 1) was appointed as an "Extension Worker" by an order dated 19th July, 1974 by the Board. Thereafter by an order dated 28th March, 1979 he was appointed as an "Extension Assistant" in the scale of Rs. 500-900. He was confirmed by an order dated 1st April, 1980 in the post of an "Extension Assistant". According to the petitioners the National Dairy Employees Federation (Petitioner No. 2) is a registered trade Union formed on 12th April, 1981 with its headquarters at Erode in Tamil Nadu State. Petitioner No. 1 is the General Secretary of the Said Union from its inception. It was on account of his trade union activities that the Board started harassing and victimising him. Thus he was transferred by an order dated 19th March, 1981 to Sikkim from Erode mala fide. The said transfer was challenged by him in the Madras High Court. However, by consent of the parties, he was transferred to Kolhapur and that is how the writ petition filed by him in the Madras High Court came to be disposed of on

19th November, 1981. The petitioner then contended that after petitioner No. 1 was transferred to Kolhapur, the Board by their letter dated 28th September, 1981 made allegations regarding his bona fide and legitimate trade union activities and again started harassing him. Petitioner No. 1, therefore by his letter dated 30th September, 1982 and a grievance to the head of the team under whom he was working at Kolhapur that he was not given proper work and false allegations were made against him that he was not working. The team leader at Kolhapur by his reply dated 8th October, 1982 admitted that he could not allot work to petitioner No. 1 for which he stated certain excuses. Petitioner No. 1's further case is that by a letter dated 11/13th October, 1982, the team leader of the Board issued a warning to him that he should not indulge in trade union activities and within a week thereafter by order dated 18th October, 1982 the Secretary of the Board terminated his services with immediate effect. Petitioner No. 1 contended that before termination of his services he was either given a charge-sheet nor any show-cause notice was issued to him although allegations of integrity and character were made against him and memos regarding his trade union activities were issued to him. He was thus not given an opportunity to explain or defend himself before his services were terminated. According to the petitioners, although the Board is registered under the Societies Act, it is an instrumentality and/or agency of Government of India and since it acted arbitrarily and capriciously without following the principles of natural justice in terminating the services of petitioner No. 1, it contravened the provisions of Arts. 14 and 16 of the Constitution and, therefore, a writ could be issued against it under Art. 226 of the Constitution.

3. The case of the Board is that the writ petition is not maintainable in as much as the Board is neither a "State" nor an "Authority" as contemplated under the provisions of Art. 12 of the Constitution of India and no writ could be issued against it under Art. 226. It is also their contention that the Board is not an instrumentality and/or an agency of Government of India. It is a voluntary and an autonomous Association formed by the experts and professionals in Dairy Farming and Animal Husbandry and allied pursuits. On merits the case of the Board is that the subject matter of the petition is a contractual relationship between the Board and petitioner No. 1 and that petitioner No. 2 who claims to be trade union has no locus standi to file the petition. Further, according to them, the services of petitioner No. 1 were terminated in pursuance of terms and conditions of an employment contract embodied in the letter of appointment which provides that the Board was entitled to terminate the services of petitioner No. 1 any time by giving him three months' notice or paying three months' salary in lieu thereof. Thus their say is that the impugned order is "termination simpliciter" on account of loss of confidence and petitioner No. 1 at the time of termination of his services was offered three months' salary in lieu of notice. The Board thus denied that the impugned order is violative of the principles of natural justice and was passed in contravention of Art. 14 and 16 of the Constitution.

4. On the submission made before us, the first point that arises for our

consideration is whether the Board is "other authority" and thus "State" within the meaning of Art. 12 of the Constitution of India. Art. 12 of the constitution defines "State" as under :

"In this part, unless the context otherwise requires "the State" includes the Government and the Legislature of each of the State and all local or other authorities within the territory of India or under the control of the Government of India."

