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Court : Karnataka

Decided On : Sep-16-1998

Reported in : ILR1999KAR1147; 1998(6)KarLJ310

Judge : G.C. Bharuka, J.

Acts : [Karnataka Urban Development Authorities Act, 1987](#) - Sections 3, 12, 13, 15, 51, 52 and 72; [Constitution of India](#) - Articles 226 and 311; [Companies Act, 1956](#); [Societies Registration Act, 1860](#); [Town and Country Planning Act, 1961](#)

Appeal No. : Writ Petition No. 22497 of 1998

Appellant : B.K. Annappa

Respondent : The Urban Development Authority, Hassan and Others

Advocate for Def. : Smt. V. Vidya, High Court Government Pleader and ;Sri S. Rangaswamy, Adv.

Advocate for Pet/Ap. : Sri Ashok Harnahalli, Adv.

Judgement :

ORDER

1. The petitioner has approached this Court for quashing the communication dated 16-6-1998 (Annexure-A) of the Secretary, Urban Development Department, (respondent 3) to the Commissioner, Hassan Urban Development Authority,

(respondent 1) intimating him to cancel the Official Memorandum dated 27-3-1998 (Annexure-D) according sanction to appoint the petitioner for 'Group D' post with effect from 24-3-1998. His further prayer is to regularise his services in the respondent-Urban Development Authority (in short 'Authority').

2. Statement of objections have been filed on behalf of the State Government and the Authority. Apart from this, as directed by this Court, the Commissioner of the Authority has also brought on record certain facts through his personal affidavit.

3. According to the Authority, for execution of certain developmental projects undertaken by it during the year 1992-93, it had employed persons like the petitioner on contract or daily wages basis as 'Group D' employees for a limited period of 90 days or less. The petitioner's services on daily wages basis were availed by the Authority keeping in view the exigencies of the Project and ultimately on termination of his contract he was relieved of his services.

4. Subsequently, the petitioner along with some similarly situated daily waged employees filed writ petition before this Court in W.P. Nos. 24479 to 24483 of 1994 on 24-8-1994 seeking regularisation of their services. This Court at the first instance granted an interim order restraining the respondent-Authority from terminating the services of the petitioner. But ultimately, the said writ petition came to be disposed of by the order dated 11-7-1997 (Annexure-C) with the following directions.-

'In that view of the matter, without expressing any opinion on the merits or demerits of the petitioners' case, these writ petitions are disposed of reserving liberty to the petitioners to make necessary representation before the respondent-authorities to regularise their services. If and when such representation is made, the respondent-authorities would consider the same in accordance with law'.

5. The State Government, in its Statement of Objections, has stated that though the petitioners had been appointed on 7-2-1992 on contract basis but as per the information received from the Authority, the petitioner did not turn up and as such did not work from 20-2-1996 to 28-2-1998 but still the respondent-Commissioner again took the petitioner to duty with effect from 1-3-1998 in violation of the

Government's instructions contained in Circular dated 6-4-1994, 5-3-1996 and 2/4-4-1997 (Annexures-R2, R3 and R4 to the Statement of Objections). The above being the factual state of affairs, pursuant to the order of this Court in the writ petition referred to above, the respondent-Commissioner, under his direction contained in Note No. 53, dated 24-3-1998 of the Chairman of the respondent-Authority, issued an official memorandum dated 27-3-1998 (Annexure-D) which was to the following effect.-

'On consideration of all the matters raised in the preamble Sri B.K. Annappa, 'D' Group Employee, has been temporarily sanctioned, with certain conditions, in the time scale of pay 840-15-900-20-1100-30-1340 with corresponding allowances.

(1) The above order will be subject to the decision of the Court and the direction of the Government.

(2) This order is applicable to the vacant post in the office of the Authority.

(3) The ex post facto approval of the above order from the Authority will be obtained in the next meeting of the Authority.

(4) The additional expenditure on account of salary will be met by the exchequer of the Authority'.

