Rampal Singh Vs. the Management of Central Institute of Plastic Engineering and Tools (Cipet) and ors.

Rampal Singh Vs. the Management of Central Institute of Plastic Engineering and Tools (Cipet) and ors.

SooperKanoon Citation : sooperkanoon.com/817388

Court : Chennai

Decided On : Oct-31-1990

Reported in : (1991)358MLJ1

Appellant : Rampal Singh

Respondent : The Management of Central Institute of Plastic Engineering and Tools (Cipet) and ors.

Judgement :
ORDER

Raju, J.

1. The above writ appeal has been filed against the order of the learned single Judge dated 7.9.1987 made in Writ Petition No. 5270 of 1987 disposed of along with Writ Petition No. 5276 of 1987, whereunder the writ petition came to be dismissed sustaining the preliminary objections raised by the first respondent with reference to the maintainability of the writ petition on the ground that the first respondent society cannot come within the ambit of 'other authorities' under Article 12 of the Constitution of India, without any further investigation of the grievance made on merits.

2. Having regard to the limited nature of the issue under consideration before us, it is not necessary for us to devolve in detail of the grievance in the Writ Petition No. 5270 of 1987 against which the above writ appeal has been filed, was filed by the appellant before us praying for a writ of certiorarified mandamus to quash the Order No. Dir/87-87/-05, dated 7.5.1987 issued by the first respondent transferring the appellant from Madras to Bhubaneswar, Orissa and to further direct the first respondent to issue an order for the promotion of the appellant as 'Manager' holding his senior to respondents 2 to 4 and ordering the posting of the appellant as the 'Manager' earlier to respondents 2 to 4. The appellant herein complained of violation of Articles 14 and 16 of the Constitution of India with reference to the promotion denied to him and in contrast to the promotion accorded to the respondents 2 to 4 by the first respondent as well as in respect of the transfer order. This writ petition and a similar writ petition filed by another employee of the first respondent society questioning the transfer order passed in relation to him came to be considered and dismissed by a common order of the learned single Judge. But, the appeal before us is directed against the decision in Writ Petition No. 5270 of 1987 alone and we are not concerned with the order passed in respect of Writ Petition No. 5276 of 1987.

3. Mr. T. Fenn Walter, learned Counsel appearing for the appellant before us reiterated as before the learned single Judge that the first respondent society is an instrumentality or an agency of the State and in addition that it is also owned and controlled by the Central Government. It is the further submission of the learned Counsel for the appellant that having regard to peculiar features as disclosed from the Memorandum of Association of the society and the Rules and Regulations governing the same, particularly those in Clause 3(viii)(h)(2) of Memorandum of Association, Regulation No. 3(1), 29, Proviso, 49,57,59 and 66 that the first respondent will fall within the ambit of 'other authorities' under Article 12 of the Constitution of India. Mr. C. Harikrishnan, the learned Counsel appearing for the first respondent referred to Regulation Nos. 8, 57 and other provisions and reiterated the preliminary objection and submitted that having regard to the decisions of the Supreme Court of India reported in Sabhajit Tiwari v. Union of India : [1973]3SCR687 . Tek Raj v. Union of India : (1988)ILLJ341SC and a decision of the Full Bench of this Court reported in R Thamilarasan and Ors. v.

The Director of Handlooms and Textiles, Madras and Ors. (1989) 1 L.L.J. 588 the conclusion of the learned single Judge do not call for any interference. From the order under appeal it could be seen that the learned Single Judge referred to the decisions reported in Ajay Husia v. Khalid Mujib Sehravardi : (1981)ILLJ103SC . Ramanna Dayaram Shetty v. The International Airport Authority of India A.I.R. 1979 S.C. 1626 : (1979) 2 S.C.C. 256 : 1979 S.C.C.(Crl) 644 and Surajit Tewari v. Union of India : (1975)ILLJ374SC , K.R. Baskaran v. State Bank of India Staff Co-operative Society Ltd. 1984 Writ L.R. 96 and came to the conclusion that on the only material exposed before him in the form of Memorandum of Association and Rules and Regulations (which were ordered to be annexed to the Order in the writ petition itself) and its assessment does not expose the position that the society is an instrumentality or an agency of the State and thus rejected the writ petition sustaining the preliminary objection.

