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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 934/93.

Dt. of Decision : 29.6.94.

1. Defence Laboratories School's
Staff Association, Hyderabad
Represented by General Secretary
Shri S. Srinivas

2. Shri K. Ram Balaji,
Teacher Defence Lab Schools
Kanchanbagh, Hyderabad.

.. Applicants.

Vs

1. Secretary, Ministry of Defence,
'B' Wing, Sena Bhavan, New Delhi.

2. Director General, Defence Research
Development Organisation, 'B' Wing,
Sena Bhavan, New Delhi.

3. Director, Defence Research &
Development Laboratories (DRDL),
Chandrayanagutta, Hyderabad.

4. Director, Defence Electronics
Research Laboratories (DLRL),
Chandrayanagutta, Hyderabad.

5. Director, DMRL, Kanchanbagh,
Hyderabad.

6. Chairman, DLS Management Committee,
Kanchanbagh, Hyderabad.

7. Management Committee of Defence
Laboratories Schools, Kanchanbagh,
Hyderabad, represented by its Secretary.

8. Principal, Defence Laboratories
Schools, Kanchanbagh, Hyderabad.

.. Respondents.

Counsel for the Applicants : Mr. V. Rajagopal Reddy *for Sri Z.V.S. Rao.*

Counsel for the Respondents : Mr. N.R. Devaraj, Sr.CGSC.
Mr. P.B.Vijayakumar
for R 6, 7 & 8.

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY : MEMBER (JUDL.)

O.A.No.934/93.

Date of Judgement : 29-6-94.

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi, Member(A) X

The first applicant is the Defence Laboratories School's Staff Association, Hyderabad, represented by its General Secretary Shri S.Srinivas and the second applicant is its President Shri K.Ram Balaji, both teachers in the said school. Their claim is for regularisation of all the teachers and other staff members of their school as on 30.4.1993 and for applying the service conditions and terms to which Kendriya Vidyalaya Sangathana Schools are subjected.

2. The preliminary question raised for our consideration is whether the applicants can invoke the jurisdiction of the Tribunal. In other words, we have to determine whether the teachers and the staff of the Defence Laboratories School (hereinafter referred to as 'the School') are persons appointed to a civil or defence service of the union or to a civil post under the union or a post connected with the defence.

3. To cater to the educational needs of the children of the Defence Laboratories in Hyderabad, the School was started in 1972. In 1978, Govt. of India, Ministry of Defence sanctioned a financial grant to the tune of Rs.30,500/- for running Standard I, II and III of the Primary School in the residential complex of the DRDL. In 1992, it was decided by the Government that the pay and allowances of the teachers and staff would be at par with those of the Kendriya Vidyalayas.

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In the same year, Government sanctioned Rs.21 lakhs towards the pay and allowances of staff and other miscellaneous expenditure. Subsequently, in 1993, the Director, DRDL was authorised to make payments on account of recurring and non-recurring expenditure in respect of the School 'out of the funds sanctioned from time to time'. It is thus evident that the School is funded, if not entirely, at least substantially by the Government.

4. Shri V.Rajagopal Reddy, learned counsel for the applicants put forward the plea that the School, built and run by the Government through the Defence Laboratories has to be viewed as an establishment of the Government and that its employees are in the service of the Government.

5. Shri N.R.Devaraj, learned Standing Counsel for the Union of India and Shri P.B.Vijaya Kumar, learned counsel for the Management of the School urged before us that the School is a private establishment under the control of the Management Committee. Admittedly, the School receives financial aid from the public fund, but the School also generates its own resources. The School was started purely as a welfare measure in 1972, but Government's grants came later. All the teachers and staff were recruited and appointed by and under the authority of the Management Committee which is also empowered to terminate the services of any of the School employees. The Government is in no way involved in the day to day administration of the School which is left entirely to the Management Committee. As regards

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the financial aid from the Government, the respondents stated that it is not a permanent arrangement and that it would cease as soon as the School becomes self sufficient. In any case, it is contended that the Government's grant covers only a part of the expenditure and that the Management Committee raises funds for the remaining expenditure.

6. Jurisdiction of the Central Administrative Tribunal is specified in Section 14 of the Administrative Tribunals Act, 1985 (the Act, for short). Clause (1)(b) which is relevant is reproduced below:-

"14. Jurisdiction, powers and authority of the Central Administrative Tribunals.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court * ()) in relation to—

- (a) XXXXX
- (b) all service matters concerning—
 - (i) a member of any All India Service; or
 - (ii) a person (not being a member of an All India Service or a person referred to in clause (c)) appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian (not being a member of an All India Service or a person referred to in clause (c)) appointed to any defence services or a post connected with defence;

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Govt. of India or of any corporation ** (or society) owned or controlled by the Government;

*Deleted vide The Administrative Tribunals (Amendment) Act, 1986 (No.19 of 1986). Takes effect from 22nd January 1986.

