

CASE NO.:
Appeal (civil) 496-497 1999

PETITIONER:
DISTT. MANAGER, APSRTC, VIJAYAWADA

Vs.

RESPONDENT:
K. SIVAJI & ORS.

DATE OF JUDGMENT: 30/11/2000

BENCH:
S.R.Babu, S.B.Variava

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J
J U D G M E N T S. N. VARIAVA, J.

These Appeals are against a Judgment dated 5th August, 1986 passed by the High Court of Andhra Pradesh. Briefly stated the facts are as follows: The Appellant is a Road Transport Corporation established under Section 3 of the Road Transport Corporation Act, 1950. The Respondents are employees of the Appellant Corporation. The Respondents had filed an application under Section 15(2) of the Payment of Wages Act claiming wages for holidays declared under the Andhra Pradesh Factories and Establishments (National Festival and other Holidays) Act, 1974 (hereinafter referred to as the said Act). This claim was contested by the Appellant. The Appellant pointed out that under the said Act only 7 days holiday were to be given, whereas they had already granted 15 days holiday. The Appellant also contended that by virtue of Section 11(1)(c) of the said Act the provisions of the said Act were not applicable to them. The Appropriate Authority did not accept the contentions of the Appellant and directed them to make payment for the work done by the Respondents on holidays declared under the said Act. The Appeals filed by the Appellant were also dismissed. The Appellants, therefore, filed Writ Petitions in the High Court of Andhra Pradesh, which came to be disposed of by Judgment dated 5th August, 1986. The High Court has held that the Appellant is not under the control of the Central or the State Government and that, therefore, the provisions of the said Act are applicable. The High Court has held that even though an institution may be treated as a State within the meaning of Article 12 of the Constitution of India, it did not necessarily mean that it was under the control of the State Government or the Central Government, as the case may be. The High Court has relied upon Section 68-A of the Motor Vehicles Act, 1988 and concluded, from this provision, that the Road Transport Corporation established under Section 3 of the Road Transport Corporation Act is distinct from the Central or State Government. It is this Judgment which has been assailed before us. At this stage, it must be mentioned that before the High Court the Appellant had relied upon a Judgment delivered by a concurrent Bench of the same Court, wherein it has been held that once an establishment is a

State within the meaning of Article 12 of the Constitution of India it would clearly show that it was under the control of the Central or the State Government. The High Court noticed this Judgment as commented as follows: "There can be no manner of doubt about the same and there is no incongruity in applying the same tests to section 11(1)(c).

It is seen from the judgment that the learned Judge examined the Memorandum and the Articles of Association of this company (H.M.T.) and held:

"These articles are signed by the President of India and other officers of the Government who are described as Subscribers. These articles establish that the undertaking is under the deep and pervasive control of the Government."

Hence, it is not correct to state that he rested his conclusion solely on the ground that the company was treated as a State for the purpose of Article 12 of the Constitution of India, Hence I am not persuaded to accept that any institution which is treated as a State within the meaning of Article 12, must be deemed to be under the control of the State Government or the Central Government, as the case may be."

On this basis, the High Court refused to follow that Judgment. We have also read that Judgment. It is clear from the reading of that Judgment that it has been categorically held that both in Article 12 of the Constitution of India and Section 11(1)(c) of the said Act, the words "under the control of the Government" are used. It has been held that the same meaning has to be ascribed to both. It has been held that if an establishment was a State within the meaning of Article 12, then it would be under the control of the Government for the purposes of Section 11(1)(c) of the said Act. Having so held, the Court then considered the Memorandum and Articles of Association by stating as under: "However, since this matter is argued at length that I shall also consider the nature of control exercised by the central Government on the undertaking."

It is thus clear that the decision that if an establishment is a State within the meaning of Article 12, then it is under the control of the Government for the purposes of Section 11(1)(c), is not based upon an examination of the Memorandum and Articles of Association. This decision was binding on the learned Judge hearing the Writ Petition. Judicial discipline required that he either follow it or refer the matter to a larger Bench. Sitting singly the learned Judge could not have taken a different view on the specious ground that the decision was based on facts. It must be mentioned that, as is pointed out hereinafter, even on facts the conclusion of the Learned Judge is unsustainable. At this stage it must be mentioned that Mr. Nageshwar Rao has very fairly stated that the Appellant Corporation do not want to and will not recover the amounts paid to the employees by virtue of the orders passed. He submits that the Appellants merely want the correct position in law established. We accept this statement and proceed to decide these Appeals. The Appellant had been established under Section 3 of the Road Transport Corporation Act. Section 3 empowers the State Government to establish a Road Transport Corporation so that (a) advantages can be offered to the public, trade and

industry by development of road transport, (b) there could be co-ordination of different forms of road transport and (c) facilities for road transport could be extended and improved by an efficient and economical system of road transport service. This, therefore, were the sovereign functions which would otherwise have been performed by the State Government itself. However, the Act permits the State Government to delegate these functions to a Road Transport Corporation established by it. Section 5 provides that the superintendence, direction and management of the affairs and business of a Corporation would vest in a Board of Directors. Section 5 further provides that the Board shall consist of a Chairman and such other Directors as the State Government may think fit to appoint. It also empowers the State Government to appoint one of the Directors as the Vice-Chairman of the board. Section 8 empowers the State Government to remove or terminate from office the Chairman or other Directors of the Corporation. Under Section 34 of the Act, the State Government may give to the Corporation general instructions which should be followed by the Corporation, and such instructions and directions may pertain to recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained and disposals of profits and stocks. Section 34 also provides that a Corporation could not depart from the general instructions issued by the State Government. Under Section 35 the Corporation has to furnish returns, statistics, accounts and other information to the State Government. Under Section 36 the State Government has the power to make such inquiries as it choose and if on the inquiries it was felt necessary, then by virtue of Section 37, the State Government may authorise any person to take over the Corporation and administer it. Section 38 also gives to the State Government a power to supersede the Corporation. All these provisions clearly show that the State Government has absolute control over the Appellant Corporation. The words used in Section 11(1)(c) of the said Act are "any factory or establishment under the control of the Central or any State Government" In Article 12 of the Constitution of India the words used are "under the control of Government of India". Thus, under both of them what is essential is control of the Government. We, therefore, fail to see as to how an establishment, which is deemed to be a State within the meaning of Article 12 of the Constitution of India, would not be under the control of the Government for purposes of Section 11(1)(c) of the said Act. Reliance on Section 68-A by the High Court is entirely misplaced. Section 68-A(b) of the Motor Vehicles Act merely states that a State transport undertaking means any undertaking providing road transport service and such undertaking may be carried on (i) by the Central Government or (ii) any Road Transport Corporation established under Section 3 of the Road Transport Corporation Act, or (iii) by any Municipality or Corporation or Company owned or controlled by the Central Government or the State Government. As seen, under Section 3 of the Road Transport Corporation Act, it is the State Government who may either perform the function itself or establish a Corporation, which would be performing functions which are basically public functions. Merely because the State Government establishes a Corporation and that Corporation is an establishment distinct from the State Government does not ipso facto mean that that Corporation is not under the control of the State Government. This very vital aspect appears to have been lost sight of by the learned Judge. In our view, it is clear that the Appellant

Corporation is under the control of the State Government.@@
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Therefore, the provisions of the said Act would not be@@
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applicable to it by virtue of Section 11(1)(c) of the said
Act. In this view of the matter, the Judgement of the High
Court cannot be sustained and is hereby set aside.
Accordingly the Appeals are allowed. There will be no order
as to costs.