

The Management, Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti Vs. Commissioner of Labour (Authority) Under Sec. 51 of the Tamil Nadu Shops and Establishments Act, 1947) Labour Welfare Board Buildings. D.M.S. Compound, Madras-6 and Another

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Court : Chennai

Decided On : Dec-19-1997

Reported in : 1999(1)CTC75

Judge : Jayasimha Babu, J.

Acts : Tamil Nadu Shops and Establishments Act, 1947 -- Sections 2(16), 4(1), 50, 51; Tamil Nadu Agricultural University Act, 1971 -- Sections 3(2), 5, 7, 9(1) (4), 10, 12, 17, 19, 26, 31, 32, 33, 49, 53 and 651; [Constitution of India](#) -- Article 220

Appeal No. : W.P.No. 7193 of 1988 and W.M.P.No. 10893 of 1988

Appellant : The Management, Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, K

Respondent : Commissioner of Labour (Authority) Under Sec. 51 of the Tamil Nadu Shops and Establishments Act, 1

Advocate for Def. : Mr. K. Chandru (senior Counsel)

Advocate for Pet/Ap. : Mr. Jayaraman, Adv.

Judgement :

ORDER

1. The petitioner Tamil Nadu Agricultural University which has agricultural Research Station at Velayuthapuram. Kovilpatti, is aggrieved by the order made by the Commissioner of Labour on 23.12.1987 under Section 51 of the Tamil Nadu Shops and Establishments Act which order was made on an application filed by the Secretary of the Kovilpatti Agricultural University Workers Union.

2. The application was for a decision on the question as to whether the Agricultural Research Station, Tamil Nadu Agricultural University at Velayudhapuram would come under the definition of 'shop' contained in Section 2(16) of the Tamil Nadu Shops and Establishments Act 1947.

3. The Commissioner has held that the Research Station does fall within the definition of shop as defined in the Act, after rejecting the preliminary objection that had been raised by the University to the effect that the Tamil Nadu Shops and Establishments Act 1947 will have no application in view of section 4(1)(c) of the Act, whereunder establishments under the Central and State Government, Reserve Bank of India etc., are exempted from the provisions of the said Act.

4. The question that arises for consideration therefore is as to whether the commissioner is correct in holding that the Agricultural Research Station of the University is not an exempted establishment and that it is a shop.

5. It is not in dispute that the Research Station was formerly run by the State Government, and that it was handed over to University, after the University, namely, the Tamil Nadu Agricultural University Act 1971. The principal work done in the Research Station is research in agriculture that, the crops grown on the land of the Research station, as also the cattle maintained there are for purpose connected with research, is not in dispute. It is also not disputed that the portion of the crop raised which is surplus to the requirements of the Station is sold and that the milk produced is also sold. According to the petitioner, it is sold to the employees while the respondents contend that some of it are also sold to the outsiders. The income realised by the sale of milk is less than 5% of the total amount expended on the Research station. The university has filed into court a statement showing the budget of the Station as also the details of the amounts realised from the sale of milk as also other income.

6. The persons employed in the Research Station are agricultural scientists as also skilled and unskilled labour for performing the works of the land and for the maintenance of the cattle population in the Research Station.

7. It is the case of the University and it is the case urged before this court by the learned counsel that the University is an establishment under the control of the State Government, and therefore the Shops and Establishments Act is inapplicable to the University. The decision of the Commissioner of Labour therefore, it was said was one which is not in accordance with law. The Commissioner of labour recorded his decision in exercise of his power under Section 51 of the Act which provides that if any question arises whether all or any of the provisions of the Act applies to an establishment or to a person employed therein, or whether Section 50 which provides that rights governing the persons in the employment under other laws continued to be available to such persons, applies or not, such question shall be decided by the Commissioner of Labour, whose decision shall be final. The finality attached to this decision is however subject to the jurisdiction and powers of this court under Article 220 of the Constitution and it is open to this court in a proceeding under Article as to examine the correctness or otherwise of the order of the Commissioner of Labour made under Section 651 of the Act, and to set aside the same if it is found that the order is not in accordance with law.

8. For the purpose of ascertaining as to whether the agricultural research station of the University is an establishment under the State Government it is the statutory provisions under which the University has been constituted that it required to be looked into. The Commissioner of Labour has committed a serious error in adverting to those provisions. He has merely on the basis of the fact that the University receives grants from the University Grants Commission, in addition to the grants from the state and Central Governments, and the fact that the affairs of the University are conducted by a Board, has held that the University being an autonomous Body, it is not an establishment under the State Government.

