

(1991) 10 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 3739 of 1991

Sudam Vanaji Shirsat

APPELLANT

Vs

Shetkari Sahakari Sangh Ltd. and others

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 1992 Bom 347 : (1993) 1 BomCR 543 : (1992) 94 BOMLR 797

Hon'ble Judges : S. Sukumaran, J; R.G. Sindhakar, J

Bench : Division Bench

Advocate : Shekhar Naphade, V.K. Damble and D.C. Dixt, for the Appellant;
Pramod N. Joshi Advs. and R.B. Raghuvanshi, A.G.P., for the Respondent

Judgement

1. A very interesting argument has been advanced on behalf of the writ petitioner in the present case. The writ petitioner was working as a Marketing Manager of the 1st respondent -- Co-operative Society. His services, have been terminated by an order dated 11th June, 1991. His termination is assailed in this writ petition under Art. 226 of the Constitution of India. Counsel was conscious about the hurdles --many of them -- which he had to cross, to have writ petition entertained by us.

2. Whether a co-operative society is an authority within the provisions of Art. 12 of the Constitution of India, is the threshold question.

3. It is unnecessary to burden the judgment with decisions of various courts including those of the Apex Court, where helpful aids and guidelines have been given for resolving that controversy. Even in relation to the co-operative societies, the question has been considered by High Courts. Some decisions have taken the view that the cooperative societies are outside the pale of the "Authority" as sketched in Art. 12. They are of High Courts of the Full Bench of the Kerala High Court, and a decision of Division Bench consisting of Ranganath Misra, C.J. and Patnaik, J., in P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others, and in

Chakradhar Patel Vs. Samasingha Service Co-operative Society Ltd. and Others, ; Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, is a decision where principles are discussed and guidance given in an exhaustive matter. A single Judge of this Court (Guttal, J.) followed the decision of the Gauhati High Court, reported in Nihar Sen Gupta v. Union Territory, 1989 Lab IC 1866 , and took a contrary view in Padubidri Pattabhiram Bhat Vs. Shamrao Vithal Coop. Bank Ltd. and Others, .

4. Guttal, J. had considered the character and status of the Shamrao Vithal Cooperative Bank Ltd. Various features, including the very constitution of the Bank, the functions discharged by it, the controls imposed on it and other matters have been considered in that decision. We are informed that the appeal from the decision is pending consideration before a Division Bench. It is sufficient to indicate that we have reservations in relation to the reasoning and conclusions reached in that case. It is unnecessary for us to express a definite view, as the functions, character, funding and control in the present case are fundamentally different. The Gauhati decision, with great respect, has not attempted to concentrate on the constitution, functions and other salient factors highlighted in the Full Bench decision of the Kerala High Court. With great respect, we feel that Guttal, J. and the Gauhati High Court have erred in their conclusions.

5. We have necessarily to consider the essentials, before coming to our own conclusion.

6. Funding is one of the important tests for deciding whether an authority answers the description under Art. 12. Funding in private society is essentially and substantially raised by the share capital of the members of the society. No doubt, it is enabled to have other helpful aids from various authorities including Government. That does not, however, establish a direct flow of funds to the society, from Government or a substantial financial investment of the Government.

7. No doubt, the co-operative society is subjected to different controls. Take, for example, the appointment of the petitioner himself. The appointment is subject to the approval of the Registrar. Government is similarly the authority to sanction, even the opening of a new branch for the society. These are two of the very many controls, apart from the regular hierarchy of officers, tribunals interfering in and dealing with a variety of functions discharged by the societies.

8. The character of the control which has to be considered in this context is the plenary control which is clearly different from some control or a few controls. In one sense, no individual or any institution, in modern times, is free from controls of the Statute. As Duncan merit has put such regulation from statutes the cradle to the grave and even beyond. That does not, however, make out a plenary control in the sense in which the Apex Court intended to put. In the present case, having regard to the area of its functions, plenary control vests with the Managing Committee, over activities primarily, principally and proximately,

associated with the society. The control exercised by the Government is indirect and remote and of an attenuated character. Counsel drew our attention to two propositions wherein, the society is discharging the functions of a sovereign character such as that in connection with grading of agricultural produce and its position as a licensing authority under the Warehousing Act. These are only some individual activities which the society is empowered to undertake. They are not main or essential functions of the society. There has not been any exterior entity with necessary proximity to Art. 12 of the Constitution which got transmitted to the present position of co-operative society. There is no case of a Government department or authority under Art. 12, which has undergone a change, only in its exterior garb, in the present case. The society was born as society and functions as such.

9. Viewed from all angles and tested by all credentials, we are clearly of the view that the society does not answer the description of Art. 12 of the Constitution. Consequently petitioner has to fail at the threshold itself.

10. Counsel for the petitioner submitted that even if the society is not an authority under Art. 12, jurisdiction of this Court could be invoked when there is flagrant violation of law. We are not impressed with that contention. Assuming that the provision is valid, we are not satisfied that the facts of the case impel invocation of our power in the present case. The petitioner was subjected to for a disciplinary action. The return shows that an enquiry had been held. That enquiry led to findings adverse to the petitioner and resulted in an order dismissing him from service. No procedural infirmity nor perversity in the assessment of evidence or analysis of contentions or arbitrariness in conclusions has been made out. These aspects as well, have promoted us to disincline to interfere with in this writ petition.

11. We have refrained from going into the merits of the case, in view of our conclusions set out hereinabove.

12. One very substantial contention urged on behalf of the petitioner was about the statutory functionaries i.e. Deputy Registrar, not advertent to consideration of the question of dismissal, as he is obliged, when the appointment itself is subject to his prior approval. In the return filed on behalf of the Deputy Registrar, it has been pointed out that the approval for appointment had been given only for one year. The fact that the approval to appointment has been given, does not in any way preclude the employer-society from resorting to disciplinary proceedings if and when such proceedings are called for by the conduct and misconduct of the person. That contention has to fail.

In the result the writ petition fails and is dismissed.

Petition dismissed.