Thus an analysis of these provisions of the Constitution shows that Art. 12 does not define the terminology "State" exhaustively. It only gives an inclusive definition that the "State" includes Government, Parliament of India, Governments and Legislatures of each of the State and all local and other authorities within the territory of India or under the control of Government of India. Therefore, in order to be a "State" within the meaning of Art. 12 of the Constitution the Board in our case must be an "Authority" first. These bodies whose orders are to be obeyed by the citizens by their very nature are excluded from voluntary associations. However, it includes statutory authorities brought into existence by an Act and is vested with governmental duties. Some of the leading examples of such authorities are the Steel Authority of India, Life Insurance Corporation of India, Natural Gas Commission, the Industrial Finance Corporation as also Bharat Petroleum. These are the statutory authorities. This has been the subject-matter of discussion many times in various High Courts and the Supreme Court. In case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, The Supreme Court held that the Rules and Regulations framed by Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law and that the employees of the statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions though these employees are not servants of the Union or the State. It was also held that these statutory bodies are "authority" within the meaning of Art. 12 of the Constitution and the employees of these statutory Corporations are entitled to protection of Articles 14 and 16. After following Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, it was observed :

"The expression "other authorities" in Art. 12 has been held by this Court in the Rajasthan Electricity Board case to be wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India."

In case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the Supreme Court laid down in Para 15 :

"A corporation may be created in one of the two ways. It may be either

established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provisions, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporate. When does such a corporation become an instrumentality or agency of Government ? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control ? Should the functions which the corporation is charged to carry out or possess any particular characteristic or feature or is the nature of the functions immaterial ? Now, 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 an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from Governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an all inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

The law laid down in case of *Ramana Shetty (supra)* was approved in case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and the law was further crystallised by the Supreme Court as under in para 9 :

"The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority's* case (*supra*). These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We

may summarise the relevant tests gathered from the decision in the International Airport Authority's case, 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 Government character";
3. "It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected";
4. "Existence of 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 of Government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government";
6. "Specially, 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."

5. Bearing in mind the law on the point as above, Dr. Kulkarni submitted that the Board in our case is "State" within the meaning of Art. 12 of the Constitution. He pointed out from the Memorandum of Association and Rules and Regulations of the Board that the Under-Secretary to Government of India had by his letter dated 25th September, 1965 conveyed to the Chairman of the said Board the approval of the Government of India to the changes proposed by him in Cl. 3 of the Memorandum of Association and Rule 13 of the Rules and Regulations and a copy of the revised Memorandum of Association and Rules and Regulations were enclosed which goes to show that in the matter of framing Rules and Regulations and the memorandum of Association the Government of India had full say. A perusal of this letter further shows that its copies were forwarded to :

1. The Secretary, Indian Council of Agr. Research, New Delhi.
2. The Secretary to the Government of West Bengal, Dept. of Animal Husbandry and Veterinary Services, Calcutta.
3. The Secretary to the Government of Maharashtra, Dept. of Agriculture and Co-operation, Bombay (Maharashtra).
4. The Minister of Finance (Department of Expenditure), New Delhi.
5. Private Secretary to Minister of Food and Agriculture.
6. Private Secretary, Deputy Minister (A).

7. All State Governments except Maharashtra and West Bengal.

All this is very much indicative of the fact that Government of India and all State Government had a vital role to play in the functioning of the Board. Further, some of the objects for which the Board was established are :

- i) Promotion of dairy science and practice, diffusion of technical know-how.
- ii) Research in the field of Dairying and Animal Husbandry.
- iii) Promotion of, and research and development in activities relating to production and marketing of agriculture and food products and extension of knowledge in the field of agriculture, animal husbandry, fisheries and other food products and to take all necessary steps in this direction by sponsoring, setting up, acquiring, constructing or installing any plant or Works necessary for the purpose.
- iv) To advise the Government of India, any State Government, Corporation or Local Body in setting up Dairies, Milk Product Factories, Dairy Extension, Rural Milk Creameries, Cattle Feed Compounding Factories and other allied Plants or Industries.
- v) To adopt and undertake any other measures or perform any other duties as may be required by the Government of India or by a State Government or which the Board may consider necessary or advisable in order to carry out any of the objects of the Board.

