

Court No. - 34

Reserved
A.F.R.

Case :- WRIT - A No. - 19131 of 2023

Petitioner :- Prem Chand

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishe Pandey

Counsel for Respondent :- C.S.C.,Rajiv Sharma

Hon'ble J.J. Munir,J.

1. This writ petition is directed against an order dated 16.09.2023 passed by the Secretary, Kshetriya Shri Gandhi Ashram, Meerut and a further order dated 25.09.2023 passed by the Secretary aforesaid, requiring the petitioner to vacate his official quarters.

2. The petitioner was employed as a Supervisor in the Kshetriya Shri Gandhi Ashram, Garh Road, Meerut and transferred to Shri Gandhi Ashram, Khadi Bhandar, Baraut, District Baghpat *vide* order dated 04.09.2023, passed by the Secretary, Kshetriya Shri Gandhi Ashram, Meerut. The petitioner says that he was also the elected Secretary of the Kshetriya Shri Gandhi Ashram Employees Union, Meerut. It is averred that the petitioner moved a complaint dated 08.09.2023 before the Branch Manager of the Union Bank and the Canara Bank, where accounts of the Kshetriya Shri Gandhi Ashram, Meerut are maintained, about execution of a forged sale deed on behalf of the Kshetriya Shri Gandhi Ashram, Meerut in favour of one Ranuka Ashiyana Private Limited, besides misuse of funds by the Kshetriya Shri Gandhi Ashram, Meerut. An inquiry was conducted into the complaint and operation of the Bank Accounts of the Kshetriya Shri Gandhi Ashram, Meerut was stopped. The petitioner was threatened by the Secretary of

the Kshetriya Shri Gandhi Ashram, Meerut to withdraw his complaint, upon pain of facing dire consequences.

3. It is the petitioner's case that bickering arising out of the said complaints that the petitioner had made, led the Secretary of the Kshetriya Shri Gandhi Ashram, Meerut to pass the order impugned dated 16.09.2023, dismissing the petitioner from service, without holding any inquiry. It is said that the order is absolutely bad in the eye of law as it was passed without affording opportunity of hearing. By the other order impugned dated 25.09.2023, the petitioner has been asked to handover possession of the house allotted to him as an employee of the Kshetriya Shri Gandhi Ashram, Meerut. Both these orders have been impugned by the petitioner by means of the present writ petition.

4. When the matter came up for admission before this Court on 22.11.2023, this Court passed the following order:

“Learned Counsel for the petitioner will indicate the organizational set up to show how a writ petition is maintainable against Shri Gandhi Ashram, Meerut, which appears to be a private registered society.

Lay as fresh again on 06.12.2023.”

5. On 13.12.2023, this petition was heard on the question of maintainability, where learned Counsel for respondent Nos.2 and 3 was also heard. Orders were reserved.

6. Heard Mr. Abhishek Pandey, learned Counsel for the petitioner and Mr. Rajiv Sharma, learned Counsel appearing for respondent Nos.2 and 3.

7. The petitioner has relied upon the provisions of the Uttar Pradesh Khadi and Village Industries Board Act, 1960 (for short, 'the Act of 1960') to submit that the respondent, Kshetriya

Shri Gandhi Ashram, Meerut, discharges statutory duties of a public character, and, therefore, the present writ petition is maintainable.

8. Mr. Rajiv Sharma, learned Counsel for respondent Nos.2 and 3, on the other hand, submits that the Kshetriya Shri Gandhi Ashram is a registered society under the Societies Registration Act, 1860. It is neither an instrumentality of the State nor in the exercise of whatever duties it performs, does it discharge any kind public functions. The provisions of the Act of 1960 do not apply. It is also submitted that the *Khadi Ashram Sewa Niyamawali* is not at all statutory in character and are service rules framed by the private registered society for its employees. Even if there is violation of the Sewa Niyamawali or principles of natural justice, a writ petition would not lie against a private registered society, unless the society is discharging functions essentially of a public character or there is any violation of a statute.

9. Learned Counsel for the petitioner, in support of his contention, has placed reliance upon the holding of the Supreme Court in **U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and others, (1999) 1 SCC 741**, besides the Full Bench of our own Court in **Vijay Bihari Srivastava v. U.P. Postal Primary Co-operative Bank Ltd., 2002 (5) AWC 308**.

