
(1966) 01 CAL CK 0010
In the Calcutta High Court
Case No : Civil Rule No. 779 (W) of 1963

Malik Ram

APPELLANT

Vs

Hindusthan Cables Ltd. and Others

RESPONDENT

Date of Decision : 04-01-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1968) 38 CompCas 500 : 72 CWN 398 : (1968) 2 LLJ 371

Hon'ble Judges : A.C. Sen, J

Bench : Single Bench

Advocate : Gopal Narayan and Rathindra Nath Bhaduri, for the Appellant; Prosanta Kumar Ghose, for Respondent Nos. 1 to 4, Manoranjan Basu, for Respondent No. 5, N.C. Chakraborty and Manjushree Dutta, for the Respondent

Judgement

A.C. Sen, J.—The petitioner is an ex-employee of Hindusthan Cables Limited and is aggrieved by the order of dismissal passed against him on the 23rd of February, 1963. He has asked for a writ in the nature of prohibition commanding the respondents to forbear from giving effect to the directions contained in the letter dated February 23, 1963, that is to say, the letter by which he was dismissed from service with immediate effect.

2. His complaint is that though he was asked to show cause why he should not be dismissed, he was not supplied with the copy of the report submitted by the enquiring officer to the dismissing authority. It is not disputed that an enquiry was made into the charges levelled against him. He does not appear to be seriously aggrieved by anything that took place at the stage of the enquiry. As a matter of fact, the rule has been issued only on ground No. 1, which runs as follows:

".....the petitioner was not supplied with necessary statements and even a copy of the finding of the enquiry officer and the said materials were relied upon without giving the petitioner any reasonable opportunity of explaining them."

3. That the petitioner was not supplied with the papers mentioned in ground No. A, is not denied; on the contrary it is stated in the affidavit in opposition that the petitioner was not entitled to the statements or to a copy of the findings of the enquiring officer. Paragraph 9 in the affidavit in opposition runs as follows :

".....I say that the petitioner is not entitled to copies of the statements of witnesses and the report of the enquiry officer and, as such, the same was not supplied to him. The petitioner was at liberty to take his own notes in course of the enquiry proceedings."

4. Therefore, it is admitted that the petitioner was not supplied with the statements of the witnesses and the report of the enquiring officer.

5. The question for determination is whether the order of dismissal passed on February 23, 1963, can be challenged by an application under Article 226 of the Constitution. It is contended on behalf of respondent No. 1, namely, Hindusthan Cables Limited, that the petitioner not being a Government servant within the meaning of Article 311 of the Constitution is not entitled to get any relief under Article 226 of the Constitution. It is further contended that if the petitioner feels that he has been dismissed in violation of the terms of the contract between him and the company, his remedy lies in filing a suit for compensation for violation of the terms of the contract. So it is necessary for me to decide whether the petitioner can be regarded as a member of a civil service of the Union or as one holding a civil post under the Union. From the materials on the record I am satisfied that the respondent No. 1, namely, Hindusthan Cables Limited, is a company incorporated under the Indian Companies Act. From paragraph 3 of the further affidavit on behalf of the respondent No. 1, it appears that the company was originally incorporated as Hindusthan Cables Private Limited, which was subsequently changed to Hindusthan Cables Limited and was incorporated on the 4th of August, 1952, under the Indian Companies Act of 1913 and that the company is a private limited company. The certificate of incorporation was produced before me and from that I am satisfied that it is a private company limited by shares within the meaning of the Indian Companies Act.

6. Section 35 of the Companies Act, 1956, says that a certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

7. It is argued on behalf of the petitioner that, even though respondent No. 1 is a company within the meaning of the Companies Act, still it is wholly controlled by the President of India, that is to say, the Union of India. If the veil of juristic personality is pierced, it will be seen that it is nothing but a department of the Union of India. I am, therefore, asked to hold that an employee of the respondent No. 1 must be regarded as either a member of a civil service of the

