(2004) 09 AP CK 0024

In the Andhra Pradesh High Court

Case No : WA No. 692 of 1999 and W.P. No''s. 18697 of 1999 and 21028 of 2000

Brooke Bond India Ltd. APPELLANT

Vs

V.S. Narayana and Others RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2005) 1 ALD 649

Hon'ble Judges : J. Chelameswar, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Leo Raj, S. Krishna, in W.P. No. 21028 of 2000 and M.V. Suresh, in W.P. No. 18697 of 1999, for the Appellant; Leo Raj and M.V. Suresh, for the Respondent

Judgement

Goda Raghuram, J.—The short and succinct question as to the maintainability of the writ petitions and the validity of the order dated 17-3-1999 in WP No. 10389 of 1994 appealed in Writ Appeal No. 692 of 1999, falls for consideration in all these matters.

2. Writ Appeal No. 692 of 1999 is filed by the Brooke Bond India Limited - the respondent in WP No. 10389 of 1994. WP No. 10389 of 1994 and the other two writ petitions have been filed by retired employees of the Brooke Bond India Limited, a public limited company (for short ''the company''), in substance, seeking a declaration that the action of the company in not conferring and refusing pensionary benefits to retired employees, who retired from service prior to 1986 and confining the benefits only to employees belonging to non-executive classes as per the Revised Pensionary Benefits dated 1-4-1991, as illegal, null and void and for consequential direction to the company to give them pensionary benefits in the same manner as is being given to employees who retired in 1992 and to give proportionate benefits to non- executive employees as per the Revised Pensionary Benefits dated 1-4-1991 including arrears from the date each of the pensioners retired from service.

3. The company appears to have introduced a pension scheme in 1979. The petitioners opted for the same and their pension was fixed accordingly. The pension scheme was revised subsequently, but the revised benefits were not extended to the several writ petitioners who had retired prior to the revision and for whom the pensionary benefits were continued on the same terms as per the earlier scheme under which they were initially granted pension. The writ petitions were filed, in the above circumstances, claming parity of treatment with pensioners who had subsequently retired and were given the benefit of revised pension under the Revised Pension Scheme.

4. In WP No. 10389 of 1994, the learned Single Judge considered the grievance of the sole writ petitioner therein as per Article 14 of the Constitution of India and in the light of the principles declared in D.S. Nakara v. Union of India AIR 1993 SC 130 and V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, , and proceeded on the assumption that the company was bound to comply with the obligated injunctions under Article 14 of the Constitution of India, declared the conduct of the company in not granting the petitioner the revised pensionary benefits as arbitrary, in violation of Article 14 of the Constitution of India and consequently allowed the writ petition. WA No. 692 of 1999 is directed against the said judgment. The other two writ petitions have been filed by other retired employees of the company on the basis of the judgment of the learned Single Judge.

5. It is neither pleaded, urged nor demonstrated in any of the writ petitions including, WP No. 10389 of 1994 that the company is an agency or instrumentality of the State within the meaning of the Article 12 of the Constitution of India. No factual particulars regarding the origin, composition, structure, or that the extent of control over the affairs of the company by the State is deep, pervasive and substantial, have either been pleaded or established before this Court. There is no warrant for the assumption that the company is an agency or instrumentality of the State within the meaning of Article 12 of the Constitution of India. The rights guaranteed to citizens and persons under Part III of the Constitution of India are rights which often create corollary obligation on the Sate such as the right to equality of treatment. The right to equal treatment conferred by Article 14 of the Constitution of India on a person, is a corollary obligation on the State to so conduct itself as not to deny equal treatment. The constitutional duty to provide equal treatment is not an injunction against every person, unless such person natural or juristic qualifies to be characterized as a State within the meaning of the Article 12 of the Constitution. It has not been demonstrated before this Court that the company - the Brooke Bond India Limited is an agency or instrumentality of the State. It is axiomatic that no duty under Article 14 is owned by the said company. If no such obligation under Article 14 is owned, it is clear that the principles enunciated in D.S. Nakara''s case (supra) are not obligated on the said company. None of the writ petitioners plead any legal obligation by the company under any statute or a statutory instrument, by which they are entitled to revision of pensionary

benefits as and when they are revised by the company for a class of pensioners.

6. In the circumstances, the reliefs, in specie, claimed by the writ petitioners cannot be mandamised by this Court under Article 226 of the Constitution of India.

7. The company had resisted the reliefs claimed in WP No. 10389 of 1994 contending that the writ petition is not maintainable. The learned Single Judge has, however, relying on the decision of the Supreme Court in U.P. State Co-operative Land Development Bank Limited v. Chandra Bhan Dubey, , held that a writ petition is maintainable. For coming to this conclusion, the following observation in Chandra Bhanu Dubey (supra), was quoted by the learned Single Judge as:

"When any citizen or person is wronged, the High Court will step into protect him, be that wrong be done by the State, an instrumentality of the State, Company or a Co-operative Society, or association or body of individuals, whether incorporated or not or even an individual. Right that is infringed may be under Part III of the Constitution or any other right, which the law validly made might confer upon him."

