

(1969) 03 BOM CK 0021

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 141 of 1969

Air Corporation Employees Union

APPELLANT

Vs

G.B. Bhirade

RESPONDENT

Date of Decision : 27-03-1969

Acts Referred:

Constitution of India, 1950 — Article 12, 22, 220, 226, 311
Evidence Act, 1872 — Section 115

Citation : (1969) MhLj 914

Hon'ble Judges : J.R. Vimadalal, J

Bench : Single Bench

Advocate : D.H. Buck and C.G. Nadkarni, for the Appellant; A.M. Setalvad instructed by A.A. Chowdhury, Solicitor to the Govt. of India for Respondents Nos. 1 and 2, S.D. Vimadalal, V.J. Taraporewala instructed by Mulla and Mulla and Craigie Blunt and Caroe for Respondent No. 3, H.B. Gandhi for Respondent No. 4 and H.K. Sowani, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Vimadalal, J.—This is a petition under Article 226 of the Constitution for a writ in the nature of mandamus against respondents Nos. 1, 2 and 3 directing them not to proceed with the recognition of the 5th respondent-Union pursuant to the inquiry held by respondent No. 1 and the directive contained in the office memo dated December 19, 1968, issued by respondent No. 2 to respondent No. 3.

2. The facts of the case are quite simple. Petitioner No. 1 is a trade Union which was registered some time in the year 1953 under the Indian Trade Union Act, 1926, and it claims to have as its members an overwhelming majority of the workmen employed by the 3rd respondent-Corporation as well as by the Indian Air lines which is another Corporation. In para. 12 of the petition it is stated that in May 1958, the 16th session of the Indian Labour Conference ratified a tripartite machinery evolved by the Government of India the employers and the employees for regulating the relations between the employers and the employees

by means of a Code of Discipline which was given effect to and implemented from June 1, 1968. In para. 14 of the petition it is stated that both petitioner No. 1 as well as respondent No. 3 accepted that Code of Discipline, and pursuant thereto, entered into an agreement dated June 6, 1966, whereby recognition was granted to the 1st petitioner-Union for a period of two years from that date. At the 22nd session of the Indian Labour Conference which was held in July 1964, the consensus was that recognition of Unions which were categorywise should not be encouraged. In para. 16 of the petition, it is stated that petitioner No. 1 was surprised to receive a letter dated October 30, 1968, stating that it was decided to undertake the work of verification of membership of the Unions operating in Air India amongst the aircraft technicians for the purpose of recognition in accordance with the procedure laid down under the Code of Discipline, and requesting petitioner No. 1 to furnish a list of its members pertaining to all branches as well as certain other documents referred to therein. It may be mentioned that the 5th respondent-Union had been formed some time in September 1965 and consisted of the technicians employed in 3rd respondent-Corporation as well as in the Indian Air Lines Corporation and the said letter dated October 30, 1968, was written as the 5th respondent-Union had applied for recognition under the Code of Discipline. The 1st petitioner-Union, however declined to furnish the information which was sought by the said letter, though two opportunities were given for that purpose, as stated in para. 17 of the affidavit of respondent No. 1 G. B. Bhirade dated March 18, 1969. Respondent No. 1 thereafter proceeded with the inquiry in the absence of the 1st petitioner-Union, and ultimately, an office memorandum dated December 19, 1968, was issued by the Ministry of Labour, Employment and Rehabilitation of the Government of India, a copy of which was sent to the General Manager of the 3rd respondent-Corporation. The said office memorandum was in the following terms:

The undersigned is directed to refer to the correspondence resting with Shri Tripathi's d. o. No. 45/44/68-1 & E of December 7, 1968 on the above subject and to say that in Air India the verification of membership of only I. A. T. A. was conducted as the A. C. E. U. failed to produce its records despite two chances. On verification it has been found that the I. A. T. A. had a membership of 682 out of the total strength of 893 amongst the technical categories of staff (viz. Technicians, Senior Technicians, Charge-hands and Inspectors) on the date of reckoning i.e. October 1, 1968. The I. A. T. A. therefore, entitled to recognition under the Code of Discipline in respect of the aforesaid technical categories.

The date from which recognition is granted may kindly be intimated to this Ministry urgently. It may also be pointed out that in the event of such recognition of I. A. T. A. the A. C. E. U. will lose its recognition in respect of the concerned technical staff.

