

ORISSA HIGH COURT: CUTTACK

WRIT APPEAL No.268 of 2011

This appeal arises out of the judgment dated 25.10.2010 passed by the learned Single Judge in W.P(C) No.8438 of 2010.

State of Orissa represented
through its Commissioner-cum-
Secretary to Government,
Finance Department and another. Appellants

-versus-

Orissa Khadi and Village Industries
Board Karmachari Sangha, represented
through its Secretary and another. Respondents

For Appellants : Mr. R.K.Mohapatra, Govt. Advocate

For Respondents : M/s. M.R.Das & Mr. P.P.Mohanty
(For Respondent No.1)
M/s.S.B.Jena & Mr.S.Das
(For Respondent No.2)
Mr.S.S.Mohapatra (For caveator)

P R E S E N T :

***THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA
A N D
THE HONOURABLE SHRI JUSTICE B.K.MISRA***

Date of judgment : 20.12.2012

B.K.MISRA,J. The State in this writ appeal assails the order of the learned Single Judge dated 25.10.2010 in W.P. (C) No.8438 of 2010, wherein the learned Single Judge while quashing Annexure-12 directed

the State Government to amend the Orissa Khadi and Village Industries Board Regulation, 1960 in extending pensionary benefits to its employees and to complete the entire process within a period of three months from the date of communication of the said order.

2. The Orissa Khadi and Village Industries Board Karmachari Sangha represented through its Secretary as petitioner had approached this Court by way of filing a writ petition which was registered as W.P.(C) No.8438 of 2010 for quashing the decision of the Government at (Annexure-17) expressing its inability in implementing the pension scheme for the Orissa Khadi and Village Industries Board employees which was communicated to the petitioner by the Additional Secretary to the Government in Industries Department in his letter no.18583 dated 14.12.2009. Further, the petitioner has prayed for directing the Opposite Party No.1 to make regulation under Section 36(2) of the Odisha Khadi and Village Industries Board Act, 1955 (Odisha Act 3 of 1956) in introducing the pension scheme as per the Resolution of the aforesaid Board dated 10.2.2009.

3. Bereft of unnecessary details in brief the case of the present respondent who was the petitioner in W.P.(C) No.8438 of 2010 is that the Orissa Khadi and Village Industries Board (hereinafter referred to as "the Board", in short) was established in the year,1956

by the Orissa Act 3 of 1956 with the aim and object to organize, promote, develop and regulate the Khadi and Village Industries throughout the State of Odisha basing upon the Gandhian thought and philosophy to make the people self-reliant and to eradicate poverty with the further object of improving the socio-economic status of the people who lived in rural areas. The said Board has its own Act i.e. the Odisha Khadi and Village Industries Board Act, 1955 (in short, "Act, 1955") as well as the Odisha Khadi and Village Industries Board Rules, 1956 (in short, "Rules, 1956") and Odisha Khadi and Village Industries Board Regulation, 1960 (in short, "Regulation, 1960"). It is alleged that the State Government has direct control over all the affairs and entire activities of the Board. The Regulation 40 of the Regulation, 1960 provides that the Rules of Orissa Service Code, Volume-1 with all its Appendices, except Appendice 1 to 4 and 8 to 12, as amended from time to time by the Government, would apply to the employees of the Board. The administrative and financial matters of the Board are controlled by the Industries Department of the State Government. It is the further case of the petitioner that though the Industries Department moved for amendment of Regulation-52 of the Regulation, 1960 for incorporating the provision with regard to extending the pensionary benefits to its employees and despite recommendations, the Government for no valid reason and without considering the grievance of the employees did not effect any amendment to the

Regulation as stated above and ultimately rejected the same on the ground of financial crunch. For providing pension to the employees of the Board, a writ petition had been filed by the petitioner in the year 1998, which was registered as O.J.C. No.15344 of 1998 and the same was disposed of with a direction to the Director, Industries Department, Government of Odisha to consider the case and to take decision within a period of three months. But the Government did not take any step in that regard. Thereafter, another writ petition was filed by the employees of the Odisha Khadi and Village Industries Board in the year 2007 which was registered as W.P(C) No.14729 of 2007 and besides that in the year 2002 another writ petition had been filed which was registered as W.P(C) No.1951 of 2002. W.P. (C) No.1951 of 2002 was disposed of on 12.9.2008 with an observation that no direction can be issued regarding pension in view of the pendency of Writ Petition No.14729 of 2007. Writ Petition No.14729 of 2007 was disposed of by this Court with a direction to the State Government for reconsideration of the matter. But ultimately the Government expressed its inability in implementing the pension scheme for the employees of the Khadi and Village Industries Board. The grievance of the petitioner is that the Government has adopted step motherly attitude towards the employees of the Board. When the employees of the Khadi and Village Industries Board of other States, namely Andhra Pradesh, Tamilnadu, Karnataka and others have extended pension scheme for the

employees of the Board at par with Government employees and besides that when at the Union level also the employees of Khadi and Village Industries Commission have been provided with pension, there is no reason as to why the employees of Odisha Khadi and Village Industries Board would be deprived of such pension facility. Thus, when the employees of the Odisha Khadi and Village Industries Board became desperate with the apathetic attitude of the State Government approached this Court for the reliefs as has been stated earlier.

