
(1987) 07 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1835 of 1981

Shridhar Hari Chandorkar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Maharashtra Water Supply and Sewerage Board Act, 1976 — Section 23

Citation : (1988) 1 BomCR 17

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : P.D. Damania and P.D. Gandhi, for the Appellant; S.N. Shah, for the Respondent

Judgement

H. Suresh, J.—The petitioner is a Deputy Engineer in the engineering organisation of the Government of Maharashtra in its Urban Development and Public Health Department for the last Several years. Sometime in 1976 an Act known as the Maharashtra Water Supply and sewerage Board Act, 1976 (hereinafter referred to as "the said Act") came to be passed. This is an Act to provide for establishment of a Water Supply and Sewerage Board for the rapid development and proper regulation of water supply and sewerage services. In substance, it contemplates complete winding up of the "Maharashtra Environmental Engineering Service" as a wing of the Urban Development and Public Health Department of the Government of Maharashtra, and the staff of the said organisation would be transferred, to the Board. Accordingly, after constitution of the Board, the Government purported to transfer the petitioner and all other Engineers belonging to the said Organisation, of course, as provided under the provisions of the Act. This has been challenged by the petition. This is a pure and simple question of law.

2. The relevant provisions of the Act are as follows:---

"Section 2(xiii):

"Maharashtra Environmental Engineering Service" means the organisation functioning for this purpose as a wing of the Urban Development and Public Health Department of the Government of Maharashtra and comprising of the following categories of officers and servants, namely :---

(1) all Engineers belonging to the Maharashtra Environmental Engineering Service, Class I and Class II;

(2) all officers and servants, not covered under (1) above, who are appointed exclusively on the establishment of the organisation and who have no lien on any post in any other Department of the Government of Maharashtra;

(3) all officers and servants belonging to the technical staff borne on Mechanical Engineering cadre of the Irrigation Department of the Government of Maharashtra, who are for the time being serving in the organisation;"

"Section 3 : Establishment of the Board.---

3(1). As soon as may be after the commencement of this Act, the State Government shall by notification in the Official Gazette with effect from a date to be specified therein, establish for the purposes of this Act a Board to be called "the Maharashtra Water Supply and Sewerage Board".

(2) The Board shall be a body corporate, having perpetual succession and a common seal, with powers, subject to the provisions of this Act, to acquire, hold or dispose of property, both moveable and immovable, and to contract, and may sue or be sued by its corporate name aforesaid.

(3) The Board shall be deemed to be a local authority as defined in the Bombay General Clause Act, 1904."

"Section 8. Officers and servants of the Board and their recruitment and conditions of service.---

(1) The Board may appoint such officers and servants as it considers necessary for the efficient performance of its duties and discharge of its functions against posts sanctioned by the State Government. The recruitment and the conditions of service of the officers and servants of the Board shall be determined by regulations.

(2) The Board may, with the previous approval of the appropriate Government, appoint a servant of the Central Government or the State Government as a in employee of the Board on such terms and conditions as it thinks fit.

(3) Subject to the superintendence of the Board, the Member-Secretary shall be the Chief Executive Officer of the Board. He shall supervise and control all its officers and servants including any officers of Government appointed on deputation to the Board."

3. Section 14 of the Act deals with duties and functions of the Board and inter alia, it provides for performing such of the duties and function, which are being

performed by the Maharashtra Environmental Engineering Service, as may be specified, from time to time, by the State Government. In addition to these duties, the Board will have to carry out such other duties as may be entrusted by the State Government.

4. Section 15 deals with the powers of the Board. Amongst other, it has powers to raise its own funds, by levy of fees etc. and to adopt its own budget annually. It has powers to raise, borrow or secure money on such terms and conditions as may be expedient. It has also powers to receive grants from the State Government, the Central Government and other local bodies etc.

5. Section 18 of the Act provides for vesting of property in the Board. Section 23 which provides for transfer of employees of the Government, with which we are directly concerned, is important and the relevant portion thereof is as follows:-

"Section 23.

(6) Nothing contained in sub-section (1) shall apply to any employee who by notice in writing given to the State Government within two months from the appointed date or such extended time as the State Government may, by general or special order, specify, intimates his intention of not becoming or continuing as an employee of the Board. Where such notice is received from any employee-

(a) in case of a permanent employee, he shall be allowed to retire giving him the benefit of pension, gratuity, provident fund and other benefits accrued to him had he retired from the Government service on the appointed date;

(b) in case of a temporary employee, his services shall stand terminated after giving him notice or remuneration in lieu of notice as per the existing service rules of the State Government."

6. Section 65 provides for making rules, while section 66 enables the Board to make regulations. Conditions of service of employees are to be provided for by regulations. In the present case, it is an admitted position that no such regulations have been made.

7. Therefore, the Board will be an independent body Corporate, and the employees of the Board, will cease to have the statutory status of Government employees. It is the Board that will pay them and will ultimately prescribe all terms and condition of service. The Board in any case is not a department of the Government. Therefore, if there is any compulsory transfer of any Government employee to the Board, it must necessarily mean termination of his services under the Government.

