

Karnataka High Court

Shama Iyengar vs Mysore Sugar Company Ltd. on 9 June, 1985

Equivalent citations: ILR 1985 KAR 4161

Author: D Gowda

Bench: D Gowda

ORDER Doddakale Gowda, J.

1. Order, dated 18th April 1985 of first Respondent by which petitioner's service is terminated, is questioned in this Writ Petition.

2. Order recites that termination is due to expiry of contractual period and in compliance of terms of agreement, a sum of Rs. 9,788-43 ps. is offered as salary for three months in lieu of notice. Contention of petitioner is that on expiry of contractual period of three years he has continued as a regular employee in the establishment of MYSUGAR and termination without holding an enquiry or providing an opportunity of hearing is arbitrary and illegal.

3. In order to sustain a Writ Petition, it is contended MYSUGAR is an authority or an instrumentality of the State, hence, orders passed by it are amenable to Writ jurisdiction. Thus, it has become necessary to consider whether MYSUGAR is an authority or an instrumentality of the State in the light of principles enunciated by Supreme Court.

4. Undisputedly first Respondent is a Company registered under the Companies Act, 1956, the object of which is to purchase, manufacture, produce, refine, prepare, import, export, sell and generally to deal in sugar, sugarcane, molasses, syrups and alcohol and all products or bye-products thereof. Authorised share capital of the Company as disclosed from memorandum of association is Rs. 2,00,00,000 divided into 17,00,000 Equity Shares of Rs. 10/- each and 3,00,000- 11% Redeemable Cumulative Preference Shares of Rs. 10/- each. Shares as set out in memorandum of association are :-

No.

Name and address and description of Subscribers No.

of shares taken by each subscriber Witness to the Signature.

1. Hajee Ismail Sait V. S. Ganapathi, Head Clerk of Hajee Ismail Sait, 'Essex Lodge", Bangalore.

2. B. Sreenivasa Iyengar Retired Financial Secretary and Landholder, Bangalore.

R. Ramaswamy, Visveswarapuram Bangalore City.

3. Leslie C. Coleman, 'Millside', Bangalore.

R. Ananthasubramanyam, 'Elephant Lodge' Bangalore City.

4. M.L. Nagappa Setty, Managing Partner, M. Lachia Setty & Sons, Chickmagalur.

S.K. Linganniah Visveswarapuram, Bangalore City.

5. S. Shamanna, Basavanagudi.

R. Ananthasubramanyam, 'Elephant Lodge', Bangalore City.

6. N. Rama Rau, Basavanagudi

7. B.K. Garudachar, Bangalore City.

Company may from time to time by ordinary resolution, increase its capital of any amount by the creation of new shares, preferential or otherwise, as may be deemed expedient. Board of Directors shall not be less than three and not more than 12. So long as State holds not less than 51% of the subscribed capital of the Company, Government of Karnataka shall be entitled to appoint not more than 4 Directors on the Board and shall be entitled to remove or appoint any person thereto vide Articles 92 and 93. At every annual general meeting 1/3rd of Members or Directors are liable for retirement by rotation ; Directors, who have been longest in office since last election to retire first and as between persons who became Directors on the same day, those who are to retire shall (unless they otherwise agree among themselves) be determined by lot. Articles 115 and 116 deal with powers of Directors. Under Article 119, Government may nominate one of the Directors of the Company as Chairman of the Company, on such terms and conditions as to his period of office and remuneration as the Government of Karnataka may deem fit. Rest of the provisions which provide for appointment of Managing Director, auditing of accounts are similar to those that are applicable to Government Companies as defined under Section 617 of the Companies Act.

5. Tests to treat an institution as an authority or an instrumentality of the State as enunciated by Supreme Court in *Ajay Hasia - v. - Khalid Mujib*, are :

(1) "One thing is clear that if the entire share capital of the Corporation is held by Government it would go 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 a 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 or 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) "Specially, 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."

Applying these tests various High Courts have held some institutions as 'other authorities' and some are held to be not 'authorities'.

6. In *Ajay Hasia's* case, a society registered under Society's Registration Act is held to be an authority or an instrumentality of State having due regard to its object, composition, resources it derived for maintenance, rules or regulations framed with prior approval of Government, scrutiny of accounts by Government, obligations enjoined to comply with all directions as are issued by Government, restriction imposed regarding disposal of an immoveable property without prior approval of Government, appointment of any other person to be a member of society, removal of a member other than a member representing State or Union and control of its affairs by State. Supreme Court has held that control is so deep and pervasive and it can only be treated as a projection of the State, subject to discharge of Constitutional obligation.

From particulars of share-holders set out above, it is clear, entire shares of this company are not held by State. Maintenance of Company is not met out of financial assistance of State. Business which the Company carries on, is not the monopoly trade of State. In other words, functions of the Company are neither governmental in nature nor closely analogous thereto, to be labeled as a projection of the State. Mere fact, that State holds more than 51% shares and by virtue of exercise of power to nominate not more than one third of total members of Board of Directors and appointment of a Chairman, State wields more power is not that kind of control which would convert any and every legal person into a State for the purpose of Article 12 of Constitution. Likewise, exercise of power regarding appointment of a Managing Director to get accounts audited and to place it before Public Accounts Committee which is normal in case of all Government Companies, where holding of shares by Government exceeds 51%, will not by itself, establish it to be an authority or an instrumentality of State. Six tests referred to above may not individually be decisive but their cumulative effect has to be taken into account. Company issues debenture, borrows money, expenditure is met out of its own resources and not by Government.

