

## Managing Director, Trifed Vs Ashok Kr. Choudhury

**Court:** Gauhati High Court

**Date of Decision:** April 30, 1998

**Acts Referred:** Constitution of India, 1950 " Article 12, 311, 311(2)

**Citation:** (1998) 2 GLT 85

**Hon'ble Judges:** N.S. Singh, J; M. Sharma, J

**Bench:** Division Bench

**Advocate:** H.N. Sarma, S. Rahman and S. Hazarika, for the Appellant; A.R. Barthakur, A.K. Thakur, A.K. Bora and N. Goswami, for the Respondent

**Final Decision:** Dismissed

### Judgement

N.S. Singh, J.

The judgment and order dated 1st August, 1995 passed by the learned Single Judge of this Court in Civil Rule No.

2490/94, thus setting aside the order of dismissal of the writ Petitioner. Shri Ashok Kumar Choudhury from his services as Deputy General

Manager (functioning as Zonal Manager, Tribal Cooperative Marketing Development Federation of India Ltd., Guwahati) under the impugned

order dated 25th January, 1994 issued by the Managing Director, the tribal Co-operative Marketing Development Federation of India Ltd., Savitri

Sadan-II, 15, Preet Vihar Community Centre, Vikas Marg, Delhi-110092 (for short, TRIFED), as in Annexure-B to the writ petition, is the

subject matter under challenge in this Writ Appeal.

2. For better appreciation of the matter under reference, the facts of the case in a short campus are as hereunder:

3. The writ Petitioner, the sole Respondent herein, filed a writ petition under Civil Rule No. 2490 of 1994 before this Court for quashing the

impugned dismissal order dated 25th January, 1994, as in Annexure-B to the writ petition, by contending, inter alia, that he applied for the post of

Deputy General Manager in the TRIFED in pursuance of a related advertisement; he was duly selected after he faced the interview and thereafter

he was appointed as Deputy General Manager under a related order/letter dated 22nd September, issued by the General Manager (Personnel and

Administration), TRIFED and, accordingly, he joined duties in TRIFED, Zonal Office at Guwahati on 7th October, 1992. As per the terms and

conditions of the appointment letter, the writ Petitioner will be on probation for a period of one year from the date of his joining TRIFED, which

may be further extended at the discretion of the appointing authority. The probation period of the Petitioner was extended by a further period of six

months with effect from 22nd September, 1993, by virtue of an Office Order dated 3rd December, 1993, as in Annexure-A1 to the writ petition.

Before expiry of the said extended period of probation, the writ Petitioner, the sole Respondent herein, was dismissed from service under the

impugned order dated 25th January, 1994, as in Annexure-B to the writ petition. The main ground for dismissal of the writ Petitioner from service

is that he has defrauded TRIFED by producing a forged degree certificates and a forged mark sheet and there is all probability that his caste

certificate might also be a forged document since the name in his caste certificate and the name in his various school certificates is not tallied with.

But, according to the writ Petitioner, at the time of his appointment he submitted certificates showing that he passed AMIE Examinations from the

Institution of Engineers (India) and also passed the MBA from the University of Illinois at Chicago and he too belonged to Scheduled Caste

community and all these certificates and information supplied by him are correct and genuine. On the other hand, the Respondents in the writ

petition contended, inter alia, that TRIFED is not a "State" or an instrumentality of the State within the meaning" of Article 12 of the Constitution of

India and as such the writ petition of the sole Respondent herein is not maintainable; on enquiry made by the Secretary of the TRIFED, the

Academic Adviser, Graduate Professional Programme of the University of Illinois, vide letter dated 20th October, 1993, stated that the writ

Petitioner did not receive MBA degree from the said university at Chicago or from Urbana and the Petitioner never attended either of the

institutions and, rather, the Institution of Engineers (India), vide its letter dated 26th August, 1993, as in Annexure-C to the affidavit-in-opposition,

informed the Assistant General Manager, TRIFED, Calcutta that the writ Petitioner appeared in the Section A examination in November, 1966

with Roll No. 5382, but he could not secure final pass in the said examination and his mark sheet, therefore, appears to have been forged, and

since he did not pass in Section A examination, the question of his appearing in Section B examination does not arise, and that Roll No. 4460 for

Section B November, 1967 examination, as quoted by the writ Petitioner, does not exist in the records at all and it appears that he has concocted

the marksheet. It is also the case of the Appellant that the writ Petitioner was appointed on probation and he may be terminated from his services

and accordingly he was dismissed from his services under the impugned dismissal order, which was not passed by way of punishment and, as such,

the provisions of Article 311(2) of the Constitution of India cannot be attracted.

