
(2016) 12 GAU CK 0001
In the Gauhati High Court
Case No : WP(C) No. 334 of 2013

Syed Sajidul Rehman

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2017) 1 GauLT 177

Hon'ble Judges : Mr. Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mrs. D. Borah, Mr. Y.S. Mannan and Mr. R.K. Bhatra, Advocates, for the Respondents; Mr. P.C. Dey, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Manojit Bhuyan, J. - Heard Mr. P.C. Dey, learned counsel for the petitioner as well as Mrs. D. Borah, learned counsel representing Respondent No.1. The Respondent Nos. 2 to 5 are represented by Mr. Y.S. Mannan and Mr. R.K. Bhatra, Advocates.

2. The subject-matter of challenge is the letter dated 31.12.2012 issued by an organization called GVK EMRI i.e. Respondent No.2, whereby the petitioner was terminated from service w.e.f. 31.01.2013 following a disciplinary inquiry.

3. The issue with regard to the maintainability of the writ petition having been raised by the respondents, the adjudication of the said issue is attended to at the outset. Case of the respondents is that GVK EMRI not being an instrumentality of the State within the meaning of Article 12 of the Constitution of India, as such, the petitioner is without locus to make grievance by invoking the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

4. On this issue, Mr. Dey submits that the role of the Government of Assam is to the extent of providing funds for establishing Emergency Response Centre and for purchase of Ambulances etc. towards providing emergency service of "108" in

various districts of Assam. Mr. Dey refers to the Memorandum of Understanding dated 08.07.2008, by and between the State of Assam and GVK EMRI, for extending emergency services in the State. According to Mr. Dey, the State of Assam has deep and pervasive control over the affairs of GVK EMRI and, as such, the affairs of the said organization are amenable to the writ jurisdiction of this Court. In this connection, it is placed on record that save and except the submissions made, the petitioner has not been able to show any documents in support of its stand that the State of Assam has deep and pervasive control over the financial, functional and administrative affairs of the respondent-organization.

5. Per contra, Mr. Y.S. Mannan submits that the issue as to whether the respondent-organization is a State within the meaning of Article 12 of the Constitution of India, had received consideration in at least two judgments rendered by the High Court of Judicature of Andhra Pradesh and by the High Court of Gujarat. In both the cases, the consistent stand is that EMRI is neither a State nor an agency of the State within the meaning of Article 12 of the Constitution of India.

6. I have heard the learned counsel for the parties and have perused the materials on record.

7. Law is well settled that a body to be considered to be a State within the meaning of Article 12 of the Constitution of India, facts to be established is that the body is financially, functionally and administratively dominated by or is under the control of the Government. It has to be established that such control over the body is pervasive in nature. If this test is answered in the affirmative i.e. that the Government have deep and pervasive control over the body, it is only in that situation that it can be deemed to be a State within the meaning of Article 12. Control which is merely regulatory, whether under a statute or otherwise, cannot clothe an organization as a State within the meaning of Article 12.

8. In Writ Petition No.10504/2009 rendered by the High Court of Judicature of Andhra Pradesh in the case of Y. Rajagopal v. Government of Andhra Pradesh, the said writ petition was answered by order dated 11.11.2009 holding that EMRI is a non-Government and a non-profit organization registered under the Societies Registration Act. The object of the organization is for providing free emergency response services. In the said case the organization had also entered into a public-private partnership with the Government of Andhra Pradesh. It was observed that the Government except providing financial support to EMRI for extending emergency services in the State, does not have any overwhelming control over the working of the system. In that situation, the High Court of Andhra Pradesh held that EMRI is neither a State nor an agency of the State within the meaning of Article 12 of the Constitution of India and, situated thus, it was not for the petitioner therein to invoke the extra-ordinary writ jurisdiction of the Court under Article 226 of the Constitution of India. In the case before the Gujarat High Court, in Civil Application No.8973/2010 (Haresh Jadavbhai Solanki v. State of Gujarat), reliance was placed upon the decision rendered by the

Andhra Pradesh. It was held that in so far as employer-employee relationship is concerned and having regard to the fact that the State has not retrained any control over it, there can be no question of branding EMRI as a State. The writ petition so filed was accordingly dismissed.

9. In the present case, the respondents have categorically pleaded in paragraph 3 and 5 of the affidavit-in-opposition stating that the respondent organization is an autonomous body having its own set of personnel independent of any control of the State. The function and management of the organization is also detailed in paragraph 5 of the affidavit-in-opposition.

10. Having regard to the facts above and the judgments rendered by the Andhra Pradesh High Court and the High Court of Gujarat on the very issue as to whether EMRI is a State or not, I find no grounds to entertain this writ petition and/or to hold that GVK EMRI is a State or an agency of the State within the meaning of Article 12 of the Constitution of India. Having held thus, this Court is of the considered opinion that the merits of the case is not required to be gone into. It is not open for the petitioner to invoke the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Accordingly, writ petition stands dismissed, however, without any order as to cost.