

Surendra Prasad Vs. U.P. Co-operative Sugar Factory Federation Ltd., Lucknow and Others

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Court : Allahabad

Decided On : Mar-30-1999

Reported in : 1999(2)AWC1689

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Articles 12 and 226; Uttar Pradesh Co-operative Societies (Centralised Service) Regulations, 1975; Uttar Pradesh Co-operative Societies (Centralised Service) Act - Sections 2, 3, 31A and 122; Uttar Pradesh Co-operative Land Development Bank Act, 1964

Appeal No. : C.M.W.P. No. 12618 of 1999

Appellant : Surendra Prasad

Respondent : U.P. Co-operative Sugar Factory Federation Ltd., Lucknow and Others

Advocate for Def. : S. C. and;A.K. Misra, Adv.

Advocate for Pet/Ap. : C.L. Yadav, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner claims employment under the Dying-in-Harness Rules on account of death of his father, who was employed as permanent S.B.A, in the Kashi Sahkari Chini Mills Limited Aurai. Mr. A. K. Misra, learned counsel for the respondent raised a preliminary objection to the extent that Dying-in-Harness Rules does not apply in the Kashi Sahkari Chini Mills Ltd. since it was not a State within the meaning of Article 12 of the Constitution and secondly that this writ petition is not maintainable against Kashi Sahkari Chini Mills Ltd., a Co-operative Society in view of the Full Bench decision in the case of Radha Charon Sharma v. U. P. Co-operative Federation and others. 1982 (8) ALR 342.

2. Mr. C. L. Yadav, learned counsel for the petitioner, on the other hand, contends that the Cooperative Society is affiliated to the federation and that the office of the federation as well as that of the Cooperative Society are Government Office and the State Government can exercise control over the affairs of the Society. Therefore, it is amenable to the writ jurisdiction. He had relied on a decision in support of his contention, which will be dealt with at appropriate stage.

3. I have heard both the learned counsel at length.

4. Mr. Yadav relying on Section 2 (a-4) of the Co-operative Societies Act contended that this Section 2 (a-4) includes U. P. Co-operative Sugar Factories Federation Ltd., as an apex society in serial No. 7. Therefore, writ is maintainable against it because it is a State within the meaning of Article 12. He relies on Section 3 and points out that, the Registrar is appointed by the Government as Registrar of the Co-operative Societies. He also relied on Section 122 under which the State Government is empowered to exercise control over the employees of the Co-operative Societies. On these grounds, he contends that this writ petition is maintainable.

5. In the present case, the petitioner's father was employed in the Co-operative Society, which was affiliated to the federation. Even if the federation is held to be a State within the meaning of Article 12, still then simply by affiliation, the Society cannot become State within the meaning of Article 12. Therefore, the definition in Section 2 (a-4) of the said Act does not help Mr. Yadav in order to bring the concerned Cooperative Society within the ambit of a State within the meaning of

Article 12. Section 3 empowering the State Government to appoint the Registrar of the Co-operative Society has nothing to do with the concerned Cooperative Societies because the Registrar of Co-operative Societies is the Registrar of all the Co-operative Societies and he altogether functions in a different capacity unrelated to the internal management and affairs with regard to its affairs of the concerned Co-operative Societies. The jurisdiction of the Registrar is prescribed and is confined to the extent as is dictated in the various provisions of the Act and the Rules. By virtue thereof, no characteristics of State is conferred on the Society. Section 31A requires appointment of certain Government Officers in the Society or the apex society ipso facto does not make the Society a State within the meaning of Article 12 unless all the ingredients as has been specified in the case of *Raman Daya Ram Shetty v. International Airport Authority of India*, AIR 1979 SC 1628, is satisfied in the present case, the Co-operative Society does not satisfy those ingredients. Therefore, Section 31A cannot help Mr. Yadav in his contention particularly when it has been held in the case of *Radha Charan Sharma* (supra), by a Full Bench of this Court that the Cooperative Society is not a State within the meaning of Article 12 of the Constitution and as such not amenable to writ jurisdiction. Section 122 prescribed authority on the State Government to exercise control over the employees of the Co-operative Societies by virtue whereof, U. P. Cooperative Societies Employees' (Centralised Service) Regulation, 1975, has been promulgated, in this case, it has not been shown that the employees of the said Society are governed by the said 1975 Regulations. On the other hand, the employees of the said Society are governed by the Standing Orders by the notification dated 4th March, 1972. Co-operative Sugar Factories were also included within the ambit of 1975 Regulations but by subsequent notification, Co-operative Sugar Factories have been taken out of the application of the 1975 Regulations. Therefore, the 1975 Regulation as such does not apply. At the same time, Standing Order by which the employee is governed, has no statutory force as has been held in the case of *Rajasthan State Road Transport Corporation and another v. Krishna Kant*, AIR 1995 SC 1715. Therefore, in absence of any statutory force in the Standing Order, the condition of service in relation to the employees, the Co-operative Society does not discharge any statutory obligation in order to make it amenable to writ jurisdiction. The decision in the case of

Subhash Yadav v. U. P. Co-operative Society and others, on which Mr. Yadav had relied on, has not laid down any ratio. On the other hand, it had directed disposal of the representation in accordance with Regulation 104 of the 1975 Regulations, which does not apply in the present case. Therefore, the said decision does not help Mr. Yadav.

6. He had relied on a decision in the case of Subhash Chandra Singh v. Fertilizer Corporation of India Limited, 1999 (1) LBESR 384 (All), in the said case it was a Fertilizer Corporation of India Limited, which was involved. The Fertilizer Corporation of India Limited was a company and not a Cooperative Society as it appears from the said judgment and, therefore, the decision thereof does not help us which is related to Co-operative Societies.

7. He also relies on the decision in the case of U. P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and others. JT 1998 (9) SC 81. The said decision does not help Mr. Yadav on the face of the decision in the case of Radha Charan Sharma (supra), inasmuch as in the said case, the U. P. State Cooperative Land Development Bank Ltd, was held to be a State since the said Bank was constituted by U. P. Co-operative Land Development Bank Act, 1964 and was governed by the U. P. State Co-operative Land Development Bank Act, 1964. Even employees' service rules were framed under the provisions of the said Act and the Rules. On this ground, it was held that it was State within the meaning of Article 12 since while discharging its relation with its employees. it discharges statutory obligation conferred on it by virtue of the said Rules, which was statutory in nature having statutory force, which is completely distinguishable and distinct from the present case where the condition of service is governed by the Standing Orders, which has no statutory force and the Co-operative Societies having been registered merely under the Co-operative Societies Act are not being constituted by any other statute and thus does not become a State within the meaning of Article 12 as has been held in the case of U. P. State Cooperative Land Development Bank Limited (supra). Therefore, this judgment is also distinct and distinguishable from the Co-operative Societies on which the father of the petitioner was an employee.

8. For all these reasons, I am unable to agree with the contention of Mr. Yadav though argued strenuously.

The writ petition, therefore, falls and is accordingly dismissed. No costs.

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