
(2010) 03 RAJ CK 0091
In the Rajasthan High Court

Jaipur Metals and Electricals Ltd.

APPELLANT

Vs

Jagdish Prasad Gupta

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Jaipur Metals and Electrical Limited (Acquisition of Shares) Act, 1986 — Section 3, 3(1), 3(2), 4
Constitution of India, 1950 — Article 12, 14, 16, 226
Contract Act, 1872 — Section 23

Citation : (2010) 2 WLN 325

Hon'ble Judges : M.N. Bhandari, J; Jagdish Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—Aggrieved by the order dated 29.10.1998, by which writ petition was allowed, appellant has preferred this appeal.

2. The writ petition was filed by the petitioner-non-appellant against the order of termination dated 2.9.1995. The challenge to the aforesaid order of termination was made being violative of Articles 14 and 16 of the Constitution of India as well as provisions of Indian Contract Act. The appellant herein raised an objection regarding maintainability of the writ petition as appellant company does not fall within the definition of "state" or its agency as provided under Article 12 of the Constitution of India.

3. The learned Single Judge did not accept the objection regarding maintainability of the writ petition and taking note of the factual as well as legal aspect of the matter, allowed the writ petition whereby termination order was set aside with consequential relief of reinstatement with back wages, till petitioner attains age of superannuation.

4. Learned Counsel for the appellant submits that there are two grounds to challenge the impugned judgment passed by the learned Single Judge. It is firstly urged that it is a case of contract between a private company and its

workman thus writ of mandamus cannot be issued in regard to such contractual matters. Elaborating the argument on the aforesaid issue, it is stated that appellant company is not a company or a public undertaking controlled, managed and financed by the government thus for a contractual matter between a private company and its workman should not have been entertained in a writ petition filed under Article 226 of the Constitution of India. Reference of the judgment of Hon''ble Apex Court in the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, has been given. Referring to the aforesaid judgment, it is submitted that law laid down by the Hon''ble Apex Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and also the judgment in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, has no application to a private company. The Hon''ble Apex Court made differentiation between a public company/undertaking and private company while deciding the case in Binny Ltd. (supra).

5. Coming to the second issue regarding maintainability of the writ petition, it is submitted that appellant company does not come in the sweep of Article 12 of the Constitution of India. It is submitted that government is neither having financial, administrative or functional control over the appellant company so as to consider it to be "state or its agency" to bring it under Article 12 of the Constitution of India. The State Government is not holding substantial share in the company and otherwise they are having no administrative control over the appellant company thus appellant company has been wrongly covered within the sweep of Article 12 of the Constitution of India. Referring to the judgment of Division Bench in the case of Jaipur Metals & Electricals Ltd. v. Ishaq Mohdand and Ors. 1988 (1) RLR 157 deciding the same issue, it is submitted that though the Hon''ble Apex Court did not interfere in the judgment of the Division Bench of this Court but kept the issue of Article 12 of the Constitution of India open for its decision in appropriate proceedings. Referring to the aforesaid order, it is submitted that this Court should take a different view than taken earlier by the Division Bench in Ishaq Mohd case (supra) as well as in other cases.

6. Our attention was also drawn towards judgment in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, to support second argument. According to learned counsel, to determine the issue as to whether a particular company, establishment or undertaking is falling within Article 12 of the Constitution of India, it cannot be based on one fact but on various factors cumulatively like pervasive control of the government apart from financial control. Referring to the fact of this case, it is submitted that none of the factors exists to satisfy that appellant company falls within the purview of Article 12 of the Constitution to maintain the writ petition. The prayer of the learned Counsel for the appellant company is to set aside judgment of the learned Single Judge.

7. Learned Counsel for the respondent, on the other hand, submitted that writ of mandamus has rightly been issued by the learned Single Judge taking note of

the fact that appellant company is not controlled and financed by the state government or financial institutions thus status of the appellant company cannot be treated as of private company like in the case of Binny Ltd. (supra). In view of aforesaid, it is submitted that facts of Binny Ltd. (supra) case do not apply to this case.

8. Coming to the second argument, it is submitted that by a detailed judgment in the case of Ishaq Mohd (supra) it was held that the appellant company is covered under Article 12 of the Constitution. The Hon''ble Apex Court did not interfere in the aforesaid judgment though it was kept open for a decision in appropriate proceedings. So far as Division Bench of this Court is concerned, it should maintain the judgment rendered by the coordinate Bench on the same subject matter. Thus, prayer of learned Counsel for the petitioner is to dismiss the appeal.

