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Court : Delhi

Decided On : Aug-29-1973

Reported in : ILR1974Delhi374

Judge : S.N. Andley, C.J. and; S.N. Shankar, J.

Acts : Constitution of India - Articles 12 and 311

Appeal No. : Civil Writ Appeal No. 207 of 1973

Appellant : B.L. Bhatia

Respondent : Indian Standards Institution and ors.

Advocate for Pet/Ap. : N.M. Ghatate,; S. Balakrishnan,; P.P. Rao and;

Judgement :

S.N. Andicy, C.J.

(1) Broadly speaking, three questions arise in this writ petition. The first question is whether the Indian Standard Institution, hereinafter referred to as 'the Institution', which is a Society registered under the Societies Registration Act, 1860. is an authority and, thereforee, 'State' within the meaning of Article 12 of the Constitution. The second question is whether in retiring the petitioner at the age of 58. the Institution lias violated Article 14 or Article 16 of file Constitution. The third question is whether the petitioner who is an employee of the Institution is the

holder of a civil post under the Union to attract Article 311 of the Constitution.

(2) According to the petitioner, he joined Government service as an Assistant in June, 1937. In September, 1946 the Government of India m its Department of Industries & Supplies passed a resolution (Resolution No. I STD(4)/45) for the establishment of an Indian Standards Institution and prepared a scheme. In pursuance of this resolution, the Institution was set up as an organisation for fixing Indian standards. One of the object of the Institution was 'to prepare and promote the general adoption of standards on national and international basis, relating to structures, commodities, materials, practices, operations, matters and things, and, from time to time, to revise, alter and amend the same.' The affairs of the Institution were to be managed by a General Council which was to be composed of representatives of various Departments of the Government of India, of the then Governors' Provinces, of the then Indian States and various other private bodies. Its finances were to be derived from (a) Government grants, (b) contributions from industry, the Provinces, the States and other interested public bodies, (c) subscription from members, and (d) sale of Indian Standards; Specification, etc. The resolution also incorporated the decision of the Government of India that the Institution should be registered under the societies Registration Act, I860. The Institution was registered as a Society on January 6, 1947, Its objects as set out in its Memorandum were substantially the same as were set out in the aforesaid Government resolution. Among its powers to achieve these objects was the power to employ such staff as may be considered necessary. It had also the power to invest the monies of the Institution which were not immediately required; to be purchase or otherwise acquire real and personal property which may be deemed necessary for any of its purposes and to enter into other contracts and engagements; to accept any gift of property for any one or more of its objects; to sell or otherwise dispose of or deal with any part of its property and to borrow monies. The General Council of the Institution was to be the Governing Body of the Society. On its winding up, its assets were not to be distributed amongst its members but were to be dealt with in such manner as the Government of India may determine.

(3) The Rules and Regulations of the Institution provided for its working. Rule 2 provides for three categories of members of the institution, nemely, Subscribing Members, Committee Members and Fellows. Amongst the Subscribing Members, associate membership Jvas made available to companies, firms, corporate or non-corporate commercial bodies, professional, scientific, technological, educational and other institution and individuals on payment of specified subscripion. Rule 7 provides for the management of the affairs of the nstitution by a General Council whose consitution is provided by ule 8. Amongst the membership of the General Council are ren-esentatives of the various Government, of various semi-Governnent bodies and various private associations and individuals. Rule U provides that the Minister of the Government of India in charge if the Ministry dealing with the subject is to be the President of the nstitution and of the General Council whereas its two Vice-Presients are to be elected from amongst members of the General Counil. Rule 15 provides for the constitution of the Executive Committe' which is to manage the day-to-day affairs of the Institution. This also is to consist of Government nominees and representatives of private organisations which are its members. Rule 17 provides for the appointment of a Director General of the Institution who is to be responsible for the conduct and of the activities of the Institution. The power to appoint, dismiss, remove or replace the Director General and other employees of the Institution and fix and vary their respective salaries and terms of apointment is vested in the General Council or in committees or officers of the Institution under powers conferred on them by the General Council from time to time, subject to the sanction of the Government of India for all employees so appointed on a scale of pay maximum of which exceeds Rs. 1250 per month. Under rule 31, the annual report of the proceedings of the Institution and all work undertaken during the year is to be prepared and published by the Executive Committee and is to be laid upon the tables of the Parliament. By rule 32, the accounts of the Institution are subject to the audit of the Comptroller and Auditor General of India. Rule 34 provides that byelaws relating to accounts and aucdit shall require the approval of the Government of India with the concurrence of the Comptroller and Auditor General of India. Rule 35 provides for alteration or amendment of the Rules and Regulations of the Institution either by a resolution of the General Council or in pursuance of an order of the Government of India under

section 19 of the Indian Standards Institution (Certification Marks) Act, 1952, after circulation to the General Council or in a meeting of the General Council.