4. After hearing the parties, the learned Single Judge of this Court held that TRIFED is an instrumentality of the State, as envisaged under Article

12 of the Constitution of India and the impugned dismissal order casts a stigma upon the Petitioner and, as such, the provisions of Article 311(2) of

the Constitution are definitely attracted in the instant case.

5. Being aggrieved by the impugned judgment and order dated 1st August, 1995, the present Appellant filed this Writ Appeal.

6. Shri H.N. Sarma, learned Counsel appearing for the Appellant, at the very outset, contended that the writ Petitioner was dismissed from his

services during his probation period, which is permissible under the law. According to the learned Counsel, Mr. Sharma, the probation period of

one year from the date of joining of services of the Petitioner in TRIFED under the related appointment order dated 22nd September, 1992, was

further extended for another period of six months with effect from 22nd September, 1993 and he was dismissed from his services under the

impugned order dated 25th January, 1994, which is during the extended period of his probation. Supporting this contention, Shri Sharma had

relied upon a decision of the Apex Court rendered in Union of India Vs. Shri Rati Pal Saroj and Another, and submitted that it is well settled that a

probationer's services can be terminated during the period of probation if he is found unsuitable and no enquiry is necessary for such termination.

The learned Counsel for the Appellant also argued that TRIFED does not come within the definition of "State", as enshrined under Article 12 of

the Constitution of India. It is the writ Petitioner, the sole Respondent herein, who furnished forged degree certificates on the basis of which the

writ Petitioner got the post in question and, as such, there is no wrong on the part of the Appellant to dismiss him from services, for which no

reasonable opportunity of being heard to him, is called for, Shri Sharma contended. According to Shri Sharma, the learned Single Judge ought to

have held that the TRIFED is not a "State", and, rather, the learned Single Judge committed an error of law in holding that the impugned dismissal

order is a punishment, even when the writ Petitioner secured a job by submitting false/forged certificates and mark sheets. It is also argued by Shri

Sharma that the present case involves disputed questions of fact, for which the writ Court should not enter into it.

7. Shri A.R. Barthakur, learned senior counsel appearing for the writ Petitioner/sole Respondent herein, submitted that the TRIFED is an

instrumentality of the State within the meaning of Article 12 of the Constitution of India and the provisions of Article 311(2) of the Constitution of

India would be attracted in the instant case, as the impugned order of dismissal was passed against the writ Petitioner by way of punishment, rather

the impugned dismissal order casts a stigma upon the writ Petitioner. No reasonable opportunity of being heard was afforded by the competent

authority about the alleged production of forged degree certificates or forged mark sheets by the writ Petitioner at the time of his appointment in the

said post of Deputy General Manager in TRIFED, before the impugned dismissal order of 25th January, 1994 was issued, Shri Barthakur

contended. According to the learned senior counsel, the impugned dismissal order is violative of the principles of natural justice and, as such, on

this ground alone the learned Single Judge rightly set aside the impugned dismissal order.

8. Now, we are to examine as to whether the learned Single Judge had acted illegally or with material irregularity while passing the impugned

judgment and order and, also as to whether the writ Petitioner, the sole Respondent herein, has an enforceable legal right in the instant case, or not.

9. On bare perusal of the available materials on record it has been revealed that the Managing Director of TRIFED is appointed with the prior

approval of the Government of India by the Board of Directors and he is the Chief Executive Officer of the TRIFED, conducting the business of

the Federation and controlling the affairs and administration of the TRIFED, subject to the decision of the Board or General Body. Likewise, seven

more Directors of the TRIFED are also appointed by the Government of India and other Directors are to be elected from amongst State-level

Tribal Co-operative Federations/Corporations, which are run by the State Governments for the welfare of tribal population of the respective

States. On further perusal of the records, it is also established that the entire investment in TRIFED was from the Ministry of Welfare, Government

of India and only one percent finance was from other sources and, rather, the Government of India invested about Rs. 18 crores against the total

investment of Rs. 18.21 crores in the year 1990-91 and again in the year 1992-93 also the Government of India invested about Rs. 32 crores

against the total investment of Rs. 32.23 crores; and TRIFED has been set up for implementing the policies and programmes of the Ministry of

Welfare, Government of India. From these existing established facts it can be rightly concluded that the Government has all supervisory power and

control over the affairs of the TRIFED. It is well settled that for the purpose of establishing a local authority or agency as an instrumentality of the

State, there must be pervasive control of the Government over the functioning and finances of the institution. So, in the instant case, it is there, as

we discussed above. In our considered view, the learned Single Judge rightly opined that TRIFED is an instrumentality of the State within the

meaning of Article 12 of the Constitution and, therefore, it is amenable to the writ jurisdiction.

