

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 3849 of 2020
Reserved on: 11.11.2020
Decided on: 27.11.2020

Sanjay Kumar and others	Versus	...Petitioners.
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State of Himachal Pradesh & others.	Respondents.
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Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.
Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioners: Ms. Anjali Soni Verma, Advocate.

For the Respondents-State: Mr. Ashwani Sharma and Mr. Hemanshu Mishra, Addl.A.Gs with Mr. Vikrant Chandel, Dy.A.G.

(through video conferencing).

Sureshwar Thakur, Judge

The writ petitioners are rendering services, in, a, project nomenclatured, as, the Himachal Pradesh Mid Himalayan Watershed Development Project. The terms and conditions of their services are governed by Annexure P-1. Respondent No.3 is the

¹ Whether reporters of the local papers may be allowed to see the judgment?

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employer, and, is a society registered under the Societies Registration Act, 1860.

2. The writ petitioners were engaged in different capacities under the afore society. Through the apposite Annexures, orders were made for placing the writ petitioners against posts higher, than, whereagainst(s) they stood initially recruited, on, a contractual basis. However, subsequently through the impugned Annexure, comprised in Annexure P-4, the afore order became withdrawn, consequently through the instant writ petition, the writ petitioners seek quashing, of, the impugned Annexure, borne in Annexure P-4.

3. Since the employer of the writ petitioners', is, a society registered under the Societies Registration Act, 1860, (i) thereupon unless it qualifies the constitutional test, of its, being an authority(s) within the ambit of Article 12 of the Constitution of India, and, thereafter it also qualifies the indispensable norm of it, being instrumentality or agency of the State, (ii) thereupon alone the relief as canvassed in the instant writ petition, may be grantable, through a judicial review, being made of Annexure P-4. In making

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test(s), vis-a-vis, the afore constitutional norm, becoming satiated by the employer of the petitioners, the making, of, an allusion, to the apposite expostulations made qua therewith, and, as become cast in a judgment, of, the Hon'ble Apex Court, rendered in a case titled as Ajay Hasia versus Khalid Mujib, reported in AIR 1981 SC 487, becomes imperative.

4. At the outset, since any society registered under the Cooperative Societies Act, 1968, or, any society registered under the societies Registration Act, 1860, cannot stand on a legal pedestal or on a juristic pedestal co-equal to that of "State", and, nor when they can be construable to be, a, "local authority", thereupon the afore statutory societies, are to fall within the ambit of the expression "other authorities", for, hence theirs being construable to fall within the definition of "State".

5. For purposes of determining, the, respondent-society qualifying, the, afore trite constitutional norm, inasmuch as, of, the apposite society(ies), falling within the ambit, of, the expression "other authorities", and, thereupon, its/theirs being construable, to be a State, hence within the ambit of Article 12 of the Constitution

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of India, for, its/theirs, thereafter becoming amenable to exercisings thereon(s), of writ jurisdiction, rather, the, apposite touchstone, is, not rested upon the apposite legal anchor qua its/theirs becoming established, hence to be a creation of a statue or it/them owing its/theirs origin, from compliance being meted to statutory provisions, as become encapsulated in the relevant statute, (i) rather contrarily, the test for determining the amenability of the apposite society, to, fall within the domain, of, the expression “other authorities” is vis-a-vis it being an instrumentality or agency of the government.

6. The creation(s) of constitutional/juristic entities, other than the State inasmuch, as, of local authorities or of other authorities, rather, is an acceptance, of, the immensity or of swathe, of, functions or multitudinous, of, functions enjoined to be performed by the Government, and, whereas resource persons hence available with the Government, for efficaciously manning the apposite functions, being minimal or theirs being not armed with any requisite skill or expertise, rather required, for efficient management(s) or operation(s) thereof. Consequently, the apposite

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societies, if are instrumentality(s) or an agency(s) of the State, thereupon alike the State or the government, they become amenable, for their actions, being judicially reviewed or upon theirs not performing, the statutory functions enjoined upon them, they become amenable for rendition, of, a mandamus upon them. Obviously hence it becomes incumbent upon this Court to reproduce the tests qua the afore facets, as, become encapsulated, in paragraph 9, of, the verdict supra, tests whereof stands extracted hereinafter:-

“ 9. The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows:

- (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."