(4) The Memorandum and the Rules and Regulations of the Institution show that it is not wholly controlled by the Government and it is only the constitution of its General Council, its ExecutiveCommittee and its accounts which are subject to some measure of control by the Government. Otherwise the Institution is an independent body like any other society registered under the Societies Registration Act, 1860.

(5) The Institution carried on its activities for standardisation and marking of goods amongst other of its objects. Since there was no sanction for enforcement of the standards fixed by the Institution. the Indian Standards Institution (Certification Marks) Act was passed in 1952 and it has been amended from time to time. It provides for the standardisation and marking of goods. Inter alia, it defines the Institution, Indian Standard and Standard Mark. Section 3 of this Act confers certain powers and imposes certain duties on the Insttition. Infer alia, the Institutions can grant, renew, suspend or cancel, in such manner as may be prescribed, a license for the use' of the Standard Mark and it can make such inspection and take such samples of any material or substance as may be necessary to see whether any article of process in relation to which the Standard Mark has been used to conform to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without license. Section 5 contains a prohibition against the improper use of Standard Mark in relation to any article, or process, or in the title of any patent, or in any trade mark or design the Standard Mark or any colourable imitation thereof, except under a license granted under this Act. There is also a prohibition against the use of the Standard Mark in relation to any article or process unless such article or process conforms to the Indian Standard. Section 8 empowers the Institution to appoint Inspectors for the purpose of inspecting whether any article or process in relation to which the Standard Mark has been used conforms to the Indinn Standard, or whether the Standard Mark has been improperly used. Such inspectors arc to be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Section 13 imposes a penalty for contravention of

sections 5 and 6 and section 14 imposes a penalty for contravention of any of the provisions of this Act or of any Rules made there under. Section 15 provides turn cognizance of any offence punishable under this Act only on complaint made by or under the authority of the Government or the Institution or by an officer empowered in this behalf by the Government or the Institution. In short, this Act gives recognition to only one activity of the Institution, namely, in the matter of Indian Sandards fixed by it and their user. The other activities of the Institution are unaffected by this Act and are to be carried on in accordance with the Societies Registration Act, 1860 and the Memorandum and Rules and Regulations of the Institution.

(6) The resume the narration of facts in relation to the petitioner, it appears that he was appointed as Secretary (Administration) under an initial term contract for 5 years and later on this employment was to extend till the age of retirement under the Rules framed by the Institution which prescribed 55 years to be the age of retirement. Thereafter, the petitioner held various posts in the Institution. The Institution amended the Retirement Rules on February 3, 1964. The amended Rules provided for the age of retirement of scientific and technical employees and the age of retirement of other than scientific and technical employees in Grade 1. For the former, the age of retirement was 60 years while for the latter it was 58 years. The term 'a scientific or technical employee' means, according to the Rules, a person possessing a University degree in any branch of engineering, natural science, or technology, or equivalent, and who has been engaged mostly in technical or scientific work during his service. By letter dated August 26, 1966 the petitioner was informed that he could not be termed as scientific or technical person as defined in the Revised Cadre Rules and could not be retained in its service cadre. He was, thereforee, requested to state whether he had any objection to be taken outside the cadre. On September 2. 1966 the petitioner stated that he had no objection provided other present conditions of service remain unchanged. On May 5, 1972 the petitioner was served with a notice by the Director General of the Institution that he shall retire from its service 'with effect from afternoon of 19 March, 1973, when he will have attained the age of 58 years.' The petitioner then made various representations to the authorities concerned on the ground, infer alia, that he was a scientific or technical person and could not be

retired before attaining the age of 60 years and this stand was taken by the petitioner notwithstanding his no objection to the statement in the aforesaid letter dated August 26, 1966 that he could not be termed a scientific or technical person. Another ground taken by the petitioner was that he had been discriminated against as his collegue G. L. Gulati (res pondent No. 4) also held the same educational qualifications but had been allowed to retire at the age of 60 years. The representations were rejected on the ground that even though the petitioner held the requisite degree he had not been, unlike respondent No. 4, engaged mostly in technical or scientific work during his service. It was then that before the date of his actual retirement, the petitioner filed this petition in February, 1973.

(7) Coming now to the first point as to whether the Institution is an authority and, thereforee, State within the meaning of Aricle 12 of the Constitution, it is not necessary to deal with many decisions because a Full Bench of this Court has laid down the tests in this behalf in L.P.A. No. 155 of 1972 in the Industrial Finance Corporation of India v. Delhi Administration and others decided on January 29, 1973(1). The question in this case was whether the Industrial Finance Corporation is State within the meaning of Article 12 of the Constitution. This Corporation had been constituted by the Industrial Finance Corporation Act, 1948 for the purpose of making medium and long term credits more readily available to industrial concerns in India particularly in circumstances where normal banking accommodation is inappropriate or recourse to capital issue methods is impracticable. After a review of the relevant provisions this Act and the case law, it was held that his Corporation was not State.

