
(2000) 10 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16164 of 1999

Ganesh Dutt

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 25

Citation : (2001) 2 ILR (P&H) 122

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. R.S. Mittal and Mr. Sudhir Mittal, for the Appellant; Mr. Raghubir Chudhary, D.A.G., Mr. M.L. Sarin, Senior Advocate and Sidharath Sarup, for the Respondent

Judgement

Mehtab S. Gill, J.—By this common order, we are disposing of Civil writ petition bearing Nos. 16164, 17697, 18102 of 1999, 117, 542, 565, 4548, 6830, 8980 and 9023 of 2000 as the questions of law and fact involved in these writ petitions are of identical nature.

2. The petitioners have prayed for issuance of a writ in the nature of mandamus and prohibition restraining respondent No. 4 i.e., Maruti Udyog Limited through its General Manager, Palam Gurgaon Road, Gurgaon (hereinafter referred to as the Company) from employing any other workman without offering employment to them, as they have already been in continuous service of Company for a period of one year and have also completed 240 days.

3. The petitioners have averred that they have completed their apprenticeship in the works of Company at Gurgaon during the year 1995-96 except petitioner Nos. 6, 7, 9 and 12, who completed such an apprenticeship during the year 1996-97 and petitioner Nos. 14 and 20, who completed the apprenticeship during the year 1994-95. All the petitioners have worked as workmen with the Company for a continuous period of one year as defined u/s 25B of the Industrial Disputes

Act, 1947 (hereinafter referred to as the Act). The petitioners are entitled to the protection of Sections 25F, 25H, 25I and 25U of the Act. Since the year 1998, it has been a consistent practice with the Company to recruit apprentices under the Apprenticeship Act, 1961 and to give regular appointments to all of them before taking any fresh apprentices. It has been further averred that during the year 1988, the apprentices were recruited and all of them were given regular appointments by the Company. This practice continued till 1990. From 1991 to 1994, the practice was modified to the extent that after completion of apprenticeship period, the apprentices were asked to appear in an examination and those who qualified the examination were given regular appointments known as LWO. During the year 1995, a batch of apprentices of nearly 700 including the present petitioners were given a contractual appointment for nine months known as LWC. All the petitioners worked on contractual basis for more than 240 days in one calendar year and became continuous employees of Company in view of the provisions of Section 25B of the Act.

4. All the petitioners as well as nearly 700 others similarly situated were called for examination for recruiting as regular employees of Company as LWO. A copy of the call letter issued to all the petitioner (issued to petitioner No. 20 Mukesh Kumar) is annexed with the petition as Annexure P-3. Another call letter issued to Ashok Kumar petitioner is attached with the petition as Annexure P-4. A list of 605 successful candidates was displayed on January 15, 1998. Out of them, 04 were given appointments on regular basis and 18 more were given regular appointments in October, 1999. The petitioners were not offered regular appointments although all the previous batches of apprentices have been absorbed on a regular basis in the employment of the Company.

5. It has been further averred that the Company is an instrumentality of the State (the Central Government) because the Central government has control over the management and policies of the Company. The Managing Director of the Company is appointed by the Central Government and the policies of the Board of Directors are subject to the control of Central Government.

6. The Company had been granted a sizeable piece of land to enable it to set up infrastructure facilities in District Gurgaon at a very concessional price. As the Company could not run on a profitable margin, proceedings were started against it. Thereafter, the Government of India took it over as a Public Sector Undertaking and started manufacturing passenger cars and commercial vehicles. After taking over the company, the Central Government retained a very deep and pervasive control over it. The Central Government has 50 per cent shares in equity and the rest of 50 per cent shares as of today are with M/s Suzuki Motors Limited.

7. Notice of motion was issued to the respondents. The respondents appeared and filed their replies.

8. The case of the respondents is mainly contested by the Company.

9. We have heard the learned counsel for the parties and perused the writ petition, written statements and the annexures attached with them.

10. At the very outset, Mr. M.L. Sarin, Senior Advocate, appearing for the Company has drawn our attention to the preliminary objection taken up in the written statement which, according to him, is to be decided first. In this context, he has raised an argument that the question of law point to be examined in this case is Whether respondent No. 4-company falls in the definition of a State or an Authority for the purpose of Article 12 of the Constitution of India. Mr. R.S. Mittal, Senior Advocate, appearing for the petitioners, vehemently contended that the affairs of the Company are governed by the Central Government, i.e., the Ministry of Industries, who have representatives on the Board of Directors. The Managing Director is also nominated by the Central Government. This itself clearly indicates that the Company is an instrumentality of the State and the land allotted to it was at a very concessional rate by the State. Had it been a private Company, there was no need for the State to allot the land at a concessional rate. In support of his contention, Learned counsel for the petitioners has placed reliance upon the authorities cited in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and *Miss Ravneet Kaur v. The Christian Medical College, Ludhiana* 1997(2) P.L.R. 320 : 1997(3) SCT 210 (P&H).