10. No doubt, in **Chandra Bhan Dubey (supra)**, the Supreme Court does seem to obliterate the divide between public duties and private duties or public functions and private functions for the purpose of maintainability of a writ petition under Article 226 of the Constitution and greatly expanded the scope of the High Court's writ, where it has been held:

"25. In *Air India Statutory Corpn. v. United Labour Union* [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] this Court speaking through a Bench of three Judges said: (SCC pp. 435-36, para 60)

"60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and 'for any other purpose'. The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *LIC v. Escorts Ltd.* [(1986) 1 SCC 264] (SCC at p. 344), this Court in para 102 had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M.C. Mehta v. Union of India* [(1987) 1 SCC 395 : 1987 SCC (L&S) 37]."

11. However, what cannot be lost sight of is the fact that the observations of their Lordships, for the maintainability of a writ petition against any person or authority, irrespective of whether the action arose under the public law or private law, were made in the context of the Uttar Pradesh Cooperative Land Development Bank, an entity not only governed by the

provisions of the Uttar Pradesh Co-operative. Societies Act, 1965 (for short, 'the Act of 1965'), that deeply regulates the functions of a Cooperative Society, but further that Cooperative Societies, like the Bank under reference, was subject to statutory control by the State Government. The State Government constituted the Uttar Pradesh Cooperative Institutional Service Board. The Service Board, with the approval of the Governor, framed regulations, called U.P. Co-operative Societies Employees Service Regulations, 1975. The Board, last mentioned, and the Regulations of 1975 would closely protect many of the rights of employees of Cooperative Societies like the appellant Bank in **Chandra Bhan Dubey**. It was in this context that it was remarked in paragraph No.25 of the report that the State Government had control on the appellant, that was all pervasive and their employees had statutory protection.

12. The other wider remarks of their Lordships are to be understood in the context of the establishment, structure, statutory regulation and government control, in case of a Cooperative Society, functioning under the Act of 1965. The case of a society, like Shri Gandhi Ashram, is very different. It is no more than a registered society, registered under the Societies Registration Act, 1860. The Kshetriya Shri Gandhi Ashram, Meerut is a regional body. Its parent body is the Shri Gandhi Ashram, Lucknow. There is no statute, regulating the functioning of the society, or providing the State and its Officers, control over their affairs. In a later decision, the Supreme Court, considering the ratio in **Chandra Bhan Dubey** regarding the maintainability of a writ petition against a Cooperative Society, held in **S.S. Rana v. Registrar, Coop. Societies and another, (2006) 11 SCC 634:**

"16. Our attention has also been drawn to *U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey* [(1999) 1 SCC 741 : 1999 SCC (L&S) 389] wherein the writ petition was held to be maintainable principally on the ground that it had been created under an Act. Reliance has also been placed upon *Ram Sahan Rai v. Sachiv Samanaya Prabandhak* [(2001) 3 SCC 323 : 2001 SCC (L&S) 584] wherein again the appellant thus was recruited in a society constituted under the U.P. Cooperative Land Development Bank Act, 1964 and this Court, having examined different provisions of rules, bye-laws and regulations, was of the firm opinion that the State Government exercised all-pervasive control over the Bank and moreover its employees were governed by statutory rules, prescribing an entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges culminating in inflicting of appropriate punishment, after complying with the requirements of giving a show-cause and an opportunity of hearing to the delinquent.

18. We may notice in some decisions, some High Courts have held wherein that a writ petition would be maintainable against a society if it is demonstrated that any mandatory provision of the Act or the Rules framed thereunder, have been violated by it. (See *Bholanath Roy v. State of W.B.* [(1996) 1 Cal LJ 502]).

19. The Society has not been created under any statute. It has not been shown before that in terminating the services of the appellant, the respondent has violated any mandatory provisions of the Act or the Rules framed thereunder. In fact, in the writ petition no such case was made out.

13. The Full Bench of this Court in *Vijay Bihari Srivastava* (*supra*) has observed:

"35. In the light of foregoing discussions, we answer question as to whether a writ petition in the nature of certiorari will lie against a Co-operative Society or it comes within the meaning of the words other Authority occurring in Article 226 of the Constitution, as follows: the writ petition in the nature of certiorari will lie against a Co-operative Society only when such Society has ingredient of an authority within the meaning of Article 226 of the Constitution and not otherwise. The following guidelines are culled out from the various decisions of the Supreme Court, referred to above:

1. The constitution of the Managing Body/ committee constitutes the functionaries of the governed, 2. There is an existence of deep and pervasive control of the management and policies of the co-operative Society by the Government, 3. The function of the Co-operative Society is of public importance and closely related to the governmental functions, 4. The financial control is by the Government or it provides financial and controlling its affairs, 5. The violation of statutory rules applicable to the Society in regard to the service matters of its employees, and 6. Statutory violations or non-compliance of it by an authority under the Act.

36. It is made clear that there is no straight jacket formula to point out as to when a Co-operative society is an authority but it has to be considered in the light of various factors enumerated in the decisions of the Supreme Court."

