

CASE NO.:
Appeal (civil) 4590 of 2004

PETITIONER:
Mohammad Sadiq & Ors

RESPONDENT:
State of Uttar Pradesh & Ors

DATE OF JUDGMENT: 21/09/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4590 OF 2004
[With Civil Appeal No.4606 of 2004]

Dr. ARIJIT PASAYAT, J.

1. These appeals are inter-linked and are directed against common judgment of the Allahabad High Court. By the impugned judgment the order passed by the learned Single Judge was set aside.

2. Background facts in a nutshell are as follows:

Retrenched employees of Institute of Engineering and Rural Technology (for short 'IERT'), 105 in number, filed a writ petition against the State of U.P. and its functionaries as well as the IERT praying for quashing the order dated 24.3.1999 by which it was decided that the Training-cum-Production Centre of IERT was to be closed down w.e.f. 31.3.1999 and the workmen employed were to be retrenched after paying compensation.

While allowing the writ petition the learned Single Judge gave directions which essentially read as follow:-

"\005The respondents are directed to prepare a list of the employees who were appointed prior to 1.10.1986 in the production-cum-training Centre of IERT, and were working continuously till the date of their retrenchment i.e. 31.3.1999 by excluding those who have retired, or have not given their option for absorption, to be absorbed in the vacancies in other polytechnics of the State of Government, which are recognized and funded or in any other technical institution, or any post which it may deem to be fit, in accordance with their eligibility and after relaxing age and other terms and conditions of recruitment. As and when petitioners are offered absorption on any equivalent post, they will vacate the quarters occupies by some of them in the premises of IERT. Since petitioners have accepted retrenchment compensation, no direction with regard to payment of salary is required to be given. The State Government is directed to

draw the list, prepare the scheme and to offer appointment by absorption, preferably within a period of four months. There is no order as cost."

3. The present respondents questioned correctness of the order by filing special appeal before the High Court. By the impugned judgment the High Court allowed the special appeal. It held that IERT is not an instrumentality of the State and/or could not be termed to be State Government or a public Corporation. It was held that the finding of learned Single Judge that IERT is wholly owned, controlled and managed by the State Government is not correct.

4. Learned counsel for the appellants submitted that the basic questions are as follows:-

- (a) Whether IERT was an instrumentality of the State.
- (b) Whether the Uttar Pradesh Absorptions of Retrenched Employees of Government/Corporations in Government Service Rules, 1991 (in short the 'Absorption Rules') is applicable to the writ petitioners-appellants.
- (c) Whether after receiving compensation, the concerned employees could question the closure.

5. It was submitted that IERT is registered under the Societies Registration Act, 1860 (in short the 'Societies Act') and in terms of the Absorption Rules the concerned employees were entitled to be given protection of the Absorption Rules. It is submitted that the expression "established" means that the institution has come into existence and, therefore, even though IERT has been registered under the Societies Act, that does not mean it is not established or constituted under any Uttar Pradesh Act.

6. In response, learned counsel for the respondent submitted that the concept of "established" or "constituted" is different from a body registered under the Societies Act.

7. The contentions raised need consideration. It has been accepted that there was no material placed before the High Court to establish that IERT is an instrumentality of the State. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.* (2002 (5) SCC 111), it has been clearly stated that even if a society or institute is registered under the Societies Act and some functionaries of the State Government and other members of the institute, such an institute may not be termed as an instrumentality of the State, if deep and pervasive control over the affairs of the institute was not with the State Government. Texts formulated in *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.* (1981 (1) SCC 722) were highlighted. There is basic distinction between a society and a corporation. In *Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi v. State of Delhi (Now Delhi Administration)* and another (AIR 1962 SC 458), it was inter alia held as follows:

"(9) The first and foremost question is whether the old Board was a corporation in the legal sense of that word. What is a Corporation? Corporations may be divided into two main classes, namely, corporations aggregate and corporations sole. We are not concerned in the present case with corporation sole. "A Corporation aggregate has been defined as a collection of individuals united

into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence". (Halsbury's Laws of England, 3rd Edn. Vol. 9, page 4.) A corporation aggregate has therefore only one capacity, namely, its corporate capacity. A corporation aggregate may be a trading corporation or a non-trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special acts of parliament, (3) companies registered under the Companies Act, etc. Non-trading corporations are illustrated by (1) municipal corporations, (2) district boards, (3) benevolent institutions, (4) universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member of members and his or their successors are one. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself; for a corporation is a legal persona just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient.

10. The learned Advocate for the petitioners has referred us to various provisions of the Societies Registration Act, 1860 and has contended that the result of these provisions was to make the Board a corporation on registration. It is necessary now to read some of the provisions of that Act. The Act is entitled an Act for the registration of literary, scientific and charitable societies and the preamble states that it was enacted for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge

etc., or for charitable purposes. Section 1 of the Act states that any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in Section 20 of the Act may, by subscribing their names to a memorandum of association and filing the same with the Registrar or Joint-stock Companies form themselves into a society under the Act. Section 2 lays down that the memorandum of association shall contain and one of the particulars it must contain is "the objects of the society". Section 3 deals with registration and the fees payable therefor. Sections 5 and 6 are important for our purposes and should be read in full.

"5. The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary of the trustees thereof, if on an application to the governing body some other officer or person be not nominated to be the defendant."

Section 7 provides for non-abatement of suits or proceedings and the continuance of such suits or proceedings in the name of or against the successor of the person by or against whom the suit was brought. Section 8 says that if a judgment is recovered against a person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society. Section 10 provides that in certain circumstances mentioned therein a member of the society may be sued by the society; but if the defendant shall be successful in any such suit brought at the instance of the society and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit was brought, or from the society. Sections 13 and 14 provide for dissolution of societies and the consequences of such dissolution. These provisions have also an important bearing on the questions before us and are quoted in full.

"13. Any number not less than three-fifths of the members of any society may

determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal court of Original civil jurisdiction of the district in which the chief building of the society is situate, and the Court shall make such order in the matter as it shall deem requisite :

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved, without the consent of the Government of the State of registration.

14. If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such Court as aforesaid :
Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint Stock Company."

8. The other crucial question is whether the Absorption Rules applied to IERT. The relevant provisions in the rules read as follows:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules to provide for the absorption in Government Service of the retrenched employees of the Government or of Public Corporations.

THE UTTAR PRADESH ABSORPTION OF
RETRENCHED EMPLOYEES OF
GOVERNMENT OR PUBLIC CORPORATIONS
IN GOVERNMENT SERVICE RULES, 1991.

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2(b) "Public Corporation" means a body

corporate established or constituted by or under any Uttar Pradesh Act except a University of local authority constituted for the purpose of Local Self Government and includes a government Company within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has prepondering interest.

2(c) "Retrenched Employees" means a person who was appointed on a post under the Government or a public corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was continuously working in any post under the Government or such corporation up to date of his retrenchment due to reduction in, or winding up of, any establishment or the Government of the Public Corporation, as the case may be and in respect of whom a certificate of being retrenched employees has been issued by his appointing authority."

9. A bare reading of the provisions makes the positions clear that in order to bring application of the Rules the public corporation has to be a body corporate established or constituted by or under any Uttar Pradesh Act.

10. The fundamental requirement is that the corporation should have been constituted by or under any Uttar Pradesh Act. Undisputedly, the Societies Act is a Central Act.

11. The impugned judgment of the High Court does not suffer from any infirmity to warrant interference. The appeals are dismissed but without any order as to costs.