
(2009) 03 SC CK 0203

In the Supreme Court Of India

Case No : Civil Appeal No. 1572 of 2009 (Arising out of SLP (Civil) No. 16203 of 2006)

State of U.P. and Another

APPELLANT

Vs

Radhey Shyam Rai

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 298

Citation : (2009) 2 AWC 1771 Supp : (2009) 121 FLR 736 : (2009) 3 JT 393 : (2009) 3 MLJ 1350 : (2009) 3 SCALE 754 : (2009) 5 SCC 577 : (2009) 5 SCR 143

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Ravi Prakash Mehrotra and Garvesh Kabra, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. The short question which arises for consideration herein is as to whether the Uttar Pradesh Ganna Kishan Sansthan (for short "the Sansthan"), a society registered under the Societies Registration Act is a 'State' within the meaning of Article 12 of the Constitution of India.

3. Indisputably, before constituting the Sansthan, its functions, viz., imparting of knowledge and training to the cane-growers and connected persons so as to effect increase in the production of sugar in the State was being performed by the Cane Development Department. The Sansthan was established by a Government Order dated 4.08.1975. The State had established training centers at Shahjahanpur, Muzaffarnagar and Gorakhpur. These training centers, as noticed hereinbefore, were being run by the Cane Development Department of the Government of Uttar Pradesh. Management of the said training centers was transferred to the Sansthan. The expenses thereof were to be met from U.P. Sahkari Ganna Samiti Sangh and Sakkar Vishesh Nidhi.

4. Respondent was appointed in the post of Computer Officer/ Data Processing Officer. The Governing Council of the Sansthan in its meeting held on 28.04.1997 resolved to abolish the posts created and to cancel the appointments made, pursuant whereunto the services of the respondent were dispensed with by an order dated 17.05.1997.

Feeling aggrieved by the said order dated 17.05.1997, he filed a writ petition before the Lucknow Bench of the High Court of Judicature at Allahabad being Writ Petition No. 869 of 1998 wherein one of the issues raised was whether the Sansthan is a 'State' within the meaning of Article 12 of the Constitution of India.

5. The writ petition filed by the respondent came up for consideration before a Division Bench of the High Court. It noticed an earlier decision of another Division Bench of the said Court wherein it was opined that the appellant No. 2 is not a 'State' within the meaning of Article 12 of the Constitution of India. However, a different view was taken.

The question as to whether the Sansthan would answer the description of a 'State' within the meaning of Article 12 of the Constitution of India was, therefore, referred to a Full Bench of the High Court.

The Full Bench held that the Sansthan being an authority would come within the purview of definition of 'State' within the meaning of Article 12 of the Constitution of India.

6. Article 12 of the Constitution of India reads as under:

12. Definition.--In this part, unless the context otherwise requires, '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.

7. Law in this behalf has developed a lot. With the changing societal conditions, a large number of bodies exercising public functions have been brought within the purview of the definition of 'State'. We need not dilate on the development of law in this regard in view of the decisions rendered by this Court beginning from Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and other decisions including a Seven - Judge Bench decision of this Court in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, .

8. We may also notice that P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, wherein Indian Council for Agricultural Research (ICAR) was held to be a 'State' within the meaning of Article 12 of the Constitution of India, was distinguished in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . However, Chander Mohan Khanna (supra) was overruled in Pradeep Kumar Biswas (supra) to the extent it followed the decision in Sabhajit Tewary Vs. Union of India (UOI) and Others, .

In *The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers' Association and Another*, Mysore Paper Mills Ltd. was held to be a 'State' within the meaning of Article 12 of the Constitution of India as it was substantially financed and controlled by the Government, managed by the Board of Directors nominated and removable at the instance of the Government and carrying on functions of public interest under its control.

9. In *Pradeep Kumar Biswas (supra)*, the following tests for the purpose of determining the nature of activities which would make the body come within the definition of 'State' have been laid down by a Seven-Judge Bench of this Court:

- (i) Formation of the body
- (ii) Objects and functions
- (iii) Management and control
- (iv) Financial aid, etc.

