

(1994) 01 AHC CK 0102

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 44516 of 1993

Girls Chandra Saxena

APPELLANT

Vs

Chief Executive, Standard Chartered Bank Indian Corporate
Office and Others

RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 21, 226

Citation : (1994) 1 AWC 443

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : O.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Standard Chartered Bank Respondent No. 3, (herein after referred to as the Bank) is a banking company incorporated in England with limited liability by Royal Charter having its registered office at 1, Aldermanbury Square, Loadon, Petitioner was an employee of the Bank working in its office at Kanpur. By order dated 3-8-1993 Petitioner has been removed from service by the Bank. It is against this order that he has filed this writ petition before this Court under Article 226 of the Constitution of India. Prayer for writ of mandamus directing the Respondents not to interfere with the working of the Petitioner in the Bank as Staff Officer and further to pay him salary regularly and not to give effect to the aforesaid order of termination, has also been made. This Court on 3-12-1993 has granted an interim order staying the operation of the above order of termination of service.

2. At the thresh-hold, a preliminary objection regarding maintainability of this petition has been raised on behalf of Respondents, which has been disputed by the learned counsel for the Petitioner. It is this question which is to be decided first.

3. In the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , relevant extract from which is reproduced below. Supreme Court has laid down that writ cannot be issued by a High Court if rights are purely of private character or if the person or authority is private body with no public duty.

If the rights are purely of a private character no mandamus can issue. If the management of the college is purely private body with no public duty mandamus will not lie. These are the two exceptions to Mandamus

Although the above observations have been made with regard to mandamus but same principles will apply in the case of writ of certiorari also. This Court under Article 226 of the Constitution can issue a writ to any person or authority within the territory in relation to which it exercise jurisdiction, but the "person" or a "authority" should be either statutory authority or agency or instrumentality of the State. They may also cover any other person or authority performing public duty. Private persons or private bodies are not amenable to writ jurisdiction unless they exercise some statutory powers or discharge public duty. Supreme Court in the above case of *Sri Anandi Mukta Sadguru* has, in this connection, laid down as under:

The words "Any person or authority" used in Article 226 are, therefore, not to be confined, only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant what is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party.

4. Questions which are required to be decided for resolving this controversy in the instant case are (i) Whether the right which is being asserted by the Petitioner is of private character, and (ii) whether the Bank is a private body with no public duty.

5. Bank is neither governmental authority nor agency or instrumentality of the State and as such is not a "State" within the meaning of Article 12 of the Constitution. It is private banking company incorporated in England under the Royal Charter and is carrying on business in India at various places including Kanpur. There are no statutory Rules or Regulations framed for regulating the conditions of service of the employees of the Bank. Petitioner has been employed by the Bank under an agreement of employment, copy of which has been filed as Annexure-1 to the counter-affidavit, under which his service can be terminated by the Bank after three months' notice or three months' pay in lieu thereof. Right to work in the Bank which Petitioner claims is right which is derived from agreement which has been executed by him with the Bank and this agreement is not a statutory agreement. Right which the Petitioner wants to be enforced by means of this writ petition is of private character. For enforcing such a right writ petition under Article 226 of the Constitution is not maintainable.

6. No writ petition can be maintained even against the statutory authority where the impugned order has not been passed in, exercise of statutory provisions, but has been passed under a non-statutory contract. In this connection reference may be made to a decision of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , wherein it was laid down as under :

There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple, Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., .

7. In R. V. British Broadcasting Corporation, Exparte Levelle, (1993) 1 AER 241, the applicant who was employed by British Broadcasting Corporation under a contract of employment, was dismissed from service, after giving her contractual notice. An appeal was presented against the above order, which was also dismissed. She challenged those orders before the Court for certiorari for getting them quashed. Her petition was rejected on the ground that the right which she was asserting was of private or domestic character based on contract of employment. Relevant passage from the judgment of this case is reproduced below:

Notwithstanding the present wording of Order 53, Rule 1 and section 31 of the 1981 Act, the position remains the same and, if this application has been confined to an application for an order of certiorari, in my view there would have been no jurisdiction to make the order sought. However, (sic) seeking a stay, the applicant is seeking, in effect, an injunction. The matter was argued before me on the basis that relief by way of an injunction was being sought on the application for judicial review. Paragraph (2) of Rule 1 or Order 53 does not strictly continue applications for judicial review to cases where as order for mandamus, prohibition or certiorari could be granted. It merely requires that the Court should have regard to the nature of the matter in respect of which such relief may be granted. However, although applications for judicial review are not confined to those cases where relief could be granted by way of prerogative order, I regard the wording of Order 53, Rule 1(2) and sub-section (2) of section 31 of the 1981 Act as making it dear that the application for judicial review is confined to reviewing activities of a public nature as opposed to those of a purely private or domestic character. The disciplinary appeal procedure set up by the BBC depends purely on the contract of employment between the applicant and the BBC, and, therefore, it is a procedure of a purely private or domestic character.