Union or as one holding a civil post under the Union. By a supplementary affidavit the petitioner has quoted some of the articles of association of the company for the purpose of showing that the company is entirely controlled and managed by the President of India. Article 4 of the articles of association of respondent No. 1 says that transfer and transmission of shares may be made with the approval of the President of India. It is argued that this particular provision violates the provisions of the Companies Act as to the transferability of shares of a private limited company. I do not accept this contention; even if for argument's sake it is assumed that this Article violates some of the provisions of the Companies Act, that may be ground for treating this Article as void but that does not justify the conclusion that the respondent No. 1 is nothing but a department of the Union of India. Article 65 says that two minimum directors or more would be appointed by members with the approval of the President of India. All of them may not have to hold qualification shares. This Article provides for the approval of the President of India for appointing two minimum directors or more. It is, therefore, argued that even the appointment of directors is controlled by the President of India. This clearly shows, according to the petitioner, that respondent No. 1 is nothing but a department of the Union of India. Article 69 says that the managing director of the company will be appointed by the President of India as a whole time employee and his salary will be fixed by the President. This, according to the petitioner, also indicates that respondent No. 1 is nothing but a department of the Union of India. I cannot accept this argument on behalf of the petitioner, because however great may be the control exercised by the President of India, from that it cannot be said that it is merely a department of the Union of India. After all, the certificate of incorporation given by the Registrar of Joint Stock Companies cannot be ignored. The juristic nature of the company cannot be impaired even if some of the provisions of the Companies Act are violated by the articles of association or even if very wide powers are conferred on the President of India. Article 121 of the articles of association says that an agreement was entered into on January 3, 1950, between the President of India and Messrs. Standard Telephone Company Limited of London for expert technical service to be rendered to the Hindusthan Cables Limited for a period of 20 years. This, according to the petitioner, shows that respondent No. 1 is nothing but the President of India and that it is President of India who is doing everything in the guise of the company. This argument too I cannot accept because it is a matter of common experience that before the incorporation of a company contracts are entered into by the promoters of the company. It may be pointed out that the company was incorporated in 1952 and the agreement referred to in Article 121 was entered into in 1950. The company really was not in existence at that time. It is for this reason that the President of India entered into an agreement with Messrs. Standard Telephone Company Limited of London.

8. The learned counsel for the petitioner referred me to Industries (Development and Regulation) Act, 1951, for the purpose of showing that respondent No. 1 is

nothing but a department of the Union of India. In my opinion, that Act has got nothing to do with the determination of the present question, namely, whether the petitioner is a Government servant within the meaning of Article 311 of the Constitution. That Act, as the name suggests, is only for the purpose of development and regulation of certain industries referred to in the First Schedule of the Act. My attention was drawn to Section 620 of the Companies Act, 1956, dealing with the power of the Central Government to modify the Act in relation to Government companies. It is not disputed that respondent No. 1 is a Government company. Section 620 says that the Central Government may, by notification in the official gazette, direct that any of the provisions of this Act (other than Sections 618, 619 and 639) specified in the notification shall not apply to any Government company. It is argued that when the Central Government reserves extensive power to modify the Act in relation to the Government companies a Government company could not be regarded as a company within the meaning of the Companies Act. We have already seen that the company has been incorporated and a certificate of incorporation has been given by the Registrar of Joint Stock Companies. So it must be held that respondent No. 1 is a company authorised to be registered and has been duly registered under that Act.

9. Reference was made to Clause (12) of Section 21 of the Indian Penal Code for the purpose of showing that the petitioner is a public servant. Clause (12) of Section 21 of the Indian Penal Code says that every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as defined in Section 617 of the Companies Act, 1956, is a public servant. They are to be regarded as public servants for the purposes of that Act. One may be a public servant within the meaning of the Indian Penal Code but from that it does not necessarily follow that he is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State within the contemplation of Article 311 of the Constitution. In my opinion, Clause (12) of Section 21 of the Indian Penal Code has got nothing to do with the determination of the present question, namely, whether the petitioner is a Government servant within the meaning of Article 311 of the Constitution. Reference was also made to the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, for the purpose of showing that respondent No. 1 is nothing but a department of the Central Government. In my opinion, that Act has got nothing to do with the determination of the present question.

10. I have been, on the other hand, referred to the case of S.K. Mukherjee v. Chemicals and Allied Products Export Promotion Council [1961] 31 Comp. Cas. 733.. The said case was decided by Sinha J. sitting singly. His Lordship had to consider whether an employee under the Chemical and Allied Products Export Promotion Council was entitled to the benefits of Article 311(2) of the Constitution. It was found that the Chemicals and Allied Products Export Promotion Council is a company limited by guarantee incorporated under the

provisions of the Companies Act, 1956. Article 7 of the articles of association provides that four officials are to be nominated by the Government as members of the Council. The auditors may be appointed by the Central Government whose remuneration shall be fixed by the Council with the concurrence of the Union Government. His Lordship came to the conclusion that the petitioner in that case was not a civil servant and was not entitled to the privileges of Article 311 of the Constitution. His Lordship had occasion to consider the decision of the Patna High Court in *Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd. and Another*, . His Lordship appears to have approved of the decision of the Patna High Court in that case. The Patna High Court held that Article 311 had no application to the case of the employees of the Sindri Fertilisers and Chemicals Limited. Before the Patna High Court it was argued that the company was completely owned by the Union Government and that the directors were appointed by the President who was also authorised to remove any director from office in his absolute discretion. The President was also authorised to issue such directives as he might consider necessary in regard to the conduct of the business of the company and under Article 110 of the articles of association the directors were bound to give immediate effect to such directives. In spite of the fact that the Central Government exercised such extensive control over the affairs of the company, it was held by the Patna High Court that the company could not be said to be either a " public body " or a " public authority " and, therefore, an employee of such a company could not be called a " civil servant " governed by Article 311 of the Constitution. If the Sindri Fertilisers and Chemicals Limited cannot be called even a public authority or a public body, then certainly it cannot be regarded as a department of the Central Government. The position of respondent No. 1 in the instant case seems to be in no way different from the position of Sindri Fertilisers and Chemicals Limited. From the articles of association of the respondent No. 1 it is clear that the President of India or, for the matter of that, the Central Government exercises extensive control over the company. Even then, it cannot be said that it is a department of the Central Government. I accordingly hold, following the decision of our High Court as well as the decision of the Patna High Court, that respondent No. 1 is not either a public body or a public authority or a department of the Union of India. I further hold that the employees of respondent No. 1 are not entitled to the privileges conferred on civil servants by Article 311 of the Constitution. That being the position, the petitioner is not entitled to get the relief asked for in this petition under Article 226 of the Constitution. His remedy, if he feels that he has been dismissed in violation of the terms of the contract between him and respondent No. 1, really lies in filing a suit for damages for breach of contract. This decision on the preliminary point is sufficient to dispose of this rule.