Manufacture of sugar is not the monopoly trade of a State though establishment of factories is regulated by grant of licences. Hence, manufacturing process carried on by the Company can neither be considered as governmental function nor analogous thereto. There are no restrictions for acquisition or disposal of its property. No doubt, recruitments beyond a particular scale or grade cannot be made without prior sanction or approval of Government. For all other purpose Board is all powerful. Contribution of major shares has enabled State to nominate one-third of Board of Directors, to appoint a Managing Director, and a man of its choice as a Chairman. State's investment must necessarily be audited and placed before Public Accounts Committee. Neither by application of

individual test nor cumulative effect of all these tests, first respondent can be considered as an authority or an instrumentality of State.

7. Dr. Nagaraj, Learned Counsel for petitioner, relying on decisions in D. P. Seshachalam - v. - Administrative Staff College of India, Hyderabad, 1984 Lab. I.C. 875; M. Kunju Mohammed and others - v. - State of Kerala and others, 1984 Lab. I.C. 1124; Raghunandan Prasad - v. - The Institute for the Physically Handicapped, New Delhi and others, 1984 Lab. I.C. 148 and Bhaskar Chandra Upadhyaya and others - v. - U. P. State Co-Operative Land Development Bank and others, 1984 Lab. I.C. 1713, vehemently urged that as per principles enunciated therein, first respondent must be held to be an instrumentality of the State and no longer beyond the pale of Writ Jurisdiction.

Question in Seshachalam's case was as to whether a registered society under Registration of Public Societies Act, 1960 is an authority or instrumentality of State. Considering its object-to provide for study of principles of organisation and administration and for conducting scientific research in applied sciences in different spheres of national life, including industry, agriculture, education, health and population etc., its membership encompassing thirteen State Governments, six pre-eminent public institutions and education Secretary of the Government of India being an ex-officio member of the society, Court held it to be an authority. Circumstances surrounding establishment of college, its management and functions cumulatively considered, lead to hold that Respondent college is a State within the meaning of Article 12 of the Constitution, though it was established as a Government venture but receiving support of the public. Principles enunciated by Supreme Court in Ajay Hasia's case fully and squarely governed facts of the said case.

In Kunju Mohammed's case Government held entire shares of the Company and applying principles enunciated in Ajay Hasia's case Full Bench of the Kerala High Court has rightly held Kerala State Industrial Development and Employment Corporation Ltd., (SIDEKO) is a State.

In Raghunandan Prasad's Case particulars regarding Constitution and its function are lacking. On a reading of judgment, I notice that it was a society registered under the Societies Act but established under the auspices of the Ministry of Education and Social Welfare.

In Bhaskar Chandra Upadhyaya's Case question arose for consideration by a Division Bench of the Allahabad High Court was as to whether State Co-operative Land Development Bank in which the State had 30% of the share was an authority within the meaning of Article 12 of the Constitution of India. Court after examining its Constitution, functions and resources made available held that society enjoyed a monopoly status of lending, advancing money, aiding agriculturists for the improvement of rural economy which closely resembled, some regulatory functions of the State consequently held it to be a State on the sole ground that it fulfils fourth test.

These cases evolve no new principles except determining with reference to test laid down in Ajay Hasia's case as to whether a particular institution is 'any other authority or an instrumentality' to treat it as a State within the meaning of Article 12 of the Constitution of India. First three cases admit of no controversy as most of the tests are complied with. It is only in last case Allahabad High Court disagreeing with the views of Full Bench of Punjab High Court in Pritam Singh Gill - v. - State

of Punjab and others, , AIR 1982 SC P & H 228, has held that a Land Mortgage Bank is an authority. Divergence being fulfillment of fourth test, control by State, is itself suffice to treat a Land Mortgage Bank as 'other authority' even though State's investment is 30 per cent only as per decision of Allahabad High Court; while fulfillment of a stray test of Control by State itself is not sufficient to treat Land Mortgage Bank as 'other authority' as per Full Bench decision of Punjab High Court. Reasoning of latter case reads thus:

"Only a lame attempt was made on behalf of the petitioner to bring his case within test No. 4 on the ground that there appears to be modicum of governmental control over the bank's activities, However, what deserves highlighting herein is the fact that it is not any finical kind of State control which is adequate to satisfy the stringent conditions spelled out in test No. 4. It can perhaps be said that with the ever extending activities of the Welfare State, there would hardly be a field wherein it may not exercise some modicum of control or interference. However, this is not the kind of control which would convert any and every legal person into a State for the purpose of Article 12 of the Constitution of India."

Investment of public revenue necessarily involves exercise of some Control. Company like first respondent where State is holding 51% and rest of shares are held by individuals cannot be considered as on authority or an instrumentality of State merely on the ground that State wields more control than other share-holders.

As a result, orders passed by first respondent are not amenable to Writ jurisdiction.