4. The 'Central Institute of Plastics Engineering and Tools' referred to in this judgment as 'the first respondent society' is admittedly a society registered under the Societies Registration Act, 1860 and came into existence in the year 1968. Since the Memorandum of Association and Rules and Regulations have been ordered to be an annexure to the order in the writ petition, except referring to certain salient features and references being made to some of them we do not consider it to be necessary for us to extract them in extenso in this judgment. The Memorandum of Association, in Clause 3 sets out the objects for which the first respondent has been established. Clause 3(viii)(h) stipulates the maintenance of a fund to which shall be credited the monies provided by the Central Government, all fees and charges received, all monies received byway of grants, gifts, donations, benefactions, bequests or transfers, all monies received in any other manner of from any other source and further provides that all monies credited to the fund shall be deposited in such Banks or to invest them in such manner as the society may 'with the approval of the Central Government' decide Sub-clause (m) stipulates that the society can borrow or raise money with or without security on the security of mortgage, charge, hypothecation or pledge overall or any property belonging to the society or in any manner whatsoever 'with the prior approval of the Central Government'. The society may create with the 'prior approval of the Central Government' any reserve fund for any of the purposes specified Sub-

clause (n) acquire by means (Gift, purchase, lease, exchange etc.) or sources any lands, buildings easements any property moveable and or immovable and hold them provided that prior approval of the Central Government is obtained for acquisition of immovable property (Sub-clause q) can deal with any property belonging to or vested in the society for advancing the objectives of the society provided that prior approval of the Central Government is obtained for transfer or any immovable property (sub clause r) and make Rules and Regulations and bylaws for the conduct of the affairs of the Society and to add to, amend, vary or rescind them from time to time with the approval of the Central Government' (Sub-clause v). Clause 4 provides that the management of the affairs of the Society be entrusted in accordance with the Rules and Regulations to the governing council which shall be composed of 15 members of whom shall be the Highly placed officials of the various Ministeries of the Central Government, and Heads of Industries stipulated whose expertise knowledge is required for the Society, of which Number (Industry Planning Commission to be the President of the society. No portion of the income and property of the society shall be paid or transferred either directly or indirectly by way of dividends, bonus or otherwise howsoever by way of profits to persons who at any time are or have been members of the society or any person claiming through them. The founding members specified in Clause 4 are about seven and all of them are highly placed officials of the various departments of Ministries concerned of the Central Government.

5. The Rules and Regulations of the society are also important and relevant as they throw light not only on the nature of the society but also on the extent to which the Central Government has control over its administration of the affairs and functioning. Rule 3 which stipulates as to who are all the members of the society refers to three categories or class of members only viz., (i) the President of the Society, who shall be appointed by the Central Government, (ii) members of the governing Council whose composition is regulated under Rule 29(iii) any other person/persons appointed by the Central Government. Rule 11(a) provides that the president may resign from his office by a letter addressed to the Central Government and the same shall take effect from the date it is accepted by the Central Government. As per Rule 12 any vacancy in the membership of the society shall be filed up by the Government of India at the request of the

President, and Rule 29 further provides the details regarding the Constitution of the governing Council numbering about 15 and it could be seen that apart from the President appointed by the Government, there are six nominees who are merely representatives of various departments of the concerned Ministries of the Central Government, five representatives of the Industries nominated by the Central Government and the Director cum Ex-officio member and Secretary who under Rule 49 is appointed by the Central Government and whose remuneration may be as decided by the Central Government. The Proviso to Rule 29 makes it clear that the Central Government may terminate the membership of any member or at one and the same time all members other than Ex officio members and such vacancies shall be filed up in terms of the rules, apparently once again by the Central Government (vide Rule 33). So far as the functioning of the governing Council is concerned Rule 42 stipulates that there is difference of opinion that of the majority shall prevail 'subject however to the veto of the Central Government which shall be communicated to the President within thirty days of such decision,' and that the President also may refer to the Central Government any question which in his opinion is of sufficient importance for the decision of the Central Government and the main decision shall be binding upon the society and its governing Council. The limits of the Budget estimates for the society for each year has to be approved by the Central Government, and for the creation of any administrative, technical, ministerial and other posts under the Institute and appointments, thereto, the maximum salary which exceeds Rs. 2,000 the prior approval of the Central Government is provided for. The person appointed by the Government of India representing the Ministry of Finance shall be the Financial Adviser to the society. The Accounts of the Society shall be maintained in such form to be prescribed by and audited by Auditors appointed by the Central Government and the accounts as certified by the Auditors together with the Audit Report shall be forwarded annually to the Central Government. The society may alter or extend the purpose for which it has been established with the prior approval of the Central Government, and the prior sanction of the Central Government shall be obtained before the Rules and Regulations of the society and any amendments thereto are brought into force, (vide Rule 63). Rule 66 stipulates that the society shall not be dissolved without the consent of the Central Government and on such dissolution the assets shall be dealt with in accordance with the provisions contained in the Madras Registration Act.

