

(2003) 01 AHC CK 0134

In the Allahabad High Court

Case No : C.M.W.P. No. 207A of 2003 & Civil Miscellaneous Writ Petition No. 207A of 2003

Bihari Lal Chauhan

APPELLANT

Vs

Director of Factories and Another

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 AWC 1069 : (2003) 96 FLR 1087 : (2003) 3 LLJ 597 : (2003) 1 UPLBEC 675

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : S.N. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned counsel for the petitioner. The petitioner is challenging the transfer order dated 19.12.2002.

2. In our opinion, this writ petition is liable to be dismissed on two grounds. Firstly, transfer is an exigency of service and the Court cannot ordinarily interfere with a transfer order. Secondly, the writ petition has been filed against a private company, i.e., Samtal Colour Ltd. Ordinarily, no writ lies against a private body except a writ of habeas corpus.

3. No doubt the language of Article 226 of the Constitution is very wide. Article 226 states :

"226 (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territory in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights covered by part III and for any

other purpose."

4. A perusal of Article 226(1) shows that it is mentioned therein that the High Court can issue writs to any person for enforcement of fundamental rights or for any other purpose. If a literal interpretation is given to Article 226(1), it will follow that the scope of Article 226 is very wide, and writs can be issued to any person i.e., writs can even be issued to private bodies or individuals, and for any purpose whatsoever, e.g. for granting divorces, holding criminal trials, etc. However, by judicial interpretation narrower interpretation has been given to Article 226.

5. The correct interpretation of Article 226 is that a writ can be issued to the person to whom, and for the purpose for which writs were traditionally issued by British Courts on well established principles. No doubt the powers of the Indian High Courts under Article 226 are wider than those of the British Courts as held by the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, but that does not mean that writs can be issued by our High Courts to any person, whomsoever, and for any purpose whatsoever. There are several well established limitations on the powers of Indian High Courts to issue writs which have been laid down by our Supreme Court in several decisions. For instance, it has been held in a series of decisions that no writ can ordinarily be issued against a private body except a writ of habeas corpus, vide *Biran Devi Vs. Sechu Lal and Others*, : *Workmen of Pepsico India Holdings Limited Vs. Deputy Labour Commissioner, Kanpur and another*, : *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, : *Carlsbad Mineral Water Manufacturing Co. Ltd. v. Jagtiani* AIR 1952 Cri 315 *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], etc.

6. Learned counsel for the petitioner has placed reliance on a Supreme Court decision in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and submitted that a writ can be issued against the respondent company because the service conditions of the petitioner are covered by the U. P. Factories Welfare Officer Rules, 1955 which are statutory rules made under the Factories Act.

7. We find no merit in the submission of the learned counsel for the petitioner. Merely because there are statutory rules governing the services of the petitioner, it does not mean that the respondent company is an instrumentality of the State. If the plea of the learned counsel for the petitioner is accepted, then logically it will have to be held that a writ can be issued against a private factory owner since every factory is governed by statutory rules, e.g., the Factories Act, Industrial Disputes Act, etc. Such a view cannot be countenanced. It is in very exceptional cases, where a public duty is imposed upon the person concerned, that a writ can be issued to him. No such public duty has been shown to exist in the present case.

8. Learned counsel for the petitioner then submitted that the petitioner has no other remedy except to file a writ petition under Article 226 of the Constitution. In our opinion, assuming that there is no other remedy, yet this does not entitle the High Court to issue a writ in a case where a writ petition is not maintainable at all.

9. There is no merit in this petition and it is dismissed.