**Inserted vide The Administrative Tribunals (Amendment) Act, 1986 (No.19 of 1986) and takes effect from 22nd January, 1986.

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7. The Tribunal exercises jurisdiction in respect of service matters of a person appointed to a civil service or to any civil post under the Union. Similarly it has jurisdiction in respect of civilians appointed to any defence services or to posts connected with defence.

8. On the question as to whether a person is holding a civil post under the Union of India, there does not exist any single test which may be said to be conclusive. In Smt. Ena Ghosh Vs. State of West Bengal & Ors. AIR 1962 Cal.420, it was observed that some of the points to be considered are:- (1) Who appoints him? (2) Who can dismiss him? (3) Who pays the wages? These tests are by no means, exhaustive. A host of factors have to be taken into consideration depending upon the peculiar features of the organisation in which the person is holding the post.

9. In Ajay Hasia Vs. K.M. Seharwardi & Ors. 1981(2) SLJ 651, the Regional Engineering College run by a Society registered under the Societies Registration Act, 1860 was held to be an instrument of the State and 'authority' within the meaning of Article 12 of the Constitution. In that case, it was found that the State and the Central Governments had full control of the working of the Society.

10. The scope and extent of meaning of the term 'the State' in Article 12 of the Constitution is much wider than the scope and meaning of the term 'civil post' and 'civil service' under the Union. For the purpose of Part III of the Constitution 'the State' includes

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Government and Parliament of India and the Government and Legislature of each of the States and all local or other authorities under the control of the Government of India. So far as the Central Administrative Tribunal is concerned, 'local or other authorities under the control of the Govt. of India' and Corporations or Societies owned or controlled by Government can seek its jurisdiction only when the Central Government, by notification, specifies that the provisions of sub-section (3) of Section 14 of the Administrative Tribunals Act, 1985 shall apply to such local or other authority or Corporation or Society.

11. In *Sabhajit Tewari Vs. Union of India & Ors.* 1975 SLJ 410, a Constitution Bench of the Hon'ble Supreme Court examined the question whether the Council of Scientific & Industrial Research (C.S.I.R. for short) is an 'authority' within the meaning of Article 12 of the Constitution. Relevant extracts are reproduced below:-

"(3) Extracting the features as aforesaid, it was contended that these would indicate that Council of Scientific & Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil & Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and cooperation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.

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(4) The Court has held in Praga Tools Corporation Vs. Shri C.A. Imanual & Ors.* Heavy Engineering Mazdoor Union Vs. The State of Bihar & Ors.** and in S.L. Agarwal Vs. General Manager, Hindustan Steel Ltd.,*** that the Praga Tools Corporation, Heavy Engineering Mazdoor Union and Hindustan Steel Ltd., are all companies incorporated under the Companies Act and the employees of these companies do not enjoy the protection available to Govt. servants as contemplated in Article 311. The companies were held in those cases to have independent existence of the Government and by the law relating to corporations. These could not be held to be departments of the Government.

(5) For these reasons we are of the opinion that the Council of Scientific & Industrial Research is not an authority within the meaning of Article 12 of the Constitution. The writ petition is dismissed."

12. Notwithstanding the fact that C.S.I.R. was declared to be not an 'authority' within the meaning of Article 12 of the Constitution, the Central Government, by notification, brought C.S.I.R. being a Society owned or controlled by the Government, within the jurisdiction of the Central Administrative Tribunal.

13. Section 14(2) of the A.T. Act reads as under:-

"The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Govt. of India and to corporations {or societies} owned or controlled by Government, not being a local or other authority or corporation {or society} controlled or owned by a State Government:

Provided that if the Central Government considers it expedient to do so for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations {or societies}."

Thus, it would be clear that a local or other authority or Society or corporation owned or controlled by Government even when coming within the purview of the definition of 'State' in Article 12 need not necessarily be under the jurisdiction of the Tribunal. For that the condition specified in sub-section (2) of Section 14 of the A.T. Act has to be met.

* (1969) 3 SCR 773.
** (1969) 3 SCR 995.
*** (1970) 3 SCR 363.

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14. The Central Government is thus empowered to extend the jurisdiction of the Tribunal to any local or other authority or society or corporation under the control of the Government. In the absence of such a notification, a local or other authority or a society or corporation, even if owned or controlled by the Government and even if falling within the definition of 'the State' in Article 12 of the Constitution, cannot seek the jurisdiction of the Tribunal under Section 14 of the Act.

15. In The State of Assam & Ors. Vs. Kanak Chandra Dutta, AIR 1967 SC 884, the dispute was whether a Mauzadar holds a 'civil post' under the Government. In arriving at the decision that a Mauzadar is holder of a civil post, certain attendant factors were taken into consideration as would be obvious from the following extract of the judgement:-

"9. xxxxx There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relation. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. xxxxx

11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him.