11. I, however, intend to enter into the merits of the case. The petitioner primarily seems to be aggrieved by the failure on the part of respondent No. 1, to supply him with the copies of the statements of the witnesses and the report submitted by the enquiring officer. I have gone through the standing orders of

respondent No. 1. Clause (c) of order No. 14 of the standing orders says that no punishment except the award of a censure or warning or fine shall be imposed on a person unless the alleged misconduct of any employee has been enquired into by an officer or officers appointed for the purpose. In the instant case, the punishment imposed being dismissal it was incumbent, according to the standing orders of respondent No. 1, to appoint an officer to enquire into the alleged misconduct of the employee. From the materials on record I am satisfied that such an officer was really employed and an enquiry was properly held. The petitioner really can have no grievance so far as the enquiry is concerned. Clause (e) of Order No. 14 says that a copy of the order inflicting the punishment shall be given to the employee concerned. In the instant case the copy of the order by which he had been dismissed was given to the employee. Therefore, he has no reason to complain on this ground. In the standing orders there is no provision for supplying the delinquent with copies of the depositions or a copy of the report submitted by the enquiring officer. It is contended on behalf of the petitioner that unless the delinquent is supplied with a copy of the findings arrived at by the enquiring officer, it is not possible for him to show cause why the proposed punishment should not be imposed upon him and this failure to supply amounts to a violation of the principles of natural justice. From the annexures to the petition I find that the petitioner was asked to show cause why he should not be dismissed from service. The standing orders really does not contain any provision for giving an opportunity to the delinquent to show cause why the proposed punishment should not be imposed upon him. Therefore, according to the standing orders the petitioner was not entitled to such a notice asking him to show cause why he should not be dismissed. In fact, however, such a notice was served upon him. So the question arises having regard to the fact that he was given an opportunity to show cause why he should not be dismissed whether it was incumbent upon the authorities to supply him with copies of the depositions of the witnesses and also with a copy of the report submitted by the enquiring officer. In other words, whether the rules of natural justice demand that if a delinquent is given an opportunity as a matter of grace to show cause why the proposed punishment should not be imposed he must be supplied with the copies of the depositions and with a copy of the report of the enquiring officer. In my opinion, no question of natural justice arises in a case like this. So far as the passing of the order of dismissal is concerned, it is after all a purely administrative order within the discretion of the punishing authority. The punishing authority is not bound to accept the report submitted by the enquiring officer. He has to form his own opinion on the materials placed before him. Therefore, even if the delinquent is not supplied with the copies of the depositions or with a copy of the report of the enquiring officer for the purpose of showing cause why the proposed punishment should not be imposed upon him, when he is not entitled as of right to a notice to show cause the question of natural justice does not arise at all.

12. It may be pointed out that the petitioner in fact showed cause as to why he

should not be dismissed. On the 8th of March, 1963, in the letter showing cause he made no grievance of the fact that he was not supplied either with the copies of the depositions or with a copy of the report of the enquiring officer. That clearly shows that he was not in any way prejudiced by the failure on the part of the punishing authority to supply him with the copies of the depositions or with the copy of the report of the enquiring officer. If the copies were demanded at the appropriate time, there is no reason to think that the petitioner would not have been supplied with the copies demanded by him or at least with a copy of the report. Therefore, on merits also I think that he was properly dismissed in accordance with the standing orders of respondent No. 1.

13. The learned Government Pleader appeared on behalf of respondent No. 6. The rule is no doubt against all the opposite parties to show cause why a writ in the nature of mandamus should not be issued directing opposite party No. 6 to refer the dispute to the Central Tribunal, but no argument has been advanced before me for the purpose of showing that a writ in the nature of mandamus should be issued directing opposite party No. 6 to refer the dispute to the Central Tribunal. Therefore, the rule is liable to be discharged in any event so far as opposite party No. 6 is concerned.

14. The rule is accordingly discharged as a whole with costs, hearing fee being assessed at four gold mohurs to be divided between respondent No. 1 and respondent No. 6 equally.