6. The main and perhaps the only question for our consideration is whether the first respondent society is 'State' within the meaning of Article 12 of the Constitution of India which provides an inclusive definition by saying;

In this part, unless the context otherwise requires, 'the State' Includes the Government and Parliament of India and the Government and the State legislative of each of the State and all local or other authorities within the territory of India or under the control of the Government of India.

Therefore, the first respondent could be held to be State if and only when it is found to be an other authority of India or under the control of the Government of India.' The question as to when and what type of a body can be held to satisfy the constitutional criteria is not one which is res integra. On the other hand there are multitude of judicial precedents and the real task within which we are faced is only to properly apply them before adjudicating the status of the first respondent society.

7. The decision of constitution Bench of the Apex Court reported in Ajay Husia v. Khalid Mujib Sehravardi : (1981)ILLJ103SC , can be referred to as one of the land mark cases on the subject since the relevant and earlier case law on the subject has been reviewed by the learned Judges and while approving the ratio of the decision in Ramanna Dayaram Shetty v. The International Airport Authority of India : (1979)IILLJ217SC summarised the tests laid down therein, in the following terms:

The tests for determining as to when a co-operation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in International Airport Authority's case, : (1979)IILLJ217SC . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities,' it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tampered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case, : (1979)IILLJ217SC , as follows:

(1) 'One thing is clear that if the entire share capital of the corporation in held by Government it would on a long way towards indicating that the corporation is an instrumentality or agency of Government.'

(2) 'Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) 'It may also be relevant factor.... whether the corporation enjoys monopoly status which is the state conferred or State protected.'

(4) Existence of 'deep and pervasive State Control may afford an indication that the Corporation is a State agency of instrumentality.'

(5) 'If the functions of the Corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.'

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government.'

If on a consideration of these relevant factors it is found that the corporation in an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, : (1979)IILLJ217SC , be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

8. Though the earlier emphasis was very much upon the distinction between a corporation established by or under an Act and a body incorporated under an Act and the endeavour was to see whether the institution concerned is a statutory body or not in the sense whether it has been created by a statue or by a set of a

group of individuals in accordances with the provisions of a statute, the decision in Ajay Husia v. Khalid Mujib Sehravardi : (1981)ILLJ103SC , declared the said test to be wholly immaterial when it said as hereunder:

We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency or the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company of a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an authority' within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression 'authority' in Article 12.

9. The said decision of the Supreme Court of India was considered at some length and detail with meticulous approach by one of us, Dr. A.S. Anand, Acting Chief Justice, as the Hon'ble Judge then was while presiding over a Full Bench of the High Court of Jammu and Kashmir who authored the judgment reported in Pyari Lal Sharma v. J.& K. Indu Ltd. B.G.R. 1984 Kash. L.J. 217. The said decision involved reconsideration of the earlier Full Bench Judgment of the very High Court in Abdul Ahad v. J.& K. and Ors. A.I.R. 1979 J. & K 57 which echoed and was in tune with the earlier view, in the light of the later decisions of the Supreme Court, and particularly that of the one in Ajai Husia's case : (1981)ILLJ103SC . It will be useful to quote the view of the earlier Full Bench also authored by Dr. Anand, J. as the Hon'ble Judge then was to appreciate the significance of the subsequent development of law which made the learned Chief Justice to hold that the earlier view as no longer good law in the context of the decision of the Apex Court in Ajay

Husia's case : (1981)ILLJ103SC . The Full Bench in the earlier Abdul Ahad's case A.I.R 1979 J. & K. 57, held thus:

There is thus, a well marked distinction between a body created by a statute and a body which after having come into existence is governed in accordance with the provisions of the statute. Only such institutions, which owe, their very existence to a statute can be considered as 'statutory' institution or 'authorities' within the meaning of Article 12, because the statute itself is the fountain head of their powers. None of the institutions to which reference has been made, above can be considered to be an institution which owes its very existence to any statute. The institutions referred to above are not created by the provisions of any Act. They are merely governed by the provisions of a statute in accordance with the requirements of law for the time being in force. That position does not militate against their independent ' existence. Their existence is independent of the statute by the provisions of which they are governed. According to the requirements of law, certain institutions like co-operative societies after their formation are required to be registered in accordance with the provisions of the Co-operative Societies Act. It cannot be said, by any stretch of imagination, that the Society so registered under the Act is created by the provisions of the Co-operative Societies Act, it remains a body which, after having came into existence, is governed in accordance with the provisions of the Statute and that cannot clothe it with any statutory status and their employees cannot be considered to be enjoying any statutory status either.

