
(2010) 05 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) 1479 of 1995 and 4542 of 1998

Ladley Mohan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 311

General Clauses Act, 1897 — Section 6

Limitation Act, 1963 — Section 14

Citation : (2010) 05 DEL CK 0035

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Sandeep Prabhakar and Amit Kumar for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, a qualified Engineer (Mechanical Engineer, B.E. & M. Tech.) joined the employment of the respondent Modern Food Industries (India) Ltd. (MFIL) as Engineering Manager (Project) w.e.f. 5th February, 1987. WP(C) 1479/1995 was filed by the petitioner seeking (i) withdrawal of all Office Memorandums from 17th June, 1994 to 31st March, 1995 issued by MFIL disallowing the petitioner to cross the efficiency bar at the stage of basic pay though it was due to be allowed to him and thereby stopping his increment at that stage; (ii) further seeking the relief of allowing the petitioner to cross the efficiency bar and to direct MFIL to allow increments to the petitioner; (iii) quashing of the order of his transfer from Delhi to Jaipur Unit of MFIL and to allow the petitioner to resume duty at Delhi; and (iv) for a further direction to MFIL to release the salaries due to the petitioner from December, 1994 onwards. This Court however vide order dated 28th April, 1995 issued notice of the petition restricted to the withholding of the efficiency bar and not granting the annual increment to the petitioner. The petitioner also sought interim relief in the said writ petition for restraining the respondent from declaring result of the

Departmental Promotion Committee held on 17th April, 1996; however the said interim relief was declined in order dated 26th April, 1996. Rule was issued in the said writ petition on 22nd August, 1997.

2. WP(C)4542/1998 was filed by the petitioner for a direction to MFIL to grant promotion to the petitioner in the cadre of Senior Manager with retrospective effect and for adjustment of all medical leave applied by the petitioner and further for a direction to MFIL to sanction the balance medical leave, casual leave, grant increment, quash departmental proceedings and to regularize the period of stay of the petitioner at the head office in Delhi of MFIL. The counsel for the MFIL informed this Court on 16th October, 1998 that the services of the petitioner had been terminated on 8th October, 1998. The petitioner thereafter amended this writ petition to also incorporate therein the challenge to the order of his termination. Rule was issued in this petition also on 1st October, 2002.

3. Both the petitions are being listed together.

4. The petitioner has in the writ petitions inter alia pleaded that MFIL is an instrumentality of the respondent Union of India and on which ground Union of India has been impleaded as respondent No. 1 in each petition as a necessary and proper party. The counsel for the Union of India has been submitting that the Union of India is neither a necessary nor a proper party and it has been recorded in the orders in the writ petition that Union of India is merely a proforma party in the present proceedings.

5. Both the petitions were listed before the court on 18th July, 2008 when the counsel for Hindustan Unilever Ltd. appeared before the court and informed that during the pendency of the writ petitions, on account of privatization, MFIL, which was an undertaking of Union of India, has been disinvested and the unit has been taken over by Hindustan Unilever Ltd. This Court vide order of that date, allowed the counsel for Hindustan Unilever Ltd. to file a short affidavit. Thereafter, the applications have been filed in both the writ petitions alongwith additional affidavit seeking dismissal of the petition. MFIL/Hindustan Unilever Ltd. now questions the continued maintainability of the writ petitions for the reason that MFIL is no longer a Public Sector Undertaking. In the additional affidavit supported by documents it is stated that MFIL, being a Public Sector Undertaking at the time of institution of the writ petition, was a "State" within the meaning of Article 12 of the Constitution of India and hence amenable to the writ jurisdiction of this Court; however the Government of India vide Notification dated 2nd March, 2000 disinvested its shareholding in MFIL to the extent of 74% in favour of the Hindustan Lever Ltd.; pursuant to the disinvestment MFIL became a joint venture company of Government of India and Hindustan Lever Ltd.; thereafter vide Notification dated 6th January, 2003, the remaining equity shares were also transferred in favour of the Hindustan Lever Ltd. and MFIL became a subsidiary of Hindustan Lever Ltd. that no share capital of MFIL is now held by the Government and none of the Directors on the Board of MFIL now are the nominees of the Government of India; that post such disinvestment MFIL has

ceased to be a "State" under Article 12 of the Constitution of India; that after obtaining approvals of concerned courts, MFIL has amalgamated with Hindustan Lever Ltd. w.e.f. 30th March, 2007 and has ceased to exist as a legal entity. It is thus stated in the affidavit that that after such disinvestment, the contractual obligations as claimed by the petitioner cannot be enforced against MFIL/ Hindustan Lever Ltd. under the writ jurisdiction of this Court and hence the writ petition is not maintainable.