4. The Odisha Khadi and Village Industries Board who was opposite party no. 3 in W.P(C) No.8438 of 2010, filed the counter affidavit wherein it is their stand that the Board Regulations are silent about the pension to be given to its employees. The Board also has no capacity of its own to provide pension to its employees without any financial support from the State Government. It is the further stand of the Board that the Board in the year 1984, 1994, 2008 and 2009 have adopted resolutions for amendment of Regulation-52 of the Regulation, 1960 and the opposite party no.1 i.e., the State Government was moved for extension of pensionary benefits to the employees of the Board. But the Government on the ground of financial stringency did not accept such proposal whenever it was sent to them.

5. The opposite party nos.1 and 2 have entered their appearance and filed their joint counter wherein it is their stand that

the Odisha Khadi and Village Industries Board is an autonomous body and, therefore, its employees are not Government servants but are employees of the Board. The Board meets the entire establishment expenditure out of the grant made available by the State Government and the Khadi and Village Industries Commission provides financial support only for programmes to be carried out and do not share any expenditure of the establishment. Though they have admitted in their counter about the filing of different writ petitions but it is also their stand that the State Government is unable to bear the financial liability in implementing the pension scheme for the employees of the Board because of the financial constraints. Thus, it would be inappropriate and incorrect to say that the State Government did not take adequate steps pursuant to the direction of this Court with regard to the implementation of pensionary scheme. It is their further case that though the Board unilaterally took a decision to provide pension to its employees but the State Government with a view to limit non-plan expenditure took a conscious decision not to introduce pension scheme in the Board. The opposite party nos.1 and 2 also averred that the State Government does not substantially meet the pension liability of urban local bodies and for that matter of pension liability of the employees of Jagannath Temple Administration. The case of the employees of Jagannath Temple Administration and local bodies are distinguishable from the Board.

6. The petitioner in its rejoinder affidavit to the counter filed by opposite party nos.1 & 2 took the further stand that the Orissa Khadi and Village Industries Board is a State and can come under the category of other instrumentality of the State within the meaning of Article 12 of the Constitution of India. Such Board was created by the State Government, which is also controlled by the State Government. The State cannot absolve itself from its responsibility to pay salary and other benefits including pension to its employees. Financial stringency cannot be a ground to deny such benefits, which will violate the right to life under Article 21 which includes right to livelihood.

7. After hearing the respective counsel for the parties and going through the averments and documents relied upon by the parties, the learned Single Judge allowed the prayer of the petitioner and directed the State Government to amend the Regulation, 1960 for extending pensionary benefits to the employees of the Board and to incorporate the pension scheme for its employees at par with the employees of the State Government and to complete the said exercise within a period of three months from the date of communication of this order.

8. The learned Government Advocate challenged the order of the learned Single Judge in W.P. (C) No.8438 of 2010 contending that when Regulation-52 of the Regulation, 1960 specifically provides that

the employees of the Board shall not be entitled to any pension except gratuity and contributory provident fund benefits, the learned Single Judge has lost sight of that specific provision as the directions issued cannot stand the judicial scrutiny for a moment and Courts do not have the power to issue a direction to the legislature either to enact the statutory enactments or frame Rules in a particular manner. The power under Article 309 of the Constitution of India to frame Rules is the legislative power and Courts cannot usurp that function assigned to the executive and therefore cannot even indirectly direct or require the executive to exercise its law making power in any manner. Thus, it was very strenuously urged by the learned Government Advocate, Mr. R.K.Mohapatra that the impugned order of the learned Single Judge be quashed and the appeal be allowed. In support of such contention, learned Government Advocate placed reliance on several cases decided by the Apex Court i.e. ***Mallikarjuna Rao and others etc. etc., v. State of Andhra Pradesh and others etc. etc., AIR 1990 S.C. 1251, Bal Ram Bali and another v. Union of India, AIR 2007 S.C. 3074, Transport Manager, Pune Municipal Corporation Transport Undertaking v. Vasant Gopal Bhagwat (dead) by L.Rs., and others, AIR 1998 S.C. 2789, Indore Development Authority v. M/s. Shri Ram Builders and others, AIR 2009 Madhya Pradesh 169.***

9. Mr. Manoranjan Mohanty, learned senior counsel appearing for respondent no.1 while supporting the order of the learned Single

