

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.9261 of 2014

% 30-4-2015

Killi Venkata Suri Apparao

... Petitioner

Vs.

\$ The Anakapalli Rural Electrical Coop. Society,

Reg.No.B.1539, Rep. by its MD,

Kasimkota, Anakapalli, Visakhapatnam;

and another

... Respondents

! Counsel for the Petitioner: Sri Prakash Buddarapu

Counsel for Respondents 1&2: Sri A.Satya Prasad,

Senior Counsel,

Representing Sri N.Pramod

< Gist:

> Head Note:

? Cases referred:

1. (1981) 1 SCC 722
2. (2009) 15 SCC 221
3. (2002) 5 SCC 111
4. 1994 (2) LAWS (SC) 132
5. 2004 (8) LAWS (SC) 102
6. 2006 (8) LAWS (SC) 93

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.9261 of 2014

Date: 30-4-2015

Between

Killi Venkata Suri Apparao

... Petitioner

and

The Anakapalli Rural

Electrical Coop. Society,

Reg.No.B.1539,

Rep. by its MD,

Kasimkota, Anakapalli, Visakhapatnam;

and another

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.9261 of 2014

Order:

The petitioner's father Killi Samudram was working as a Senior Lineman in the 1st respondent-The Anakapalli Rural Electrical Cooperative Society (the Society, for short) and died on 05-8-2010 while in service. The petitioner, who is the son of late Killi Samudram, submitted representations to the 1st respondent-Society seeking appointment on compassionate grounds.

The representations have not been considered by the

1st respondent-Society. Thereafter, he filed Writ Petition No.6954 of

2013 against the 1st respondent-Society and this Court disposed of the said writ petition without going into merits of the case directing the 1st respondent-Society to consider the representations of the petitioner and to pass appropriate orders. Thereafter, the 1st respondent-Society issued proceedings in the month of September, 2013 informing the petitioner that there is no possibility for providing employment in the Society on compassionate grounds as the representations made by the petitioner have not been considered by the Managing Committee on the ground that the family of the deceased employee was given all terminal benefits including family pension unlike the other employees retired from service of the Society on superannuation. The said rejection order is challenged in the present writ petition seeking a Writ of *mandamus* by declaring the same as illegal and to issue a direction to the 1st respondent-Society to provide employment to the petitioner on compassionate grounds.

2. According to the petitioner, the 1st respondent-Society without regularising the services of several employees has been issuing appointments to certain individuals who never worked in the Society and the said issue was subject matter of a writ petition before this Court. Thus, it is the version of the petitioner that the 1st respondent-Society has been recruiting non-working and ineligible candidates but inspite of the direction issued by this Court in the aforementioned writ petition, rejected the representation made by the petitioner in an illegal and arbitrary manner.

3 . *Nextly*, it is submitted that the 1st respondent-Society is a Rural Electrical Cooperative Society formed with an object of distributing power to the consumers within the area of 5 Mandals and has a turnover of Rs.3 Crores per month. The Society purchases power from the Eastern Power Distribution Company Limited (EPDCL) and it discharges a public function by distributing electricity to its

consumers/members and is obligated to strictly comply with the statutory process and rules for the purpose of making the recruitment. It is further submitted that the

1st respondent-Society is following not only the service conditions applicable to EPDCL but also paying the salaries on par with the employees of EPDCL and therefore, it is duty bound to give appointments on compassionate grounds to the legal heirs of employees who died in harness as in EPDCL.

4. The respondents filed a Counter Affidavit contending, *inter alia*, as follows:

The relief sought for by the petitioner against the respondents in the writ petition under Public Law is not maintainable inasmuch as the 1st respondent-Society was registered under the provisions of the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, for short) with an object of providing low cost energy and power supply. The Society was established in the year 1974 when the rural areas of the State in general were not having access to the electricity without there being share capital of any Governmental organization or State. It is not

an instrumentality of the State as defined under Article 12 of the Constitution of India and the State has no pervasive control over the 1st respondent-Society. The petitioner has no vested right much less any statutory right to impugn the action of the respondents in rejecting his claim for compassionate appointment by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In the absence of any specific guidelines or scheme adopted by the Society in its bye-laws in relation to compassionate appointments, the petitioner cannot seek any relief in the present writ petition. Since the bye-laws of the Society do not provide for making any compassionate appointments, the Managing Committee cannot be expected to act in contravention of bye-laws of the Society to defeat its objects and structure. As regards appointing certain individuals in the Society, it is submitted that the relief sought

for in the present writ petition has nothing to do with the regularization sought by the workers who have been working continuously for several years which is the subject matter of another writ petition.