3. It is the case of the petitioners that the said office memorandum contained a directive to the 3rd respondent-Corporation which was contrary to the principles

accepted by respondent No. 2 as well as the employers and employees at the 16th and the 22nd sessions of the Indian Labour Conference, and also contrary to the Code of Discipline evolved at the first of those conferences which was accepted by the said three parties and acted upon by the 1st petitioner-Union. It may, however, be mentioned that, according to respondent No. 2, the said office memorandum is not in the nature of a directive, and what is stated therein is in conformity with the Code of Discipline evolved at the 16th session of the Indian Labour Conference, the departure from the consensus at 22nd session of that conference having been considered advisable for certain reasons stated in para. 15 of the affidavit in reply of respondent No. 1.

4. The case of the petitioners will have to be considered separately against the different respondents, though it was conceded by Mr. Buch on behalf of the petitioners that if the petition fails as far as respondents No. 2 and 3 are concerned, it must fail altogether. The first point which Mr. Setalvad on behalf of respondents Nos. 1 and 2 made was that respondent No. 2 was a mere verification machinery, and that whether or not recognition should be granted to a particular union was a matter entirely for the 3rd respondent-Corporation and, under the circumstances, the relief sought in prayer (a) of the petition as framed cannot be granted to the petitioners as far as respondents Nos. 1 and 2 are concerned. In my opinion, this contention of Mr. Setalvad is well-founded for Mr. Buch has not been able to point out anything in the course of his arguments to show that it is respondent No. 2 itself that is concerned with the granting of recognition to a particular union. All that Mr. Buch has contended is that the alleged directive contained in the office memorandum of December 19, 1968, is regarded as binding by the 3rd respondent-Corporation, and that it is under those circumstances that he has sought the relief which he has prayed for in prayer (a) of the petition. I am afraid, the mere fact that the 3rd respondent-Corporation may attach a particular weight to the statement made by respondent No. 2 in the said office memorandum cannot give it the effect of a directive or order so as to entitle the petitioners to the relief in prayer (a) of the petition which is to the effect that inter alia respondents Nos 1 and 2 should be directed not to proceed with the recognition of respondent No. 5. The petition must, therefore, fail against respondents Nos. 1 and 2 on that ground alone, since, no other relief is claimed against them.

5. As the matter has been fully argued, I must, however proceed to deal with the petition on the merits also. It has not even been averred in the petition, and indeed Mr. Buch has conceded that it is not the petitioners' case, that the Code of Discipline which was evolved as a result of the 16th session of the Indian Labour Conference has any statutory force. As far as the 22nd session of the Indian Labour Conference is concerned what was arrived at was only a "consensus of opinion" that recognition of category wise "Unions should not be "encouraged." That is a far cry from anything having statutory force. That being the position, neither the said Code of Discipline nor the said consensus confer any right on anybody, and Mr. Setalvad's contention that the petitioners have no

legal right to recognition which can be enforced by means of a writ petition must be upheld. In support of that contention, Mr. Setalvad has relied upon the decision of the Supreme Court in the case of G.J. Fernandez Vs. State of Mysore and Others, . The facts of that case were that tenders were invited for the construction of the right bank masonry dam called Hidkal Dam by the Public Works Department of the State of Mysore, and the appellant as well as respondent No. 3 submitted their tenders for the same. The contract was eventually granted by the Major Irrigation Projects Control Board to respondent No. 3, and the appellant challenged the grant of that contract and prayed for quashing the resolution of the said Board inter alia on the ground that the rules in the Mysore Public Works Department Code were not followed. The High Court dismissed the petition holding, inter alia, that there was no breach of the conditions of the tender contained in the Code. On appeal to the Supreme Court, the appeal was dismissed and in doing so, the Supreme Court laid down (para. 12) that the rules in the Code were mere administrative instructions and were not statutory rules, and that they conferred no right on anybody and a tenderer could not claim any rights on the basis of those administrative instructions. The Supreme Court therefore took the view that, even if there had been any breach of those instructions, that did not confer any right on the appellant to apply to the Court for quashing orders in breach of such instructions, and it was unnecessary for them to decide whether there had been in fact a breach of any instruction contained in the Code. The facts of Fernandez's case (1) bear a close resemblance to the facts of the present case and the decision of the Supreme Court therein is directly applicable to the present case also, since admittedly the Code of Discipline has no statutory force. It may be noted that the observations of the Supreme Court in Fernandez's case (1) are not limited to the legal position in regard to a particular writ, but apply to all writs provided for by Article 226 of the Constitution. There is another and an earlier decision of the Supreme Court in the case of State of Assam and Another Vs. Ajit Kumar Sharma and Others, in which the same position has been laid down (paras. 11-12) in regard to the Rules framed for the conduct and discipline of employees of aided educational institutions, and the Supreme Court declined to grant a writ against the State on the ground that those rules being mere administrative instructions, conferred no right of any kind on teachers, and they could not apply to the High Court under Article 226 for the enforcement or non-enforcement of the Rules, even if indirectly there might be some effect on them because of the grant-in-aid being withheld in whole or in part. It may be mentioned that in that case also, as in the present case, there was a communication by which the Director of Public Instruction to the Principal and Secretary of the College concerned pointing out that the permission granted to the respondent to rejoin his duties "immediately" was contrary to one of the Rules. These decisions leave no room for doubt that the petitioners in the present case have no legal right conferred upon them as a result of the Code of Discipline evolved as a result of the 16th session of the Indian Labour Conference, or the "consensus of opinion" at the 22nd session of that Conference for the enforcement of which they can maintain a petition under