9. The Tamil Nadu Agricultural University Act was enacted with the object of providing for the establishment of the University, for the development of agriculture, and for the furtherance of the advancement of learning and prosecution of research in agriculture and allied sciences, in the State of Tamil Nadu. The Act extends to the whole of the State of Tamil Nadu, and is made applicable to the agricultural colleges and institutions specified in the Schedule to the Act.

10. One of the objects of the University is to undertake the extending of such sciences namely agricultural sciences to the rural people in co-operation with the concerned Government Departments. By Section 3(2) the University is constituted as a body corporate. Section 5 sets out the powers and functions of the University. Section 7 of the Act is material for the purpose of this case. That Section confers a right on the Government to cause an inspection to be made of the University, its buildings and laboratories, libraries, museums, workshops and equipments of any institution, college or hostel maintained by the University; of the teaching and other work conducted by the University or under its auspices; and the conduct of any examination held by the University. Sub-section 2 of Section 7 empowers the Government to cause an inquiry to be made by

such person or persons as they may direct in respect of any matter connected with the administration or finance of the University. By Sub-Section 5 of Section 7 the University is bound to report to the Government the action taken, or proposed to be taken, and within the time fixed by the Government after the Government has caused an inquiry to be conducted into any matter concerning the University. Sub-section 6 of Section 7 empowers the Government, after considering any explanation offered or any representation made by the University, to issue such direction as they may deem fit and 'the University shall comply with such direction. 'Sub-section 9 of Section 7 provides that in the event University fails to comply with the direction given by the Government, the Government shall have the power to appoint any person or body to comply with such direction and make such order as may be necessary. The powers of the Government with regard to the University are of widest amplitude and it can inspect and inquire into any matter concerning the University, and all its institutions, and give directions which the University is bound to carry out. It can penalise the University in case of failure to carry out the instructions by appointing other persons to carry out the work of the University.

11. The officers of the University are mentioned in Section 8 of the Act. The Government of Tamil Nadu is the Chancellor of the University, as provided in Section 9(1) of the Act. The Chancellor is the head of the University. The Chancellor has under section 9(4) of the Act the power to call for and examine the record of any officer or authority of the University in respect of any proceedings and it is open to the Chancellor to annul, modify, reverse or remit any order passed by the University if the Chancellor is satisfied that the proceedings had been irregular, incorrect, illegal, or improper. Section 10 of the Act makes the Minister-in-Charge of the portfolio of Agriculture in the State to be the Pro-Chancellor of the University, he shall act as the Chancellor in the event of Chancellor being unable to discharge his duties. The Vice-Chancellor is to be appointed by the Chancellor from out of the panel of three names recommended by the committee, which committee shall be constituted by the Chancellor. Section 12 of the Act designated the vice chancellor as the principal executive officer of the University.

12. The Authorities of the University are mentioned in Section 17 of the Act. The Board of Management shall consist inter alia, of the Vice Chancellor, the Secretary to Government, Agriculture Department, Secretary to Government, Finance Department, Director of Agriculture, Director of Animal Husbandry, Director of Fisheries, Chief Conservator of Forests, and the Registrar all whom are Ex-Officio Members. All the Non-official members except those elected by the Legislature the Indian Council of Agricultural Research, are to be appointed by the Chancellor. There are such non-official members to be appointed by the Chancellor. Thus, the majority of the members of management are the persons who hold office as ex-officio members or as nominees of the Chancellor. Sub-section 7 of Section 18 empowers the Chancellor to remove any member of the Board other than an ex-officio member from the office.

13. The powers of the Board are set out in Section 19. It has total control over the finances and administration of the University.

14. Section 26 of the Act deals with Agricultural Research Organisation. The University is required to establish an Agricultural Research Organisation for doing basic research on problems primarily relating to agriculture, and for purpose, to establish as many agricultural research stations as may be necessary in co-operation with the Department of Agriculture and the research stations under the control of the Government.

15. Section 31 of the Act requires the Government every year to make non-lapseable lump sum grants to the University. The grants so made shall not be less than the expenditure which had been incurred on the activities of the institution which had been transferred to the University. The Finance Committee provided for in Section 32, is required to have two of the ex-officio members of the Government, the Secretary to Government, Agriculture Department and the Secretary to Government, Finance Department as its members.

16. Section 33 of the Act provides that the annual accounts shall be submitted to the Government and the Government in turn is required to place the same before both Houses of Legislature.

