

(2001) 03 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1567 of 2001

Krushna Prasad Samal

APPELLANT

Vs

Deputy General Manager (O) Sakthi Sugars Ltd. and Another

RESPONDENT

Date of Decision : 21-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 1 OLR 631

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Jaminikanta Das and Sanjaya Kumar Das, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Heard Mr. J.K. Das, learned counsel for the petitioner, on the question of admission. The petitioner has prayed for issuance of a writ in the nature of mandamus certiorari directing opposite party No. 2 to summon the Doctor as a witness in a Domestic Enquiry being undertaken by opposite party No. 2.

2. The petitioner is an employee of Sakthi Sugars Ltd., admittedly a Private Limited Company. The sole question which arises is as to whether the writ petition is maintainable against a private limited Company, or the Enquiry Officer appointed by the Private Limited Company to conduct the domestic enquiry. The learned counsel for the petitioner has placed reliance on the decision reported in Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, and has contended that issuance of writ can also affect a private person. Paragraph-9 of the said decision upon which strong emphasis has been made is extracted hereunder :

"9.(1) and (b) :

The expansive and extraordinary power of the High Courts under Article 226 is as

wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose, even one for which another remedy may exist. The amendment to Art. 226 in 1963 inserting Art. 226(1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to the residence of such person. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect; the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash."

The aforesaid decision of the Supreme Court which arose in appeal under Article 136 of the Constitution of India related to the order passed by the Arbitrator functioning u/s 10A of the Industrial Disputes Act. It was observed that such an Arbitrator is a statutory tribunal. Once such conclusion is reached, there cannot be doubt that writ of certiorari can be maintainable on the decision of a statutory tribunal. In the present case, if any action is taken against the petitioner in violation of the principle of natural justice, it would be open to the petitioner to seek for appropriate remedy before the Industrial Tribunal and thereafter the aggrieved party may file writ petition under Articles 226 and 227 of the Constitution. Keeping in view the facts and back-ground of the decision of the Supreme Court reported in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , there cannot be any doubt that the ratio of the said decision is not at all applicable to the present case.

3. The learned counsel for the petitioner also relied upon the decision of the Supreme Court reported in 1985 (67) FJR (SC) 85 (*Anil Kumar v. Labour Court, Jullundur and others*). In the aforesaid case, it is seen that the matter had gone to the High Court against the decision of the Industrial Tribunal and not against an interlocutory order by Enquiry Officer conducting the enquiry. It was observed in the said case :

"..... It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially....."

The aforesaid observation torn out of its content prima facie appears to support the petitioner. However, on deeper scrutiny, it appears that the said decision is not applicable as it does not lay down that during the pendency of domestic enquiry relating to conduct of an employee of a private limited company, the High Court can exercise its jurisdiction under Articles 226 and 227 of the

Constitution. As already indicated, it goes without saying that in case any action is taken against the petitioner in violation of the principles of natural justice, or if there is any illegality in such order, the petitioner can always raise industrial dispute and ultimately the High Court may entertain any application under Articles 226 and 227 of the Constitution. However, at this stage, there is no warrant for entertaining the writ petition which is accordingly dismissed as not maintainable.