(2010) 04 AHC CK 0143

In the Allahabad High Court

Case No : Writ Petition No. 1452 (S/B) of 2010

S.N.Tripathi APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 10-04-2010

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2010) 04 AHC CK 0143

Hon'ble Judges : Devi Prasad Singh, J and Vedpal, J

Final Decision : Disposed Of

Judgement

1. We have heard Sri H.G.S. Parihar, learned counsel for the petitioner, Smt. Sangita Chandra learned standing counsel and perused record.

2. Preliminary objection has been raised by the learned standing counsel that the respondent Dayanand Anglo Vedic Post Graduate College Lucknow (in short ''College'') is not a ''State'' within the meaning of Article 12 of the Constitution of India. Accordingly, we proceed to consider the objection raised by the learned standing counsel with regard to maintainability of writ petition.

3. Admittedly, the College is managed by its committee of management registered under the Societies Registration Act and is governed by the byelaws framed in pursuance of powers conferred by the Societies Registration Act. The College is managed and administrated by the byelaws of the society.

4. However, the learned counsel for the petitioner submits that being a College under grantinaid, the entire salary of teachers and staff of the College is paid by the State Government. Further submission is that the teachers are appointed by the Commission. So far as the appointment of ClassIII and ClassIV are concerned, admittedly, they are appointed by the Principal of the College. The submission is that since the appointment is made by the Commission and entire salary of the staff and teachers of the College is paid by the State Government, it shall be deemed to be ''State'' within the meaning of Article 12 of the

Constitution of India.

5. On the other hand, Smt. Sangita Chandra learned Additional Chief Standing Counsel submits that merely because of grantinaid being given to a College and the teachers and staff of the College and being appointed by the Commission, it shall not mean that the College is ''State'' within the meaning of Article 12 of the Constitution of India. Unless the State has got deep and pervasive control over the College, it shall not be deemed a ''State'' within the meaning of Article 12 of the Constitution of India.

6. Admittedly, the petitioner has retired from the College in question. The Principal of the College, by the impugned order, has declined to release the managerial share of the petitioner with regard to contributory provident fund. Submission is that the order of the Principal of the College is based on unfounded facts hence not sustainable under law.

7. It shall be appropriate to consider the maintainability of the writ petition with regard to order passed by the Principal of the College.

8. In a case reported in 2007 (25) LCD 508. U.P. and others, in which one of us (Hon''ble Devi Prasad Singh, J.) was a member, various pronouncements of Hon''ble Supreme Court, have been considered, reported in 1991 (9) LCD 103, S.C. Pandey v. District Basic Education Officer and others: (1981) 1 SCC 722, Ajay Hasia v. Khalid Mujib Sehravardi: (2002) 5 SCC 111, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others: (2003) 10 SCC 733: Federal Bank Ltd, v. Sagar Thomas and others: (2005) 1 SCC 149, Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam and another: 2005 (4) SCC 649, Zee Telefilms Ltd, and another v. Union of India and others.

9. After considering the aforesaid various pronouncements of Hon''ble Supreme Court, in the case of Lalsa Prasad (supra), this Court proceeded to observe as under:

"12. Admittedly, committee of management in question is governed by its own byelaws. Though government provides grant in aid for the payment of salary to teachers and staff of the school in question but it lacks deep and pervasive control over the committee of management. The right of duties of the members of the committee of management are government by its byelaws framed under Societies Registration Act. The interference of government is only regulatory to the extent it pays the salary and teachers and staff. Administration control over the school and its staff or teacher remain in the hands of office bearer and the members of the committee of management or its general bodies. Atleast the appointment of class III and Class IV employees falls within the hands of management and principal of the school. Buildings and infrastructure are also established and managed and maintained by the committee of management and the members of the society in accordance to its byelaws. Accordingly, private school may be getting grant in aid from the State Government shall not be a state within Article 12 of the Constitution of India, hence writ petition shall not be maintainable."

10. It shall be appropriate to refer the cases relied upon by the learned standing counsel. In the case reported in (2006) 11 SCC 634: S.S. Rana. v. Registrar. Cooperative Societies and another, their lordships relied upon the judgment reported in (2002) 5 SCC 111: Pradeep Kumar Biswas, v. Indian Institute of Chemicai Biology, and proceeded to observe that unless deep, pervasive and functional control of the State over the Society exist, an institution cannot be held as ''State'' within the meaning of Article 12 of the Constitution of India.

11. In one other case reported in (2007) 15 SCC 136: Lieutenant Governor of Delhi and others, v. V.K. Sodhi and others. Hon''ble Supreme Court reiterated the aforesaid proposition of law and observed that State Council of Education, Research and Training (SCERT) is not ''State'' within the meaning of Article 12 of the Constitution of India hence writ petition shall not be maintainable. Hon''ble Supreme Court has taken note of the fact that SCERT is wholly funded by the Government with regard to salary and emoluments of its employees but it shall not be ''State'' within the meaning of Article 12 of the Constitution of India being not under the functional control of the State Government. Relevant portion from the judgment of aforesaid case of V.K. Sodhi (supra), are reproduced as under:

"15. The Council was to be fully financed by the Government and the funds of the Council was to consist of grants made by the Administration of Delhi/Delhi State and Government of India for the furtherance of the objects of the Council, contributions from other sources, income from assets and publication of the Council and receipt of the Council from other sources. The accounts had to be audited annually by Chartered Accountants and to be approved by the Annual General Meeting of the Council. The State Government had no role to play on the administration of the Council or in the working of the Council or over its finances, once the grant was made.

