
(2010) 12 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 66283 of 2010

Dharmendra Kumar Yadav

APPELLANT

Vs

Manager, Commercial Auto Sales (P) Ltd.

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 1 ADJ 182 : (2011) 2 AWC 1940 : (2011) 2 CivCC 76 : (2011) 112 RD 328

Hon'ble Judges : Shyam Shankar Tiwari, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard, learned Counsel for the Petitioner.

2. By this petition, Petitioner has prayed for following reliefs:

(i) issue a writ, order or direction in the nature of mandamus commanding the Respondent not to take forcibly possession of Truck No. UP-70-AT-7959 through their re-possession agents.

(ii) issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

(iii) To award the cost of the writ petition in the favour of the Petitioner.

3. The Petitioner has taken a loan of Rs. 10 lacs in the month of November, 2007 from the Respondent Commercial Auto Sales (Pvt.) Ltd for purchase of a Truck which was to be repaid in 44 instalments upto 2011. Petitioner's case is that certain default was committed in depositing the loan, hence the truck which was financed by the Respondent was repossessed by the agents of the Respondent. Petitioner's case is that a letter dated 21.9.2010, has been issued by the Respondent to all repossession agents that an amount of Rs. 1 lac has been deposited vide Cheque dated 20.10.2010, and the next installment be paid by

2.10.2010. The letter advised that the above vehicle be not held upto 3.10.2010. Petitioner has also filed an application for impleadment of the State of U.P. through the Collector Allahabad and the Deputy Inspector General of Police as Respondent Nos. 2 and 3. In the writ petition, allegations have been made against the Respondent Commercial Auto Sales Pvt. Ltd and its agent which is a private concerned.

4. Learned Counsel for the Petitioner on a query made by the Court that how a writ petition can be entertained against a purely private body, has relied on the judgment of the Apex Court in Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, and Full Bench judgment of this Court reported in Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others,

5. We have considered the submission of the learned Counsel for the Petitioner and perused the record.

6. As observed above, the only allegations made in the writ petition are against the Commercial Auto Sales Pvt. Ltd, which is a private body and its agent who had once repossessed the vehicle. Although, an application for impleadment has been moved for impleading the State of U.P and DIG. of Police, but there are no allegations of any kind made against any State Authorities or Police authorities so as to implead them in this writ petition. No case has been made out for impleading the State of U.P. and DIG of Police, hence the Impleadment application is rejected.

7. The jurisdiction of High Court to issue writ under Article 226 of the Constitution of India has come up for consideration on several occasions before the Apex Court and this Court in The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, The Apex Court considered the issue of issuing writ petition under Article 226 of the Constitution against a registered Company incorporated under the Indian Companies Act, 1913. Following was laid down in paragraphs 6 and 7.

6. In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to, issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc., or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of restatement to an office which is essentially of a private character nor

can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. [See *Sohanlal Vs. The Union of India (UOI)*, In *Regina v. Industrial Court* 1965 (1) QB 377, mandamus was refused against the Industrial Court though set up under the Industrial Courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the Act but a private reference. "This Court has never exercised a general power" said Bruce, J., in *R. Lewisham Union* 1897(1) QB 498 501 "to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. 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 would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. [CF. Halsbury's Laws of England, (3rd ed.) Vol. 11, p. 52 and onwards].

7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company.

8. The Apex Court in *Federal Bank Ltd. Vs. Sagar Thomas and Others*, again considered the scope of issuance of writ under Article 226 of the Constitution against a private Bank. Following was laid down in paras 27 and 33.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment say Air (Prevention and Control of Pollution) Act, 1981 or Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten

certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance of those provisions. For instance, if a private employer dispense with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and have issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the Appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the Respondent by filing a writ petition under Article 226 of the Constitution of India. The Respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

9. It is not the case of the Petitioner that the Commercial Auto Sales Pvt. Ltd. is an authority within the meaning of Article 12 of the Constitution, nor it is alleged that there is any violation of any statutory provisions in the present case. No statutory duty on the Respondents have been pointed out which have been violated by it. The Full Bench judgment of Aley Ahmad Abidi (supra) relied on by the learned Counsel for the Petitioner lays down that a writ can also be issued to a person or body which is non-statutory, where such body is entrusted with performance of statutory duties or conferred with statutory powers. Following was laid down in para 28.

28. Sri Hyder also fairly conceded that in the light of the pronouncement of the Supreme Court in The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, even if the Committee of Management of a recognised Intermediate college is held to be a non-statutory body, such committee will still be amenable to the Writ jurisdiction of the High Court, where such Committee is entrusted with performance of statutory duties or conferred with statutory powers.

10. Judgment on which much reliance has been placed by the learned Counsel

for the Petitioner is Manager ICICI Bank Ltd. (supra). The said case arose out of Criminal Misc. Writ Petition No. 11210/2006 filed in the High Court. The allegation of writ Petitioner in the aforesaid case was that the Bank and its officials had systematically conspired to cheat the Petitioner by advancing the loan for purchase of the truck. Petitioner claims to have sent an application to the police authorities to register an FIR. and when no steps had been taken, criminal writ petition was filed in the High Court for issuing direction to register first information report and with certain other reliefs. The High Court directed the Senior Superintendent of Police to ensure registration of the case by a competent Police Officer. The said order was challenged by the Bank. The Apex Court allowed the appeal by directing that on deposit of Rs. 50,000/- the Bank shall forthwith release the truck of the Petitioner which was seized. The Apex Court in the said context has made following observation in paragraph 18.

18. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ Petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics.

There shall be no order as to costs.

Appeal allowed.

11. There cannot be any dispute to the proposition as laid down by the Apex Court in the above case. The Bank has to resort to the procedure recognised by law to take possession of the vehicle. However, in case the Bank commits any violation or commits an offence, it is always open for an aggrieved person to take such criminal or civil action as permissible under law.

12. In view of the aforesaid, the above case which arose out of criminal writ petition does not help the Petitioner in the present case.

13. In view of the foregoing discussions, we are of the view that no grounds have been made out to issue any mandamus to a purely private body namely; i.e. Commercial Auto Sales Pvt. Ltd. in the facts of the present case. We, however, observe that it is open for the Petitioner to take such civil or criminal action against the private body which may be permissible under law.

14. With the aforesaid observations, writ petition is dismissed.