
(1994) 07 KL CK 0038

In the High Court Of Kerala

Case No : O.P. No. 6567 of 1994-F

T.M. Devassy, Secretary-Cum-Finance Manager, Periyar Latex
P. Ltd.

APPELLANT

Vs

Managing Director, Periyar Latex P. Ltd. and Another

RESPONDENT

Date of Decision : 01-07-1994

Acts Referred:

Companies Act, 1956 — Section 3(1)
Constitution of India, 1950 — Article 12, 2, 226

Citation : (1994) 81 CompCas 560 : (1995) 1 ILR (Ker) 338 : (1995) 2 LLJ 992

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : George Verghese Kannanthanam, for the Appellant; S. Siri Jagan
and Joseph Markose, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—In this petition under Article 226 of the Constitution of India, the question is whether, Periyar Latex (P.) Ltd. is State or authority for the purpose of Articles 12 and 226 of the Constitution of India. The petitioner who is secretary-cum-finance manager of Periyar Latex (P.) Ltd., respondent No. 2 herein, impugns the termination of his service communicated by Letter No. PLL/Staff/103/94, dated May 10, 1994 (exhibit P-3).

2. At the stage of admission, the respondents appeared through counsel, filed a counter-affidavit and urged that Periyar Latex (P.) Ltd. (hereinafter referred to as "the company") is not State or "any authority", for the purposes of Articles 12 and 226 of the Constitution of India, and that, therefore, this petition is incompetent. I have heard counsel on this point. I have not gone into the merits of this case.

3. The petitioner contends that the Rubber Board which holds more than 50 per cent. shares in the company and controls it, is an instrumentality of the Central Government, and, therefore, the company is State or other authority. The

respondents contend that it is not. The question whether the Rubber Board constituted under the Rubber Act is State or other authority does not arise for consideration in this petition. It is assumed for the sake of argument that the Rubber Board is State or other authority.

4. The petitioner strongly relies upon the facts that,

(a) the Rubber Board constituted under the Rubber Act holds 50 per cent. shares in the company.

(b) three of the nominees of the Rubber Board are members of the board of directors of the company, and

(c) u/s 22 and other provisions of the Rubber Act the Central Government exercises control over the acts of the Rubber Board.

5. The Supreme Court in *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other* [OVERRULED], *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* [1986] 69 FJR 171 ; [1986] 60 Comp Cas 797, *Bhandari (O. P.) v. ITDC* [1986] 69 FJR 493; [1986] 4 SCC 337 and other cases, has laid down the tests applicable in determining whether a Government company or society or other entity, is State or authority for the purpose of Articles 12 and 226 of the Constitution of India.

6. Broadly stated, the tests which emerge from the judgments of the Supreme Court are whether :

(a) the entire share capital is held by the Government,

(b) the company concerned enjoys monopoly status conferred by the State,

(c) the functions of the corporation are governmental or public functions,

(d) substantial amount of financial assistance is received from the State, and

(e) statutory duties are imposed upon the company.

7. Now consider the constitution of the company and its objects as they emerge from the articles of association. The following features are clear:

(i) Membership of the corporation is limited to ;

(a) the Rubber Board, (b) rubber purchasers' societies, (c) rubber processing co-operative societies, (d) rubber marketing co-operative societies, and (e) industrial, agricultural or financial institutions, owned or controlled by the Central or State Governments.

(ii) The maximum number of directors is nine. The board of directors is composed of (a) three nominees of the Rubber Board, (b) one nominee of the financial institutions who advance loans to the company, (c) one director to be nominated by the industrial, agricultural or financial institutions, owned or

controlled by the State or Central Government, and (d) four elected by the members.

8. An examination of the constitution, functions and the nature of business of the company in the light of the tests set out in paragraph No. 5 above shows that the company is not State or authority for the purpose of Articles 12 and 226 of the Constitution of India. The reasons are as follows :

While the Rubber Board holds over 50 per cent. shares of the company, it does not control the affairs of the company. Nor does the Government have any control over the affairs of the company. Out of nine directors only three are nominated by the Rubber Board, leaving the Rubber Board in a minority on the board of directors. Out of these nine directors, five are elected without any control of the Rubber Board.

9. Secondly, like any other company registered under the Companies Act, the management of the affairs of the company is in the hands of the board of directors in which the Rubber Board does not have controlling authority. The only authority of the Rubber Board is to appoint one of its nominees as the managing director. The Rubber Board's pervasive presence in the affairs of the company is nowhere seen from the constitution of the company.

10. A third significant feature of the constitution of the company is this : The company is, under Article 2 of the articles of association, a private company within the meaning of Section 3(1)(iii) of the Companies Act, whose shares are subscribed privately with no notice to the public.

11. The governmental control or the control of the Rubber Board is not discernible.

12. Lastly, the main objects of the company are production, manufacture and sale of natural and synthetic rubber. This activity is entirely commercial without even a trace of State or governmental functions.

13. Learned counsel for the petitioner relied upon the judgment of the Bombay High Court in *State Bank of India Vs. Transport Co. Pvt. Ltd. and Another*, . The judgment is not applicable to this case. That was a case relating to the State Bank of India and its subsidiaries which are statutory corporations. The company in this case does not have anything common with statutory corporations.

14. For the reasons stated in the foregoing paragraphs, this petition is not maintainable. It is therefore dismissed.