(2003) 08 CAL CK 0037

Calcutta High Court

Case No: M.A.T. No. 1355 of 2001

Bikash Talukdar		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Aug. 1, 2003

Acts Referred:

- Constitution of India, 1950 - Article 12

Citation: (2004) 2 CALLT 4

Hon'ble Judges: Ashok Kumar Mathur, C.J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: B.R. Neogi and Tapan Sarkar, for the Appellant;L.K. Gupta and Kallol Bose, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Mathur, C.J.

This is an appeal directed against the order dated 2nd April, 2001 passed by the learned single Judge whereby the learned single Judge has upheld the objection of the respondents that the present writ petition is not maintainable as the West Bengal State Handloom Weavers'' Co-operative Society Ltd. is not a ''State'' within the meaning of Article 12 of the Constitution. The learned single Judge dismissed the writ petition on the ground that the Cooperative Society is not a ''State'' within the meaning of Article 12 of the Constitution so as to maintain the writ petition. Hence, aggrieved against the aforesaid order the present appeal.

2. For convenient disposal of this appeal, brief facts may be narrated. The petitioner was an employee of the West Bengal State Handloom Weavers'' Co-operative Society Ltd. The petitioner challenged the order dated 1.11.1986 whereby he was dismissed from the service. The aforesaid order was passed after holding the regular inquiry. The challenge of the petitioner was that the order of dismissal was arbitrary and

illegal and without holding any inquiry and without giving any reasonable opportunity of being heard to the petitioner. An objection was raised before the learned single Judge by the respondents that since the petitioner was an employee of the Cooperative Society and the society is not a "State" within the meaning of Article 12 of the Constitution therefore the present writ petition is not maintainable. The learned single Judge relying on a decision of this Court (Altamas Kabir, J.) in C.O. No. 11357 (W) of 1996 and W.P. 21846 (W) of 1997 (Dipak Kumar Roy v. The West Bengal State Handloom Weavers" Co-operative Society Ltd. and Ors. with Smt. Papia Pal v. The West Bengal State Handloom Weavers" Co-operative Society Ltd. and Ors.) against this very Society upheld the objection that the present Co-operative Society is not a "State" within the meaning of Article 12 of the Constitution, therefore the writ petition is not maintainable.

3. Learned counsel for the Appellant has submitted that this Society has a large share held by the Government and the Government has all pervasive control in the management of the Society. Therefore it is a "State" within the meaning of Article 12 of the Constitution, and in support of that learned counsel has relied on various decisions of the Apex Court, i.e Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , Indra Kumar Chopra v. Pradeshik Co-operative Dairy Federation Ltd. and Ors. (AIR SC 2093), N.S. Giri v. The Corporation of City Mangalore and Ors. [(1999(2) SLR 630], Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another, , Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, . Before we proceed to deal with the aforesaid cases, we may refer to the necessary Bye-Laws of the Society.

4. The Society was registered under the West Bengal Co-operative Societies Act, 1983 and they framed Bye-Laws known as "West Bengal State Handloom Weavers" Co-operative Society Ltd. Bye-Laws". The object of the Society as enumerated, in Section 4 highlights that it would organise the handloom industry in West Bengal on Co-operative basis by arranging production and sale of handloom fabrics on commercial lines and to facilitate the operation of the affiliated societies engaged in production and/or marketing of handloom fabrics within the State. There are number of objectives and we need not to deal each one of them, but for our purposes suffice it to say that the main objective is to encourage the handloom industry and the fabrics and persons who are engaged in this profession for their benefit. Bye-law 6 deals with the membership. The State Government, i.e. Government of West Bengal is one of the Members, Co-operative Societies of Producers of handloom goods registered in West Bengal, other Co-operative Societies engaged in the marketing of handloom goods, nominated members and other members who are only member of the Society and other members who shall become member according to these bye-laws, and such persons who shall hereafter become members according to these bye-laws, and the State Government when

they purchase shares of the Society in accordance with the bye-laws. In accordance with the bye-laws they are also nominated members. They have no right to vote. Every person who is desirous of taking membership shall submit an application before the Managing Director/Secretary of the Society in prescribed form. Rule 14 deals with the fund. The Society will raise fund by issuing shares, receiving deposits from members and non-members, taking loans from financing banks and other sources, issuing debentures; and obtaining grants, donations and subsidies from the Government and other sources. The bye-laws 15 deals with the share capital. The authorised share capital of the Society for the present being Rs. 15,00,00,000/- (Rupees fifteen crores) made up of shares of the following categories:

(a) 1,00,000 ''A'' class (State Government) shares of Rs. 1,000/- each.

(b) 5,00,000/- ''B'' class shares of Rs. 100/- each. ''B'' class shares shall be allotted to the Co-operative Societies.

(2) 50% of the value of each share shall be payable on allotment and the remainder shall represent the reserve liability of member which shall become payable in case of winding up of the society.