5. It is further contended that the petitioner's father died at the fag end of his service and the loss of his income on account of his death cannot be said to impair the sustenance of the petitioner and his family and therefore, the petitioner has no right to seek compassionate appointment in the Society. Contending as such, the respondents sought to dismiss the writ petition.

6. I have heard Sri Prakash Buddarapu, learned counsel appearing for the petitioner and Sri A.Satya Prasad, learned Senior Counsel for the respondents.

7. Two issues arise for consideration in the present writ petition. The first one is whether the 1st respondent-Society can be regarded as a State or Authority as defined in Article 12 of the Constitution of India so as to enable the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a direction to the 1st respondent-Society to provide him compassionate appointment. The other is whether the petitioner has a right to claim employment in the Society on compassionate grounds on the ground that his father died in harness while working in the Society.

8. The learned counsel appearing for the petitioner submits that the Society having regard to its objects and functions discharges a public duty and therefore, it is an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

9. On the other hand, the learned Senior Counsel for the 1st

respondent-Society would submit that the Society was formed in the year 1974 with an object of providing more efficient service of power supply to the members of the Society, the bye-laws do not provide for any appointments on compassionate grounds, it does not discharge any public function and therefore, it does not come under the expression “the instrumentality of the State” and therefore, the writ petition itself is not maintainable.

10. In **AJAY HASIA v. KHALID MUJIB SEHRAVARDI**, the Supreme Court laid down the test for determining if an authority is within the definition of State in Article 12 of the Constitution of India is whether it is an instrumentality or agency of the Government. The Supreme Court held as follows:

“It is immaterial whether the corporation is created *by* a statute or *under* a statute, the test is whether it is an instrumentality or agency of the Government and not as to how it is created, the inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 of the Constitution of India if it is an instrumentality or agency of the government and that would have to be decided on proper assessment of the facts in the light of the relevant factors.

The concept of instrumentality or agency of the government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on consideration of the relevant factors, whether the company or society is an instrumentality or agency of the government so as to come within the meaning of the expression “authority” in Article 12 of the Constitution of India.”

11. The Supreme Court further held that the definition of “State” in Article 12 of the Constitution of India which includes an “authority”

within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36,

to Part IV: it does not extend to the other provisions of the Constitution and hence a juristic entity which may be “State” for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. (Emphasis added)

12. Similarly, in **M.P. STATE COOP. DAIRY FEDERATION LTD. v. RAJNESH KUMAR JAMINDAR**, the Supreme Court held as follows:

“The Madhya Pradesh State Cooperative Dairy Federation Limited is covered by the definition of “State”, held that having regard to the history of the Federation, it is clear that the Federation was a part of the department of the Government. It not only carries on commercial activities, it works for achieving the better economic development of a section of the people. It seeks to achieve the principles laid down in Article 47 of the Constitution of India viz., nutritional value and health. It undertakes training and research work. Guidelines issued by it are binding on the societies. It monitors the functioning of the societies under it. It is an apex body. It must, therefore, be held that the appellant would come within the purview of the definition of “State” as contained in Article 12 of the Constitution of India.”

13. Basing on the above two judgments, the learned counsel appearing for the petitioner would submit that the 1st respondent-Society is an authority under the State within the meaning of Article 12 of the Constitution of India and therefore, the writ petition is maintainable.

14. As per the law laid down by the apex Court, the test to determine whether the 1st respondent-Society is an instrumentality or agency of the State is not as to how it is created but it has to be decided on proper assessment of its

objectives and functions and also having regard to the extent of control of the Government over the 1st respondent-Society.

15. In **PRADEEP KUMAR BISWAS v. INDIAN INSTITUTE OF CHEMICAL BIOLOGY** relied on by the petitioner, the Supreme Court took the view that as formulated in **AJAY HASIA** (1 *supra*) that a body when can be said to fall within the scope of definition of the State, the tests to determine are not a rigid set of principles so that a body falling within any one of them must be considered to be “State”. According to the Supreme Court, the question in each case would be: whether on facts the body is financially, functionally and administratively dominated by, or under the control of the Government, such control must be particular to that body and must be pervasive.

If the answer is yes, then the body is a State. The Supreme Court further was of the view that however, mere regulatory control, whether statutory or otherwise are not sufficient,

an instrumentality or agency of the State is not necessarily an authority within Article 12 of the Constitution of India. To be an authority, the entity should have been created by or under a statute and should be functioning with liability or obligations to the public. In either case it should be entrusted with functions which are governmental or closely associated therewith by being of public importance or fundamental to the life of the people. Whether an entity is an authority cannot be answered by applying *Ajay Hasia* tests which are relevant only for determining whether an entity is instrumentality or agency of State. According to the Supreme Court, the burden to prove an entity having an independent legal existence to be an instrumentality or agency of the State lies on the person making such allegation. (Emphasis added)

16. Therefore, no straight jacket formula can be laid down as to under what circumstances a society or corporation can be regarded as an authority or instrumentality of the State within the meaning of

Article 12 of the Constitution of India.

