
(1995) 04 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 1369 of 1994

S.K. Banerjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1995) 2 GLR 98

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : M.Z. Ahmed, for the Appellant; K.N. Choudhury, Sr. Central Govt. Standing Counsel, J.M. Choudhury and A.C. Borbora, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Baruah, J.—In this application under Article 226 of the Constitution Petitioner has challenged Annexure 2 and 3 show cause notices dated 16.2.94 and 17.3.94 respectively and the Annexure-6 termination order dated 5.4.94 terminating his service.

2. The facts, as stated by the Petitioner, may be stated as follows:

3. The Petitioner was a teacher of repute and he served in various renowned Schools in the Country. He was appointed Principal of Assam Rifles Public School, Shillong in the. year 1990. On 15.10.93 the students of the school resorted to strike for a day as the Petitioner slapped two students for their misbehaviour. The 3rd Respondent by Annexure-2 show cause notice dated 16.2.94 asked the Petitioner to show cause by 21.2.94, to which the Petitioner replied by his letter dated 21.2.94 within the period. An enquiry was conducted and the statement of the Petitioner were recorded. No notice before conducting enquiry was issued. According to the Petitioner, statements were recorded very casually. Thereafter, the Petitioner was never called for hearing. Besides, findings of the enquiry was also not furnished to the Petitioner.

4. On 17.3.94 another show cause notice was issued to the Petitioner framing same charges. On 22.3.94 the Petitioner gave his reply to it. Thereafter, by Annexure-6 order dated 5th April, 1994 the 3rd Respondent terminated the services of the Petitioner. According to the Petitioner, the entire process adopted by the Respondents in terminating the Petitioner's services was illegal and without jurisdiction, inasmuch as, no procedure as per settled law had been followed. Over and above, there was failure of principles of natural justice. According to the Petitioner, the impugned order was passed only at the instance of the Chairman of the Governing Body and this was not a decision as a result of the enquiry. Therefore, the Petitioner stated that the order of termination was illegal and without jurisdiction and liable to be quashed. Hence the present petition.

5. I heard Mr. M.Z. Ahmed, learned Counsel for the Petitioner and Mr. K.N. Choudhury, Senior Central Government Standing Counsel for the Respondents.

6. Mr. Choudhury submitted that the writ petition was not maintainable, inasmuch as, the Respondent School, i.e. Assam Rifles Public School, Shillong, was not an instrumentality of the State within the meaning of Article 12 of the Constitution. Mr. Choudhury also supported the order of termination. He submitted that the order of termination was passed after following the procedure prescribed and giving opportunity of hearing as per Annexures 2 and 4. Therefore, this Court even if it was held that the said school comes within the purview of Article 12 of the Constitution, no interference was called for.

7. First it is to be seen whether the School is an instrumentality of the "State" within the meaning of Article 12 of the Constitution.

8. Mr. M.Z. Ahmed, learned Counsel appearing on behalf of the Petitioner submitted that the Director General, Assam Rifles formed the School and thereafter it was handed over to the Society. The Society was formed under Societies Registration Act, 1860. The School was created and funded by the Central Government and being run by the regular substantial Grants-in-aid given by the Government. The said Society was, therefore, an instrumentality of the State within the meaning of Article 12 of the Constitution. The Governing Body of the School comprised of Governor as patron, the Director General of Assam Rifles as Chairman, the Deputy Director General of Assam Rifles as Vice Chairman, Deputy Inspector General of Ranges, Education Secretary to the Government of Meghalaya, Financial Adviser, North Eastern Council as members and any other persons nominated by the Chairman are also members of the Governing Body.

9. Respondents 2 and 3 filed affidavit-in-opposition. According to these Respondents the School was neither a State nor an instrumentality nor an authority within the meaning of Article 12 of the Constitution. The very appointment of the Petitioner as Principal was a contractual one (sic) on three month's notice, as will indicate from Annexure-A to the affidavit-in-opposition. The administration and entire function of the School were regulated by its own

Governing Body with no State Control. No statutory power could exercise by State over the affairs of the School. The Boarding and tuition fee received were the major source of finance for the School, The employment of the Petitioner was, therefore, a private employment.

10. In Sahabuddin Choudhury v. State of Assam and Ors. 1993 (2) GLJ 51, a Full Bench of this Court had occasion to deal With a similar matter. In the said decision the Full Bench of this Court after considering various decisions of this Court as well as apex Court observed thus:

The Correct position, as pointed out by the Supreme Court in a catena of decisions, is that in order to decide whether a particular organisation attracts Article 12 of the Constitution, the Court must have regard to various factors, such as functional character being Governmental is essence, plenary control residing in Government or its officers, financial resources and of the State being the Chief funding source, prior history of the same activity having been carried on by Government and made over to the new body, the composition of the body being dominated by the Government representatives, the presence or absence of deep and pervasive control by the Government over the organisation. The test cannot be fitted into a strait jacket formula. When the Court considers functional character regard must be had to the fact that in a welfare State, Governmental control is pervasive and touches all aspects of social existence and independent and autonomous institutions are, therefore, subject to a degree of State control. In the case of a cooperative society, the Court must necessarily examine these factors in the light of the Bye laws as well as other relevant circumstances. Nihar Sengupta's case (1989) (1) GLJ 111) does not lay down good law.

11. In Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], the Supreme Court dealt with a similar point. In the said decision the Apex Court held thus:

...that Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the seep of the expression "state". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12 of the Constitution. The State control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State and coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State".

The court further observed thus:

...if the Government operates behind a corporate veil, carrying out Governmental activity and governmental functions of vital public importance, there may be little

difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution.

12. Writ Petitioner placed reliance on the following decisions:

AIR 1981 SC 212 ; Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., AIR 1993 SC 2178; Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , and 1994 (1) GLJ 267.

13. These decisions also do not indicate that each and every private institutions having some and from the Government can be termed as "State". These decisions do not support the contentions of the Petitioner.

14. In view of the decisions in Sahabuddin Choudhury (Supra) by the Full Bench of this Court as well as the decision In Chander Mohan Khanna (Supra) by the Apex Court, the position of law is very clear that merely because some Government officers are in the body of the management cannot make a particular institution an instrumentality of State within the meaning of Article 12 of the Constitution of India.

15. In the instant case, the School is run by a Society. The object of the Society is to impart education to the children of Assam Rifles personnel though there are provisions for admitting students from outside. This is mainly not for general public. The Boarding fee and tuition fee received from the students are major source of income. From the papers available before this Court it cannot be said that the Government has any control, whatsoever, over the said school.

16. In view of the above, in my opinion, the said school is not an instrumentality of the "State" within the meaning of Article 12 of the Constitution. Hence, the writ petition is not maintainable.

As the writ petition fails in the first ground, viz; maintainability of the writ petition, I do not consider it necessary to decide the case on merit. Accordingly, the petition is dismissed. However, in the facts and circumstances of the case, I make no order as to costs.