14. The question, whether by its constitution, the Shri Gandhi Ashram is a society or body that is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution in the matter of service causes of its employees, was examined by this Court in **Suresh Ram v. State of U.P., 2005 SCC OnLine All 727**, where it was held:

"4. A preliminary objection has been raised by Sri Rajeev Sharma, learned Counsel for the respondents that the writ petition is not maintainable as Shri Gandhi Ashram Khadi Bhandar has been held not to be a State by a Division Bench of this Court in Writ Petition No. 3842 of 1990 (*Ram Jokhan Singh v. Union of India*) connected with Writ Petition No. 8639 of 1990 (*Dhirendra Brahmchari v. Union of India*). He has also placed reliance upon the judgments passed by His Lordship Hon'ble Mr. Justice Sunil Ambwani in Writ Petition Nos. 51147 of 2003 (*Chhabi Lal v. Union of India*) and 40101 of 2002 (*Santosh Kumar Rastogi v. President, Khadi Gram Udyog Sangh, Allahabad*) as well as on the judgment passed by his Lordship Hon'ble Mr. Justice S.K. Singh in Writ Petition No. 11302 of 2003 (*Ram Nagina Singh v. U.P. Khadi Evam Gram Udyog Board, Lucknow*).

5. The preliminary objection in those cases was accepted after hearing the learned Counsel for

the parties at length and it was held that Shri Gandhi Ashram Khadi Bhandar is not a State within the meaning of Article 12 of the Constitution.

6. The respondents have raised a preliminary objection that in view of the decision of the Hon'ble Supreme Court rendered in *The General Manager Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad*, [(2003) 8 SCC 639.] there is no foundation laid in the writ petition as to how the respondent-Kisan Sewa Sahkari Samiti Ltd., Kharkhaunda No. 2, district Meerut is an instrumentality of the State as has been held in *Ajay Hasia v. Khalid Mujib Sehravardi*, [(1981) 1 SCC 722.] and *Ramana Dayaram Shetty v. International Airport Authority of India*. [(1979) 3 SCC 489.] In the aforesaid case of *International Airport Authority of India* (supra), the following principles have been laid down which may be a pointer as to whether a co-operative society is a State or other authority within the meaning of Article 12 of the Constitution or not.

(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. (S.C.C. p. 507, para 14)

(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. (S.C.C. p. 508, para 15)

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected. (S.C.C. p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (S.C.C. p. 508, para 15)

(5) If the functions of the corporation are 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. (S.C.C. p. 509, para 16)

(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. (S.C.C. p. 510, para 18)

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

8. In this case no foundation has been laid down as to how the respondent is State or other authority within the meaning of Article 12 of the Constitution.

9. The writ petition is not maintainable in view of the decision rendered in *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur v. Satrughan Nishad*, [(2003) 8 SCC 639.] as the respondent-Mills is not instrumentality or agency of the State Government within the meaning of Article 12 of the Constitution.

10. In the facts and circumstances of the case, I am of the opinion that the petitioner is not State within the meaning of Article 12 of the Constitution."

15. To like effect is the unreported decision in **Ram Bachan Singh v. Chief Executive Officer Khadi Gramodyog & Others, Writ-A No.52811 of 2012**, decided on 09.10.2012, where it has been observed:

"Petitioner is an employee of Sri Gandhi Ashram Ratanpura, Mau Camp Office Jangipur, Ghazipur. When the matter has been taken up, preliminary objection has been raised by Sri Rajeev Sharma, Advocate that present writ petition is not at all maintainable. This Court in Civil Misc. Writ Petition No. 40101 of 2002 Santosh Kumar Rastogi Versus President Khadi Gramodyog Sangh Allahabad and others has clearly taken the view that it is a society registered under Societies Registration Act, 1860, and he is not an employee of the U.P. Khadi Gramodyog Board, and the provisions of U.P. Khadi and Village Industries Board Act 1960 are not applicable to the petitioner. The Khadi Ashram Seva Niyamawali is not a set of statutory rules which can be enforced by a writ petition. In view of this once services of petitioner are governed by Khadi Ashram Seva Niyamawali, writ

petition is not maintainable and petitioner has been transferred by his employer, then this Court refuses to interfere with the same.”

16. Upon a perusal of the writ petition, this Court does not find that there is any such violation of a public duty or public obligation, cast upon the Kshetriya Shri Gandhi Ashram, Meerut, as may make it amenable to the writ jurisdiction of this Court under Article 226 of the Constitution.

17. In the result, this petition fails and is **dismissed**.

18. There shall be no order as to costs.

Order Date :- 24.5.2024

Anoop

(J.J. Munir, J.)