

(2001) 10 AP CK 0015
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16136 of 1993

SUM. Prasad

APPELLANT

Vs

Andhra Pradesh State Federation of Co-operative Spinning
Mills Ltd., Hyd. and Others

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 311
General Clauses Act, 1897 — Section 31(3)
Specific Relief Act, 1963 — Section 14

Citation : (2001) 6 ALD 741 : (2001) 6 ALT 233 : (2001) 3 APLJ 241

Hon'ble Judges : S.B. Sinha, C.J.; V.V.S. Rao, J.; Goda Raghuram, J

Bench : Full Bench

Advocate : M. Vijaya Kumar, for the Appellant; Government Pleader and G. Shiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.

QUESTION:

1. The question which arises for consideration in this Writ Petition is as to whether the A.P. State Federation of Co-operative Spinning Mills Ltd., (hereinafter referred to as "the Federation") is a State within the meaning of Article 12 of the Constitution of India. REASON FOR REFERENCE:

2. A Division Bench of this Court in M/s. Baroda Cotton Company, Bombay Vs. The A.P. State Federation of Co-op. Spinning Mills Ltd. and another, , held that Nellore Co-operative Spinning Mills Ltd., is not State or statutory authority. However, in Writ Appeal No. 1071 of 1993, dated 21.4.1997 a contrary view has been taken.

FACTS:

3. Noticing the contrary views of two Division Benches of this Court, a learned single Judge referred the present writ petition to a Division Bench. The petitioner was appointed as a Mill Manager on 28.8.1987. He was posted as Managing Director of Rajahmundry Co-operative Spinning Mills Ltd, Rajahmundry. On the ground of commission of misconduct a departmental proceeding was initiated against him. However, although a charge-sheet was issued and the petitioner submitted a reply, allegedly, no witness was examined during the departmental proceedings and thus the principles of natural justice had been infringed. By an order dated 30.8.1990 he was dismissed from service whereagainst he preferred an appeal before the Board of Directors which has not been disposed of. Aggrieved by the said order of punishment the petitioner filed a writ petition in this Court praying:

That this Hon"ble Court may be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari after calling for the records in proceedings Ref.No. 863/90-A dated 30.8.1990 of the A.P. State Federation of Co-operative Spinning Mills Limited, Hyderabad and quash the proceedings as being illegal, arbitrary and violative of the principles of natural justice apart from being violative of Articles 14, 16 and 311 of the Constitution of India and pass such other order or orders as may deem fit

4. Although in the writ petition no plea had not been taken that a flagrant violation of Section 116-C of the A.P. Co-operative Societies Act, 1964 (for short "the Act") was committed, such a plea has been taken by raising additional grounds.

5. The State, in exercise of its power conferred upon it under Sub-section (1) of Section 130 of the Act made the A.P. Cooperative Societies Rules, 1964 (for short "the Rules"). Rules 70-AA and 71 of the Rules read thus:

70-AA. Notwithstanding anything in the bye-laws, no appointment or removal of a Chief Executive by whatever name called, shall be made without the approval of the Registrar of Co-operative Societies in respect of the following classes of Societies:-

- (1) All Apex Institutions.
- (2) Sugar Factories.
- (3) Spinning Mills.
- (4) District Backward Class and Scheduled Caste Societies.
- (5) Rural Electric Co-operative Societies.
- (6) The Andhra Pradesh State Cooperative Union.

71. Service Conditions of common Cadre Employees u/s 13 6-A:- The service conditions of Common Cadre Employee u/s 116-A, shall be governed by the existing regulation till they are modified by the rule made in this behalf by the

Government.

6. Mr. M. Panduranga Rao, the learned counsel appearing on behalf of the petitioner, would submit that the society is a State within the meaning of Article 12 of the Constitution. He would contend that having regard to the aforementioned provisions, as the right of the petitioner is protected under a statute, a writ petition will be maintainable.

7. Section 116-A of the Act was substituted by Act 21 of 1985. It provides for an enabling provision.

8. If a common cadre has been constituted under the provisions of the Act, the services of the concerned officials would be protected thereunder. Before us, however, no common cadre regulations had been produced to show as to whether any qualifications, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers specified in Sub-section (2) of Section 116-A of the Act have been provided by reason of regulations framed by the Registrar.

