

(1992) 01 GUJ CK 0038

In the Gujarat High Court

Case No : S.C.A. No. 748 of 1988 with C.A. No. 1452 of 1988

Miscellaneous Mazdoor Sabha

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1)

Industrial Disputes Act, 1947 — Section 10, 10A, 25, 25, 25F

Citation : (1992) 2 GLR 1065 : (1993) 1 LLJ 695

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; K.S. Nanavati, for the Respondent

Judgement

Majmudar, J.—This Spl. C.A. is moved by Misc. Mazdoor Sabha through its Secretary on behalf of its members who were workmen working with respondent No. 3 at the relevant time. Respondent Nos. 4 and 5 are joined as constituted attorneys in charge of the said concern while respondent No. 6 is joined through its Managing Director, being parent company whose wholly owned subsidiary is respondent No. 3 industries.

2. The case of the petitioner-Union is that services of all the employees working with respondent No. 3-Company were terminated illegally on February 3, 1988 by notice at Annexure "B" without following the provisions of Secs. 25F, 25FFA, 25N and 25-O of the Industrial Disputes Act, 1947 ("the Act" for short) and Section 66 of the Bombay Shops and Establishment Act, 1948. Respondent No. 3 was registered as a private Company on December 20, 1982. According to the petitioner, one of the objects of the company, as seen from the Articles of Association, was to carry on business of manufacturing, preparing for market and/or selling and dealing in mosquito net and allied products. The manufacturing operation of mosquito nets was carried on by the Mosquito Netting Plant managed by respondent No. 6 company which is a parent company. According to the petitioner, though the mosquito net plant was still

manufacturing mosquito nets at the relevant time and even though it was not closed by respondent No. 6, respondent No. 3, a subsidiary company, terminated the services of all its employees being 74 in number. Thus, it was a wholesale termination of services of all the employees on the ground that sewing thread division of Ahmedabad Jubilee Mills had stopped working and all the divisions are closed and, therefore, the employees of Diwan Chemtex Industries Limited, will not be given work after working hours, w.e.f. February 3, 1988. It was stated therein that if the production will start in future, it will be informed in advance and the eligible employees will have their rights in respect of gratuity, leave encashment, arrears of salary, termination salary and salary in lieu of notice required under the Administrative Rules. Names of employees and their categories whose services were terminated were shown in enclosed Annexure to the said notice and they were 74 in number. According to the petitioner, none of the relevant provisions of the I.D. Act or Bombay Shops and Establishments Act were followed and, therefore, the impugned notice was null and void and the concern employees are entitled to be treated to have continued with respondent No. 3 and as they were not being given work, they had made complaints to respondents Nos. 1 and 2, specially respondent No. 2 who was discharging his functions under the Act and hence respondents Nos. 1, 2 are required to be directed to prosecute respondent Nos. 3 and 6 which according to the petitioner is the parent company

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3. So far as the grievances in the main petition are concerned, the first question to be decided is as to whether a direct petition under Art. 226 is maintainable against respondent No. 3 and/or respondent No. 6 which are companies registered under the provisions of the Companies Act, 1956 and if such a petition is maintainable, further question would arise as to whether the impugned notice at Annexure "B" is null and void or not and even if it is null and void, whether any relief can be given against respondent No. 6 in the present proceedings when highly disputed questions of facts are raised as to whether respondent No. 3 is in any way part and parcel of respondent No. 6 company and where they result in such disputed questions of fact, petitioner should be relegated to the remedy under the I.D. Act or not. We shall, therefore, first deal with question of maintainability of this petition under Art. 226 of the Constitution against respondent No. 3 or for that matter, respondent No. 6.

Maintainability of writ petition :- Sub-clause (1) Art. 226 provides thus :

"(1) Notwithstanding anything contained in Art. 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 in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of the rights conferred by Part III and for any other purpose."