6. The petitioner sought opportunity to respond to the aforesaid additional affidavits and has filed a response thereto. The petitioner has not controverted the factual averments in the affidavits. It is the plea of the petitioner that MFIL/ Hindustan Lever Ltd. in its present status, cannot be permitted to shirk all responsibility which it has taken over. It is pleaded that as per the terms on which Hindustan Lever Ltd. has acquired the shares of MFIL from Union of India, any suit, appeal or other legal proceedings of whatsoever nature by or against MFIL pending on that date is not to abate or be discontinued or in any way to be prejudicially affected by reason of the transfer of the undertaking of MFIL and such proceedings are to be continued against the transferee company i.e. Hindustan Lever Ltd. in the same manner and to the same extent as it would or might have been continued against the transferor company (MFIL) if the scheme had not been made.

7. The petitioner appearing in person and the counsel for the Hindustan Unilever Ltd. have been heard. The petitioner besides relying on the clause aforesaid has also contended that he has been litigating in these petitions for the last 15 years and if now relegated to a suit, long time will be taken in disposal thereof also, causing undue prejudice to him.

8. The counsel for the Hindustan Unilever Ltd. has on the contrary relied on *Asulal Loya Vs. Union of India (UOI) and Others*, Mr. Asulal Loya petitioner therein also had filed the writ petition challenging the order of termination of his services by Bharat Aluminium Company Limited, then a Government company. During the pendency of the writ petition the said Bharat Aluminium Company Ltd. was privatized and thereupon it was contended that the writ petition was no longer maintainable and no relief could be granted against Bharat Aluminium Company Ltd. since on that date it was not a State or other authority under Article 12 of the Constitution of India. The counsel for the Asulal Loya had however contended that the writ petition, when it was originally filed was maintainable and it would be unjust and unfair to non suit him after so many years; it was further contended that the ordinary rule of litigation is that rights of the parties stand crystalised on the date of commencement of litigation and right to relief should be decided with reference to the date on which the petitioner entered portals of the Court. This Court however held -

i. that Section 6 of the General Clause Act 1897 does not apply to the Constitution of India;

ii. that a writ petition is not maintainable against a Private Limited Company or a Public Limited Company in which the State does not exercise all pervasive control;

iii. that a Government servant having a protection of not only Articles 14 and 16 of the Constitution of India but also of Article 311 has no absolute right to remain in service;

iv. that the petitioner in that case was not remediless and the apprehension expressed of limitation for taking appropriate proceedings before appropriate fora can be taken care of.

This Court thus in *Asulal Loya* (supra) dismissed the writ petition on the sole ground of the respondent company at the time of hearing of the writ petition ceasing to be State and amenable to the writ jurisdiction of the court.

9. The aforesaid dicta applies on all fours to the present situation also. The petitioner in person has contended that *Asulal Loya* was a workman to whom the remedy under the Industrial Disputes Act was available and which is not available to him and he would be rendered remediless. However, neither is that the position nor was that the consideration for the decision in *Asulal Loya*. The petitioner, as aforesaid would have the remedy of the civil court available to him.

10. The petitioner next contends that *Asulal Loya* did not consider the clause as aforesaid. Undoubtedly, as per the said clause, the proceeding pending on the date of privatization against MFIL were to be continued against MFIL/Hindustan Lever Limited without prejudicially affecting the same; the petitioner would certainly be affected by this Court holding the writ petition to be not maintainable. However, the question that arises is that, when the writ petition is not maintainable against MFIL/Hindustan Lever Limited, could MFIL/Hindustan Lever Limited by agreement aforesaid, make itself amenable to the writ jurisdiction. It is not open for a person/party to agree or disagree to the amenability to the writ jurisdiction. If under the law, a party is not amenable to the writ jurisdiction, he would not so become amenable merely because he has represented to the other or has agreed with the other that he would be so amenable. It is a settled principle of law that jurisdiction cannot be vested by contract in a court which otherwise does not have the jurisdiction. Similarly, if this Court has no jurisdiction to entertain a writ against MFIL/Hindustan Unilever Limited, which as of today is a private entity, merely because Hindustan Lever Ltd. at the time of acquiring the shares of MFIL from the Government agreed that the proceedings then pending against MFIL would be continued, would not vest jurisdiction in this Court to entertain a writ against MFIL/Hindustan Unilever Limited.

11. The writ petitions therefore cannot continue and are dismissed as not maintainable. It is clarified that this Court has not gone into the merits of the matter and the petitioner is at liberty to approach any forum for redressal of his grievance and the time spent by him in these proceedings shall be taken into

consideration for the purpose of limitation. Section 14 of the Limitation Act, 1963 gives protection in such cases. In the facts and circumstances, there will be no order as to costs.