8. Mr. Damania appearing for the petitioners pointed out that initially the Government passed a resolution dated 10th January, 1979 (Exhibit "A" to the petition). In the resolution it has been stated that the staff in the Environmental Engineering Organisation will be rendered surplus on the Board being set up, although the posts will be held in abeyance, and that it has become necessary to

post all the staff of the Environmental Engineering Organisation as well as the staff in the Mantralaya handling this work on deputation to the Maharashtra Water Supply and Sewerage Board. Accordingly, the entire staff has been deputed to the said Board with effect from 1st March, 1979 for a period of one year in the first instance. The resolution further says that terms and conditions on which the entire staff is sent on deputation to the Board has been indicated in an appendix annexed to the said resolution, which more or less retains the same terms and conditions as if they were on service with the Government. However, the resolution says that no deputation allowance will be given to any of them sent to the Board on deputation. Thereafter on 30th October, 1979 orders were passed to transfer the duties and functions of the entire Environmental Engineering Organisation to the Board, followed by a further order dated 31st October, 1979 to enable transfer of the said Engineers to the Board.

9. Thereafter there were number of protest from the affected employees. There was a suggestion that till the employees exercise their option, no definite decision would be take. The Government would not finally agree to anything. As far as the option is concerned, it is interesting to note that the option given u/s 23, sub-section (6) is no option at all. If an employee decides not to join the services of the Board, his services would be terminated and, therefore, either he has to join or he will have to face the consequence of his services being terminated. In the result this staff has no choice but to join the services of the Board. The Government seeks to justify this on the basis that the earlier Department has ceased to function and, therefore, the entire state has to unnecessarily join the Board.

10. Mr. Damania has submitted this transfer was, therefore, nothing but termination of the services of the petitioner and other employees of this particular organisation and in that the Government has not complied with the requirements of Article 311 of the Constitution of India. He further pointed out that in any event the petitioner as also other employees have ceased to be the employees of the Government and to that extent their status is affected. In answer to the contention of the respondent, the petitioner and the other staff members have suffered no detriment, he submitted that there were various disadvantages of being in services with the Board and some of the difficulties have been set out in the petition. He submitted that there is no guarantee that the petitioner and other employees who have been compelled to join the Board would get the same treatment as Government servants would get and in any case there is no guarantee that the Board would not be wound up some day or the other. In that connection he drew my attention to a recent instance where a Government Corporation viz. Bombay Metropolitan Transport Corporation Ltd. sought the permission of this Court to wind up even though the entire shareholding was of the Government. In any event, it is clear that the Board cannot be equated with the Government in every respect.

11. Mr. Damania has drawn my attention to a case of the Supreme Court being

the case of The State of Mysore Vs. H. Papanna Gowda and Another etc., . What happened in this case was that the State of Mysore brought is a law known as Mysore University or Agricultural Sciences Act, 1963. Under the said Act, the University was to be a Corporate body having perpetual succession and a common seal. That Act also provided for transfer of the services of certain employees employed in certain institutions as mentioned therein, to the University without any choice as far as employees were concerned. The petitioner in that case was in Mysore Civil Services and was at the material time posted as a Chemical Assistant of the Sugarcane Research Station at Nandya, in the Department of Agriculture. He was transferred as per the Act, to the University. That transfer was challenged on the ground that the transfer resulted in removal of the petitioner from a Civil post under the State in Contravention of the provisions of Article 311 of the Constitution of India. This contention was upheld by the High Court at Bangalore, against that State of Mysore came to the Supreme Court. The Supreme Court upheld the judgment and in particular it observed as follows:

"We are not here concerned with the question as to whether for all practical purposes the respondent was not to be a loser as a result of the transfer. Evidently the respondent held the view that as a civil servant of the State of Mysore the prospects of promotion to higher post with better scales of pay were greater in the service of the State with its manifold activities in various departments. For better or for worse, the notification resulted in extinction of his status as a Civil servant." (Para 8)

12. I think these observations would apply here also and for better or for worse they have no longer the status of being a Government servant. Therefore, it must necessary follow that the transfer of the petitioner and other employees to the Board compulsorily, amounts to termination of their services with the Government and the same was in contravention of Article 311 of the Constitution of India.

13. The petitioner, of course, says that section 23 in so far as it compels, an employee to join the services of the Board should be struck down as ultra vires Articles 310 and 311 of the Constitution of India. However, in my view it is not necessary to go to that extent. Earlier on 10th January ,1979 the Government did transfer the employees on deputation. It is not only later on by a subsequent notification they have purported to transfer the employees on a regular basis as provided u/s 23 of the Act. Therefore, this transfer was in contravention of Articles 310 and 311 of the Constitution of India. This latter absorption of the employees who were in the Maharashtra Environmental Engineering Organisation earlier, will have to be struck down and if that is so, the employees will continue to be on deputation with the Government. I, therefore, pass the following order :

ORDER

1. Writ Petition No. 1835 of 1981:

Rule made absolute as follows:

The said order of transfer of the petitioners and other Government employees dated 31st October, 1979 (Exhibit J) is quashed and set aside as ultra vires the Articles 310 and 311 of the Constitution of India and the same is declared to be illegal and void. I further declare that these employees will continue to be on deputation with the Board but with no deputation allowance. However, I make it clear that it is open to the Government to recall these employees to any of the Department of the Government, if they so desire. There will be no order as to costs.