It becomes clear that as per said provision, High Court can issue writ to any person, authority or Government and such writ or direction can be issued to them for enforcement of any of the fundamental rights covered by Part III and for any other purpose. It is now well settled that any other purpose would include enforcement of statutory rights and obligations. However, the moot question is whether private company like respondent No. 3 or 6 is covered by the phrase "any person" as employed by sub-clause (1) of Art. 226. It may be noted that the word "person" is not defined by the Constitution. However, Art. 367 can be resorted to in this connection. It defines "Unless the context otherwise requires, the General Clauses Act, 1897 shall, subject to any adaptations and modifications that may be made therein under Art. 227, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. When we turn to General Clauses Act, 1897, we find definition of the term "person" as provided by Section 3(42) as meaning any company or association or body of individuals, whether incorporate or not." In the context of Art. 226(1), there is nothing to contra-indicate applicability of this definition of the term "person". Consequently, it can safely be assumed that while the framers of Constitution employed the term "person" in Art. 226(1), the said term had the same meaning as laid down in Section 3(42) of the General Clauses Act, 1897 as provided by Art., 367 of the Constitution. Consequently, it has to be held that provisions of Art. 226(1) would apply to companies like respondents Nos. 3 and 6. However, the more fundamental question which is required to be answered in this context as to whether any writ of mandamus or writ in the nature of mandamus for enforcement of even statutory obligations of respondents Nos. 3 and 6 can be issued against them. It is well settled that writ jurisdiction is in the nature of a public law remedy and it was never to be invoked for enforcement of any private rights. Consequently, the words "any person" in Art. 226 even though they may include within their sweep companies, like respondents Nos. 3 and 6, no writ can be issued against them under Art 226 unless they can be treated to be persons who have committed breaches of statutory provisions imposing duties of public nature. It becomes, therefore, clear the even if a company like respondent No. 3 or respondent No. 6 may be bound by any statutory provisions and may be enjoined by the provisions of the Act to act in a particular manner before it can take any appropriate steps to terminate services of an employee, unless such statutory provisions can be said to partake character of public duty, such actions would remain in the domain of private duty qua concerned aggrieved workman and would not entitle them to claim writ of mandamus against such companies, however, wider contusion of the word "person" in Art. 226(1) may be. It is in this connection that Mr. Clerk for the petitioner vehemently contended that respondent No. 3 or respondent No. 6 have been enjoined by provisions of Secs. 25FFA, 25FFF and 25-O of the Act to follow statutory procedure for closing down of their undertakings and that procedure imposes duty of public nature on them as such an action has impact on the livelihood of the entire mass of workmen and that would not only affect their right to life under Art. 21 but would spell a disaster not only to the

workmen but also to the large number of their dependents being members of their families and such action taken by the respondents would not remain a purely private action like retrenchment and therefore, atleast in cases of closure of undertakings, without following procedure of Secs. 25FFA, 25FFF and/or 25-O, as the case may be, statutory obligations of concerned employers should be treated to be of the nature of public duties and obligations and not private duties and obligations, especially when they are cast by statute based on public policy and, therefore, writ petition should be treated as maintainable against them.

4. Mr. Buch for the respondents on the other hand, vehemently contended that these companies are not authorities within the meaning of Art. 12 of the Constitution and, therefore, no writ would lie against them and in any case if individuals have any grievances against their terminations, they have alternative remedy under the I.D. Act and hence, this Court should not interfere in the present proceedings.

5. The learned Advocates for the respective parties cited number of decisions of the Supreme Court and High Courts for supporting their contentions. We shall deal with these citations later on. For the present, we may proceed to examine the main rival contentions about maintainability of the petition on their own. It is nobody's case that respondent No. 3 or respondent No. 6 is an authority within the meaning of Art. 12 of the Constitution and, therefore, we need not dilate on this aspect. However, the contention of the learned Advocate of the petitioner that respondent No. 3 Company is a "person" within the meaning of Art. 226(1), as we have seen above, is well founded. But the moot question is whether any breach of public duty was committed by respondent No. 3 when the impugned notice was issued. Now, a mere look at the said notice shows that respondent No. 3 could not offer work to the concerned 74 employees from February 3, 1988. In substance, therefore, the concern was closed down. This was not the case of individual terminations of employment either on ground of misconduct or on the ground of retrenchment, as retrenchment presupposes that when the concern is going on, some working force as contra-distinguished from the entire working force, gets terminated from service. So far as such workmen are concerned, it can be said that they can raise disputes as per Section 2A of the Act read with Section 10 thereof. These would be individual disputes pertaining to one or two or number of workmen similarly situated as compared to their other colleagues who are still retained in service. So far as such grievances are concerned, even though employers may be covered by the sweep of Art. 226(1) as being "person", they may not be liable to be proceeded against under Art. 226(1) as their actions would remain in the domain of private rights and obligations. But in the present proceedings, we are concerned with the short question whether employer which is alleged to have closed down its undertaking and which had wholesale terminated services of all the workmen contrary to provisions of Secs. 25FFA and 25FFF on the one hand and Section 25-O on the other, can be issued a writ in the nature of mandamus or a writ, direction or order in the nature of mandamus under Art. 226(1) if such action is found to be