(8) The contention that a body or authority is an 'authority' and hence State within the meaning of Article 12 of the Constitution merely because it had been constituted or set up by a statute was repelled. But this aspect of the matter need not detain us as the Institution though brought into existence initially by a resolution of the Government of India cannot now be said to be constituted or set up by a statute. It is, as stated earlier, a society registered under the Societies Registration Act, 1860. The Full Bench then observed that a body or authority which had been constituted or set up by or under the Constitution or a statute within the territory to India or under the control of the Government of India would

be an 'authority' and hence 'State' within the meaning of Article 12, if :-

(1)it is an agent or instrument of the Government; or (2) it has been set up for the purpose of administering laws enacted by the Parliament or by the State, or has been vested with the duty to make decisions in order to implement those laws; or (3) it has been vested with powers to carry out governmental or quasi-governmental functions, or powers to give directions which arc to be obeyed and command obedience of the same ; or (4) it is invested with power to make rules or regulations and to administer or enforce them to the detriment of citizens and others.

(9) Mere inclusion of Government representatives amongst the members of the Institution and its registration under the Societies Registration Act, 1860 would not make the Institution an authority within the meanig of Article 12 of the Constitution. The case in Mohinder Singh v. Union of India: : AIR1969 Delhi170 , (IA) in respect of Lawrence School, Sanawar, Simla Hills, which was registered under the Societies Registration Act, 1860 is in point. The Regulations of this school provide that Secretaries to the Government in the Ministries of Education, Finance and defense are to be the ex-officio members of the Society in addition to four other members to be nominated by the Government. It was held by a Division Bench of this Court in this case that the Society controlling and administering the school can be regarded as an authority created under a statute on whom some powers are conferred by law and it could, thereforee, be said to be an authority under Article 12 of the Constitution. This view was not accepted by the Full Bench. While dealing with the Industrial Finance Corporation Act, the Full Bench noticed section 41 which provided for certain penalties for false statements. As to this facet, the Full Beach observed that the section does not make any disobedience of any direction given by the Corporation punishable as an offence, but it only made certain actions of persons dealing with the Corporation punishable as offences and that such actions are punishable not because of any disobedience of any order or direction of the Corporation but by reason of the statute itself. Similarly, in the case of the Institution it is certain actions of persons dealing with the Institution which are punishable as offences and it is not as. if such actions are punishable because of any disobedience of any order or direction of the Institution. On a review of the

various provisions of the Industrial Finance Corporation Act, 1948, the Full Bench observed:-

'THEabove review of the provisions in the Act shows that some of them treat the Corporation as any other financial institution, while some provisions give certain special rights or powers in the matter of recovery of its dues or reliefs in case of default on the part of its debtors or loanees, which provisions do not militate against the Corporation being a trading Corporation or a banking Corporation. No doubt, some of the provisions show that under the Act the Corporation needs the sanction or permission of the Central Government in certain matters and the Central Government has the power to issue directions to the Corporation regarding certain matters. But they, are not, in our opinion, sufficient to make the Corporation an agent or instrument of the Central Government. The provisions do not show that the Coiporation has been set up for administering any laws enacted by the Parliament or by the State or that it has been vested with any duty to make decisions in order to implement such laws. They do not also show that the Corporation has been vested with powers to carry out Governmental or quasi-governmental functions, or powers to give directions which are to be obeyed and command obedience of the same.'

(10) Lii our opinion, the same observations do apply to the Institution. Coming back to the four tests set out earlier, we do not find it possible to accept the contention that any of these tests is satisfied in the case of the Institution. Apart from the fact that it has not been incorporated under a statute, it is an independent body registered under the Societies Registration Act, 1860 with its own Memr andum and Rules and Regulations to carry out its functions, it cannot, thereforee, be styled as an agent or instrument of the Government. Nor can it be said to have been set up for the purpose of administering laws enacted by the Parliament or by the State or vested with the duty to make decision in order to implement those laws. The fact that the Indian Standards institution (Certification Marks) Act, 1952 gives statutory recognition to Indian Standards as fixed by the Institution does not mean that the Institution has been set up for the purpose of administering laws or vested with the duty to make decisions in order to implement those laws. There are no powers vested in the Institution to carry out any governmental or quasi-