9. We have considered rival submissions of learned counsel for the parties and scanned the matter carefully.

10. The first issue raised for ouI consideration is as to whether a writ of mandamus can be issued in respect of a contract between a company and its worker and second issue is regarding maintainability of the writ. At the very outset, we find that writ of mandamus has been issued after holding order of termination to be illegal thus in the aforesaid background we have to consider arguments of the parties.

11. It is a case of a company where share holding exist with the state government and financial institutions apart from workers cooperative society. In the aforesaid background, it cannot be considered to be a private company as is the case of Binny Ltd. (supra). The position of company changed from time to time but we have to consider the position as was existing at the time of filing the writ petition.

12. Perusal of the record shows that for acquisition of shares of appellant company, an Ordinance was issued in the year 1986 i.e. The Jaipur Metals And Electrical Limited (Acquisition of Shares) Act, 1986. Sections 3 and 4 thereof are quoted herein for ready reference:

3. Transfer and Vesting of shares of the Company in the State Government.-(1) On the appointed day, all the shares of the Company shall, by virtue of this Ordinance, be deemed to have been transferred to, and vested in, the State Government.

(2) The State Government shall be deemed, on and from the appointed day, to have been registered in the Register of members of the Company as the holder of each share which stands transferred to, and vested in, it by virtue of the provisions of Sub-section (1).

(3) All the shares which have vested in the State Government under Sub-section (1), shall, by reason of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens and other encumbrances

affecting them and any attachment, injunction or any decree or order of the Court, Tribunal or other authority restricting the use of such shares in any manner, shall be deemed to have been withdrawn.

(4) For the removal of doubts, it is hereby declared that the provisions of subsection (1) and (2) shall not affect-

(a) any right of the Company subsisting, immediately before the appointed day, against any shareholder to recover from such shareholder any sum of money on the ground that the shareholder has not paid or credited to the Company the whole or any part of the value of the shares held by him or on any other ground whatsoever; or

(b) any right of the shareholder subsisting, immediately before the appointed day, against the Company to receive any dividend or other payment due from the Company, except where the right to claim dividend, cumulative or otherwise, attached with any class of shareholders is varied at any time before or after the appointed day.

4. Management of the Company. - for the purpose of enabling the Company to function effectively, the State Government may, by notification, make such provisions (including changes in the Board of Directors, and amendments in the memorandum and articles of association of the Company) as it may consider necessary and the provisions so made shall have effect so long as they are not inconsistent with the provisions contained in the Companies Act, 1956.

13. Perusal of aforesaid and by virtue of the Act of 1986 there was transfer and vesting of shares of the Company in the state government apart from provision for management of the Company. It is also a fact that even Managing Director was appointed by the State Government who was none else but an Indian Administrative Services officer of Rajasthan cadre. This is apart from the fact that even substantial loan was given by financial institutions and the state government to the appellant company and at the relevant time no individual was having controlling share in his favour.

14. Looking to the aforesaid facts, it comes out that while delivering judgment by the coordinate Bench in the case of Ishaq Mohd (supra) this Court rightly taken a view that appellant company falls within the purview of Article 12 of the Constitution of India. Since the issue has elaborately discussed by the Division Bench and no material has been placed before us to take a different view, we subscribe the same view as was taken by the Division Bench and, accordingly, we hold that appellant company falls within the purview of Article 12 of the Constitution of India. In this regard, finding in the case of Ishaq Mohd (supra) would be treated as finding in this case also. This is to avoid repetition of same facts and finding.

15. Now, reverting back to issue No. 1 in the aforesaid background, it cannot be said to be a case of a private company as discussed by the Hon''ble Apex Court

in the case of Binny Ltd. (supra). Here is a company which is covered under Article 12 of the Constitution of India thus judgment of Hon''ble Apex Court in the case of Central Inland Water Transport Corporation (supra) as well as Delhi Transport Corporation (supra) apply to this case. Termination therein was of similar nature as exists in this case. The Hon''ble Apex Court set aside the order of termination holding that it is hit by Article 14 and 16 of the Constitution of India apart from Section 23 of the Contract Act.

16. If the ratio in the case of Binny Ltd. (supra) is taken note of, it clearly shows that the judgment in the case of Central Inland Water Transport Corporation (supra) applies to a company, undertaking, corporation or Government company but not a private company. Looking to the aforesaid ratio, we are of the view that learned Single Judge has rightly issued mandamus in favour of the petitioner-non-appellant instead of referring him to resort other remedy, This is more so when the appellant company was declared as a relief undertaking at one point of time pursuant to the provisions of The Rajasthan Relief Undertakings (Special Provisions) Act, 1961, whereas, various laws including remedy under labour laws was not available to the petitioner-non-appellant.

17. In view of the discussion made above, we do not find any error or illegality in the judgment impugned herein. Accordingly, the appeal is dismissed. No order as to costs.