6. In the statement of objections filed by the Government, it has been stated that a copy of the above official memorandum issued by the respondent-Commissioner was forwarded to the Government, on receipt whereof the Government refused to accord sanction and by its impugned communication 16-6-1998 (Annexure-A) addressed to the Commissioner directing him that the regularisation of the petitioner should immediately be cancelled under communication to the Government otherwise disciplinary proceedings will be initiated against him. It is under these circumstances, the present writ petition has been filed with prayer referred to in para 1 above.

7. The Authority has been constituted under Section 3 of the [Karnataka Urban Development Authorities Act, 1987](#) (in short the 'Act'). Section 12 of the Act provides that the Government shall appoint an officer not below the rank of 'Group

A' officer to be the Commissioner of the Authority.

8. Section 13 of the Act prescribes the powers and duties of the Commissioner. This Section to the extent it is relevant reads thus.-

13. Powers and duties of the Commissioner.--(1) The Commissioner shall be the Chief Executive and Administrative Officer of the Authority.

(2) The Commissioner shall in addition to performing such functions as are conferred on him by or under this Act or under any law for the time being in force-

(a) carry into effect the resolutions of the Authority:

Provided that, if, in the opinion of the Commissioner any resolution of the Authority contravenes any provision of this Act or any other law or of any rule, notification, regulation or bye-law made or issued under this Act or any other law or of any order passed by the Government or is prejudicial or detrimental to the interest of the Authority he shall, within fifteen days of the passing of the resolution refer the matter to the Government for the orders and inform the Authority at its next meeting, of the action taken by him and until the orders of the Government on such reference are received, the Commissioner shall not be bound to give effect to the resolution;

(b)xxxxxxx; (3) The Commissioner shall have all the powers of a major Head of the Department of the State Government under the Karnataka Civil Services Rules for the time being in force as in respect of the officers and servants of Authority.

9. Chapter VI of the Act contains Sections 51 and 52 which deal with 'Officers and Servants of the Authority'. These sections are reproduced hereunder:

Chapter VI

Officers and Servants of the Authority

51. Schedule of officers and servants to be submitted for sanction of Government.--The Authority shall, from time to time prepare and submit for the sanction of the Government a schedule of the staff of officers and servants whom

it shall deem it necessary and proper to maintain for the purposes of this Act. Such schedule shall also set forth the amount and nature of the salaries, fees and allowances which the Authority proposes for each such officer or servant. No alteration in the sanctioned schedule shall be made without the sanction of the Government.

52. Appointments etc., by whom to be made.--(1) Subject to the provisions of the regulations framed under Section 72 and of the schedule for the time being in force sanctioned by the Government under Section 51, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the Authority (not being officers in Government service lent to the Authority) shall be exercised by the Commissioner in the case of officers and servants whose monthly salary does not exceed one thousand and five hundred rupees and in every other case by the Authority:

Provided that in the case of officers in Government service lent to the Authority, the Commissioner may exercise the powers of sanctioning or withholding increments, fining or suspending and shall report the fact to the Head of the Department of Government to which such officer belongs.

(2) The power of dispensing with the service of any officer or servant of the Authority not being an officer in Government service lent to the Authority otherwise than by reason of such officer's or servant's own misconduct, or of permitting any such officer or servant to retire on a pension, gratuity or compassionate allowance, shall subject to the provisions of sub-section (1), be exercised by the Authority only.

10. Section 72 of the Act empowers the Authority to make regulations with the previous approval of the Government for the purpose of this Act. The said Section to the extent it is relevant reads thus.-

72. Power to make regulations.--(1) The Authority may, with the previous approval of the Government make regulations not inconsistent with the provisions of this Act or the rules made thereunder to carry out the purpose of this Act and without prejudice to the generality of this power, such regulations may provide for.-

(a)xxxxxx xxx; (f) regulating the grant of leave, leave allowances, pensions and gratuities and other matters relating to recruitment and conditions of service of the officers and servants of the Authority not being officers in Government service lent to the Authority:

xxx xxx xxx; (3) All regulations made under this section shall be published in the Official Gazette.

Reg. Staffing pattern and power of appointment of Officers and Servants of the Authority

11. According to Section 51 of the Act, the Authority constituted under the Act, can make appointments only to such posts of officers and servants as is sanctioned by the State Government. The salary, fees and allowances attached to the posts also requires to be sanctioned. The Legislature has put a restraint on the Authority from making any alteration in the sanctioned schedule of its staff without the sanction of the Government.

