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W.A.Nos.578 of 2013 etc., and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 880,
881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892 of 2013
and
W.P.No.32650, 32648, 32649, 32651, of 2017; 34552, 34556, 34560, of
2019,
and
C.M.P.No.12564 of 2020
and
W.M.P.Nos.35977, 35978, 35979, 35980 of 2017; 35263, 35268, 35259,
of 2019

[W.A.No.578 of 2013]

B.H.Santharam

... Appellant

Vs.

1. Khadi Gramodyog Sangh,
rep.by its Secretary,
844, Anna Salai,
Chennai-600 002.

2.Khadi Gramodyog Sangh Employees Superannuation Fund,
rep. by its Chairman and Trustee,
844, Anna Salai, Chennai-600 002.

3.Khadi and Village Industries Commission,



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rep. by its Director,
326, Avvai Shanmugam Salai,
Gopalapuram, Chennai-600 086.

4. The Registrar of Societies,
District Registrar (Central),
Chamiers Road,
Chennai-600 018.

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order of the learned Judge dated 08.04.2010 made in W.P.Nos.6981 of 2010.

For Appellants/
petitioners
in all cases

: Mr.K.Shakespeare

For Respondents
in all cases

: Mrs.Rita Chandrasekaran for
M/s.Aiyar & Dolia (for R1 & R2);

: M/s.A.V.Bharathi (for R3);

: Mr.Stanley Abimanu,
Additional Government Pleader (for R4).

COMMON JUDGEMENT

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The intra court appeals and the writ petitions have been instituted seeking pension to the employees served in Khadi Gramodyog Sangh.



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2. The learned Single Judge of this Court elaborately considered the issue relating to the maintainability of writ petition under Article 226 of the Constitution of India against Khadi Gramodyog Sangh which is a Society registered under the Societies Registration Act, 1860.

3. Khadi Gramodyog Sangh was originally registered under the Societies Registration Act, 1860 and after coming into force of the Tamil Nadu Societies Registration Act, 1975, it was registered under the said Act. A trust was created namely Khadi Gramodyog Sangh Employees Superannuation Fund Trust, which is an independent trust registered under the Trust Act and governed by the Board of Trustees. However, neither Khadi Gramodyog Sangh nor the Trust is a “State” within the meaning of Article 12 of the Constitution of India.

4. An attempt has been made by the learned counsel for the writ appellants writ petitioners Mr.Shakespeare that the Khadi Gramodyog Commission is a statutory body sanctioning funds to Khadi Gramodyog Sangh and there are correspondences between the Commission and Sangh, which would reveal that the Sangh is the State.



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5. We have gone through the by-laws of Khadi Gramodyog Sangh as a Society. The funds of the Sangh are generated by raising loans from such rate of interest, as may be decided by the Managing Committee of Khadi Gramodyog Sangh. The funds of the Sangh shall be invested in the State Bank of India or in any scheduled bank, as may be decided by the Board of Management. The treasurer shall be in-charge of the funds of the Sangh, subject to such limitation as prescribed by the Board of Management.

6. The by-laws would reveal that the funds are generated by raising loans and accordingly, the affairs of the Society are being conducted. Regarding membership, any person who is an employee of Khadi Gramodyog Sangh, male or female, is qualified for its membership. The purpose and object of the Society has been set out in the by-laws approved by the Registrar under the Societies Registration Act. Thus, Khadi Gramodyog Sangh is a Society registered under the Act and not a 'State' within the meaning of Article 12 of the Constitution of India.

7. The Sangh is not funded by the Government nor by the Village



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Industries Commission, which is a statutory body. They are extending the funds to the Society by way of loans, which is repayable. The said procedure has been stated in the counter filed by the Khadi and Village Industries Commission.

“8. I state that the 1st Khadi Gramodyog Sangh, it is an Institution, registered under Society Registration Act and functioning as per the Memorandum of Association and By-laws. It is governed by Elected Officer bearers and Management Committee. It is one of the directly aided Khadi Institution of 3rd respondent KVIC for carrying out activities of Production and Sales of Khadi and Village Industries products by engaging rural artisans.

*9. I state that the present Writs and Writ appeals have been filed on the subject matter of providing pensions to the retired employees of the 1st respondent Khadi Gramodyog Sangh. It is purely internal administrative matter of the institution. The 3rd respondent KVIC has nothing to do with the subject and has no role to play in the matter since the said Institution is **not a Government body**, but an Institution registered under Society Registration Act. The 3rd respondent has no role in the 1st respondent*



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administration, Employees Pensions etc., under any circumstances.”

8. Further, it is not in dispute that the employees of Khadi Gramodyog Sangh are falling under Employees' Provident Funds and Miscellaneous Provisions Act, 1952. These employees are admitted to the Employees' Pension Scheme, 1995 under the Act. Therefore, the employees of Khadi Gramodyog Sangh are eligible to avail the benefits as admissible under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and other consequential benefits under the Act or scheme formulated under the Act.

9. The Writ Court has considered the issues and held that the Khadi Gramodyog Sangh is not a 'State' and therefore, the writ petitions by the employees are not maintainable. Therefore, we are of the considered opinion that the employees of the Sangh have to approach the competent Court of law or forum, for the purpose of redressal of their grievances. It is not as if they are remediless. However, the writ petitions under Article 226 are not maintainable. Thus, we are not inclined to go into the merits raised between the parties.



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10. Liberty is granted to all the aggrieved persons to approach the competent authority under the enactment or the forum or the Court of law as the case may be. In the event of filing any application by any of the aggrieved person under the Act before the Court of law, the period during which the writ petitions and writ appeals were pending before the High Court is to be taken into consideration for the purpose of condoning the delay and those claims are to be adjudicated on merits and in accordance with law.

11. With the above observations, the writ appeals and the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(C.K.J.,)

15.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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