(1994) 12 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 454 of 1993

Vinod Kumar — APPELLANT

Vs

H.R.T.C. and Others — RESPONDENT

Date of Decision : 30-12-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(2), 14(3), 15(2), 15(3), 26
Constitution of India, 1950 — Article 226, 323A(2)
Road Transport Corporations Act, 1950 — Section 3

Citation : (1995) 1 ILR HP 121

Hon'ble Judges : Gulab C. Gupta, C.J;S.N. Phukan, J;Kamlesh Sharma, J

Bench : Full Bench

Advocate : Rajiv Sharma, for the Appellant; Inder Singh, General and C.B. Barowalia, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, C.J.—Whether the Respondent Himachal Road Transport Corporation (Corporation for short) is a Corporation'' controlled by the State Government, is the basic question requiring decision of this Full Bench. In case the answer to this question be in the affirmative, the decision of the is raised in this petition would require decision by the State Administrative Tribunal constituted under the Administrative Tribunal Act, 1985 (hereinafter referred to as the Act) and this Court will have no jurisdiction to deal with it because of Section 28 of the said Act. Since during the hearing of this writ petition before a Division Bench, a Full Bench judgment of the Andhra Pradesh High Court was cited to submit that Section 28 of the Act, to the extent it divests jurisdiction of this Court under Article 226 of the Constitution, was ultra-vires, it was thought fit and proper to get the controversy decided by a Full Bench of this Court. That is how the Full Bench has been constituted and is deciding the aforesaid question in this writ petition. It may also be noticed that this Court vide its interim order dated 30.4.1993, directed the Respondent-Corporation to re-engage the Petitioner and the Respondent Corporation had challenged the Validity of the said order by filing Civil Misc. Appeal in the Supreme Court. The aforesaid jurisdictional question was specifically raised before the Supreme Court but was not decided by the said Court because writ petitions were pending for final disposal of this Court. The Supreme Court has, however, directed that these petitions be heard and disposed of before the commencement of winter vacation.

2. The Petitioner is admittedly an employee of the Respondent-Corporation discharging duties of a bus conductor. His bus was checked on 2.10.1990 by the Inspector of the Respondent-Corporation when it was found that the Petitioner was carrying certain passengers without tickets, though fare from the said passengers had already been collected. A charge-sheet was, therefore, issued against the Petitioner seeking his explanation. Thereafter an enquiry was held in which he (Petitioner) was found guilty of the charges. Thereafter the Petitioner was given a show cause notice to which he submitted reply and on consideration of the same together with a material collected during the departmental enquiry, he was removed from the employment by order dated 27.4.1993 (Annexure PE). The legal validity of this order is under challenge in this petition filed under Article 226 of the Counstitution of India.

3. It appears that the State Government exercising its power u/s 15(2) of the Act, specified the first September 1986 as the date from which the provisions of Section 15(3) of the said Act shall apply to the local or other authorities and Corporations or Societies controlled or owned by the State Government''. Because of the aforesaid notification, it is submitted that the dispute regarding removal of the Petitioner has been included within the exclusive jurisdiction of the State Administrative Tribunal and hence this Court''s jurisdiction under Article 226 of the Constitution is excluded by Section 28 of the Act. The submission of the learned Counsel for the Petitioner is that Section 28 of the Act is unconstitutional inasmuch as it takes away constitutional jurisdiction of this Court under Article 226 which cannot be done except by amendment of the aforesaid Article in accordance with the provisions of the Constitution. The aforesaid submission is based on the Full Bench judgment of the Andhra Pradesh High Court dated 26th October, 1993 in a batch of writ petitions. A copy of the said judgment has been made available to us for our perusal. According to the Full Bench of the said High Court, Article 323A(2)(d) of the Constitution is itself un-constitutional to the extent it empowers the Parliament, by law, to exclude the jurisdiction of the High Court under Article 226. Consequently, Section 28 of the Act was also held to be un-constitutional and invalid. We are informed that ah appeal against this decision has been filed in the Supreme Court and the said Court has been pleased to stay the operation of this judgment. In view of the stay of the aforesaid judgment, this Court cannot rely on the same. As fax as constitutional validity of the Act and various provisions thereof is concerned, the sane remains decided by the Supreme Court in S.P. Sampath Kumar v. Union of India (1997) 1 SCC 124 , J.B. Chopra and Others Vs. Union of India (UOI) and Others, and Union of India v. Deep Chand Pandey (1992) 4 SCC 432. Though the learned Counsel for the Petitioner submitted that the decision in Sampat