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He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State."

16. In the instant case, the School was established for the purpose of meeting the educational needs of the children of the employees of the nearby Defence Laboratories as a welfare measure. The teachers and staff have nothing to do with the actual functioning of the Defence Laboratories and hence cannot be said to be connected even remotely with the functions and affairs of the Laboratories. They are neither appointed to a defence service nor their posts are 'connected' with defence. This is so even if the School is financed by the funds at the disposal of the Defence Laboratories.

17. The facts in the instant case are that the teachers and staff of the School are appointed by the Management Committee, which has the power to order termination of their service, the master-servant relationship exists only between the Management Committee and the teachers and the Government has no role in the functioning of the School or in appointing the teachers or the other staff. As regards the heavy financial support of the Government to the School, the said factor by itself does not make the School a Government establishment nor its staff holders of civil posts under the Government. It is settled law that employees of aided schools run by Societies cannot be said to be holders of civil posts

Copy to:

1. The Secretary, Ministry of Defence,
'B' Wing, Sena Bhavan, New Delhi.
2. The Director General, Defence Research
Development Organisation, 'B' Wing,
Sena Bhavan, New Delhi.
3. The Director, Defence Research &
Development Laboratories (DRDL),
Chandrayanagutta, Hyderabad.
4. The Director, Defence Electronics
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Chandrayanagutta, Hyderabad.
5. The Director, DMRL, Kanchanbagh,
Hyderabad.
6. The Chairman, DLS Management Committee,
Kanchanbagh, Hyderabad.
7. The Secretary, Management Committee of
Defence Laboratories Schools, Kanchanbagh,
Hyderabad.
8. The Principal, Defence Laboratories Schools,
Kanchanbagh, Hyderabad.
9. One copy to Mr. J.V.S. Rao, Advocate, CAT, Hyderabad.
10. One copy to Mr. N.R. Devraj, Sr. CGSC, CAT, Hyderabad.
11. One copy to Mr. P.B. Vijay Kumar, Advocate, CAT, Hyderabad.
12. One copy to Library, CAT, Hyderabad. (3 copies).
13. One copy to Deputy Registrar, (Judl.), CAT, Hyderabad.
14. Copy to Reporters ^{& All Benches} as per standard list CAT, Hyderabad.
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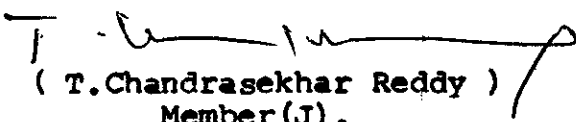
In Narinder Gupta Vs. Union of India & Ors.

1986(2) SLJ (CAT) 213, the Principal Bench of the Tribunal held that aided schools managed by Societies and Trusts under the control of Delhi Administration are not amenable to the jurisdiction of the Tribunal.

18. In Sampath Kumarachary Vs. Defence Laboratories Schools & Another (O.A.No.591/90) decided on 6.8.90, this Bench of the Tribunal held that the Defence Laboratories School is a private school and hence the Tribunal has no jurisdiction over it under Section 14 of the Act. In that case, there was no discussion as to the funding of the school. Notwithstanding the same, we reaffirm the view taken in Sampath Kumarachary's case.

19. For the aforesaid reasons we find that the O.A. is not maintainable as we have no jurisdiction to entertain it. The O.A. is, therefore, dismissed. It is open to the applicant to approach the appropriate forum for relief, if any.

20. No order as to costs.


(T.Chandrasekhar Reddy)
Member(J).


(A.B.Gorthi)
Member(A).

Dated: 29 June, 1994.

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DEPUTY REGISTRAR(J)

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. G. RTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER (A)

Dated: 27-6-1994. ✓

ORDER/JUDGMENT:

M.A./R.A/C.A. No.

in

O.A.No.

934/93 ✓

T.A.No.

(W.P.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed. ✓

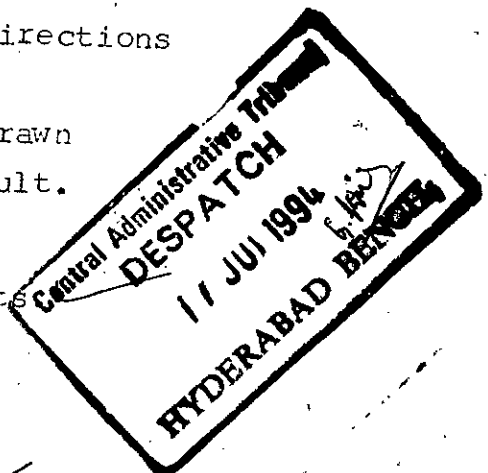
Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs

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2/7/94

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