Further, Animal Husbandry Commissioner and Dairy Development Advisor or Government of India were the members of the Executive Committee of the Board. The income and property of the Board were to be applied towards the promotion of the object set forth in the Memorandum of Association subject nevertheless in respect of the expenditure of grants made by Government of India to financial rules and regulations Government of India may lay down from time to time. A resignation of the membership of the Board or the Executive Committee had to be tendered to the Secretary and could not take effect until the same was accepted by him on behalf of the Board. The Secretary would not, however, accept such resignation except under the instructions of Government of India. The Chairman shall be appointed by Government of India and the office bearers of the Board may be the persons designated as such by Government of India. The Executive Committee had the powers subject to the approval of the Board and with the sanction of Government of India to make such bye-laws as they deemed fit. The Chairman of the Executive Committee has the power to reserve any matter for decision which he thought important for the decision of Government of India and on such reference the decision of Government of India, Ministry of Food and Agriculture (Department of Agriculture) shall be final and the Executive Committee shall act accordingly. The Funds of the Board would consist also of the grants made by Government of India or State Government apart from the fees collected from dairies and other services rendered and

income from investments. The accounts of the Board should be subject to an audit by a properly qualified Auditor or Auditors approved by the Executive Committee consultation with Government of India. An annual report of the proceedings of the Board and of all work undertaken during the year should be prepared by the Executive Committee for the information of Government of India. Subject to the approval of Government of India previously obtained the Board could a late, extend or abridge any purpose or purposes for which it was established. It was further provided in the Memorandum and Rules and Regulations that if on the dissolution of the Board there should remain after the satisfaction of its debts and liabilities any property the same shall not be paid to and distributed among the members of the Board or any of them but shall be transferred to Government of India to be utilised by it in any manner as it thought fit. These are some of the circumstances from which it is crystal clear that the Government of India had lot of powers vested in it with regard to day to day functioning of the Board and it was directly subject to the control of Government of India in the matter of Rules and Regulations, business of the Board, appointments of the members of the Board and the Executive Committee, funds raising and expenditure etc. Therefore, the conclusion is irresistible that the Board is "State" within the meaning of Art. 12 of the Constitution. Rajasthan High Court has in a recent judgment in case of Raj Co-op. Dairy Federation Ltd. and another v. Manohar Lal Sharma 1983 (47) FLR 336 , held that the said Federation falls within the ambit of Art. 12 of the Constitution and as such amenable to the writ jurisdiction of Art. 226 of the Constitution. The Federation was held to be the "authority" under the control of the Government and so was the "State" within the meaning of Art. 12 of the Constitution. The facts in that case were similar to those obtaining in our case and, therefore, the said judgment has a direct bearing on the issue before us. In the modern welfare State the activities such as these carried out by the Board in question really partake the functions of Government of India and in fact as can be seen from the foregoing paragraphs it is under the control of Government of India and would therefore come within the purview of "State". Mr. Rane, learned Counsel appearing on behalf of the Board, very heavily and vehemently relied upon the decision of the Supreme Court in case of Sabhajit Tewary Vs. Union of India (UOI) and Others, , in which the Council of Scientific and Industrial Research, a society registered under the Societies Registration Act, was not held to be an "Authority" within the meaning of Art. 12. In that case the Supreme Court held that the said society did not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation or Industrial Finance Corporation. It was further held that the fact that the Prime Minister, the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research and other activities of the Council towards the development of industries in the country are carried out in a responsible manner. Mr. Rane tried to compare the constitution,

functions and day to day working of the Council of Scientific and Industrial Research with the six tests laid down by the Supreme Court in International Airport Authority's case (supra) and submitted that on consideration of these relevant factors it can be well said that these tests were satisfied by the facts and circumstances obtaining in the case of Council of Scientific and Industrial Research which was not held to be "State" and, therefore, the Board in our case should also not be held "State". We are not able to persuade ourselves to agree with Mr. Rane. The facts in the case of the Council of Scientific and Industrial Research could be well distinguished from the facts obtaining in our case.

