
(2004) 12 MAD CK 0060
In the Madras High Court
Case No : W.A. No. 1910 of 2004

Management of GE Power Controls Private Ltd. and Another	APPELLANT
Vs	
Workmen of GE Power Controls Pvt. Ltd. and Others	RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 226(1), 32
Industrial Disputes Act, 1947 — Section 25M

Citation : (2005) 104 FLR 758 : (2005) 2 LLJ 34 : (2005) 1 LW 126 : (2005) 1 MLJ 165

Hon'ble Judges : Markandey Katju, C.J.;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : A.L. Somayaji, for Gupta and Ravi, for the Appellant; V. Prakash, for P. Chandrasekaran and V. Raghupathy, G.P., for the Respondent

Final Decision : Allowed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned single Judge, dated April 26, 2004.

2. Heard the learned counsel for the parties.

3. We have perused the judgment of the learned single Judge and other papers, and are of the opinion that the said judgment cannot be sustained.

4. The writ-petitioner had prayed for a writ of declaration to declare that portion of the notice of the respondents in the writ petition (the present appellants), by which the appellants required its workmen listed in the annexure to it to report at Limbasi, Gujarat to work under the third respondent in the writ petition, namely, G.E. Lighting India Private Ltd., to be illegal and unenforceable. The consequent individual order of transfers issued to the members of the writ-petitioner-union were also challenged.

5. The writ-petitioner is a trade union and the first respondent is a company running a factory at No. 46, SIPCOT Industrial Complex, Hosur, Tamil Nadu,

where the members of the petitioners-union were employed. The writ-petitioner alleged that there was wage settlement entered into by the petitioner-union and the first respondent on September 10, 1999 for a period of three years, which expired on August 4, 2002. It was alleged that the first respondent-company had been removing production machinery from Hosur plant to Pondicherry and Karnataka plant gradually after the wage settlement. The first respondent-company had applied for permission for lay-off u/s 25-M of the Industrial Disputes Act, which was rejected on October 17, 2000.

6. Admittedly, there is a provision in the Certified Standing Orders of the first respondent company that the employees are required to be transferred anywhere in India. On September 3, 2002, lock out was imposed by the first respondent-company, which was lifted by the impugned notice dated, March 2, 2004.

7. The writ-petitioner-union submitted a (memorandum, dated August 21, 2002, to the Labour Commissioner raising the dispute of wage and lock out. It was alleged in the writ petition that the Joint Commissioner of Labour without any request from the writ-petitioner- union was seeking to include the issue of transfer of workmen to Limbasi in the failure report.

8. Sri V. Prakash, learned senior counsel who appeared for the petitioner-union in the writ petition submitted before the learned single Judge that the management taking advantage of the clause available in the Certified Standing Orders that the workmen are liable to be transferred to any place, is seeking to transfer them to G.E. Lighting India Private Ltd., which is a different entity.

9. Admittedly, the appellant company G.E. Power Control India Private Ltd., and G.E. Lighting India Private Ltd., have come under one management from January 1, 2004. As a result of the aforesaid decision, all the workmen of the Hosur Factory in Tamil Nadu have been relocated to the new manufacturing facility of the company at Limbasi in Gujarat giving them relocation benefits with effect from March 3, 2004. It was alleged by Sri V. Prakash, learned senior counsel before the learned single Judge that various provisions of the Industrial Disputes Act have been violated by the impugned decision.

10. Before dealing with the submissions made by the learned counsel for the parties, we may mention that ordinarily no writ lies against a private body except a Writ of Habeas Corpus vide *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], , *Ganga Saran v. Civil Judge* 1991 (1) A.W.C. 213 , and *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, . There are no doubt certain exceptions to this rule, but that is the ordinary rule. Article 226(1) of the Constitution states:

"Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of

habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any or them for the enforcement of any of the rights conferred by Part II and for any other purpose."

11. The language of Article 226 is no doubt very wide. It states that a writ can be issued "to any person or authority" and "for enforcement of right conferred by Part III and for any other purpose." However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can be issued to any private person or to settle even private disputes. If we interpret the word "for any other purpose" literally it will mean that a writ can be issued for any purpose whatsoever, e. g., for deciding private disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words "to any person" literally it will mean that a writ can even be issued to private persons. However, this would not be the correct meaning in view of various decisions of the Supreme Court in which it was held that a writ will lie only against the State or instrumentality of the State vide *Chander Mohan Khanna v. National Counsel of Educational Research and Training* (supra), *Tekraj Vasandhi (alias) K. L. Basandhi v. Union of India* (supra), *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others*, , *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, etc. In *General Manager, Kisan Sahkari Chini Mills, Ltd. v. Satrughan Nishad* (supra), the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. In our opinion the appellant is not performing a public function nor discharging a public duty. It is only doing commercial activity. Hence, no writ lies against it.

12. The correct interpretation of the aforesaid words in Article 226 is that a writ can ordinarily be issued to a person to whom writs were traditionally issued by British Courts on well established principles. Similarly, the words, "for any other purpose" have to be interpreted in the narrower sense to mean that a writ can be issued for the purpose for which writs were traditionally issued by British Courts on well established principles. The British Courts did not ordinarily issue writs to private persons except a writ of habeas corpus.

13. No doubt the power to issue writs under Article 226 is wider than those of the British Courts vide *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , but in our opinion they are not so wide as to permit Judges to do anything they like in writ jurisdiction. There are well settled principles governing the exercise of power under Article 226 as laid down in various decisions of the Supreme Court, and these principles have laid down several limitations to the exercise of such power. For instance, ordinarily a writ will not be issued to a private body except a writ of habeas corpus.

14. In Para 4 of the counter affidavit filed by the present appellants in the writ petition it is stated:

"Even otherwise, I submit that the writ petition itself is not maintainable as against this respondent since this respondent is neither a State nor other authority within the meaning of Article 12 of the Constitution of India and consequently no writ petition will lie against this respondent under Article 226 of the Constitution of India. This respondent being a private employer is not discharging any statutory or public duty and consequently, the writ as prayed for does not lie as against this respondent. Even on this ground the writ petition has to be summarily rejected."

15. In the rejoinder affidavit of the writ-petitioner-union there is no rebuttal to the allegation in Para 4 of the counter affidavit. Hence, the allegation in Para. 4 of the counter affidavit that the appellant company (respondents in the writ petition) is a private body and is not State under Article 12 of the Constitution is not rebutted and has to be taken as correct. In view of the above, the writ petition itself was not maintainable and should have been dismissed straightaway by the learned single Judge, as it was a writ petition filed against a private body, not discharging any public duty.

16. That apart, we have held in W.A. No. 3837 of 2004, dated December 14, 2004 that when there is allegation of violation of some provision of the Industrial Disputes Act, the only remedy for the workmen is to raise an industrial dispute under the Industrial Disputes Act, and get the matter referred to the Labour Court or Industrial Tribunal. No writ petition will directly be entertained without first approaching the fora under the Industrial Disputes Act. We reiterate the same view. In the above judgment, we have also referred to the decisions of the Supreme Court vide *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , *U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh*, as well as the Full Bench decision of this Court in *P. Pitchumani Vs. The Management of Sri Chakra Tyres Ltd.*, . Hence, also the writ petition was not maintainable.

17. For the reasons stated above, this writ appeal is allowed, and the impugned judgment is set aside. The writ petition is dismissed. No costs.

18. However, if the writ-petitioner raises an industrial dispute and it is referred, we direct the Industrial Tribunal to decide the same expeditiously.