Article 226.

6. Mr. Buch, however, invoked what has been called the doctrine of promissory estoppel which is of comparatively recent growth, and the question is, how and to what extent is that doctrine reconcilable with the principles laid down by the Supreme Court in the two cases discussed in the preceding paragraph. The said doctrine has been formulated with characteristic lucidity in Halsbury's Laws of England (3rd edn.) Vol. 15, p. 175, para. 344 in the following terms:

Promissory estoppel. When one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced. This doctrine, which is derived from a principle of equity enunciated in 1877, has been the subject of considerable recent development. It differs from estoppel properly so called in that the presentation relied upon need not be one of present fact.

The doctrine may have been too widely stated in recent cases and its limits are not yet finally settled. The doctrine cannot create any new cause of action where none existed before.

Two English cases viz. those reported in *Central London Property Trust, Ltd. v. High Trees House, Ltd.* (1947) 1 K. B. 130 and *Robertson v. Minister of Pensions* (1949) 1 K. B. 227 were cited by Mr. Buch in support of that principle, but I do not think it necessary to discuss those cases in view of the formulation of that doctrine in the passage from Halsbury which has been quoted above which is based on those and other English cases. Reference may, however, be made to a decision of the Supreme Court in which that principle has been recognised in our country and that is, in the case of *Union of India v. Anglo Afghan Agencies A I R 1968 S. C. 718*. The facts of that case were that the Textile Commissioner published on October 10, 1962, a scheme called the Export Promotion Scheme providing incentive to exporters of woollen goods. By that Scheme as extended to exports to Afghanistan, exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters would be entitled to import raw materials of the total amount equal to 100 per cent, of the f. o. b. value of the exports. The Textile Commissioner was, however, authorised, if it was found that a fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported, to reduce the import certificate. Under that Scheme, the respondents who were a firm dealing in woollen goods, exported to Afghanistan in September 1963 woollen goods of the f. o. b. value of over Rs. 5,00,000. The Deputy Director in the office of the Textile Commissioner Bombay, however, issued to the respondents an Import Entitlement Certificate for Us. 1,99,459

only. Representations made by the respondents to the Union Government having failed, a writ petition under Article 226 of the Constitution was filed before the High Courts of Punjab by the respondents for a writ or order directing the Union of India and the Textile Commissioner as well as the Joint Chief Controller of Imports and Exports, Bombay, to issue a licence for the entire balance of the value of the goods exported by the respondents. The High Court granted the writ sought by the respondents on that petition, and the Union of India and its officers appealed from that decision to the Supreme Court. The Supreme Court stated (para. 10) that the defence of executive necessity was not relied upon in the case before them, but went on to observe that they were unable to accede to the contention that executive necessity released the Government from honouring its solemn promises relying on which citizens had acted to their detriment. It then went on to hold (para. 19) that the claim of the respondents was properly founded upon the equity which arose in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation to their prejudice under the belief that the Government would carry out the representation made by it. It was further observed by the Supreme Court (paras. 19-20) that that equity did not fall within the terms of section 115 of the Evidence Act apparently on the ground that the representation or promise was not with regard to an existing fact, but was in regard to what the Government promised to do in the future.

