



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2831 OF 2023

(Mrs. Sampada w/o Sanjay Karkare Vs. Bombay Natural History Society & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Anil Mardikar, Senior Advocate with Shri Shubhankar Phadnis, Advocate for the petitioner.

Shri K.N. Shukul, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : SEPTEMBER 1, 2023

Heard.

2] The challenge raised in the present Writ Petition is to the communication dated 6/4/2023 issued by the Human Resources Department of the Bombay Natural History Society – respondent no.3 thereby intimating the petitioner who is serving as an Education Officer with the Conservation Department of the Bombay Natural History Society - Society that her services were no longer required by the Society and that on conclusion of the notice period of one month, her engagement would come to an end.

3] A preliminary objection has been raised on behalf of the Society to the maintainability of the Writ Petition on the ground that the Society is not a “State” within the meaning of Article 12 of the Constitution of India and therefore the present Writ Petition seeking to challenge its communication dated 6/4/2023 is not maintainable. It is submitted by Shri K.N. Shukul, learned Counsel for the Society by referring to various documents including its Memorandum of Association that the Society is registered as a Public Trust under the Maharashtra Public Trusts Act, 1950 as well as the Societies Registration Act, 1860. It is an autonomous body which meets its expenses from the amounts received through donations, membership fees, entrance fees, etc. It is not dependent upon any funding either by the State Government or the Central Government. In its Governing Council, provision is made for accommodating the Secretary to the Ministry of Scientific Research with the Government of India as well as the Joint Secretary of the State of Maharashtra

only if the Central Government or the State Government consents to give to the Society a recurring grant being requested. It is submitted that no such request for being issued any grant has been made. There is absence of deep and pervasive State control either of the Central Government or the State Government. The Society is not discharging any public function and hence various tests laid down by the Hon'ble Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others* [(1981) 1 SCC 722] are not satisfied. In addition, it is submitted that the tests prescribed by the Full Bench in its decision in *Vassudev Madkaikar and Others Vs. State of Goa* [AIR 2022 BOMBAY 9] are also not satisfied. Since the petitioner seeks enforcement of her contract of service and the Society is not a "State" within the meaning of Article 12 of the Constitution of India, the Writ Petition against it is not maintainable.

4] Shri Anil Mardikar, learned Senior Advocate for the petitioner in reply submitted that the petitioner has attained the status of a permanent employee of the Society. There is no remedy provided under the Employees Service Rules for raising challenge to the communication impugned in the Writ Petition. In absence of any alternate remedy being available, the petitioner has approached this Court for challenging the communication dated 6/4/2023. Referring to the Constitution of the Governing Council under Clause (31) of the Memorandum of Association, it is submitted that State control has been provided for under Clauses (d), (f) and (g) thereof. Inviting attention to the observations in paragraphs 18 and 31 of the decision in *Federal Bank Ltd. Vs. Sagar Thomas and Others* [(2003) 10 SCC 733], it is submitted that since the Society is undertaking a public duty, a Writ of Mandamus could be issued. Reliance is also placed on the judgment of the High Court of Madras in *Dr. E. Johnson and two others Vs. Salim Ali Centre for Ornithology and Natural History and another* [2002 (4) CTC 65] in that regard. It is thus submitted that considering the nature of activities of the Society which are in larger public interest, the Writ Petition was maintainable and liable to be entertained on merits.

5] Having heard the learned Counsel for the parties on the preliminary objection, we find that the said objection deserves to be upheld. A perusal of the Memorandum of Association indicates that the activities of the Society relate to

promoting knowledge amongst the Members of public of natural history particularly the study of animal and plant life. The object is to carry out research in all branches of natural history. For carrying out such activities, the Society is permitted to borrow or raise money in such a manner as it thinks fit including by issuing debentures. Clause (31) of the Memorandum of Association permits the Secretary of the Ministry of Scientific Research to be the Member of the Governing Council. Similar is the case insofar as the State Government is concerned. Except such nomination on the Governing Council, it is seen that there is no other involvement of the State Government or the Central Government in the activities of the Society. It has been asserted by the Society that no request for any funding has been made by the Society either to the State Government or the Central Government. Further, the nature of activities of the Society do not indicate that the same can be termed to be the public functions as explained by the Hon'ble Supreme Court in its decision in *Ajay Hasia and Others (supra)*. The Society is autonomous in its activities and there is no control whatsoever either of the State Government or the Central Government. In addition, as held by the Full Bench in *Vassudev Madkaikar and Others (supra)*, there is no element of public law involved in the activities of the Society. On the contrary, the petitioner seeks enforcement of her service contract.

6] We therefore find that the Society cannot be said to fall within the expression "State" as has been contemplated in the decisions relied upon by the learned Counsel for the Society. The ratio of the decision of the High Court of Madras in *Dr. E. Johnson and two others (supra)* cannot be applied to the facts of the present case in view of various distinguishing factual aspects.

7] For the aforesaid reasons, it is held that the Writ Petition as filed seeking to raise challenge to the communication dated 6/4/2023 to dispense with the services of the petitioner is not maintainable. The petitioner is at liberty to avail appropriate legal remedy in accordance with law for challenging the impugned communication. The points raised in that regard are kept open. The ad-interim order dated 28/4/2023 shall further continue to operate for a period of two weeks from today. It is made clear that the observations made in this order are

only for considering the objection with regard to tenability of the Writ Petition and the same shall not be treated as an observation on merits of the claim.

8] The Writ Petition is disposed of as not maintainable. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

SUMIT