Kumar''s case (supra) is likely to be reconsidered by a larger Bench, we would for that reason not hold that the law declared by the Supreme Court in that case has ceased to be binding. In this view of the matter, it is the considered view of this Court that the constitutional validity of Section 28 of the Act is not open to challenge in view of the aforesaid Supreme Court decision. This is also the decision of this Court in Jeet Ram Thakur v. H.P. University 1988 (2) Shim.L.C. 51 . The notification dated 29.8.1986 issued by the State Government u/s 15(2) of the Act without doubt makes the provision of Section 15(3) of the Act applicable to the local and other authorities and Corporations and Societies controlled and owned, by the State Government''. According to this notification, if the Respondent Corporation is covered by the word "other authorities" or is held to be a "Corporation controlled by the State Government", the proper forum for adjudication of the dispute raised in this writ petition would be the State Administrative Tribunal and not this Court. The Corporation, according to the learned Counsel for the Petitioner, is constituted and established u/s 3 of the Road Transport Act, 1950 (referred to as the Transport Act), and is a body-corporate having its own independent existence. Relying on the decision of the Andhra Pradesh High Court, in Andhra Pradesh-State Road Transport Corporation represented by its ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION Vs. Income Tax OFFICER, HYDERABAD, AND ANOTHER., it is submitted that the Respondent-Corporation is neither owned nor coatroled by the State Government. It is, therefore, submitted that the aforesaid notification would not be applicable to service matters relating to Respondent-Corporation. Learned Counsel for the Respondents, however, submitted that the Corporation is no doubt a body-corporate having its own independent existence, but inspite of the same, it is controlled by the State Government. It is, therefore, submitted that the said notification would be applicable and this Court will have no jurisdiction to deal with the present dispute. The learned Counsel for the Respondents frankly conceded that the Corporation is not owned by the State Government and hence this question would not require our decision.

4. In order to understand the nature of the Corporation and its relationship with the State Government, it is necessary to refer to the provisions of the Transport Act. It is common ground that the Respondent-Corporation is established u/s 3 of the said Act. Section 4 of the said Act provides that the Corporation shall be a body corporate with perpetual succession and common seal and entitled to sue and be sued in its name. Section 5 of the said Act deals with the management of the Corporation and appoints to the Board of Directors. Sub-section (1) of this Section vests the general superintendence, direction and management of the affairs of the Corporation in a Board of Directors, which, with the assistance of the committees and the Managing Director, is empowered to exercise all such powers and do all such acts and things, as may be done by the Corporation. The number of Directors constituting the Board of Directors is decided by the State Government u/s 5(2) of this Act. The Chairman and the Board of Directors are'' also appointed by the State Government under this Act. The State Government is

entitled to remove the Directors u/s 8 of the said Act. The appointment of a Director can also be terminated by the State Government u/s 8(2) of the Act by giving a notice of not less than one month, though a Director appointed by the Central Government, cannot be terminated without the concurrence of that Government. It is, therefore, clear that the, Chairman and the Board of Directors are not only appointed by the State Government but can also be removed or terminated by the said Government.

5. As regards the financial matters, though the Corporation is entitled to raise capital by issuing shares, it cannot do so unless authorised by the State. Government in this behalf. Section 26 of the Act provides that the Corporation cannot borrow money either for raising working capital or meeting any expenditure of capital nature except with the previous approval of the State Government. It is thus clear that the Corporation does not have freedom to raise funds either by issuing shares or borrowing from other sources. Section 27(2) of the Act entitles the State Government to direct the investment of the funds of the'' Corporation in such securities or other financial or banking institutions as it may direct. Similar provisions for depreciation, reserves and other funds to be established by the Respondent Corporation also exist and these are also controlled by the State Government u/s 29 of this Act.

6. Section 32 of the said Act is an important part of the financial management of the Corporation and requires it to prepare and submit a budget to the State Government for approval and unless there is a current budget ,unit approved by the State Government, no sum can be spent on behalf of the Corporation. Sub-section (3) of this Section controls appropriation of the grant and makes the same subject to the condition and restriction specified by the State Government. The State Government is also entitled to give directions to the Corporation with regard to the preparation of annual statements of accounts, profit and loss accounts and balance sheet. The accounts have to be audited by the Comptroller and Auditor General of India and are required to be forwarded to the State Government to be laid before the legislature of the State.

7. Section 34 of the Act confers over-riding jurisdiction on the State Government to give directions and general instructions to the Corporation which it is obliged to follow. Sub-section (2) of this Section provides that the Corporation shall not, in exercise of its powers and performance of its duties, under the Act, depart from any general instructions issued u/s 34(1) of the Act except with the previous permission of the State Government. There are similar other provisions in the Act which make it clear that the working of the Corporation has to be in terms of the directions of the State Government under its day-to-day supervision.