17. In the instant case, the 1st respondent-Society was formed by registering itself under the provisions of the Andhra Pradesh Cooperative Societies Act, 1964 and was established in the year 1974 with the object of providing low cost energy and power supply to the rural areas.

The 1st respondent-Society does not have share capital of any governmental organisation/State. It is governed by its own bye-laws and perusal of the bye-laws does not show that it is under the pervasive control of the Government. Since the petitioner contends that the 1st respondent-Society is an instrumentality of the State, the burden is

on him to place on record the relevant factors for the purpose of characterising the 1st respondent-Society as “State” within the meaning of Article 12 of the Constitution of India. The petitioner has not furnished any material showing that there is any financial contribution made by the State and also the nature and extent of the control by the State in the functions discharged by the 1st respondent-Society. From the bye-laws of the 1st respondent-Society,

it is clear that there is no interference by the functionaries of the State in the day-to-day management of the affairs of the 1st respondent-Society. Merely because the

1st respondent-Society renders service to the people in the rural areas, by providing low cost energy and power supply, the said objective or function by itself does not characterise the 1st respondent-Society as an authority within the meaning of State in Article 12 of the Constitution of India. Therefore, in the considered opinion of this Court, the

1st respondent-Society cannot be regarded as an agency or instrumentality of the State so as to come under the expression “authority” within the meaning of Article 12 of the Constitution of India.

18. The next question to be determined is whether the petitioner is entitled to claim compassionate appointment in the 1st respondent-Society. In **LIFE INSURANCE CORPORATION OF INDIA v. ASHA RAMCHHANDRA AMBEKAR**, the Supreme Court took the view that a direction to the Life Insurance Corporation of India to appoint the 2nd respondent on compassionate grounds is against the statutory provisions and therefore the Court should not have directed the appointment on compassionate grounds. According to the Supreme Court, the juristic *mandamus* cannot be exercised in that fashion and the Court should have merely directed the consideration of the claim of the 2nd respondent.

In the opinion of the Supreme Court straightaway directing the appointment would only put the appellant Corporation in piquant situation.

19. In **PUNJAB NATIONAL BANK v. ASHWINI KUMAR TANEJA**, the Supreme Court took the view that the object of appointment on compassionate grounds is to enable the family to get over the sudden financial crisis on account of the death of employee in harness but such appointments on compassionate grounds have to be made in accordance with the rules and regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

20. In **UNION BANK OF INDIA v. M.T.LATHEESH**, the Supreme Court held that it is settled law that the compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.

21. Thus, the legal representatives of the deceased employee cannot claim compassionate appointment as a matter of right. The case of an individual for compassionate appointment can however be considered by the Department, in

exceptional cases where the family of the deceased employee is found to be in financial crisis and when compassionate appointment is required to enable the family to get over the sudden financial crisis arising out of the sudden death of the employee. For this purpose, the person claiming compassionate appointment has to necessarily establish that the deceased employee died in harness and the compassionate appointment is absolutely necessary for the family to get over the sudden financial crisis. The burden to show that his case falls under the eligibility criteria is on the person who claims compassionate appointment. In the instant case, the petitioner merely stated in the Affidavit filed in support of the writ petition that his father died while in service. He did not place any material showing that on account of the death of his father, his family was thrown into sudden financial crisis.

22. Admittedly, the petitioner's father died at the fag end of the service. All his terminal benefits were paid to the family members. Further, in the bye-laws of the

1st respondent-Society there is no provision for making compassionate appointment. In the absence of any provision in the bye-laws of the 1st respondent-Society enabling it to make appointments on compassionate grounds, the legal representatives of the deceased employee cannot make a claim of compassionate appointment as

a matter of right. This Court in the earlier writ petition i.e. W.P.No.6954 of 2013 has already issued a direction to consider the case of the petitioner. In pursuance thereof, the petitioner made a representation and the

1st respondent-Society rejected the claim of the petitioner stating that in the absence of any specific guidelines or the scheme adopted by the Society in its bye-laws in relation to compassionate appointment, the petitioner cannot claim the compassionate appointment. Since the claim of the petitioner was already rejected on the ground that the bye-laws of the 1st respondent-Society do not provide for making any

compassionate appointment and that the Managing Committee of the Society cannot be expected to act in contravention of bye-laws of the Society, no further direction can be given in the present writ petition to provide appointment to the petitioner on compassionate grounds.

23. For the foregoing reasons, the writ petition fails and the same is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.
No costs.

R.KANTHA RAO, J.

30th April, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.9261 of 2014

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