10. The learned Chief Justice in Pyari Lal Sharma 's case 1984 Kash. L.J. 217, after a review of the subsequent position of law and consideration of the Articles of Association etc., of the Jammu and Kashmir Industries Limited declared the position thus:

The determinative factors suggested by the Supreme Court in the International Air Port Case A.I.R. 1979 S.C. 1628 and approved by the Supreme Court in Ajay Husia's case A.I.R. 1981 S.C. 487 : (1981) 1 S.C.C. 722, are fully satisfied in the case of Jammu and Kashmir Industries Private Limited and, on a consideration of all these relevant factors, we hold that the Jammu and Kashmir Industries Private

Limited is an instrumentality or an agency of the Government. In the said company, as is apparent from the Articles of Association the voice is that of the Government and the hands are also of the Government. We accordingly hold that the company being an instrumentality or the agency of the State, is an authority within the meaning of Article 12 of the Constitution of India and is as such amenable to the writ jurisdiction of this Court.

[Emphasis supplied].

I express my complete concurrence with the modulation of the indicative tests indicated as decisive of the character and status of an authority for purposes of Article 12 of the Constitution of India.

11. The next decision that requires to be referred to is the one reported in Tek Raj v. Union of India and Ors. : (1988)ILLJ341SC , whereunder the scope of Article 12 came to be considered in a most analytical and exquisitively exhaustive manner by His Lordship Ranganath Misra, J. as His Lordship then was, while pronouncing upon the question whether the 'Institute of Constitutional and Parliamentary Studies (I.C.P.S.) was an authority within the territory of India or under the control of the Government of India. After an elaborate consideration of the ratio of the earlier decisions on the subject and after analysing the objects and Memorandum of Association of the said Authority, ultimately reached the conclusion as hereunder:

We have several cases of Societies registered under Societies Registration Act which have been treated as 'State' but in each of these cases it would appear on analysis that either governmental business had been undertaken by the society or what was expected to be the public obligation of the 'State' had been undertaken to be performed as part of the Society's function. In a welfare State, as has been pointed out on more than one occasion by this Court, Governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of the case, we are not in a position to hold that I.C.P.S. is either an agency or instrumentality of the State so as to come within the purview of 'other authorities' in Article 12 of the Constitution. We must say that I.C.P.S. is a case of its Type-typical in many ways and the normal tests may perhaps not properly apply to test its character.

[Emphasis supplied]

12. The reasons which influenced the learned judges to come to the conclusions referred to supra any how taken up for consideration since the indicia indicated in the decision will help us to arrive at a proper conclusion in the present case. To determine the question under examination in the words of the learned Judge the approach should be, thus:

It is time to turn to the facts of the present case to find out as to what the conclusion should be when the tests formulated by the several cases of this Court referred to above are applied. There cannot indeed be a strait jacket formula. It is not necessary that all the tests should satisfied for reaching the conclusion either for or against holding an institution to be 'State'. In a given case some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the border line and it would be difficult to take one view or the other outright.

13. The various indicia formulated in the said decision may thus be summarised as follows:

(a) I.C.P.S. was born not as a governmental organisation but was born as a voluntary organization for the purpose of enabling the acquisition of appropriate democratic ideas and spirit by the representatives of people in the legislature of the country.

(b) The several office bearers and members were really not part of the Government;

(c) The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions and though the annual contribution from the Government, there were materials to show that an U.S. based Trust had extended support for quite some time;

(d) The subsequent regulation of foreign funding by way of clearance was the same as in respect of any other institution which received foreign aid;

(e) No material was placed before the Court for the stand that the Institution was not entitled to receive contribution from any indigenous source without Government sanction;

(f) The accounts of the society are separately maintained and subject to audit in the same way as the affairs of the society receiving Government grant are to be audited and thus the mere fact that such restrictions are made is not a determinative aspect;

14. Reference may be made to yet another decision of the Supreme Court reported in Star Enterprises v. C.I.B.C. of Maharashtra Ltd. : [1990]2SCR826 , rendered by his Lordships Ranganath Misra, J. presiding over a Division Bench of three learned Judges, wherein while considering the question as to whether a Government Company named 'City and Industrial Development Corporation of Maharashtra Limited' falls within the definition of 'State' within the meaning of Article 12 of the Constitution of India held thus:

We do not find it difficult to agree with Mr. Dwivedi's submissions that respondent 1 is 'State' within the meaning of Article 12 and in its dealing with the citizens of India it would be required to act within the ambit of Rule of Law and would not be permitted to conduct its activities arbitrarily. It is too late in the day for an institution like respondent 1 to adopt the posture that the activity in question is commercial and as respondent 1 is engaged in trading activity it would be open to it to act as it considers appropriate for the purpose of protecting its business interest. An instrumentality of the State as has been laid down by this Court in a series of authoritative decisions beginning with R.B. Shetty v. International Airport Authority of India and in Ajay Hasia v. Khalid Mujib Sehravardi : (1981)ILLJ103SC , and a number of decisions thereafter has to act within the ambit of Rule of Law and would not be allowed to conduct itself arbitrarily and in its dealings with the public would be liable to judicial review.