9. The question as to whether a society or Corporation including a Co-operative Society is a State within the meaning of Article 12 of the Constitution of India or not, is essentially a question of fact. Some societies may be State and some may not. This aspect of the matter has been considered by various High Courts including a Full Bench of this Court in SRI KONASEEMA CO-OPERATIVE CENTRAL BANK LTD., v SEETHARAMA RAJU AIR 1990 AP 171. Without referring to each decision separately, we may notice that a Division Bench of this Court recently in Ch. Ankamma Vs. Registrar of Co-operative Societies, Hyd. and others, , took into consideration various decisions and observed:

The service conditions of an employee of the bank were regulated by the statutory rules. In that situation, it was held that the Bank was an instrumentality of State and that exercise of power of dismissal by the society must be in accordance with the statutory regulations and with the approval of superior body. The Supreme Court referring to a Full Bench decision of this Court in KONASEEMA CO-OPERATIVE CENTRAL BANK LTD held:

.... After examining various decisions and treatises on the subject it was stated that even if a society could not be characterized as a "State" within the meaning of Article 12 even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person" or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court is to enforce such statutory public duty.

For the purpose of holding that a society or Co-operative Society is a State one of the criterion that has to be considered is as to whether it discharges any sovereign function. Some amount of control over such societies by the State or

some amount of funding would not render the same as the instrumentality or agency of the State. (See RAJKUMAR SARDAR v. UNION OF INDIA (1999) 1 Cal.LJ 125 and CHAIRMAN, WEST DINAJPUR SHIPPING MILLS LTD. AND ORS. v. GOUTAM DEB and Ors. (1999) 1 C.HN 464 : 1999 WBLR (Cal.) 185. ... In view of the fact that the Special Bye-laws in question do not have the force of a statute, we are of the opinion that violation thereof would not render the order of termination invalid.

10. A Full Bench of the Madras High Court in M. Thanikachalam and others Vs. Maduranthakam Agricultural Producers co-operative Marketing Society and others, has also recently considered this aspect of the matter. This Division Bench in W.A.No. 547 of 2001 rendered on 6.6.2001 has noticed the said decision. Reference in this connection may also be made to the decisions of Calcutta High Court in Bholanath Roy and Others Vs. State of West Bengal and Others, N.I.S. CORPORATION v STATE OF BIHAR, 1994 (1) BLJR 559, Saikat Ghosh Vs. The Institution of Engineers (India) and others, , The Parent Teacher Association, Maharaja's College Vs. State of Kerala, , PAYANDEO DATTATREYA KOLE v. STATE OF MAHARASHTRA 1995 LIC 705. In SERJING SINGH v STATE OF BIHAR 1994 (1) BLJR 287, and S.B.I. STAFF ASSN. v ELECTION COMMISSION OF INDIA 1994 (1) BLJR 128, it has been held that a Co-operative Society is not a local authority within the meaning of Section 31(3) of the General Clauses Act.

11. We may refer to a five-Judges decision of this Court in HASAN ALI KHAN v DIRECTOR OF HIGHER EDUCATION 1987 (1) ALT 378, wherein while considering the question as to whether a private educational institution will be a State within the meaning of Article 12 of the Constitution of India, it was laid down:

Therefore, substantial aid by the Government, performance of public function and control by the Government are present and in view of these features the college can be easily accommodated within the precincts of "other authorities". Sri P.L.N. Sarma, learned counsel for the petitioner contended that imparting education is a function of the State and therefore the society should be considered as State on this score alone. We are unable to subscribe to this view. The imparting of education alone by the private institution without any aid or control by the Government cannot be considered as State.

12. In the instant case, no foundational fact is pleaded and proved to show that the first respondent herein is a State within the meaning of Article 12 of the Constitution.

13. As indicated hereinbefore Section 116-A of the Act provides for an enabling provision. Unless it is pleaded and proved that a Regulation has been made laying down the conditions of service, the petitioner cannot take any benefit therefrom. Section 116 AA provides for an enabling provision.

