IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.04.2017

CWP No.22063 of 2015

Parmod Kumar Yadav ...Petitioner

Vs.

Union of India & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Radhika Suri, Senior Advocate, with
Ms. Rakhi Banerjee & Mr. Manpreet Singh Kanda, Advocates, for the petitioner.

Mr. Sanjiv Gupta, Advocate, for respondent No.2.

Mr. Sanjiv Ghai, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J.

An order of dismissal and the an order dismissing the appeal against the dismissal order have been challenged in this petition brought under Article 226 & 227 of the Constitution of India praying for issuance of an appropriate writ, order or direction quashing both the orders. The dismissal order has been passed and conveyed to the petitioner at Jaipur, Rajasthan, which was the place of posting when the order was passed. That penalty order was passed after conducting a regular inquiry against the petitioner on certain charges of misconduct, contained in the charge-sheet, committed while serving the respondent organization at Jaipur in Rajasthan. Petitioner prays for reinstatement to service with all consequential benefits maintaining that the order which has been passed against him terminating his services at management level cadre was induced by bias and mala fides.

The employer is the Apparel Training and Design Centre (called in acronym 'ATDC'), which is a society registered under the Societies Registration Act, 1860 with certificate of registration issued on 15.02.1991 bearing the seal of the Registrar of Societies, Delhi Administration, Delhi. The ATDC society is governed by its own Memorandum and Articles of Association.

The foremost question which falls for consideration is; whether a writ is maintainable against the society run in the name and style of "The Apparel Training & Design Centre, New Delhi". Does the activity qualify as 'State' under Article 12 or 'other person or authority' within the definition of Article 226 of the Constitution of India?

Before we look for answers, the status of the third respondent is noticed as brought out in the pleadings and the copious documents produced by both sides. The third respondent AEPC is a Company registered under Section 25 of the Companies Act, 1956. It was incorporated and a fresh certificate of incorporation, consequent on change of name, was issued on 05.07.1984 signed by the Assistant Registrar of Companies, Delhi & Haryana.

Ms. Radhika Suri, learned senior counsel appearing for the petitioner asserts with vehemence that ATDC qualifies both as 'State' within the meaning of Article 12 of the Constitution and - other authority/instrumentality of State under Article 226 of the Constitution during the lengthy arguments heard for two days, apart from other cases listed on board which have consumed a lot of time to understand its constitutional status.

The prayer under Article 227 of the Constitution has to be rejected as the impugned orders have not been passed by a Tribunal or appellate authority.

Mr. Sanjiv Gupta, learned counsel appearing for the contesting second respondent – ATDC, stoutly refutes the claim as to maintainability of the writ petition arguing that it is a private body which does not perform public duty. He submits that the training centre is neither a 'State' nor an 'authority/instrumentality' of State for the purposes of maintainability of a writ petition. Neither the Central Government nor the State has any deep or pervasive control over the functioning of the Society which trains manpower for the apparel industry pan India and its expenditure towards training students is partially defrayed by the Apparels Export Promotion Council (for short 'AEPC').

Urges that ATDC is not a statutory body and is per se not amenable to writ jurisdiction. It may be under regulatory laws, which is not unlike other bodies and entities, or in some way or the other not under direct control of the Government, but that regulatory power is not interred in the interstices of the training centre, i.e. ATDC. It does not perform any public duty or a public function usually associated with governmental functions based on statutory relationship. It bears no public character or displays a positive obligation to perform statutory duties. There is no direct correspondence between the Central Government/State Government and ATDC, and the training facilities managed by the parent body. It may be true that for the present, the Chairman of ATDC and AEPC are common being one person, but that is a fortuitous circumstance of no significance to amalgamate the two entities in unison as they are separate entities created for different purposes since one is a Society while the other is a Company incorporated under Section 25 [and not Section 617 of the Companies Act].

Likewise, Mr. Sanjiv Ghai, learned counsel appearing for the third respondent – AEPC. Contends that his client is not ‘State’ or “... any person or authority” and is not amenable to writ jurisdiction and this objection has been taken in their written statement. In addition, Mr. Ghai explains the meaning of the expressions ‘public deposit fund’ and ‘forfeiture amount’ while enunciating the financial relationship between the two respondents and the Central Government.

Even the documentation placed on the rather heavy file constituting two thick paper-books running into hundreds of pages, there is no evidence of any direct control and supervision by the Ministry of Textiles, Government of India on the functioning of the training centre [ATDC]. The correspondence remains between the Ministry of Textiles and the AEPC. The training centre may have opened 195 training centres in 22 States and may have pan India presence with a budget outlay today of ₹1900 crores but then that factor alone will not held the field on its own in determination on the issue of maintainability as to whether the body AEPC is a ‘State’ within the meaning of Article 12 and other authority/instrumentality under Article 226 of the Constitution.

The first major hurdle in the way of Ms. Suri is the judgment of the Constitution Bench in <u>Executive Committee of Vaish Degree College Shamli & others Vs. Lakshmi Narain & others</u>, AIR 1976 Supreme Court 888 : 1976 (2) SCR 1006. An employee of the society would be governed by the law of contract of personal service the breach of which can only sound in damages. The petitioner is not a government or public servant holding a post protected by Article 311 of the Constitution. To qualify for writ protections the applicant must be such as falling in one of the categories, that is, an employee claiming service law advantages in any one or more of the following statuses, namely, (i) an employee the Central/State Government; (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

The training centre is not created by legislation nor is the activity entrusted with public duty or bears a sovereign imprint. The training centre does business like any private person could do within the law. Every entity which does business will abide with regulation unless it is exempted by law.