5. By-law 31 deals with the management of the society. The business of the society shall be carried on and managed by the Board constituted in accordance with the provisions of the Act, the Rules and bye-laws. The Board of the society shall be constituted by-- (a) election from amongst members at an annual general meeting; (b) nomination by the State Government, when it divides to make such nomination u/s 33 of the Act, (c) election by the employees of the society under Sub-section (4) of Section 27 of the Act, (d) the Managing Director under Sub-section (4) of Section 27 of the Act and (e) nomination by the Main Financing Bank.

6. Bye-Law 33 deals with the Constitution of the Board. The Board shall consist of 21 (twenty one) Directors of which 15 (fifteen) shall be elected from amongst the representatives of affiliated societies. 15 Directors are to be elected from the various constituencies like Hooghly, Burdwan, Bankura, Purulla, 24-Parganas (North & South), Midnapore, Nadia, Birbhum, Murshidabad, Maida, West Dinajpur, Cooch Behar, Jalpaiguri, Darjeeling, Howrah and Calcutta spreading all over West Bengal. One of the Directors shall be nomiated by the main financing Bank arid three Directors shall be nominated by the State Government. One Director shall be elected by the employees, the Managing Director of the society shall be an Ex-officio Director. The Chairman shall be nomiated by the State Government in the Cottage & Small Scale Industries Department.

7. Rule 41 deals with the Managing Director, and the Managing Director has to be appointed in terms of Rule 57 of the Rules. The powers of the Managing Director has also been defined in bye-law 42.

8. In a scheme of these bye-laws, the question naturally comes, whether the present Institution has all pervasive control of the Government or not. The Apex Court from time to time has laid down various tests in order to find out the real character of the Institution, like the finances, management, all pervasive control of the Government, and the functions discharged by the Institution. Instead of referring to all those cases individually it would be relevant to refer to the recent decision of the Apex Court in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, consisting of seven Judges wherein all the earlier decisions of the Apex Court have been discussed, and Their Lordships have summarised the legal position as follows:

"The picture that emerges from the case-law is that the tests formulated in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, for determining as to when a corporation can be said to be an instrumentality or agency of the Government are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be--whether in the light of the cumulative facts as established, the body is financially functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

9. Therefore, the latest verdict on the subject as summarised above, would show that each case would depend on its peculiar facts and one has to take into consideration the cumulative facts in order to find out that the body is a State within the meaning of Article 12 of the Constitution or not. Some of the factors which have to be taken into consideration are, finances, functionally and administratively dominated by or under the control of the Government. All these factors are to be taken cumulatively and it cannot decided that if the institution is financed by the Government, but it does not have an administrative control or dominance by the State then too also it will not be a State. Sometimes, the body may be controlled by some Administrative officers of the State, but that would not make that body a State within the meaning of Article 12 of the Constitution. All factors taken together will constitute a State within the meaning of Article 12 of the Constitution. Now in the light of this decision of the Apex Court, we have to examine whether this Society fulfils all indication laid down by the Apex Court or not. We have already described the bye-laws pertaining to finances, management and role of the State. A perusal of those bye-laws detailed above would show that the State Government has only a share denominating Rs. 1,00,000/- shares of Rs. 1,000/- each out of the Rs. 15,00,00,000/-fund of the Society. The Society runs through the Board of Directors and majority of the Board of Directors are from various Societies, and all are elected. The Managing Director who is also an ex-officio Director is nominated by the State.

The State has no functional control over the Board and the entire management vests in the Board. Therefore taking all these factors into consideration, it appears that the State Government has not the pervasive control in the Management of this Society. The Society manages its affair by itself through its own Board of Directors and the Managing Director. All the Board of Directors, that is 15 (fifteen) come from various parts of the State of West Bengal. One of the Directors is nominated by the financing Bank and there are three Directors nominated by the State. Therefore there is no control or management of the State in the present functioning of the Board. The Board takes its own decision and implement the same. Meeting of the Board has to be called periodically. The employees of the Society are under the administrative control of the Managing Director subject to the control of the Board. Therefore the entire management of this Society vests in the Board and not in the Managing Director alone. It may be that the Managing Director is nominated by the State, but that would not change the character of the Board, as the Board is an autonomous body in its management. Therefore the norms which has been laid down by the Apex Court in the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (supra) none of those are found in this Society. Thus by any stretch of imagination the present Society cannot be said to be a ''State'' within the meaning of Article 12 of the Constitution.

8. Hence, as a result of the above discussion we are of the opinion that the Society is not a State within the meaning of Article 12 of the Constitution and the view taken by the learned single Judge is correct and there is 110 ground to interfere in this appeal and hence the same is dismissed. However, any observation made in this order will not prejudice the right of the petitioner to challenge his disciplinary inquiry and order of dismissal.

No order as to costs.

A.K. Banerjee, J.

9. I agree.