Judge contended that the findings of the learned Single Judge cannot be faulted as they are based on sound reasonings. It was also further contended that when the Government of India have decided for payment of pension to the employees of Khadi and Village Industries Commission at par with the employees working under the State Government, demand of pension made by the employees of the Board and when the Board has recommended for such grant of pension to its employees and the State Government also when on principle agreed to introduce such pension scheme, rejecting the same at a later stage on the pretext of financial constraints cannot be said to be a valid one, as pension is no more a bounty especially when the employees working in other organizations like Sri Jagannath Temple Administration, Odisha University of Agriculture Technology are getting pension. It was also contended by Mr. Mohanty that when the Khadi and Village Industries Board of Kerala, Andhra Pradesh, Tamilnadu and Karnataka etc. are getting pension like that of the State Government employees in those States, there is no rhyme or reason to deprive such employees of the Board in Odisha. In support of his contention Mr. Mohanty, learned senior counsel placed reliance on a judgment of the High Court of Gujarat i.e in the case of **Gujarat State Khadi Gramodyog Board v. Gujarat State Khadi Gramodyog Pensioners Association**, which judgment was confirmed by the Apex Court in SLP (Civil) CC No.1321-1482 of 2005. Reliance was also placed in a judgment of the High Court

of Judicature at Bombay i.e. in the case of ***Maharashtra State Khadi Gramodyog Mandal Pensioners Association, Mumbai and others v. State of Maharashtra and others.***

10. After hearing learned counsel for the respective parties, we have examined the matter at length. Perusal of the different provisions of the Act, 1955, Rules, 1956 and Regulation, 1960 framed thereunder by the Government leaves no manner of doubt that the real control, authority of the Board rests with the Industries Department of the Government, in other words the Board is under the direct control of the State Government and is totally dependant on the Government for running its administration and in carrying out its activities including finance. Notwithstanding the fact that the Board is a statutory one and right from the commencement, the management, the administration, the appointment, framing regulations, carrying on with its activities, formulations of policy are all controlled by the State Government. Furthermore, the employees of the Board in question are governed and controlled by Rules as are applicable to the State Government servants and the provisions of the Odisha Service Code, which are applicable to the State Government servants, are also applicable to the employees of the Board. The Travelling Allowance Rules and Odisha Leave Rules are also applicable to the employees of the Board. The function of the Board is well defined in Section 17 of the Act, 1955. To discharge such functions, programmes have been drawn by the Board with the

sanction of the State Government and therefore, the State Government has all pervasive control over the Board and got power to frame Rules under Section 35 of the Act, 1955. It is true that the Regulation-52 of the Regulation, 1960 provides that the employees of the Board are not entitled to pensionary benefits but to overcome such a hurdle the Board have recommended to the Government for amending Regulation-52 and this Court also directed the Government to consider such demand of pension to the employees of the Board in OJC No.15344 of 1998 and W.P(C) No.14729 of 2007. But the State Government on the ground that it cannot take extra burden of providing pension to the employees of the Board did not comply with the directions of this Court. Admittedly, when all conditions of service of the State Government employees are applicable to the Board employees, refusal to extend the pensionary scheme to such employees of the Board, in our considered view, amounts to discrimination and violative of Articles 14 and 16 of the Constitution of India. The learned Single Judge has dealt with the important aspect in detail in the impugned judgment. It was brought to our notice that the Board on several occasions moved the State Government through the Industries Department which is the controlling authority of the Board for extending pensionary benefits to the employees of the Board, but the same did not find favour with the Government on the ground that the State Government cannot carry the extra financial burden. In our

opinion, the view taken by the learned Single Judge with regard to making provision for providing pension to the employees of the Board is quite justified and calls for no interference, as the same is in conformity with the decisions of Gujarat and Bombay High Courts in the cases referred to supra upon which learned Senior Counsel has rightly placed reliance. For all practical purposes, the Board is an instrumentality of the State and therefore, it is covered under the Article 12 of the Constitution of India and undoubtedly amenable to the writ jurisdiction of this Court. We are quite aware of our limitations under Article 226 of the Constitution. The direction of the learned Single Judge to Opposite Party Nos.1 and 2 to take appropriate steps to incorporate the pension scheme for the employees of the Board at par with the State Government employees is only advisory in nature and the same is in the welfare of the employees of the Board. The State Government shall honour such advisory note keeping in view that the interest of the retired employees shall be taken care of by the State Government as mandated under Article 41 of the directive principles of the State policy by discharging its constitutional obligations towards aged persons who have served the State through Board, as the State has decentralized its power and functions through its instrumentalities such as the Board and other statutory Corporation for good governance of the people under the Constitution of India.

11. In the result, after making a threadbare analysis and appraisal of factual and legal profile and proposition highlighted before us, we find no merit in this writ appeal and the impugned order of the learned Single Judge does not call for any interference in any manner.

Accordingly, the writ appeal stands dismissed.

.....
B.K.Misra,J.

V.Gopala Gowda, C.J. *I agree.*

Gowda,C.,J.

.....
V.Gopala

Orissa High Court, Cuttack
*20th December,2012/ **RNSahoo***