8. Bank, as mentioned herein before, is a private banking company incorporated under Royal Charter in England and is a private body. It is not exercising any

power or discharging any duty under any statute. It is also not discharging any public duty. It is doing only the business of banking like any other business-man.

9. The fact that Bank carries on business under the permission of Reserve Bank of India does not change either its character or nature of order passed by it. In *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and others* [OVERRULED], , Supreme Court while dealing with similar argument, has laid down as follows:

It must not be lost sight of, that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12, The State control, however, vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty, in identifying the body as "State" within the meaning of Article 12 of the Constitution. (See (i) *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, : (ii) *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , and (iii) *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, .

Although above observations were made by Supreme Court while considering the question whether Respondent therein was a "State" within the meaning of Article 12 of the Constitution, but these observations are equally good and appropriate in order to (sic) out as to whether a private body, which carries on business under the permission of the State, can be treated as an authority amenable to writ jurisdiction of the High Court. In the instant case control of the State over the Bank is purely regulatory in nature. There is nothing on record to show any financial aid by the State to the Bank, nor is there anything to indicate unusual control of the State over it. The Bank is a private body and has passed the impugned order, not in discharge of any statutory or public duty, but in exercise of its right under a non-statutory contract. It is thus clear that the cause of action has not arisen out of exercise of statutory obligation, but has arisen out of non-statutory contract. The fight which the Petitioner is asserting is purely of private character and Bank is not an authority within the meaning of Article 226. of the Constitution and a? such, is not amenable to writ jurisdiction.

10. Learned counsel for the Petitioner has placed reliance on *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , *Kobad Jehangir Bharda Vs. Farokh Sidhwa and others*, , *Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others*, and *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , in support of his submission that the writ petition is

maintainable. These cases do not lend any support to the case of the Petitioner. In the case of Sri Anandi Mukta Sadguru (supra) Supreme Court has held that the trust was discharging public duty on account of following reasons:

- (1) It is managing a college affiliated to the University to which public money is paid as Government aid, which plays a major role in the control, maintenance and working of the college;
- (2) Government aided institutions imparting education discharge public functions;
- (3) The college being affiliated to the University is subject to Rules and Regulations of affiliating University and its" activities are supervised by the University; and
- (4) The service conditions of the academic staff of the college are governed by the Regulations and Ordinances framed by the University and any decision taken by the University is binding on the management of the college.

It was accordingly held that the service conditions of the staff of the college are not purely of private character and the trust is discharging public duty and, as such, it is amenable to writ jurisdiction. In this connection it may also be mentioned that while distinguishing the cases of Executive Committee of Vaish Degree College Shamli v. Lakshmi Narain AIR 1976 SC 88 and Deepak Kumar Biswas v. Director of Public Instructions, (1987) 2 SCC 252, the Supreme Court held that members of the staff of the college of trust were neither pleading for specific performance of contractual service nor were they claiming right to continue in service. This is clear from para 13 of the judgment, which is reproduced below:

But here the facts are quite different and, therefore. We need not go thus far. There is no plea for specific performance or contractual service. The Respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus.

In the instant case the Petitioner has prayed for quashing the order of termination and for continuance of his service. Bank, as mentioned above, is neither an authority exercising any public or statutory duty, nor the impugned order, passed by it, comes within the domain of public law function. Similar decision of Full Bench of this Court in Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, cannot be of any assistance to the Petitioner, because in that case it was laid down that private body can be amenable to writ jurisdiction of High Court, if it has passed any order in exercise of any statutory provision. Case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., is also of no help to the Petitioner. In that case it was laid down that right to education is fundamental right covered under Article 21 of the Constitution.

While dealing with this question Hon"ble Mohan, J. referred to the case of Supreme Court in Shri Anandi Mukta Sadguru (supra) and the decision in R. v. British Broadcasting Corporation, ex parte Lavelle (1983) 1 AER 241 . If the educational institutions discharge public duty, they are amenable to writ jurisdiction of the High Court. In the case of Kobad Jehangir Bharda Vs. Farokh Sidhwa and others, the question was whether expulsion of student by the school, which is run by a public charitable trust, can be challenged before High Court under Article 226 of the Constitution. Following the decision of Supreme Court in the case of Shri Anandi Mukta Sadguru (supra) and provisions of Secondary Schools Code, Bombay High Court answered the question in affirmative and held that act of such institution can be challenged under Article 226 of the Constitution. This case was decided on its own facts. When right to education is fundamental right covered under Article 21 of the Constitution, educational institutions under certain circumstances, can be said to perform public duties, and their orders can be challenged before High Court under Article 226 of the Constitution, unless they have been passed under a non statutory contract. In the instant case Petitioner is asserting private right and Bank is private body with no public duty and the impugned order has been passed by it in exercise of non-statutory contract.

11. For the reasons given above, this writ petition is dismissed with costs. The stay order passed by this Court is discharged.