11. The authority cited by the learned counsel for the petitioners, i.e., *Ajay Hasia's* case (supra) is not applicable to the facts of the present case as in the case in hand, there are shares of M/s Suzuki Motors Limited and the Central Government of 50 percent each, while in the case of *Ajay Hasia's* case (supra), it concerns with the Corporation of Societies or agencies of the government in which the Apex Court held trial they are instrumentalities of the State. The company in the present case cannot come within the ambit of being as instrumentality or agency of the government so that it can come within the expression of the authority as envisaged under Article 12 of the Constitution of India.

12. Another authority cited by the learned counsel for the petitioner, i.e., *Miss Ravneet's* case (supra) also does not apply to the present case as in that case a Full Bench of this Court has held that "the High Court can issue writs, orders or direction to any person or authority discharging a public duty for enforcement of the fundamental rights or for any other purpose". But in the case in hand, the Company, by no stretch of imagination, can be shown as discharging a public duty because it is dealing in selling of cars and light motor vehicles for the sole purpose of making profits.

13. In the written statement filed on behalf of the Company, learned counsel appearing on its behalf has cited the judgment of Delhi High Court in Civil Writ Petition No. 3102 of 1990 titled *P.B. Ghayalod v. Maruti Udyog Limited* and another, the relevant portion of which is reproduced as under :

"In the circumstances mentioned above we conclude that the respondent No. 1 is

not an instrumentality of the government within the ambit of Article 12 of the Constitution of India. We are fully fortified in our above view by the observations of the Kerala High Court as reported in *K.M. Thomas Vs. Cochin Refineries Ltd. and Others*, . We are tempted here to cite a few lines from the said judgment, it was observed, "that Government has only a bare majority and not the entirety of the share capital of the Company, i.e., Cochin Refineries Ltd. A substantial part of the share capital thereof belongs to a foreign company. There is no material to show that exclusive or unusual financial assistance has been given by the Government. The Board of Directors has practically full control over the management of the affairs of the Company. The fact that five out of nine Directors are Government nominees is not sufficient to say that Government has exclusive or unusual control over the management etc. This conclusion is valid even taking into consideration certain reservations regarding approval of Central Government, For that matter the foreign company has power of veto in regard to capital expenditure in excess of specified limits. Presence of nominees of a foreign company in the Board is a significant circumstances. It cannot be said that there is deep and pervasive State control. Of course company may enjoy monopoly status since it is dealing with precious commodities like petroleum and petroleum products and the like and such an activity is of public importance, viewed in the light of importance of these commodities in the life of the Nation..... The totality of the circumstances mentioned above is not sufficient to show that "Voice is that of the Government of hands are of the Government" or that company "an agent or surrogate of State, in fact owned by the State, in truth controlled by State and in effect an incarnation of the State."

"It is abundantly clear from the fact of the said case that in that case the Cochin Refineries enjoyed a monopoly status since it was dealing with precious commodities like petroleum and petroleum products. It is further evident from the above that the activities of the said company were of vital importance to the nation. However, even then the Kerala High Court held that the said company was not an agency of the State keeping in view the totality of the circumstances. In the present case we have already observed above that the respondent No. 1 does not enjoy a monopoly status; the activities of the company, i.e., sale and the manufacture of the Motor-Vehicles is not of vital importance to the country inasmuch as there are various other companies who also deal in the sale and the manufacture of the motor vehicles. Consequently, the respondent No. 1 can by no stretch of imagination be called an instrumentality of State."

Against the order of Delhi High Court dated September 11, 1991, SLP was relied in the Apex Court. Their Lordships of the Apex Court vide order dated December 6, 1991 declined to interfere with this judgment and dismissed the SLP in limine. A copy of the order of the Apex Court is annexed with the written statement as An- nexure R-1.

14. In Civil Writ petition No. 7384 of 1996 filed in this Court a similar point was also raised and a Single Bench of this Court vide order dated November 16, 1999

decided the point in issue and dismissed the petition filed by the petitioner, a relevant portion of which is reproduced as under:

"On a consideration of the matter, it is noticed that the question whether the Company is an instrumentality of the State has been once examined by the Delhi High Court in P.B. Ghayalod v. M/s Maruti Udyog Limited and others in Civil Writ Petition No. 3102 of 1990 and by order dated September 11, 1991, it has been after a detailed consideration, held that the Company is not an instrumentality of the State. Their Lordships of the Supreme Court have dismissed SLP filed against that order. I am of the view that the Company cannot be said to be an instrumentality of the State. It has not been denied that 50% shares capital of the Company is held by M/s Suzuki Motors Limited. The Central Government does not have that kind of control over the affairs of the Company which may make it an instrumentality of the Government.

Since only the law point and the preliminary objections raised by the learned counsel appearing for the Company are being decided, we do not consider it necessary to go into the merits of the case.

15. With the above observations and discussions, we are of the view that the Company is not an instrumentality of the State or an Authority for the purpose of Article 12 or the Constitution of India. The question is, accordingly, answered in favour of the Company.

Since the question of law point and the preliminary objections have been decided in favour of the Company, we are of the view that the writ petitions are not maintainable in exercise of writ jurisdiction under Article 226 of the Constitution of India.

With the observations and discussions made above, all these petitions are dismissed on this ground alone.

16. Petitions dismissed.