8. It requires to be noted that Chandra Bhan Dubey''s case (supra), fell for analysis in a subsequent decision of the Supreme Court in Federal Bank Ltd. Vs. Sagar Thomas and Others, , and the decision in Chandra Bhan Dubey (supra), was analyzed and explained as under:

"U.P. State Co-operative Land Development Bank Limited has been relied upon by the Division Bench while passing the impugned order dismissing the appeal. We may examine the position as involved in that case in some detail. It is registered as a Co- operative Society under the provisions of the U.P Co-operative Societies Act. While holding it to be an instrumentality of the State, the Court took note of the fact that though registered as a Co-operative Society, it was constituted under the provisions of the U.P. Co-operative Land Development Bank Act, 1964. The Managing Director and the Chief General Manager of the bank are officials of the Sate, who are at the helm of the affairs of the Bank. The service rules for the employees and officers of the Bank were framed by the State Government in exercise of powers u/s 30 of the U.P. Co-operative Land Development Bank Act, 1964. The rules are called the U.P. Co- operative Land Development Bank Rules, 1971, which lay down the conditions of service of the employees. The Institutional Service Boards constituted u/s 122 of the Co-operative Societies Act has also framed service rules according to which dismissal of an employee can be ordered only after its approval by the Institutional Service Board. U.P State Co-operative Land Development Bank Limited is the only bank constituted under the provisions of the U.P. Co-operative Land Development Bank Act and there cannot be any other State Level Land Development Bank for the whole of the State. Apart from the fact that the Bank had exclusive jurisdiction over the whole of the State of Uttar Pradesh, the other Land Development Banks could also be made members of U.P. State Co-operative Land Development Bank, in any number, as the Registrar of the Co-operative Societies, may deem it necessary. It is further found that the Registrar of the Co-operative Societies, U.P is the trustee for the purpose of securing the fulfillment of the obligations of State Land Development Bank to the holders of debentures issued by the Board of Directors. The Board of Directors is entitled to issue debentures from time to time with the previous sanction of the State Government and the trustee, against the unconditional guarantee by the State Government for the repayment in full of the principal and interest thereon, or on the security of mortgages, charges or hypothecations etc. The State Government constitutes a Guarantee Fund u/s 9 of the Act for the purpose of meeting losses that might accrue on account of loans advanced by the Land Development Banks. The Guarantee Fund is maintained by the Finance Department of the State Government. On the basis of the facts noted above, the Court took the view the U.P. State Co- operative Land Development Bank Limited though registered as a co-operative Society, is an instrumentality of the State and its employees have a statutory protection under the statutory rules."

9. In the light of the principles reiterated and clarified in Federal Bank Limited v. Sagar Thomas (supra), the Brooke Bond India Limited is not a State or instrumentality of the State or other authority within the meaning of Article 12 of Constitution of India. No reliefs could be granted to the writ petitioners under Article 226 of the Constitution of India. For the reasons alike, the order of the learned Single Judge dated 17-3-1998 in WP No. 10389 of 1994 cannot be sustained. Accordingly, WA No. 692 of 1999 is allowed and WPNo.18697 of 1999 and WP No. 21028 of 2000 are dismissed.

10. It is stated by the learned Senior Counsel, Sri E. Manohar, appearing for the appellant in WP No. 692 of 1999 that a Division Bench of this Court, while admitting this appeal, by an order dated 9-6-1999 declined stay of the impugned order subject to the condition that the respondent- employee files an undertaking in the Court to the effect that in the event of appellant''s success in the appeal, the amount paid would be refunded to the appellant. It is also represented by Sri E. Manohar that as undertaking had since been filed by the employee, revised pensionary benefits'' were granted by the appellant company to him, as directed in judgment under appeal, and in light of the undertaking filed by the employee.

11. Having regard to the fact that the respondent-employee, in the appeal, is aged 80 years and it is represented by Sri Manohar that the total enhanced pensionary benefits that were granted to him as a result of the order of the Single Judge, are in the order of Rs. 1,00,000/-, we consider it appropriate, while allowing the writ appeal, to direct the appellant-company not to recover the amounts already paid to the respondent in the appeal. All further pensionary benefits to this respondent shall however be paid by the appellant-company only as per the entitlement of the respondent- employee in accordance with the same under which he had retired and without reference to the judgment of the learned

Single Judge dated 17-3-1999 in WP No. 10389 of 1994.

12. Subject to the above, the writ appeal is allowed and the writ petitions dismissed. No costs.