The dicta of Mathew, J. in *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*, was quoted with approval in *Pradeep Kumar Biswas (supra)*, which is in the following terms:

17. For identifying such an agency or instrumentality he propounded four indicia:

(1) "A finding of the State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action." (SCC p. 454, para 96)

(2) "Another factor which might be considered is whether the operation is an important public function." (SCC p. 454, para 97)

(3) "The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion." (SCC p. 454, para 97)

(4) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?" (SCC p. 458, para 111)

This Court referred to *Ajay Hasia (supra)* wherein the tests gathered from the decision of this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, were stated in the following terms:

(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. (SCC p. 507, para 14)

(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 Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, 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." (SCC p. 510, para 18)

It was held in Pradeep Kumar Biswas (supra):

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be -- whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

10. In *Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another*, , this Court held the respondent therein to be a 'State' within the meaning of Article 12 of the Constitution of India, applying the tests of administrative control, financial control and functional control.

11. The question as to whether the Board of Control for Cricket in India (BCCI) which is a private body but had a control over the sport of cricket in India is a 'State' within the meaning of Article 12 of the Constitution of India came up for consideration before a Constitution Bench of this Court in *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, wherein the majority felt itself bound by the dicta laid down in *Pradeep Kumar Biswas (supra)* to opine that it was not a 'State' within the meaning of Article 12 of the Constitution of India.

However, the minority view was as under:

70. Broadly, there are three different concepts which exist for determining the questions which fall within the expression "other authorities":

(i) The corporations and the societies created by the State for carrying on its trading activities in terms of Article 298 of the Constitution wherefor the capital, infrastructure, initial investment and financial aid, etc. are provided by the State and it also exercises regulation and control thereover.

(ii) Bodies created for research and other developmental works which are otherwise governmental functions but may or may not be a part of the sovereign function.

(iii) A private body is allowed to discharge public duty or positive obligation of public nature and furthermore is allowed to perform regulatory and controlling functions and activities which were otherwise the job of the Government.

71. There cannot be same standard or yardstick for judging different bodies for the purpose of ascertaining as to whether any of them fulfils the requirements of law therefore or not.

80. The concept that all public sector undertakings incorporated under the Companies Act or the Societies Registration Act or any other Act for answering the description of State must be financed by the Central Government and be under its deep and pervasive control has in the past three decades undergone a sea change. The thrust now is not upon the composition of the body but the duties and functions performed by it. The primary question which is required to be posed is whether the body in question exercises public function.

110. Tests evolved by the courts have, thus, been expanded from time to time and applied having regard to the factual matrix obtaining in each case. Development in this branch of law as in others has always found differences. Development of law had never been an easy task and probably would never be.

The majority despite holding that BCCI is not a 'State' within the meaning of Article 12 of the Constitution of India opined that a writ petition under Article 226 of the Constitution of India against it would be maintainable.

12. Keeping in view the aforementioned principles, we may consider the fact of the present matter.

For the purpose of determining the question as to whether a society registered under the Societies Registration Act would be a 'State' within the meaning of Article 12 of the Constitution of India or not, the history of its constitution plays an important role. [P.K. Ramachandra Iyer (supra)] The functions which are being performed by the Sansthan were used to be performed by the Government directly. The main purpose and object for which the training institutes were established at different places in the State of Uttar Pradesh admittedly was to provide scientific ways of sugarcane cultivation and management so as to

improve the production of cane with a view to achieve better production of sugar. Such a function indisputably is a State function. The State established the 'Sansthan' so as to take over its own functions. It even transferred the entire management relating to imparting of training in various institutes in its favour. All the assets held by it for the aforementioned purpose including the infrastructural facilities stood transferred in favour of the Sansthan. It was created under a Government charter contained in the Government Order dated 4.08.1975 issued in the name of the Governor of Uttar Pradesh. A budget of Rs. 6.00 lakhs was sanctioned in the year 1975-76, 50% of which was made by the Government and the remaining 50% by the Mills run by the State Sugar Corporation, Indian Mill Association, U.P. Sugarcane Cooperative Federation and Cane Development Societies. A sum of Rs. 2 lakhs was released immediately from the Contingent Fund of the State and the remaining amount was released on acceptance of supplementary demands and passing of Appropriation Bill by the Legislature. Some of the objectives stated in the Memorandum of Association are:

- (i) To establish, run and maintain training institute for the benefit of cane growers and the personnel in the Cane Development Department;
- (ii) To purchase land or building, etc. for establishing the institute, auditorium, etc.
- (iii) To diffuse practical and scientific ways of sugar cane cultivation and management through sugar cane research workers.