12. Section 52 inter alia, provides that subject to the provisions made in the regulations framed under Section 72 of the Act, the Commissioner will have the power to appoint officers and servants whose monthly salary does not exceed Rs. 1,500. In case of all other officers and servants, against posts sanctioned under Section 51, the power of appointment rests exclusively with the Authority to be constituted in the manner provided under Section 3(3) of the Act being of 12 members.

13. In para 11 of the State's statement of objections, it has further been stated that there is no specific pattern laid down by the Government for the Authorities constituted under the Act and the posts are sanctioned depending on the workload and the activities of the Authorities concerned. But, so far as the respondent-Hassan Authority is concerned, it has been specifically stated that it has not submitted any schedule of officers and servants for sanction of the Government in terms of Section 51 of the Act. If this be the fact, then it is of serious concern and I am constrained to hold unless there is a sanctioned schedule of Staff in terms of Section 51 of the Act, neither the Authority nor the Commissioner is competent to

make any appointment in terms of Section 52 thereof. More surprising is the statement made by the State Government in para 12 of the Statement of Objections disclosing that despite direction by the State Government, out of 22 Authorities, only 16 have submitted their draft cadre and recruitment rules and in respect of 6 Authorities the proposal are yet to be received. Therefore, none of the Authorities constituted under the Act including the respondent-Authority at Hassan have any regulation in terms of Section 72 of the Act relating to recruitment and conditions of service for its officers and servants including those pertaining to grant of leave, leave allowance, pension and gratuity. In these state of affairs one is left to wonder as to how the Authorities are managing to deal with the said aspects regarding employment of its officers and servants.

14. At this stage, it is necessary to remind that the corporate bodies like the Authorities constituted under the provisions of the Act cannot be permitted to manage their affairs by treating themselves as the departments of the Government nor the State Government is permitted to treat them in the said manner.

15. In the case of *Sabhajit Tewary v Union of India and Others*, it has been held that.-

'This Court has held in *Praga Tools Corporation v C.B. Imanual, Heavy Engineering Mazdoor Union v State of Bihar*, and in *S.L. Agarwal v General Manager, Hindustan Steel Limited*, that the Praga Tools Corporation, Heavy Engineering Corporation Limited and Hindustan Steel Limited are all companies incorporated under the Companies Act and the employees of these companies do not enjoy the protection available to Government servants as contemplated in Article 311. The companies were held in those cases to have existence independent of the Government and by the law relating to corporations. These could not be held to be departments of the Government'.

16. In the case of *Ramana Dayaram Shetty v The International Airport Authority of India*, it has been held that.-

'A Corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the [Companies Act, 1956](#) or the

[Societies Registration Act, 1860](#). Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a Corporation incorporated under law is managed by a Board of Directors or committee of management in accordance with the provisions of the statute under which it is incorporated'.

17. In the case of State of Punjab v Raja Ram, it has been held that.-

'Learned Counsel for the appellant then urged that the Corporation is a Government department. We are unable to accept this submission also. A Government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government. The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party'.

18. In the personal affidavit filed by the respondent-Commissioner, it has been revealed that.-

'I submit that there are no regulations framed by this authority and approved by the Government under Section 72 of [Karnataka Urban Development Authorities Act, 1987](#) governing day-to-day activities of the Department. It is true on reading of the provisions under Sections 51 and 52 of the above Act, it becomes quite clear that Commissioner had no power/authority to give appointment to any person in excess of the strength sanctioned by the State Government. But it is given to understand that my predecessors who made these impugned appointments had understood the provisions of the said sections that they deal with the permanent or

regular appointments but not appointments on temporary/daily wages/contract basis. That being so, in order to meet emergencies/pressure of developmental activities undertaken by this authority in compliance with the approved Comprehensive Development Plan under [Town and Country Planning Act, 1961](#) in the public interest, my predecessors were constrained to make certain appointments including the petitioner on temporary/contract basis/daily wages subject to approval of this authority. More so, it is with the bona fide belief that such appointments would not contravene or violate the provisions of the law, the impugned appointments were made by my predecessors'.