6. Now, the next question that arises for our consideration is whether the termination of the services of petitioner No. 1 was mala fide and was as a result of victimisation illegal. In this connection, it is pertinent to note that petitioner No. 1 was a confirmed employee in the post of an "Extension Assistant". He became the General Secretary of the National Dairy Employees Federation, registered trade union, with its headquarters at Erode in Tamil Nadu State and it was thereafter that the officers of the Board started harassing him. As a measure of harassment and with a view to victimise him for his trade union activities he was transferred to Sikkim from Erode. He was constrained to challenge the said transfer in the Madras High Court and the transfer was stayed. Afterwards the matter was compromised and he was transferred to Kolhapur which was recorded by the Madras High Court in its judgment while disposing of the writ petition. After the Petitioner No. 1 took over at Kolhapur, allegations were made against him regarding his trade union activities. It appears that the petitioner No. 1 and his union had submitted certain demands and were carrying on agitations in support of the same on account of which he was singled out and was harassed. He had, in fact complained to the Head of the Team under whom he was working at Kolhapur that he was not given work properly and that allegations were made against him that he was not working. He had replied to such allegations by offering to raise the sake of milk from 6000 liters to 25000 liters per day if marketing work was given to him. The record further shows that the Team Leader of the Board had issued a warning to him, that he should not indulge in his trade union activities and within a week thereafter he received the order dated 18th October, 1982 from the Secretary of the Board to the effect that his services were no longer required and the same were terminated with immediate effect. It is pertinent to note here that before termination of his services, petitioner No. 1 was neither given a show-cause notice nor was charge-sheeted although allegations were made against him and stigmas were attached to his integrity and character and memos were issued to him complaining against his trade-union activities. Thus he was not given an opportunity to explain or defend himself before visiting him with a verdict of guilt. All this had happened because of his trade union activities which were not liked by the officers of the Board who showed vindictive attitude against him. The arbitrary act on the part of the Board was thus not only mala fide but was also an ugly example of naked victimisation of a person connected with trade union activities. In terminating the

service of petitioner No. 1 the Board violated the principles of natural justice with impunity and did not give him an opportunity to defend himself. The defence of the Board that they lost confidence in petitioner No. 1 and, therefore, termination of his services was a "termination simpliciter" does not hold water. We would presently point out that this is not a case where it could be said that there were reasonable grounds for the Board to have lost confidence in petitioner No. 1 so as to simply terminate his services. At any rate, on facts if it can be interpreted that it is reasonably doubtful whether there was sufficient material before the Board to lose confidence in petitioner No. 1, was victimised because of his trade union activities, the benefit of such reasonable doubt should go to him. The Supreme Court in case between Workmen Vs. Williamson Magor and Co. Ltd. and Another, has held in para 8 :

"The word "victimization" has not been defined in the statute. The term was considered by this Court in the case of Bharat Bank Limited v. Employees of Bharat Bank Limited 1950 L.L.J. 921. This Court observed, "it (victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with. A submission was made on behalf of the management in that case that "victimization" had acquired a special meaning in industrial disputes and connected a person who became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed." This submission, however, was not considered by the Court. When, however, the word ("victimization") can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poor section of the people compared to the management."

This Court in case of The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others, observed in para 6 :

"In Industrial Law, interpreted and applied in the perspective of Part IV of the constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section of labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts".

"We would, therefore, accept the interpretation of the word "victimization" in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimization of the superseded workmen."