18. The majority in Pradeep Kumar Biswas also noticed that on a winding up of that Council, the entire assets were to vest in the Central Government and that was also a relevant indication. Their Lordships in the majority also specifically overruled as a legal principle that a Society registered under the Societies Registration Act or a company incorporated under the Companies Act, is by that reason alone excluded from the concept of State under Article 12 of the Constitution.

19. In the case of SCERT, in addition to the operational autonomy of the Executive Committee, it could also amend its byelaws subject to the provisions of the Delhi (sic) Societies Registration Act though with the previous concurrence of the Government of Delhi and that the proceedings of the Council are to be made available by the Secretary for inspection of the Registrar of Societies as per the provisions of the Societies Registration Act. The records and proceedings of the Council have also to be made available for inspection by the Registrar of Societies. In the case of dissolution of SCERT, the liabilities and assets are to be

taken over at book value by the Government of Delhi which had to appoint a liquidator for completing the dissolution of the Body. The creditors'' loans and other liabilities of SCERT shall have preference and bear a first charge on the assets of the Council at the time of dissolution. This is not an unconditional vesting of the assets on dissolution with the Government."

12. The aforesaid proposition has been followed by Hon''ble Supreme Court in other case reported in (2009) 5 SCC 577: State of Uttar Pradesh and another, v. Radhey Shyam Rai, where, Uttar Pradesh Ganna Kisan Sansthan has been declared to be ''State'' since it fulfils the required conditions provided by Article 12 of the Constitution of India. The Uttar Pradesh Ganna Kisan Sansthan is fully credited, managed by the State Government and the State Government has got deep and pervasive control over it. Relevant portion from the judgment of Radhey Shyam Rai (supra), is reproduced as under:

"23. The documents produced before the High Court reveal that 80 to 90% of the expenditure of the Sansthan was met out of the funds made available to it by the Government. The majority of the officebearers of the Governing Council were holders of various offices of the Government. It had, thus, a dominance of the holders of the office in the Government of Uttar Pradesh; the Minister in charge of the Cane Department being its exofficio Chairman of the Governing Council. He is the Chief Executive Authority. The Director and Accounts Officer are also government servants and the Sansthan is not free to appoint anybody on those posts who is not a government servant. This itself clearly shows that the composition and constitution of the Sansthan and its Governing Council was nothing but a show of the Government and only a cover of the society was given."

13. In the case reported in (2010) 4 SCC 378: Dalco Engineering Private Limited, v. Satish Prabhakar Padhye and others, Hon''ble Supreme Court has considered the cases referred to hereinabove. Their lordships held that Corporation established by or under an Act, have got different meaning. In case corporation or body is established by an Act, necessarily, it shall be ''State'' within the meaning of Article 12 of the Constitution of India but the establishment of a body under the Act shall not be necessary under Article 12 of the Constitution of India. Relevant portion of the judgment of Dalco Engg. (P) Ltd., (supra) is reproduced as under:

"21. The Where the definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the word "by or under". The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between "established by a Central Act" and "established under a Central Act"?

14. Considering the judgment of Hon''ble Supreme Court in the present context, it may be noted that the general body of the committee of management frames

its byelaws to constitute the committee of management and manages the affairs of the society, and the Government has got no say at all, to interfere with the daytoday functioning of the society. Every office bearer of the committee of management owes its responsibility in pursuance of the byelaws of the society and not in pursuance of any statutory provisions. The committee of management discharges its obligations to run the College without any interference of the State Government. The society has got option to close the institution or further extension in pursuance of the resolution of the general body of the committee of management as provided by the byelaws. In a welfare state, the payment of salary by the State Government to the College receiving grantinaid does not mean that the Government has got deep and pervasive control over the College managed by the society. Accordingly, we are of the view that a Government aided private society constituted under the Societies Registration Act, shall not be ''State'' within the meaning of Article 12 of the Constitution of India. Hence the writ petition is not maintainable.

15. However, it does not mean that the petitioner or the employees of the Government aided College are remedy less. In the event of Intermediate College, the District Inspectors of Schools or Deputy Director of Region or the Director of Education has got ample powers to interfere in accordance with the provisions contained in the statute or under the Payment of Salaries Act. In case a degree college is affiliated to University, then under the U.P. Universities Act and its statutes, the employees have got right to approach the appropriate authority like ViceChancellor/Director of Higher Education, to ventilate their grievance.

16. Accordingly, while holding that the present writ petition as not maintainable, we give liberty to the petitioner to approach the Director Higher Education with regard to payment of salary in question or the Vice Chancellor as the case may be. In case the petitioner represents his cause, it shall be considered and decided expeditiously say, within three months from the date of receipt of a certified copy and communicate the decision.

17. The writ petition is disposed of accordingly.