Similarly, in the judgment reported in Mahabir Auto Stores v. Indian Oil Corporation : [1990]1SCR818 , the Supreme Court held that the Indian Oil Corporation which is also a commercial undertaking to satisfy the definition of 'State' contained in Article 12 of the Constitution of India.

15. As opined by the Apex Court it is not necessary that all the tests should be satisfied for reaching the conclusion either way. The analysis made by us of the Memorandum of Association as well as the Rules and Regulations of the first respondent society show beyond doubt that the society in question speaks but only through the voice of its Master, the Central Government who operates the society as the real brain behind the organisation. That apart, the control of the Central Government is also deep and pervasive and consequently the first respondent is an instrumentality of the Central Government and as such 'an authority' within the meaning of Article 12 of the Constitution of India. The decision of the Full Bench of this Court reported in R. Thamilarasan etc. P. Kannan, etc. v. D.B.T., Madras and Ors. (1989) 1 L.L.J. 588 referred to supra and the ratio laid down therein will be wholly inappropriate for the situation on hand. Though the Full Bench might have referred to and applied certain tests laid down by Courts while construing the scope of Article 12 of the Constitution of India, that is no sufficient reason for relying upon the ratio of the decision rendered in the context of the status of a 'society' registered and functioning under the Tamil Nadu Co-operative Societies Act, for a determination of the scope of Article 12 of the Constitution of India and the character of the Society now under our consideration. The scheme underlying and the purpose and object of a society registered under the Tamil Nadu Co-operative Societies Act, the constitution and powers of such a society, the rights and interests of the shareholders in the administration of the properties and carrying on its business management, the autonomous role they play subject only to the provisions of the Act, Rules and Bye-laws made, the vesting of real power of administration in a body of representatives of the shareholders, and the nature and the type of control and supervision exercised by the departmental

Authorities of the Co-operative Department over the said bodies functioning under the Co-operative Societies Act makes such society a distinct and separate category altogether. As a matter of fact there could be no reasonable or just scope for comparison of the two categories nor could any analogy be drawn on their status and control dehors the basic, vital and essential differences among them.

16. The learned single Judge, in our view did not take into consideration, while analysing the essential features of the first respondent society certain vital and crucial aspects pertaining to the manner of functioning, the power to make, alter or amend regulations as well as the purpose of the society, the power to appoint officers and servants, the power to vest any decisions of the governing council, the members of society as well as the governing council and the authority which appoints or nominates the members of the society as well as the members of the Governing Council, the financial control, the official status and position of the members of the society as well as the governing council etc., which we have indicated in this judgment supra. All these features which have been noted by us, when tested with the principles laid down in the decision reported in Ajay usia v. Khalid Mujib Sehravardi : (1981)ILLJ103SC , Pyarelal Sharma's case 1984 KL.J. 217 (F.B.) and Tekraj v. Union of India : (1988)ILLJ341SC , only inevitably indicate that the voice and hands of the first respondent society is that of the Central Government and we are unable to persuade ourselves to subscribe to the conclusion of the learned single Judge that the first respondent is not 'State' within the meaning of Article 12 of the Constitution of India. Consequently, for all the reasons stated above the order of the learned single Judge is set aside and the writ appeal stands allowed to that limited extent. Even while coming to such conclusion we would like to reiterate the caution administered by the Apex Court that even if an Institution becomes 'State' within the meaning of Article 12 of the Constitution of India, its employees do not become holders of civil posts so as to become entitled to the cover of Article 311 and that they would, if at all, be only entitled to the benefits of Part III of the Constitution of India.

17. Having regard to the view taken by the learned Judge and the nature of the order passed it becomes necessary for us to relegate the matter for consideration of the case on merits by the writ Court after restoring the writ petition to file. We

direct that the writ petition be posted before the concerned writ court and before a learned single Judge dealing with the disposal of writ petitions for final disposal on merits. But, in the circumstances of the case, there will be no orders as to costs.