The facts of our case are so simple that there is absolutely no difficulty in coming to an irresistible conclusion that on account of the trade union activities of petitioner No. 1 the Board not only acted mala fide but also victimised him by terminating his services.

7. Mr. Rane emphatically urged that this is a case of "termination simpliciter" because of loss of confidence in petitioner No. 1. He submitted that petitioner No. 1 was sent to Kolhapur to work on a project of augmenting the milk production

where what he did was the other way round by misguiding the employees of the clients of the Board, viz. Kolhapur Zila Sahkari Dudh Utpadak Sangh Ltd. Kolhapur (hereinafter referred to as "the Sangh") in various ways. Thus in the submission of Mr. Rane, petitioner No. 1 caused circulars to be issued and instigated the workers of the Sangh. He also addressed a press conference announcing indefinite strike in support of the demands made by the workers of the Sangh. He also took a "Prabhat Feri" and led Morcha of the workers of the Sangh at Kolhapur at the time of the meeting of the Board of Directors and as a result of such trade union activities of petitioner No. 1, a good deal of misunderstanding was created between the Board and this was very much embarrassing for the Board. Mr. Rane urged that the letters written by the Sangh to the Board highlighting the trade union to the Board highlighting the trade union activities indulged in by petitioner No. 1 do show that the Sangh had lot to say against petitioner No. 1. But we give no credence to the allegation of the Sangh against petitioner No. 1 because admittedly petitioner No. 1 was organizing the workers of the Sangh and, therefore, the Sangh had an axe to grind against him. If the Board acted upon such allegations made by the Sangh against petitioner No. 1 without holding an enquiry into such allegations, it is a further proof that they did not bona fide. The whole approach of the Board is indicative of the fact that the Board was prejudiced against petitioner No. 1 because of the campaign of the Sangh against him. We do not see any reason why the Board should have lost confidence in petitioner No. 1 on account of his trade union activities. At least there were no reasonable grounds for the Board to do so. Mr. Rane submitted that petitioner No. 1 had been speaking a lot against his employers which gave rise to the Board to have lost confidence in him. As rightly submitted by Dr. Kulkarni, such an activity on the part of a trade union leader cannot be said to be unreasonable so as to lose confidence in him. If such a thing is allowed it is very easy for any employer, if he wants to get rid of his employee, to put such a label on him with a view to terminate his services without holding inquiry against him and call it "termination simpliciter". This cannot be and should not be permitted in labour jurisprudence. The material which prompted the action of the employer should be well scrutinised to find out whether the alleged misconduct on the part of the employee was the real foundation for and order of the termination of his services. On the facts and circumstances of a particular case there may be reasons for an employer to lose confidence in his employee but the facts and circumstances obtaining in our case are certainly not of the kind that there was any reason for the Board to have lost confidence in petitioner No. 1.

8. In this view of the matter, were more than satisfied that the Board mala fide terminated the services of petitioner No. 1 as and by way of victimisation on account of his trade union activities and that too in flagrant violation of the principle of natural justice. Such an act on the part of an employer is illegal being arbitrary and has got to be set aside in the writ jurisdiction of the High Court under Art. 226 of the Constitution of India. We, therefore, set aside the

termination order dated 18th October, 1982, passed by the Board against petitioner No. 1. They are ordered to reinstate him forthwith. It is well settled follow the order of reinstatement unless there are circumstances not permitting such an order, as for example, the employee was in employment carrying same emoluments or was otherwise gainfully occupied during the period of his forced unemployment. There is no evidence on record of our case that petitioner No. 1 was gainfully employed during the period of his forced unemployment. Again, since ours is the case of gross victimisation we are all the more inclined to award full back wages to petitioner No. 1. Hence we order the Board to pay full bank wages to petitioner No. 1 right from the day of termination of his services till the day he is reinstated. The writ petition is thus allowed. Rule is accordingly made absolute with costs.