7. In my opinion, the equity which was recognised and enforced by the Supreme Court in the *Anglo Afghan Agencies* case (1), was none other than what has been rightly labelled by Halsbury in the passage quoted above as the doctrine of "Promissory Estoppel". It is, in fact, an extension of the principle of estoppel, and before it comes into play, it must, as in the case of estoppel, be proved that the other side has acted upon the representation in question to its prejudice. No doubt, unlike the case of an ordinary estoppel, the representation on which a promissory estoppel is founded is not a representation with regard to an existing fact, but is in regard to something promised to be done in the Future. On a proper analysis, before the doctrine of promissory estoppel can be invoked, it must be proved, (1) that there was a representation or promise in regard to something to be done in the future; (2) that that representation or promise was, as stated in the passage from Halsbury quoted above, intended to affect the legal relations of the parties and to be acted upon accordingly; and (3) that it is one on which the other side has, in fact, acted to its prejudice. On the facts of the present case, the last two of those ingredients are not proved. It cannot be said in the present case that either the Code of Discipline evolved at the 16th session of the Indian Labour Conference, or the "consensus of opinion" at the 22nd session of that Conference, was intended to affect legal relations, at any rate, as far as the Government of India was concerned, and the petitioners are therefore not entitled to any relief on the basis of the doctrine of promissory estoppel. It may further be mentioned that, in this case, there is no material

before me to show that the last ingredient of the doctrine of promissory estoppel is proved, in so far as Mr. Bhoo has not been able to satisfy me that, as a result of the representations alleged to be contained in the said Code of Discipline or the said "consensus", the petitioners have acted to their prejudice in a manner in which they would not have otherwise acted. In the result, I have come to the conclusion, that, even on merits, the petitioners' claim against respondents Nos. 1 and 2 must fail.

8. As far as respondent No. 3 is concerned, it has been the contention of Mr. Taraporewala who appears on its behalf, that the Air India Corporation does not fall within the definition of "State" in Article 12 of the Constitution and, therefore, no writ petition lies against it. In support of that contention, he has relied upon the unreported judgment of my brothers Patel and Wagle dated September 25, 1968, *Pramodrai Shamaldas Bhavsar v. The Insurance Corpn.* 1969 Mah. L J 559 (Spl. C. Appln. No. 353 of 1967, D/- 25-9-68.) in which it was held that the Life Insurance Corporation does not fall within the definition of "State" in Article 12, and that "since the Corporation cannot be regarded as an authority i. e. State, no writ ought to issue." That was actually a case under Article 311 of the Constitution which could be availed of only against the State, but, with respect to my learned brothers, the proposition in the wide terms quoted above cannot stand in view of the subsequent unreported decision of the Supreme Court dated February 19, 1961, in the case of *Praga Tools Corporation v. C. A. Imantil* (1969) Civil Appeal No. 612 of 1966 (Supreme Court.) in which, whilst confirming the view of the High Court that the writ petition filed in that case under Article 22(i) claiming against the company a writ of mandamus or an order in the nature of mandamus, was misconceived and not maintainable, the Supreme Court observed as follows:

It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus may also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities.

In an earlier part of the judgment of the Supreme Court it was stated,

The condition precedent for the issue of the mandamus is that there is in one claiming it a legal right to the performance of those duties by one against whom it is sought.

Except in cases falling under Article 311 of the Constitution, therefore, it is not as if a petition under Article 226 would lie only against an authority that falls within the definition of "State" in Article 12. A petition under Article 220 can be maintained against a statutory corporation in order to enforce the performance

of a statutory or public duty. Apart from the fact that the petition as framed against respondent No. 3-Corporation must fail, once it fails against respondents Nos. 1 and 2 as Mr. Buch has stated, even on merits the petitioners are not entitled to succeed on this petition as against the 3rd respondent-Corporation for they have not been able to point out any statutory or public duty which the 3rd respondent-Corporation has violated. Whichever way one looks at it, therefore, the petition must fail against the 3rd respondent-Corporation also.

9. As far as respondents Nos. 4 and 5 are concerned, no relief whatsoever is claimed against them on the present petition and it is, therefore, unnecessary to deal with the petition, as far as they are concerned.

10. In the result the petition fails and must be dismissed with costs in two sets, one for respondents Nos. 1 and 2, and the other for respondent No. 3. As far as respondents Nos. 1 and 2 are concerned, I fix the costs at RS. 450 as the hearing of the petition lasted for several hours. As far as respondent No. 3 is concerned, the costs will be on the usual scale.