

(1961) 07 CAL CK 0022
In the Calcutta High Court
Case No : Matter No. 283 of 1960

S.K. Mukherjee

APPELLANT

Vs

Chemicals and Allied Products, Export Promotion Council

RESPONDENT

Date of Decision : 31-07-1961

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

Citation : AIR 1962 Cal 10 : 65 CWN 1172 : (1961) 3 FLR 404 : (1962) 2 ILR (Cal) 225 : (1962) 1 LLJ 475

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

Bench : Single Bench

Advocate : S.K. Mukherjee, for the Appellant; N.C. Chakravarti and Diptikana Bose, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows:

The petitioner was employed as a stenographer by the "Chemicals and Allied Products Export Promotion Council" some time in March 1959. The letter of appointment is dated 26th March, 1959, copy whereof is Annexure A-1 to the petition. It will show that the appointment was to be governed by the service rules of the Council as might be enforced from time to time. The petitioner was to be on probation for a Period of six months. He was confirmed in service on or about 18th May, 1.960 with effect from 1st May, 1960. On the 1st November, 1960 he received a letter from the Secretary of the said Council, copy whereof is Annexure A-3 to the petition. It is stated in the letter that the petitioner's services were no longer required by the Council and would stand terminates with effect from 2nd November, 1960. He was to be paid Rs. 270/-, being one month's salary in lieu of a month's notice of termination of service. The petitioner made a representation against this order to the Secretary. He has, however, received the one month's salary which was offered. Thereafter, as the order was not withdrawn, he has made this application and has appeared at the

hearing personally. The point that he has taken is that the Secretary, or as it appears from the affidavit-in-opposition, the Chairman of the Council, had no right to dismiss the petitioner, and in any event he was not given any opportunity of being heard in his defence, and the order of dismissal was passed in violation of the rules of natural justice and Article 311(2) of the Constitution. The respondents have taken a preliminary point that this application under Article 226 does not lie at all, because the respondent Council is a company incorporated under the Indian Companies Act, and is neither a public body nor a public authority, and the petitioner is not a civil servant within the meaning of Article 311(2) of the Constitution. In order to decide this point, I have, first of all to look into the Memorandum and Articles of Association of this company. It appears therefrom that "The Chemicals and Allied Products Export Promotion Council" is a company limited by guarantee, incorporated under the provisions of the Indian Companies Act, 1956. The memorandum has been signed by eight persons who seem to be connected with companies or associations concerning the manufacture of chemicals and allied products, as also the export thereof. The object of the company is, inter alia, to support, maintain and increase exports of chemical, pharmaceutical and other allied products. There is no doubt that in many ways the Central Government exercises a degree of control. For example, under Article 7 of the Articles of Association, four officials are nominated by Government as members of the Council. The auditors may be appointed by the Central Government, whose remuneration shall be fixed by the Council with the concurrence of the Union Government. The Articles provide for the appointment of a committee, and one of the functions of the committee is to control the staff of the Council, and to make, alter and repeal bye-laws which may be deemed necessary for the proper conduct and management of the Council, Article 27 provides that there should be a Secretary, and such other officers to the Council as may be determined from time to time by the Council. Under Article 28, the Secretary shall perform all the business and affairs of the Council. Now, the question is whether a company incorporated under the Indian Companies Act can be construed as a public body or a public authority, simply because the Central Government exercises certain powers as conferred by the Memorandum and Articles of Association. The petitioner who has appeared personally and argued his case has referred me to Article 12 of the Constitution. That article provides that unless the context otherwise requires, the expression "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within, the territory of India or under the control of the Government of India. It is urged that this company would come under the expression "other authorities". This is a point which has been considered, before, and is covered by authority. The term "local authority" is to be understood as referring to the authorities mentioned in Entry 5 of List 2 (State List) of Schedule VII to the Constitution. The Entry runs as follows :

"Local government, that is to say, the constitution and powers of municipal

corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

The question then arises as to the meaning of the words "other authority". According to the dictionary meaning, "authority" is a body exercising power or command. That would include a host of authorities, whether governmental or otherwise. It has, however, been held that in view of the fact that in enumerating the authorities the words "other authorities" follow the words "local authorities", the interpretation of the expression "other authorities" should be based on the principle of ejusdem generis. Read in this light, it would refer to authorities of a like nature to the ones already enumerated. So interpreted, the expression "other authorities" can only refer to public authorities and not private ones. Thus a commercial concern or a company cannot be considered included within the expression "other authorities" in Article 12. There have been a number of decisions which have laid down the proper meaning of the expressions "public body" or "public authority", A writ in the nature of mandamus can only lie against a "public body" or a "public authority", carrying out its public duties and/or duties imposed by statute. *Sohanlal Vs. The Union of India (UOI)*, . In a decision of the Andhra High Court, *In Re: V.S. Hariharan*, , it has been held that a company could not be called a judicial Or quasi-judicial tribunal or a public or statutory authority discharging judicial or quasi-judicial functions, and therefore a writ of certiorari would not lie. It was held by the Patna High Court in *Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd. and Another*, that Article 311 has no application to the case of the employees of the Sindri Fertilisers and Chemicals Ltd. It was argued there that the company was completely owned by the Union Government, and that the directors were appointed by the President, who was also authorised to remove any director from office, in his absolute discretion. He was also authorised to issue such directives as he might consider necessary in regard to the conduct of the business of the company and under Article 110 of its Articles of Association the directors were bound to give immediate effect to such directives. Even so, it was held that the company could not be said to be either a "public body" or a "public authority", and therefore an employee of such a company could not be called a "civil servant", governed by Article 311 of the Constitution. This principle has been discussed in a decision of the Madras High Court-- *The University of Madras Vs. Shantha Bai and Another*, . *Rajamannar C.J.* said as follows:

"The question is whether the University can be held to be "local or other authority" as defined in Article 12. These words must be construed ejusdem generis, with Government or Legislature, and so construed can only mean authorities exercising governmental functions. They would not include persons natural or juristic who cannot be regarded as instrumentalities of the government,"

It was pointed out that where educational institutions are wholly owned and

maintained by the State, that would be another matter, but even Government-aided institutions cannot be said to be a public body or a public authority. Reference was made to an American case, *Ex Parte, Commonwealth of Virginia* (1880) 25 Law Ed. 676 where, the prohibition contained in the 14th Amendment of the American Bill of Rights was being explained. It was, inter alia, stated as follows:

"We have said the prohibitions of the 14th Amendment are addressed to the States They have reference to actions of the political body denominated a State, by whatever instrument or in whatever modes that action may be taken; A State acts by its legislative, its executive or its judicial authorities. It can act in no other way."

It is in this sense that the expression local or other authorities" has been used in Article 12 of the Constitution.

2. Had it been possible for this court to treat the Petitioner as a civil servant, entitled to the privileges conferred by Article 311 of the Constitution, then I would have to go into the question as to whether the order made by the Secretary or the Chairman of the Council was a valid order. It was argued, not without substance, that it was only the committees the Council that could make such an order and no power is given to the chairman. In my opinion, however, on the authority of the cases cited above, the petitioner is not a civil servant and is not entitled to the privileges of Article 311 of the Constitution. Further, the Council not being a "public body" or a "public authority", and not carrying out statutory duties in appointing or dismissing its employees, cannot be made the subject-matter of a high prerogative writ.

3. The result is that on this preliminary point this application fails. The rule is discharged, interim order, if any, is vacated. No order as to costs.