The tests have been exhaustively explained by the Supreme Court in Zee Telefilms Ltd. & another Vs. Union of India & others, AIR 2005 SC 2677: (2005) 4 SCC 649 and I do not see how the second respondent qualifies as person amenable to writ jurisdiction applying those tests exhaustively refined keeping in view all prior important developments in the case law developed by the Supreme Court over decades of forensic debate in one of the most slippery field of law in two articles of faith in the Constitution numbered 12 and 226 by the founding fathers, with only one amendment made in Article 226 regarding hearing on stay matters and curtailing it by time.

The activity in order to be amenable to writ jurisdiction must be of public character and public duty bound by enforceable statutory obligations in the performance of its duties or business. Alas, no material has been placed on the file of this case to show positively that the Central Government has any deep and pervasive control over the functioning of the society not only in what has to be done, but the manner in which it is to be performed. Mere doles or freebies or replenishments are not enough to hold them amenable since those may be aimed only to encourage the activity, otherwise every non-government organization [NGO] may fall under the ambit of Articles 12 and 226. There must be deep, pervasive and functional control by State. Mere accountability of expenditure may not be enough since the one who parts with money may ask for rendition of accounts. The training centre gets no binding instructions from the Central Government or direct aid unless, as urged, routed through the AEPC which may qualify the prescriptions of Part III of the Constitution. On that connection an opinion is not expressed. ATDC only receives funds, as I was made to understand, indirectly by apportionment in the Union budget in the Ministry of Textiles, GoI or by some other financial arrangement according to fiscal discipline in policy to offset the expenditure suffered by second respondent ATDC in training students, with money diverted to defray overheads and costs of training and imparting skill development for the textile job market routed through the AEPC via the Union of India to promote clothing export to other countries. The Central Government through the Ministry of Textiles does not do business directly with the ATDC training centre other that mere mention of its existence in some of the papers on record, but those do not confer status of an authority in the training centre even within the widening scope of the ambit of the net of writ jurisdiction. In Paras.3 to 6, the following averments have been pleaded in the petition which have material bearing on point of jurisdiction coming from whom the onus lies to satisfy the Court to invoke a case for notice:-

"3. Respondent No.2, 'Apparel Training & Design Centre, New Delhi' (ATDC), is a society registered on 15.02.1991 under Societies Registration Act, 1860 with the Registrar of Societies, Delhi Administration, Delhi and is a 'State' within the meaning ascribed to the term of Article 12 of the Constitution of India. Main objective of respondent No.2 is to impart vocational training on behalf of Ministry of Textiles, Government of India to the unemployed youth of India for the Apparel Industry through its 192 Centers situated all over India. Copy of Registration Certificate of Respondent No.2 is Annexure P-3.

4. Respondent No.2, ATDC, is working under the aegis of Respondent No.3, Apparel Export Promotion Council (AEPC). Respondent No.3 is a Company registered under Companies Act, 1956 and sponsored by Ministry of Textiles, Government of India. Copy of Certificate of Incorporation of Respondent No.3 dated 05.07.1984 is Annexure P-4.

5. It is submitted that Governing body of respondent No.2, ATDC, includes Secretary General, AEPC and Joint Secretary, Ministry of Textiles and other three members from other Ministries. Both Respondent No.2 and 3 are headed by a common Chairman and Director General (DG) of Training and Productivity of Respondent No.3, AEPC is the DG & CEO of Respondent No.2, ATDC.

6. In the year 2010, Respondent No.1, Ministry of Textiles, Government of India, launched 'Integrated Skill Development Scheme' (ISDS) and Respondent No.2, ATDC which was already working within the ambit of Ministry of Textiles towards skill development was selected as Nodal Agency for the said scheme. Focusing on the core workforce requirement of the garment industry located across India, the scheme aims to impart training to large number of workforce relating to apparel industry in India. For this purpose, huge amount of Government fund has been released by Government of India, through Ministry of Textiles and for 12th Five Year Plan, Government of India has approved an expenditure of RS.1900 Crore for the implementation of various project under 'ISDS' scheme."

The Central Government in the Ministry of Textiles does not have any share holding in ATDC. The assertion to the contrary is not enough to bring the case within the fold of maintainability of the writ petition. There must be strong and cogent proof that the activity is none other than a creature of the State. One or two Officers of the Central Government on the management of the ATDC will hardly make any material difference to alter the character of the training centre as one qualifying the tests of State/person/authority bearing inimitably a public character, and one which is unequivocally an under wing, an adjunct, a limb or manifestly an organ of the State falling without convoluted ratiocination within the law in the first expansion of the law on the subject in beckon ruling in Anandi Mukta Sadguru Shree Mukta etc. v. V.R.Rudani, AIR 1989 SC 1607, 1989 (2) SCR 697, (1989) 2 SCC 691 and the law as it developed since which need not be cited to add length to the order. There is want of sufficient material on record from where it can be safely concluded that this writ is maintainable in its present form against the contesting second respondent ATDC. I would, therefore, be constrained to disallow this petition and leave the petitioner to his alternative remedies available in law.

While holding in the negative, the merits of the case have not been touched upon so as not to cause any prejudice to any of the parties involved in view of the conclusion reached, in my considered view, that this writ petition does not lie since it is found, for the reasons recorded above, not entertainable in the High Court and accordingly has to be dismissed for lack of maintainability and the petitioner relegated to his remedy in a forum which is available to him in law.

The petition is dismissed with liberty to the petitioner to apply elsewhere, as advised, to sue for relief, if available and in accordance with law.

20.04.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*