8. Section 38 of the said Act confers rather drastic powers on the State Government to supersede tjhe Corporation though with the previous approval of the Central Government. After the Corporation is superseded under the aforesaid provision, all powers and duties to be exercised and performed by the Corporation can be performed by such person or persons as may be directed by

the State Government and all property of the Corporation during this supersession, vests in the State Government. These provisions, in our opinion, are sufficient to indicate that the State Government not only establishes the Corporation but also appoints Board of Directors for its proper management and controls its finances. The State Government has also the right not only to remove the Chairman and Directors but also supersede the Corporation. Once, the Corporation is superseded, its property vests in the State Government. The Corporation may, therefore, be an otherwise independent statutory body, but it is not independent of ite(sic) control, of the State Government. It has to work within the parametres prescribed in the Act. These provisions should, therefore, not create any difficulty in holding that the Respondent Corporation is controlled by the State Government.

9. The decision of the Andhra Pradesh High Court in ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION Vs. Income Tax OFFICER, HYDERABAD, AND ANOTHER., is not the decision on the point. That was a case where the income of the Corporation was sought to be exempted from the payment of Income Tax under the Income Tax Act on the ground that it was the income of the State Government which is not taxable under the Income Tax Law. It was in that context that the said High Court held that the Corporation was an independent authority by itself having its own independent legal entity apart from the Government. It was not owned by the Government nor it was carrying on the activities on behalf of the Government. The question of the control of the State Government was really not in issue in the said case and that is the reason why nothing whatsoever has been said about it. Then the said judgment was taken to the Supreme Court and the said Court on consideration of all relevant legal provisions held that the income of the Andhra Road Transport Corporation was not exempted from the Union Taxation. The decision of the Supreme Court in Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another, while affirming the view taken by the Andhra Pradesh High Court makes certain pertinent observations in para-21 which reads as under:

...There is no doubt that the Corporation is a State Controlled Corporation in the same sense that at all material stages and in all material particulars, the activity of the Corporation is controlled by the State....

With this observation, the conclusion reached by this Court that the Respondent corporation is a State controlled corporation is further fortified. This is also the view taken by the Division Bench in Himachal Road Transport Corporation (Drivers and Conductors) Operational Staff Union, Bus Stand, Shimla, through its President Shri Rajendra Pal v. Himachal Road Transport Corporation and Anr. (CWP No. 1571 of 1993) decided on 26th July,1994.

10. In this view of the matter, the subject of this writ petition would be covered by Section 15(3) of the Act and hence this Court would not be the appropriate forum for deciding the same. The writ petition must be held to be not

maintainable.

11. The learned Counsel for the Petitioner relying upon the decision of this Court in Jeet Ram Thakur v. Himachal Pradesh University and Ors. 1988 (2) Sim.L.C 51, submitted that even if the provisions of the Act are applicable to a Corporation like the Respondent, the jurisdiction to deal with the service matters in relation to it would vests in the Central Administrative Tribunal u/s 14(3) of the Act. Since this will require notification u/s 14(2) of the Act and no such notification has been issued by the Central Government the appropriate forum for decision of the dispute remains the High Court. Jeet Ram Thakur''s case (supra) was related to a dispute in the H.P. University. It was conceded in the said case that the University was an autonomous body and was neither controlled nor owned by the State Government (para 4). Interpretation of Section 14(2)(3) of the Act was, therefore, done by this Court on the assumption that an autonomous body not owned or controlled by the State Government would be within the purview of Section 14(2) of the Act. The view of the Court was that in order to attract application of Section 15(2)(3) of the Act, the autonomous body should be owned or controlled by the State Government which the University in question was not. It was, therefore, held that the notification of the State Government u/s 15(3) of the Act would not exclude the jurisdiction of the High Court. This decision is thus the authority for the proposition that even an autonomous body controlled by the State Government is within the ambit and scope of Section 14(2) and (3) of the Act. We are also of the opinion that but for the aforesaid admission of the parties, the Court would be required to examine the provisions of the Act under which the University is constituted and reach its own conclusion about its control. In case the decision of the question be that the University though autonomous is controlled by the State Government, the view taken by the Court in Jeet Ram Thakur''s case (supra) would become inapplicable. Since the question whether the H.P. University is owned or controlled by the State Government was not in issue in that judgment, we are of the view that the same will require consideration in some suitable case. Clearly, therefore, the decision does not support the submission of the learned Counsel and for that reason is rejected.

12. In view of the discussion aforesaid, we uphold the preliminary objection of the Respondent-Corporation, and hold that the writ petition is not maintainable in this High Court. It is accordingly dismissed but with no orders, as to costs.

13. Petition dismissed