17. Section 49 requires the submission of the annual report to the Government, which report is to be placed before the Legislature.

18. By Section 53 of the Act, the Government is empowered to amend the schedule to the Act or omit any college or institution specified in the schedule.

19. These provisions of the Act indicate the abundance of power conferred on the Government in relation to the affairs of the University. The Governor of the State besides being the Chancellor has power to annul any decision of the University in certain circumstances. He is the authority who appoints all the members of the Board of Management excluding 3. The Board comprises of number of officers of the Government, who hold their position in the Board ex-officio. Two of them are also to be members of the Finance Committee. The Government may at any time, inquire into any matter concerning the University and give direction which the University is bound to obey. The money required for meeting the expenses of the University is to be provided to the substantial extent by the Government.

20. These provisions of the Act show that the University though a statutory body and autonomous within the frame work of the Act is an establishment which is under the State.

21. The Supreme Court in the case of C.V. Raman v. Bank of India, 1988 (2) L.L.J. 423 had occasion to consider Section 4(1)(c) of the Act. The court, after examining the provisions of the State Bank of India Act and the Banking Companies Act held that the banks constituted under those enactments though possessed of corporate personality and autonomous within the frame work of the statute were establishments 'under' the State. The court therein pointed out that word 'under' does not mean that it should be a Department of the Government and if the Government had deep and pervasive control over the establishment eventhough such establishment had a juristic personality of its own, such an establishment will still be one under the Government.

22. The Supreme Court in the case of AIR India Statutory Corporation etc. v. United Labour Union and others, 1997 (1) L.L.J. 1113 exhaustively dealt with the question as to when autonomous juristic entity which is an agent or instrumentality or the State, is to be regarded as one under the Government. The court held:

'It must be remembered that the Constitution adopted mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalised free economy, private and multinational enterpreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large scale industrial productions. Even some of the public Corporations are thrown open to the private national and multi-national investments. It is axiomatic, whether or not industry is controlled by Government or public Corporations by statutory form or administrative clutch or private agents, juristic persons corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz. Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of Public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the fundamental rights enshrined in the Constitution. The word 'control' therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

From the above discussion, the following principles would emerge;

(1) The constitution of the Corporation or instrumentality or agency or corporation aggregate or Corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

(2) If it is a statutory Corporation, it is an instrumentality agency of the state. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indices that it is controlled by or under

the authority of the appropriate Government

(3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2) it is an instrumentality or agency of the State.

(4) The State is a Service Corporation. It acts through instrumentalities, agencies or persons natural or juridical.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations, and abide by the principles laid in the Directive Principles.

(6) The frame work of service regulation made in the appropriate rules or regulations should be consistent with and subject to the same public law principles and limitations.

(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association they become the arm of the Government.

(8) The existence of deep and pervasive state control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.

(9) Functions of an-instrumentality, agency or person are of Public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, memorandum of association or bye-laws or articles of association.

(11) The instrumentality, agency or person render an element of public service and is accountable to health and strength of the workers, men and workmen, adequate means of livelihood, the security for payment of living wages, reasonable condition of work, decent standard of life and opportunity to enjoy Full- latered and social and cultural activities to the workman.

(12) Every action of public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality agency or the person acting in public interest, though in the filed of private law, is not free to prefer be any unconstitutional conditions or limitations in their actions.'

23. If the functions of the instrumentality or agency one of public importance, with a public interest element, and there exists deep and pervasive state control, such an establishment should be regarded as one under the Government. Though the apex Court in that case was concerned with the provisions of the Contract Labour (Regulation and abolition) Act as also of the Industrial Disputes Act, and the discussion was in relation to the juristic entities constituted under the provisions of the Companies Act which are capable of being regarded as agents or instrumentalities of the State it is clear therefore, that the word 'under' used in an enactment in relation to the establishments under the Government is to be construed liberally.

24. The Commissioner of Labour was therefore, in error in holding that the Tamil Nadu Shops and Establishments Act is applicable to the University. The University being one under the State Government is exempt from the provisions of the Act under Section 4(1)(c). Having regard to this conclusion I do not consider it necessary to examine other aspects of the case considered by the commissioner of Labour, which has been done on the erroneous basis that the Act is applicable. The impugned order of the Commissioner cannot be

sustained and the same is set aside. The writ petition is allowed. In view of the disposal of the main writ petition, W.M.P. No.10393 of 1988 is dismissed.

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