

(1999) 05 AHC CK 0179

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21384 of 1999

Jata Shanker Misra and others

APPELLANT

Vs

Benaras State Bank Ltd. and others

RESPONDENT

Date of Decision : 26-05-1999

Acts Referred:

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

Citation : (1999) 3 AWC 2416 : (1999) 2 LLJ 1090

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : S.A. Gilani and S.T. Siddiqui, for the Appellant; Navin Sinha, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—Shri Navin Sinha, learned counsel for respondents at the outset has taken a preliminary objection that the writ petition is not maintainable. He further contends that the service condition of the petitioners is not governed by any statutory rules or regulations. The relation between the Benaras State Bank Ltd. and the petitioners is that of an employer- and employee which is purely contractual. He also contends that in the case of Writ Petition No. 30753 of 1992, decided on 1.11.1995, Vijay Kumar v. General Manager, Benaras State Bank Ltd. and others, Division Bench of this Court had held that writ petition against the Benares State Bank Ltd. is not maintainable. He produces copy of the said judgment.

2. Shri S.A. Gilani, learned counsel for the petitioners contends that even though the Benaras State Bank Ltd. is not a statutory authority and as such it is not a State within the meaning of Article 12 of the Constitution, yet it discharges public duty and there is an element of public function in the Benares State Bank Ltd. and that if there is violation of principle of natural justice in relation to the condition of service of an employee, in that event, the writ jurisdiction can be invoked in order to establish his fundamental and non-fundamental rights. He

relies on the decision in the case of Air India Statutory Corporation etc. v. United Labour Union and others JT 1996 (11) SC 109 in support of his contention. He had also addressed the Court on the merit of the case.

3. I have heard learned counsel for the parties.

4. Mr. Gilani had relied on the observation made in the decision of Air India Statutory Corporation (supra) which may be quoted below :

"13. If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

From this perspective and on deeper consideration, we are of the considered view that the two Judge Bench in Heavy Engineering case narrowly interpreted the words "appropriate Government" on the common law principles which no longer bear any relevance when it is tested on the anvil of Article 14. It is true that in Hindustan Machines Tools, R.D. Shetty's and Food Corporation of India cases the ratio of Heavy Engineering case formed the foundation. In Hindustan Machine Tool's case, there was no independent consideration except repetition and approval of the ratio in Heavy Engineering case. It is to reiterate that Heavy Engineering case is based on concession. In R. D. Shetty's case, the need to delve in-depth into this aspect did not arise but reference was made to the premise of private law interpretation which was relegated to and had given place to constitutional perspectives of Article 14 which is consistent with the view we have stated above. In Food Corporation of India's case, the Bench proceeded primarily on the premise that warehouses of the Corporation are situated within the jurisdiction of different State Governments which led it to conclude that the appropriate Government would be the State Government.

* * * * In a developing society like ours, steeped with unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. It was accordingly held that right to social justice and right to health were held to be Fundamental Rights. The management was directed to provide health insurance during service and at least

15 years after retirement and periodical tests protecting the health of the workmen.

It would, thus, be seen that all essential facilities and opportunities to the poor people are fundamental means of development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is means to development and source to earn livelihood. Though, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency instrumentality, juristic person or private entrepreneur it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful.

* * * * The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the *qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour u/s 10 (1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is not a basic structure of the Constitution by catena of decisions of this Court starting from *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, , and *Bommai*'s case. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court would properly mould the relief and grant the same in accordance with law."

5. The above observation does not lay down that writ is maintainable against any person irrespective of its public duty and devoid of any statutory obligation. There is a distinction between private law and public law. Even if a private body cannot be characterised as an authority within the meaning of Article 12, even then a writ would lie to enforce a public duty. Though Article 226 speaks of a person and does not mean that the person should be only a State or an Authority within the meaning of Article 12 but yet in its wisdom the Constitution has imposed a self-imposed restriction so as to keep the writ jurisdiction workable and prevented it from overburdening the Courts with innumerable cases making the exercise of writ jurisdiction impossible. Self-imposed restriction has to be respected to the extent as is meant and it cannot be open to an extent inviting anything and everything. It is not that every right against every individual can be enforced through writ jurisdiction irrespective of the fact that the person has no public function or not discharging any statutory obligation. Relation between the employee-petitioner and the respondent bank is purely contractual and is in the realm of private law without any public duty or statutory liability. Therefore, the ratio decided in the case of *Air India Statutory Corporation etc.* (*supra*), cannot

be attracted in the present facts and circumstances particularly when it has already been decided in the case of Vijay Kumar (supra) that Benares State Bank of India is not a State within the meaning of Article 12 of the Constitution and that writ petition is not maintainable against it.

6. Now the Division Bench had held that Benares State Bank Ltd. is not State and writ petition is not maintainable against it. The Division Bench decision is binding on the learned single Judge. When the Division Bench decision is staring on the face, it is not open to me, particularly when I do not find to disagree or differ with the same, to ignore the binding precedent. In that view of the matter, this writ petition is not maintainable and as such is dismissed as not maintainable without entering into the merit of the case. This order however will not prevent the petitioner from espousing their case or establishing their legal right before appropriate forum if they are so advised.