14. A Division Bench decision of this Court in S. Venkata Ramanamma Vs. Principal Secretary to Govt., Forest Dept., A.P. Secretariat and Others, , relied upon by Mr. Panduranga Rao (in which one of us S.B. Sinha, CJ was a member),

was considering a case against an employee who had been serving in the Forest Department of the State and as the order of termination had been passed in violation of the principles of natural justice, the same was held to be bad in law. The said decision has no application to the facts of the present case.

15. Section 116-C of the Act provides for a staffing pattern of societies. The same merely provides that staffing pattern must be constituted only with the prior approval of the Registrar. Section 116-C (2) whereupon strong reliance has been placed is circumscribed by two pre-conditions, viz.,

- (1) The person concerned must be Chief Executive of the Society;
- (2) Such society must be in receipt of financial aid from the Government.

16. The petitioner cannot be a Chief Executive of the Society. He on his own showing would only be the Chief Executive of the Unit. Only a Managing Director or a Chairman of the Federation would be the Chief Executive within the meaning of Section 116-C of the Act and Rule 70-AA of the Rules.

17. As the petitioner herein is not a Chief Executive of the Society, the question of his services being protected under a statute would not arise.

18. However, one aspect of the matter which, although has not been placed before us, may not be lost sight of. The State has made an Act known as Andhra Pradesh Co-operative Spinning Mills (Regulation) Act, 1983. "Co-operative Spinning Mill" has been defined in Section 2(b) of the said Act to mean a Cooperative Spinning mill registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964. "Rajahmundry Co-operative Spinning Mills Limited, Rajahmundry" is one of the Units that finds place in the schedule appended to the said Act. The petitioner has not pleaded that the act of removal is an outcome of the act of the Statutory Committee constituted thereunder. The order of dismissal passed against the writ petitioner shows that the same has been done in terms of Rule 17(1)(e) of the Service Rules of the Federation. The Service Rules of the Federation have been made by the Federation itself which being akin to the bye-laws framed to the Society will not have any statutory force as held in KONASEEMA case (supra) and also in CH.ANKAMMA case (supra).

19. Section 14(b) of the Specific Relief Act provides that a contract of personal service shall not be enforced. The Court does not thrust an employee upon an unwilling master. However there exists four exceptions to the aforementioned rules.

- 1) Where an employee enjoys the status which is being protected under Article 311 of the Constitution of India.
- 2) An employee who has been dismissed from service by a Statutory corporation in violation of the mandatory provisions of a statute.
- 3) A workman under the Industrial Disputes Act.

4) Employees whose services are protected by a statute.

20. The violation of a statute or a statutory rule in the context of the A.P. Co-operative Societies Act would mean violation of the provisions of the State Act or Rules made thereunder. As has been noticed hereinbefore, the services of the petitioner are not protected under the said Act or under the Rules. Even if an authority performs a public function, writ may not lie. We may notice that DE SMITH, WOOLF AND JOWELL on Judicial Review of Administrative Action, (5th Edition) laid down the following propositions:

1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

2) The principles of judicial review prima facie govern the activities of bodies performing public functions.

3) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function.

a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed by the parties (expressly or by necessary implication), that regime and not judicial review, will normally govern the dispute.

21. In U.P. STATE CO-OPERATIVE LAND DEVELOPMENT BANK LTD., v CHANDRA BHAN DUBEY, , relied on by Mr. Panduranga Rao the Apex Court held that the U.P. State Cooperative Land Development Bank is instrumentality of the State as it is controlled by the State Government and service conditions of its employees are statutory in nature. Yet again in Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another, , the Apex Court after referring to the case of CHANDRA BHAN DUBEY (supra) observed:

.... The conclusion is irresistible that the defendant Bank is undoubtedly and instrumentality of the State. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee, it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross violation of principles of natural justice, then the third exception to the general principle that contract of personal service,

cannot ordinarily be specifically enforced...

22. The aforementioned decisions of the Apex Court therefore clearly lay down a distinction as to co-operative societies which are merely registered under Co-operative Societies Act on the one hand and those cooperative societies although registered under the Co-operative Societies Act are fully funded and controlled by the State and conditions of service of its employee are governed by the statutory rules.

23. For the aforementioned reasons, there is no merit in this petition. It is accordingly dismissed. There shall be no order as to costs.