

Chander Mohan Khanna

Vs

National Council of Educational Research and Training and Others

Civil Appeal No. 1699 of 1981

(K. Jagannatha Shetty, Yogeshwar Dayal JJ)

17.09.1991

JUDGMENT

JAGANNATHA SHETTY J. –

1. Whether the National Council of Educational Research and Training (NCERT) is "State" as defined under Article 12 of the Constitution ? This is the only question that calls for decision in this appeal. The appellant was an employee of the NCERT. His services were terminated by the Secretary of NCERT. Challenging the termination he moved the Delhi High Court under Article 226 of the Constitution. The NCERT raised a preliminary objection as to the maintainability of the writ petition. The objection was that the NCERT is not amenable to the writ jurisdiction of the High Court as it is not an instrumentality or other authority within the meaning of Article 12 of the Constitution. The High Court has upheld the preliminary objection and dismissed the writ petition. The decision of the High Court has been challenged in this appeal.

2. There are only general principles but not exhaustive tests to determine whether a body is an instrumentality or agency of the government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the government and those which are not. The powers, functions, finances and control of the government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with government character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive of clinching in any case (see (i) Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi ((1975) 1 SCC 421 : 1975 SCC (L&S) 101); (ii) R.D. Shetty v. International Airport Authority of India ((1979) 3 SCC 489 : AIR 1979 SC 1628), (iii) Ajay Hasia v. Khalid Mujib Sehravardi ((1981) 1 SCC 722 : 1981 SCC (L&S) 258) and (iv) Som Prakash Rekhi v. Union of India ((1981) 1 SCC 449 : 1981 SCC (L&S) 200)).

3. Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control,

however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the state may largely point out that the body is "State". If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution. (See : (i) P.K. Ramachandra Iyer v. Union of India ((1984) 2 SCC 141 : 1984 SCC (L&S) 214) (ii) Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly ((1986) 3 SCC 156 : 1986 SCC (L&S) 429) and (iii) Tekraj Vasandi @ K.L. Basandhi v. Union of India ((1988) 1 SCC 236 : 1988 SCC (L&S) 300 : (1988) 2 SCR 260).)

4. The NCERT is a society registered under the Societies Registration Act. Like all societies, it has a Memorandum of Association. It has rules for internal management. The High court has elaborately examined the Memorandum of Association and the rules of the NCERT. The relevant part of the discussion by the High Court is as follows :

"The NCERT is governed by a Memorandum of Association subscribed to by seven officers of the Government of India on June 6, 1961. Under clause 3.1 of the Memorandum of Association the object of the Council is to assist and advise the Ministry of Education and Social Welfare in the implementation of its policies and major programmes in the field of education particularly school education. Under clause 3.2 the Council is empowered, for the realisation of the above objectives to undertake several kinds of programmes and activities which include coordination or research, extension services and training, dissemination of improved educational techniques and practices in schools, collaboration in educational programmes, distribution of ideas and informations, preparation and publication of books, materials, periodicals and other literature and allied activities. Under clause 5 the income and property of the Council is to be applied towards the promotion of its objects and cannot be disposed of by way of dividends, bonus etc., But under this clause, the Council is free to apply the income and property towards its objectives in such manner as it may think fit. It is subject to the limitations placed by the Government of India in this regard only in respect of the expenditure of grants made by the government. Under clause 6 the Government of India could review the work and progress of the Council and take appropriate action to give effect to the reports received on enquiries. In addition, the government could at any time issue directions to the Council on important matters of policy and programmes. Rule 3 of the Rules of the Council provides for constitution of the Council which consists mainly of various government officials but also includes the Chairman of the University Grants Commission, four Vice Chancellors and a number of nominees, four from school teachers and several others. Rule 7 enables the government to fix the period of appointment of the members and to extend it from time to time. The Council's affairs are conducted by the Executive Committee whose constitution is outlined in Rule 23. This includes various government servants but it also includes four educationists and three Professors and Heads of Departments who may be nominated by the President. Rule 37 provides that if there is any difference of opinion the view of the majority will prevail subject to a veto which could be exercised by the Government of India within a month. It also enables the President to refer any question for the decision of the government. Rule 40 enables the Executive Committee to frame and amend Regulations not inconsistent with the rules. Rule 42 empowers the Executive

Committee to enter into arrangements with government, public or private organisation or individuals in furtherance of its objectives and implementation of its programmes. Rule 57 provides that the funds of the Council shall consist of (i) grants made by government; (ii) contribution from other sources; (iii) income from the assets of the Council; and (iv) receipts of the Council from other sources."

5. The object of the NCERT as seen from the above analysis is to assist and advise the Ministry of Education and Social Welfare in the implementation of the governmental policies and major programmes in the field of education particularly school education. The NCERT undertakes several kinds of programmes and activities connected with the coordination of research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes. It also undertakes preparation and publication of books, materials, periodicals and other literature. These activities are not wholly related to governmental functions. The affairs of the NCERT are conducted by the Executive Committee comprising government servants and educationists. The Executive Committee would enter into arrangements with government, public or private organisations or individuals in furtherance of the objectives for implementation of programmes. The funds of the NCERT consist of (i) grants made by the government, (ii) contribution from other sources and (iii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The government control is confined only to the proper utilisation of the grant. The NCERT is thus largely an autonomous body.

6. Almost a similar case was considered by this Court in *Tekraj Vasandi @ K.L. Basandhi v. Union of India* ((1988) 1 SCC 236 : 1988 SCC (L&S) 300 : (1988) 2 SCR 260). This Court was required to determine whether the Institute of Constitutional and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was the then Speaker of the Lok Sabha. Out of the five Vice Presidents three were the then Central ministers; the other two were the then Chief Justice of India and the Attorney General. The objects of the society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation. It found further that though the annual financial contribution from the State was substantial, it was entitled to receive aid from the public and in fact, received contributions from other sources. Its objects were not governmental business. As regards the argument that the government exercised pervasive control over ICPS, the Court said : (SCC p. 257, para 20)

"In a Welfare State government control is very pervasive and in fact touches all aspects of social existence A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

7. In the light of all these factors it was held that ICPS was not "State".

8. In the present case, the High Court has relied upon the Constitution Bench decision of this Court in *Sabhajit Tewary v. Union of India* ((1975) 1 SCC 485 : 1975 SCC (L&S) 99). There it was held that the Council of Scientific and Industrial Research (CSIR), which was sponsored and controlled by the Central Government and registered under the Societies Registration Act was not "State"

within the meaning of Article 12. But this decision has been distinguished and watered down in the subsequent decisions particularly in Ajay Hasia ((1981) 1 SCC 722 : 1981 SCC (L&S) 258) and Ramachandra Iyer cases ((1984) 2 SCC 141 : 1984 SCC (L&S) 214).

9. Counsel for the appellant strongly relied upon the decision in P.K. Ramachandra Iyer case ((1984) 2 SCC 141 : 1984 SCC (L&S) 214) where this Court held that Indian Council for Agricultural Research (ICAR) was "State" under Article 12. But it may be noted that ICAR was originally an attached office of the Government of India and its position was not altered when it was registered as society. That case, therefore, is clearly distinguishable.

10. In our opinion, the case on hand, having regard to the indications to which we have called attention earlier, does not satisfy the requirements of "State" under Article 12 of the Constitution. We, therefore, agree with the conclusion of the High Court and dismiss the appeal. In the circumstances of the case, we make no order as to costs.

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