governmental functions. Any private body could be set up with functions similar to the ones of the Institution which cannot be said to be governmental or quasi-governmental functions. Nor can the giving of a license for use of the mark of the Institution be said to be a power in the Institution to give directions which are to be obeyed and command obedience of the same. It is not as if the Indian Standards fixed ' by the Institution in respect of various articles are to be complied with by every manufacturer or trader with respect to the goods he manufactures or trades in. It is only if a manufacturer or trader appoaches the Institution to grant him its mark that the use of the mark on such goods is indicative of the fact that they are in accordance with the standard fixed by the Institution for that particular manfacturer or trader in respect of the particul3.r goods on which it is to be used. It may be that it is in the nature of a contract imposing an obligation upon the manufacturer or trader that if he used the Indian Standard on his goods, they must be according to the standards as fixed. Much less can it be said that the Rules and Regulations made by the Institution can be administered or enforced by it to the detriment of the citizens and others. These Rules and Regulations are for the purpose of the Institution itself and for those who deal with it. The fact that there is some sort of control of the Government over the finances of the Institution and some of its activities also cannot be said to confer the status of an authority within the ing of Article 12 of the Constitution upon the Institution when one finds to-day that the Government is entering more and more into the commercial field. In our opinion, thereforee, the Institution is not an authority and, thereforee, State within the meaning of Article 12 of the Constitution.

(11) The contention that the petitioner has been discriminated qua respondent No. 4 must fall to the ground with the above finding because Articles 14 and 16 of the Constitution can be invoked only against the State. Even if we are wrong in our conclusion that the Institution is not State, we do not think the petitioner has been able to establish any violation of Articles 14 or 16 of the Constitution. In the first place he admittedly had no objection to not being treated as a scientific or technical person. Jn any case, it is not enough to hold the requisite degree to be styed as a scientific or technical person. In addition he must have been engaged mostly in technical or scientiic work during his service. Of course, the petitioner contends that he has fulfillled this qualification but the Institution did not agree with

his contention and was of the view on examination of the relevant service record of the petitioner and respondent No. 4 that the petitioner had not been engaged mostly in scientific or technical work during his service, he is a decision which has been arrived at by the Institution on a consideration of the relevant mai.erial before it. We cannot sit in appeal over that decision particularly when there is no detailed data available on this record.

(12) The third and the last question is whether the pctluoner is holding a civil post under the Union within the meaning of Article 311 of the Constitution. Reliance by the petitioner on the case of Pradyat Kumar Bose v. The Hon'hi.; Chief Justice of Calcutta High Court : : [1955]2SCR1331 (1) is wholly misconceived. One of the tests laid'duown by the Sc to determine whether a person holds a Civil Post under the Government was whether his salary is paid out of State funds and is chargeable upon the Consolidated Fund of a State-. Merely because the Government makes a grant to the Institution cannot lead to the conclusion that the salary of the members of its staff arc paid from the Consolidated Fund of India. Apart from Government. grants, grants are made to the Institution by various other organisations and its revenues also coinurise of subscriptions from iis members and other persons. It cannot, thereforee, be said that the salary of the petitioner is a charge upon the Consolidated Fund of India. Another case relied upon by the petitioner is The State of Assam and others v. Kamak Chandra Dutta : : (1968)ILLJ288SC . In this case it was observed that a post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post- This observation also does not help the petitioner because the employment of the petitioner was in connection with the affairs of the Institution as distinguished from the State and there was no relationship of master and servant between him and the Union of India. In Dr. S. L. Agarwal v. The General Manager, Hindustan Steel Ltd. : : (1970)IILLJ499SC (3). the Sc was considering the question whether an employee of the Hindustan Steel Ltd. can claim the protection of Article 311(2) of the Constitution. It was observed that this protection extends only to persons referred to in Article 311(1) with reference to the standing services which have been created in the Union and the States and which are permanently maintained in

strength. It was further held that Hin dustan Steel Ltd., which is a Corporation is not a Department of the Government nor are the servants of it holders of civil posts under the State. It has its independent existence and by law relating to Corporation it is distinct even from its members and, thereforee, its employees are not entitled to the protection of Article 311. Similarly, in the case before us, the Institution cannot be said to be a Department of the Government because it has its independent existence by virtue of its registration under the Societies Registration Act, 1860. Its employees are not, thereforee, entitled to the protection of Article 311. In Director General of Health Services and others v. Bikash Chatterjee and others: : (1970)ILLJ70Cal , it was held that the Council of Scientific and Industrial Research being a society under the Societies Registration Act and being an independent and autonomous body not under any direct control of the Government is neither a public body nor part of the Government and, thereforee, Article 311 has no application to it. It was further observed that even though the Council was to function under the Ministry of Education, Government of India, it was not directly under the control of the Government as is the case with the Institution. The view was further expressed that neither grants in aid of the activities of the Council nor the touch with the Government makes the Council a public body or part of the Government. We respectfully agree.

(13) The petitioner, thereforee, fails on all grounds. The writ petition is accordingly dismissed with costs. Counsels' fee Rs. 300.00 to be shared equally between counsel for respondents I to 3 and counsel for respondent No. 4.

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