

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-235/2004
OA-438/2004
OA-975/2004

New Delhi this the 29th day of July, 2004.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

OA-235/2004

Sh. Mehar Chand,
S/o Shri Gopi Chand,
R/o D-183, Manglapuri
Village, Palam Colony,
New Delhi. Applicant

(through Sh. A.K. Behera with Sh. U. Srivastava,
Advocate)

Versus

1. New Delhi Municipal Council
through the Secretary,
Parliament Street,
New Delhi-1.
2. Union of India through
the Secretary,
Ministry of Personnel Public
Grievance & Pension,
Department of Personnel &
Training, North Block,
New Delhi. Respondents

(through Ms. Seema Singh, Advocate for R-1 and
Sh. K.S. Chauhan, proxy for Sh. M.M. Sudan,
Advocate for R-2)

OA-438/2004

Sh. Mircha Singh,
S/o Sh. Baishkha Singh,
(Mali Group'D')
R/o 20/433, Kalyanpuri,
Delhi-51. Applicant

(through Sh. A.K. Behera with Sh. U. Srivastava,
Advocate)

Versus

1. Delhi Development Authority
(through Vice-Chairman)
Office of DDA, Vikas Sadan,
INA, New Delhi-3.
2. Director(Horticulture),
Delhi Development Authority,
Vikas Sadan,
INA, New Delhi-2.

3. Union of India through
Secretary DoP&T,
MHA, New Delhi.

4. Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi-1.

..... Respondents

(through Sh. Arun Birbal, Advocate for R-1 & R-2 and
Sh. Inderjit, proxy for Sh. Rajinder K. Schal, Advocate
for R-3 & R-4)

OA-975/2004
MA-1036/2004

Sh. Kali Charan,
S/o late Sh. Ram Singh,
R/o H.No. 7, Block-33,
Trilok Puri, Delhi-91.

..... Applicant

(through Sh. A.K. Behera with Sh. U. S. Vastava,
Advocate)

Versus

Delhi Jal Board through

1. The Chief Executive Officer,
Delhi Jal Board,
Varunalaya, Phase-2,
Jhande Wala, New Delhi.

2. The Director (A&P),
Delhi Jal Board,
Varunalaya, Phase-2,
Jhande Wala, New Delhi.

3. The Asstt. Commissioner(D),
DJB, Varunalaya, Phase-2,
Jhande Wala, New Delhi.

4. Union of India through
the Secretary,
Ministry of Personnel Public
Grievance & Pension,
Deptt. of Personnel & Training,
North Block, New Delhi.

..... Respondents

(through Sh. K.S. Chauhan, proxy for Sh. M.M. Sudan,
Advocate)

ORDER (ORAL)
Hon'ble Shri Shanker Raju, Member(J)

We pass a common order in these O As involving
common question of jurisdiction of this Tribunal.

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These cases have been filed by the employees of New Delhi Municipal Council Delhi Development Authority and Delhi Jal Board. These bodies claim an independent status.

2. At the outset, we may observe that we are not entering into the merits of the cases for adjudication.

3. Though the applicants counsel have vehemently in their pleadings relied upon plethora of decisions of the Apex Court to substantiate their ground of deemed jurisdiction.

4. In a Constitutional Bench decision by seven Judges of the Apex Court in Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and Others (2002 SCC(L&S)633, the following text has been laid down to identify an agency or instrumentality within the control of the Government for being brought in the ambit of State under Article 12 of the Constitution of India:-

"17. For identifying such an agency or instrumentality he pronounced four indicia:

- (1) "A finding of the State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action."
- (2) "Another factor which might be considered is whether the operation is an important public function."

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- (3) "The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion."
- (4) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?"

5. In the aforesaid case finding ICCB as State having regard to the notification made by the Government under Section 14(2) of Administrative Tribunals Act, 1985, the petition was dismissed.

6. Be that may so, we would like to reproduce the decision of the Apex Court on the judicial independence in K.A. Judicial Officer vs. In re (200193)SCC 54) where the following observations have been made:-

"A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four-corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior but may upset his action or opinion. The availability of such fearlessness is

essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge."

7. Similarly in a Constitution Bench decision in Rupa Ashok Hurra Vs. Ashok Hurra (2002(4)SCC 388) on the functions of the judiciary, the following observations have been made:-

"The role of the judiciary to merely interpret and declare the law was the concept of a bygone age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years there is a discernible shift in the approach of the final courts in favour of rendering justice on the facts presented before them, without abrogating but bypassing the principle of finality of the judgement."

8. If one has regard to the above, it is open for this Tribunal which has been given a status of Court and a judicial forum to lay down principles and guidelines to bodies changing conditions of the society and to ultimate object to dispense justice. A suggestion to the Government is also part of it which does not partake the character of mandamus on any opinion expressed which is within the four corners of law though may be subjected to scrutiny of higher forum if independent is maintainable.

9. In view of the above, we find that in the light of decision in Pradeep Kumar Biswas case all the components and factors as well as guidelines for judging control of the Government over the body and the

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fact that under Central Administrative Tribunal under Section 14(2) of Administrative Tribunals Act, 1985 any authority within the territory of India or under the control of the Government which is owned or controlled by Government can be brought by notification within the purview of the Administrative Tribunal for the purposes of jurisdiction is concerned. We find that none of the bodies above are State owned or controlled as the NCT of Delhi is yet to take full shape of a State within the Constitution of India. Accordingly, keeping these O.As in abeyance with liberty to either of the parties to revive. On an opinion as a suggestion recommend to the Government which may consider taking a decision to bring these bodies through a notification under Section 14(2) of Administrative Tribunals Act, 1985 within the jurisdiction of the Central Administrative Tribunal on deliberations.

10. Let a copy of this order be sent to DoP&T for information.

(Shanker Raju)
Member(J)

(V.K. Majotra)
Vice-Chairman(A)

29.7.04

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