19. The above statement of the Commissioner, who is supposed to be a responsible officer quite versed with the provisions of the Act for implementation whereof he is appointed but his understanding of the statutory provisions regarding powers of the Commissioner, appears to be pitiable. The Authority and the office of the Commissioner are the creatures of the statute. Therefore, they can act and operate only within the bounds of the provisions contained under the Act. They can exercise only such powers and authority as are statutorily assigned to them. They cannot claim themselves of having any inherent powers. That being the legal situation, unless there is a sanctioned staffing pattern as per Section 51 of the Act and there are Regulations providing for mode and manner of making appointments to such posts with declared service conditions, no person can be appointed either by the Authority or by the Commissioner as officer or servant of the Authority either on daily wages or contract basis much less on temporary or permanent basis. What is more important is that atleast the Commissioner has no powers to make any appointment on any basis where the monthly salary attached to the post of an officer or servant, exceeds Rs.1,500/-,

20. So far as the plea raised by the Commissioner, for justifying his powers to make appointments on temporary/daily wages/contract basis on the ground that such appointments becomes imminent and necessary for carrying out the development activities, which is a statutory duty of the authority, is concerned, in my opinion, is neither justifiable nor legally permissible. It is for the simple reason that the development schemes can be undertaken by the Authority only subject to the statutory provisions contained in Chapter III of the Act containing Sections 15

to 34.

21. Section 15 empowers the Authority to undertake developmental works and incur expenditure for the same. Sub-section (1) of this section provides that.-

Section 15. Power of Authority to undertake works and incur expenditure for development etc.--(1) The Authority may,

(a) draw up detailed schemes (hereinafter referred to as 'development scheme') for the development of the urban area; and

(b) With the previous approval of the Government undertake from time to time any works for the development of the urban area and incur expenditure therefor and also for the framing and execution of development scheme.'

22. From the above provisions, it is clear that the Authority cannot undertake any development scheme without seeking the previous approval of the Government. From the said provision, it also manifests that the Government's approval is required also for incurring the expenditure for execution of said development scheme which will also include the expenditure against employment of manpower by way of daily wages or contract basis restricting its tenure till completion of the scheme. Therefore, the Commissioner is wrong in assuming that he or the Authority can make temporary or daily wages appointments under the guise of undertaking developmental schemes.

23. Keeping in view the facts as noticed above that the none of the Authorities constituted under the Act, being 22 in number, have statutory service regulations in terms of Section 72 of the Act, I feel that it is high time when the Government should be set down with judicial fiat to expedite the grant of approval to the Regulations which have already been sent to it atleast by 16. Authorities. So far as the remaining 6 Authorities are concerned, the Government should issue immediate directions to them in terms of Section 65 of the Act for forwarding its draft regulations for its approval.

24. Insofar as the reliefs claimed by the petitioner are concerned, the same cannot be granted in view of the law laid down by the Supreme Court in the case of State

of Himachal Pradesh v Suresh Kumar Verma and Another, wherein it has been held that.-

'The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition'.

25. Keeping in mind the facts, the statutory provisions and the law laid down by the Supreme Court as noticed above, it is held that the petitioner is not entitled to any relief as claimed. But at the same time, it is further held and directed that.-

(i) No Urban Development Authority constituted under the Act or its Commissioner or any other office bearer is entitled to give appointments either on daily or contract or temporary or permanent basis to any person as officer or servant of the Authority except under and in accordance with Sections 51 and 52 of the Act;

(ii) The State Government should complete the process of granting approval and its publication in the official gazette of the regulations in terms of Section 72 of the Act in respect of every Urban Development Authority within four months from today.

26. For the aforesaid reasons, the writ petition is dismissed subject to the declarations and directions set out above. The Secretary, Urban Development Department, Government of Karnataka, is directed to immediately circulate the copies of this judgment to all the Urban Development Authorities and their Commissioners for meticulous observance.

27. Let a copy of this order be made available to Mrs. Vidya, learned High Court Government Pleader for doing the needful.

