

PUNJAB AND HARYANA HIGH COURT

Krishan Gopal Ram Chand Sharma

Vs

Punjab University

(S Dulat, C.J. A Grover. J.)

15.03.1965

JUDGMENT

A.N. Grover, J.

1. This petition under Article 226 of the Constitution was heard by me sitting singly and as an important question of law was raised as to whether the respondent University would fall within the definition of State as given in Article 12 of the Constitution, I referred it to a Division Bench for decision.

2. It is unnecessary to set out the facts which are given in the referring order. The main contention on behalf of the petitioner was that the respondent University had been guilty of a discriminatory act against him in the matter of his result in the P. E. L. examination and the question that has arisen is whether such an act, assuming for the sake of argument that it was discriminatory, could be struck down as violative of Article 14 of the Constitution. Now, Article 14 inhibits the State from denying to any person equality before the law. Article 12 contains the definition of the expression "the State" and it is in the following terms :--

" In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

Mr. H. S. Wasu, learned counsel for the petitioner, has urged that the respondent University being a statutory body having been constituted under the East Punjab University Act would be a local or other authority and would, therefore, be included within the meaning of the words "the State." This contention, however, is wholly opposed to the view expressed by a Bench of the Madras High Court consisting of Rajamannar C. J. and Venkatarama Ayyar J. (as he then was) in the University of Madras v. Shantha Bai, AIR 1954 Mad 67. In that case, the question was whether Article 15(1) which prohibits discrimination by the State, could be made applicable to certain

directions issued by the University of Madras. The view of the Bench was that the words "local or other authority" must be construed ejusdem generis with Government or Legislature and so construed they could only mean authorities exercising governmental functions. These words would not include persons natural or juristic who cannot be regarded as instrumentalities of the Government. The University being a body corporate created by a statute, was not charged with the execution of any governmental functions, its purpose being purely to promote education. Although Section 44 of the Madras Act VII of 1922 provided for financial contributions by the local Government, the University was authorised to raise its own funds of income from fees, endowments and the like. It was a State-aided institution but not maintained by the State. The learned Madras Judges relied a great deal on American decisions in which the distinction between State-maintained Universities and State-aided Universities had been adopted. In their view it was clear that the provisions enacted in part 3 of the Constitution had also recognised the distinction between such institutions. Reference was made to Article 28(1), which enacts that no religious instruction shall be provided in any educational institution wholly maintained out of State funds and to Article 28(3) according to which religious instruction might be given to educational institutions recognised by the State or receiving aid out of the State funds, but that no person should be compelled to take part in such instructions. Article 29(2) also recognised that educational institutions might be either State-maintained or State-aided. Adopting the principles laid down in the American cases it was held that educational institutions would be within the purview of Article 15(1), only if they were State-maintained and not otherwise.

3. The Madras decision was followed by Sinha J. in *Ena Ghosh v. State of West Bengal*¹, while considering whether the Sarojni Naidu College for Women, Dum Dum, which was a Government sponsored college, was a State within the meaning of Article 12. In *B. W. Devadas v. Selection Committee for Admission of Students to the Karnatak Engineering College*, AIR 1964 Mys 6, the question was whether the Karnataka Regional Engineering College Society fell within the definition of the term "State" in Article 12. The Madras decision was followed in that case and it was held that an unsuccessful applicant for admission into that college could not complain of the infringement of the provisions of Article 14 of the Constitution. Narayana Pai J., who delivered the judgment of the Bench, said that the term "State" was an abstract political conception and it could act only through agencies or instrumentalities through which it exerted its political power on those whom it governed or ruled. Article 14, therefore, necessarily sought to control State action or the action of the State through its agencies or instrumentalities. The Mysore Court further examined meaning of the term "authority" and said:--

"The 'authority' in the ordinary dictionary sense may comprise not merely a person or a group of persons exercising governmental power but also any person or group of persons who, by virtue of their position in relation to other person or persons, may be able to impose their will upon that other person or persons. But, there is an essential difference between a political association of persons called the State giving rise to political power connoted by the well known expression 'imperative law' and a non-political association of

persons for other purposes of contract, consent or similar type of mutual understanding related to the common object of persons so associating themselves together giving rise to a power which operates not in manner in which imperative law operates, but by virtue of its acceptance by such associating persons based upon contract, consent or mutual understanding. The several matters enumerated in the inclusive definition of 'law' contained in Article 13(3)(a) are also those that have the force of law, that is to say those that are in the nature of imperative law whose power arises by virtue of political association of persons forming themselves into a State and not by virtue of any contract, consent or mutual understanding. In this view, the term 'authorities' occurring in Article 12 could only mean a person or a group of persons who exercise the legislative or executive functions of a State or through whom or through the instrumentality of whom the State exercises its legislative or executive power."

4. As against these authorities, Mr. Wasu relied on *P. M. Bramadathan Nambooripad v. Cochin Devaswom Board*², in which it has been observed (in paragraph 5) that entry 5 in List II of the Seventh Schedule gives an indication as to what are "Local authorities" and the Cochin Devaswom Board constituted under the Travancore-Cochin Hindu Institutions Act, 1950 cannot be considered as a "local authority" within the meaning of Article 12 but it would fall within the ambit of "other authorities." According to the Travancore Cochin Full Bench, the word "authority", in its literal sense, means "a body exercising power" and in the context of Article 12 that power must be considered as the power to issue rules, bye-laws or regulations having the force of law. It appears that the attention of the learned Travancore Cochin Judges was not called to the Madras decision which, with respect, is very authoritative. In Basu's Commentary on the Constitution of India, the Madras view has been subjected to a certain measure of criticism in the following words:

"With respect, it may be submitted that this is begging the real question. The distinction made in the specific provisions of Articles 28-29 cannot be imported to interpret the general provisions of Articles 12 and 15(1). As I have already said, the test for the application of Article 12 is whether the authority has the power to make 'laws' as defined in Article 13 or the power to administer such laws."

Further, where a body exercises power conferred by a statute, it is obvious that it is exercising governmental power in its ordinary sense. There is the authority of the State behind its acts (assuming them to be *intra vires*). This is why even a Board of Trustees constituted by a statute has been in the U. S. A. taken, to be an agency of the State. A different view, it is submitted, can hardly be taken as regards a University exercising statutory powers. In the Madras case, AIR 1954 Mad 67, reliance was placed on American decisions such as *Tinkoff v. N. W. University*³, where the Fourteenth Amendment was held inapplicable to Universities not maintained but aided by the State. But it was not discussed whether such Universities were exercising any statutory powers. In later cases, *Lucy v. Adams*, (1955) 350 U. S. 1 and *Florida v. Board of Control*,

(1956) 350 U. S. 413, the American Supreme Court has held that the Fourteenth Amendment is applicable to aided Universities, if they are vested with statutory powers."Mr. Wasu, however, admits that the American decisions on which Basu has relied do not support the statement made by him that the Fourteenth Amendment is applicable to aided Universities if they are invested with statutory powers.

5. After giving the whole matter due consideration, I am of the opinion that the decision of the Madras Court must, with respect, be followed, with the result that any challenge under Article 14 to an act of the respondent University cannot be sustained. The petition, therefore, fails and it is dismissed, but in the circumstances there will be no order as to costs.

S.S. Dulat, J.

6. I agree.

Cases Referred.

1AIR 1962 Cal 420

2AIR 1956 Trav-Co. 19 (FB)

3(1948) 93 Law Ed. 383