10. Now, we are to examine as to whether the impugned dismissal order dismissing the writ Petitioner from his services is founded on misconduct,

or negligence, or inefficiency, or other disqualification. If such dismissal order is founded in any one of these grounds, just mentioned above, then it

is a punishment and violative of Article 311(2) of the Constitution of India. On mere perusal of the dismissal order of 25th January, 1994, it speaks

that on verification the Respondents (in the writ petition) found that the writ Petitioner did not receive MBA degree from the University of Illinois at

Chicago and never attended the said institution and, rather, he did not appear in the AMIE Section B examination and he has concocted the

certificates and mark sheets. Certain remarks have been made in the dismissal order that the Tehsildar (Settlement), Jagadri, who has issued the

caste certificate in favour of the writ Petitioner, was not competent to issue such certificate, as per the statement/letter of Deputy Commissioner

concerned. Basing on these allegations the competent authority was of the view that the writ Petitioner defrauded and cheated the TRIFED for

obtaining gainful employment fully knowing that the documents he has produced are forged and, accordingly, the writ Petitioner was dismissed

from his services. In our considered view, the impugned dismissal order casts a stigma upon the writ Petitioner and it amounts to punishment in the

existing facts and circumstances of the case. We agree with the learned Counsel, Shri Sharma, appearing for the Appellant, that probationer's

services can be terminated during the period of probation if he is found unsuitable and no enquiry is called for in case of such termination. But, in

the instant case, it is not a case that the writ Petitioner was found unsuitable during the period of his probation. In Gopi Kishore Prasad v. Union of

India reported in AIR 1960 SC 689, it was held that if the Government proceeded against the probationer in the direct way without casting any

aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment; but, in the instant case, the

competent authority of TRIFED proceeded against the writ Petitioner, thus casting an aspersion on his honesty and competence, and, as such, in

our considered view, the impugned dismissal order amounts to removal of the writ Petitioner from his services by way of punishment. We are,

however, not expressing our view as to whether the certificates and marksheets produced and submitted by the writ Petitioner at the time of his

appointment in the post of Deputy General Manager, TRIFED are forged documents or not.

11. In order to appreciate the correct propositions of law in this matter, we may rely upon a land-mark judgment of the Apex Court in *Samsher*

*Singh Vs. State of Punjab and Another*, wherein the Apex Court held that if the termination of services is sought to be founded on misconduct,

negligence, inefficiency and other disqualification, then it is a punishment and violates Article 311 of the Constitution. Apart from this, we may refer

to the words of Prof H.W.R. Wade, in his book, ""Administrative Law"" (Fifth Ed., 1982) on this aspect. In the said book Prof. Wade stated:

Where an administrative act or decision is vitiated by a bench of natural justice, the Court may award any appropriate remedies. The remedy will

frequently be certiorari to quash, on the footing that the vitiated decision is void and a nullity. For this same reason a declaratory judgment is

equally effective, as in *Ridge v. Baldwin*. Occasionally, where injury is done, there will be grounds for an action for damages.

Traditionally natural justice has been confined to the two rules now to be discussed: that a man may not be judge in his own cause; and that a

man's defence must always be fairly heard. It has not, as yet, included the requirement that reasons should be given for decisions. On the other

hand there is an isolated judicial statement that natural justice requires decisions to be based on some evidence of probative value. The Courts are

now so conscious of natural justice that they may well extend its scope in both these directions.

(p. 419-420).

12. In the same book Prof. Wade highlighted that violation of natural justice makes the decision void, as in other cases of ultra virus and that the

rules of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of the power. The Court

presume that these requirements are implied in the absence of indications to the contrary in the Act conferring the power or in the circumstances in

which the Act is to be applied, (p. 415).

13. Applying all these established principles of law as discussed above, as well as considering the existing facts and circumstances of the case, we

are of the view that the learned Single Judge exhaustively dealt with the matter and gave a reasoned judgment in the instant case.

14. For the reasons and observations made above, we are of the view that the writ Appellant could not make out a case to justify interference of

the impugned judgment and order passed by the learned Single Judge in Civil Rule No. 2490 of 1994.

15. In the result, this writ appeal is devoid of merit and accordingly it stands dismissed, thus affirming the impugned judgment and order of the

learned Single Judge.

16. There will be no order as to costs.