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(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) "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." 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's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in [Article 12.](#)"

7. However, extraction of the afore tests would not rest, the conundrum besetting this Court, inasmuch, as, of the employer of the writ petitioners falling within the ambit, of, the expression “other authorities”, and, whereupon alone this Court becomes leveraged, to, judicially review, the impugned Annexure P-4. As unfolded in the verdict supra, a deep delving into the bye-laws of the respondent-society, is, imperative, for making cullings therefrom, vis-a-vis, the government hence, holding, a, deep pervasive control, vis-a-vis, the functions of the respondent-society. In the afore endeavour a perusal of Annexure P-8, Annexure whereof is a certificate of registration of the respondent-society, makes candid upsurgings, vis-a-vis, the composition of society

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becoming comprised of (i) Governing Counsel (General House) with Hon'ble Chief Minister as the President and Hon'ble Forest Minister as the Vice President, (ii) Executive Committee with Pr. Secretary (Forests) as the Chairman, (iii) Finance Committee with Pr. Secretary (Forests) as the Chairman (iv) District Level Coordination Committee with Deputy Commissioner of the concerned district as the Chairman.

8. The afore extractions, obviously made underlinings, that in the respondent-society, the government rather holding a deep pervasive control and also when the objective(s) of the society, as, become embodied, in clause 4, require engagement(s) of specialized man power, manpower whereof may not be available with the government, for ensuing the fullest operationalisings, of, the afore objective, hence therethroughs within the ambit of the afore extracted tests, appertaining to a society, for, upon its satiating or its qualifying to fall within the expression instrumentality or agency of the State, it also consequently falling within the expression "other authority", and hence for its apposite breaches, it becomes amenable for exercising(s) thereon(s), of, writ

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jurisdiction, may be limited to rendition, of, a mandamus, upon, the apposite inertia, hence, surging, vis-a-vis, implementation, of, relevant statutory rules, and, may not be workable, upon, areas, appertaining to service jurisprudence, except in emergent scenarios.

9. Be that as it may, the mere factum of the respondent-society qualifying the test, of, its amenability, to, exercise thereon, of, writ jurisdiction, would not perse constrain this Court, to make a judicial review, of, Annexure P-4, (a) unless the writ petitioners establishes, especially, vis-a-vis, theirs holding an indefeasible right, under, the bylaws to seek quashing, of, Annexure P-4, (b) and the test for determining the factum, of, the afore blatant infringement, of, the afore bye-laws being made at the instance, of, the respondent-employer, (c) is despite the writ petitioners, satiating all the indispensable eligibility criteria and also despite the initial orders, of, theirs being placed at a place higher than qua wherewith the afore stood initially recruited, on a contractual basis, rather theirs becoming untenably demoted to those posts, whereagainst they stood initially inducted, on a contractual basis, in consonance with the bylaws or the rules governing, the, initial

recruitment(s) of the writ petitioners (d) the writ petitioners holding an efficacious alternate remedy for redressing their grievances.

10. In the afore endeavour a perusal of the reply made on affidavit by the respondents, discloses that the initial order, of purported promotions of the petitioners, as became undone through Annexure P-4, rather emanating without any approval of the government authority, and, also the afore order(s) not mentioning the emoluments, wheretowhich the petitioners, hence, on their purported promotions, became entitled. In sequel, there is no blatant infringement hence visited upon the apposite rule/bye-laws. Even otherwise since a complete alternate to the extant petition, hence a remedy becomes encapsulated, in, clause 20 of the bye-laws, thereupon the afore does constitute the befitting remedy hence alternate to the extant remedy, for its, hence becoming exercised by the writ petitioners.

11. Since the existence of the afore efficacious alternative remedy, to the recouring(s) of writ jurisdiction, by the writ petitioners, is, a fetter against the exercising(s) of writ jurisdiction,

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by the Writ Court, thereupon on the afore score, also the writ petition becomes not maintainable before this Court.

12. In view of the above, there is no merit in the petition, and, accordingly the same is dismissed. All pending applications also stand disposed of accordingly.

(Sureshwar Thakur),
Judge.

27th November, 2020
(priti)

(Chander Bhusan Barowalia),
Judge.