It started with eight members of the Governing Council; all of whom were public servants including the Cane Commissioner, Uttar Pradesh or were nominated by the State.

The Sansthan framed rules called the Rules of Association of Sansathan, some of which are as under:

- (1) Co-opted Members not exceeding two (Rule-4)
- (II) Donors Members with right to elect two of them to be members of Sansthan.
- (III) The Governing Council (having 12 members) headed by Minister, In charge of the Cane Department of the Government of U.P., with majority of the members, by virtue of their respective offices under the State Government (Rule-9)
- (IV) Chairman of the Governing Council, to be the Chief Executive Authority of Sansthan (Rule -25)
- (V) Vice-Chairman who shall be pramukh Sachiv, Sugar industry and Cane Development of the Government and will preside the meetings in absence of Chairman (Rule - 26).
- (VI) The affairs of Sansthan shall be carried on and managed by the Governing Council, which shall have also power to appoint officers, employees of Sansthan

and to fix their pay scales and remuneration (Rule- 29).

(VII) The Director of Sansthan, to be the ex-officio Secretary of the Governing Council and he shall be officers, of the Government of U.P., on deputation (Rule -30).

(VIII) Account Officer of Sansthan, to be taken on deputation from amongst, servants of the State Government. He shall be responsible for maintenance of the accounts etc. (Rule - 32).

(IX) The Governor of Uttar Pradesh may from time to time issue directives to the society as to the exercise and performance of its functions in matters involving the security of the State or substantial public interest and such other directives as he considers necessary in regard to the finances and conduct of business and affairs of the society and in the like manner may vary and annul any such directives and the society shall give immediate effect to the directives so issued (Rule -41(a)).

(X) The Governor of Uttar Pradesh may call for such returns, accounts and other information with respect to the properties and activities of the society as may be required by him from time to time (Rule -41(b)).

13. The Government had constituted and re-constituted a Committee consisting of officers of the Government and other holders of the public office with the Cane Commissioner to streamline curriculum of training courses to be undertaken by it. The provisions of the Uttar Pradesh Sugar Cane (Purchase Tax) Act, 1961 provided for appropriation of 50% of the amount of tax from the Consolidated Fund of the State and credited to and vested in 'Sakkar Vishesh Nidhi' which was to be administered by a Committee headed by the Secretary to the Government in the sugar industry. The Government withdrew a huge amount from the said fund for making it available to the Sansthan in the financial year 1988-89.

14. The documents produced before the High Court reveal that 80 to 90% of the expenditure of Sansthan was met out of the funds made available to it by the Government. The majority of the office bearers 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-Incharge of Cane Department being its ex-officio Chairman of the Governing Council. He is the Chief Executive Authority. The Director and Accounts Officer are also the 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 Sansthan and its Governing Council was nothing but a show of the Government and only a cover of the Society was given. Rule 41 of the Rules of Sansthan provides that the Governor shall have power to issue any directives to the Sansthan concerning any matter of public importance and the Sansthan shall give immediate effect to the directives so issued. Furthermore, Rule 41(b) of the Rules of Sansthan reads as under:

The Governor of Uttar Pradesh may call for such returns, accounts and other information with respect to the properties and activities of the society as may be required by him from time to time.

The functions of the Sansthan are public functions.

15. From the materials placed before the court there cannot be any doubt whatsoever that the State exercises a deep and pervasive control over the affairs of the Sansthan, the Cane Commissioner being at the helm of the affairs. The Accounts Officer is the officer of the State Government and, is also sent on deputation. The Majority of members of the Governing Council, as noticed hereinbefore, are holders of different offices of the State Government. They play a vital role in carrying out the affairs of the Sansthan. They alone have power to appoint anybody of their choice on the post. It is required to obey all the directions issued by the State Government from time to time. We, therefore, are of the opinion that the Full Bench of the High Court has rightly held the Sansthan a 'State' within the meaning of Article 12 of the Constitution of India.

16. For the reasons aforementioned, the appeal is dismissed with costs. Counsel's fee assessed at Rs. 50,000/-.