ex-facie violative of these provisions. So far as Section 25-O is concerned it may not detain us any further as it is found in Chapter V-B which deals with an industrial establishment in which not less than 100 workmen are employed on an average per working day for the proceeding twelve months. Respondent No. 3 at the relevant time was employing 74 workmen as seen from the notice at Annexure "B". Section 25-O was pressed in service by Mr. Clerk for the petitioner on the basis that respondent No. 3 was a unit of respondent No. 6 and was its limb and there was total functional integrality between the two. On that hypothesis, it was submitted that the total strength of workmen of both these companies would exceed 100 per day. However, this contention has been vehemently opposed by the respondents by filing affidavit-in-reply. They do raise highly disputed questions of facts whether there was any functional integrality in working of these two concerns and whether respondent No. 6 was part and parcel of respondent No. 6. Both questions cannot be got resolved without leading evidence. We, therefore, relegate petitioner to the remedy by way of raising an industrial dispute if so advised. No relief can be given in the present petition to the petitioner on the ground of alleged violation of Section 25-O without deciding these vexed questions of facts. We leave that question open.

6. Therefore, we will proceed for the purposes of this proceedings on the basis that the concerned employees covered by notice at Annexure "B" were employees of respondent No. 3 only. Proceeding on that basis it becomes clear that Section 25-O will be out of picture. We have, therefore, to turn to Chapter V-A which deals with lay-off and retrenchment in other cases. In that Chapter is found Section 25FFA. So far as Section 25FFA is concerned, it clearly provides that an employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective a notice, in the prescribed manner, on the appropriate Govt. stating clearly the reasons for the intended closure of the undertaking. Proviso to sub-section (1) is not relevant as it excludes an undertaking in which less than fifty workman are employed, from the sweep of the provision. In the present case, admittedly 74 workmen were sought to be terminated on account of closure as the impugned notice shows. Hence Section 25FFA squarely gets attracted. Mr. Buch for respondent No. 3 could not point out anything from the record to show that the company had followed the procedure of Section 25FFA before issuing the impugned notice. Section 25FFF lays down that where an undertaking is closed down for any reasons whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure, shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched. Provided that where the undertaking is closed down account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25F shall not exceed his average pay for three months. It cannot be disputed that even if Section 25-O does not apply, Section 25FFA and 25FFF would apply to the

facts of the present case. Mr. Buch for respondent No. 3 was not in a position to show how these provisions would not apply. It could not be disputed that Section 25FFF was not followed by respondent No. 3 while issuing notice and while closing down its concern since February 3, 1988. If that is so, the effect of non-compliance with Section 25FFA and 25FFF immediately assumes importance. So far as this effect is concerned, decision of a learned single Judge of the Bombay High Court in Maharashtra General Kamgar Union Vs. Glass Containers Pvt. Ltd. and another, was strongly relied upon by Mr. Clerk for the petitioner. In that case, an identical question had arisen before the learned single Judge. The learned Judge while interpreting Secs. 25FFA and 25FFF, held that the language of Section 25FFA is clearly mandatory. It was found in that case that both the aforesaid provisions were violated by the employer while closing the concern. In that light, it was observed that thereby, the employer had rendered itself liable to the penalty contemplated by Section 30A. Since the employer is a private limited company, it is presumed that all the then Directors and perhaps even the persons in actual management of the undertaking would become liable to suffer the penalty. In para 15 of the report, it was further observed (p. 329) :

"Ordinarily, what is made penal and which attracts a sentence of imprisonment cannot be regarded as legally valid or effective. This a broad rule of construction or interpretation which is not required to be departed from. Thus, a closure effected in fact, without compliance with the requirements of Section 25FFA, must be held to be devoid of legal effect, invalid and illegal for the reasons already indicated."

Thereafter, the learned Judge posed himself the question about legal effect of violation of Section 25FFF. In para 16 of the report, this aspect was considered and it was observed as under (p. 329) :

"The general provision contained in sub-section (1) of Section 25FFF is that the workman affected by the closure shall be entitled to notice and compensation in accordance with the provisions of Section 25F as if the workman had been retrenched. Now the marginal note to Section 25F speaks of conditions precedent to retrenchment of workmen. It provides for certain notice to be given and for certain payments to be made. Now, the settled legal position appears to be that although the retrenchment notice and payment compensation must be regarded as condition precedent to the retrenchment becoming effective, the same position would not follow in respect of the compensation which is prescribed by Section 25FFF. Reference may be made only to a decision of the Supreme Court in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, ."

Dealing further with the said decision of the Supreme Court, the learned Judge in paras 17 and 18 of the report, observed as under (pp. 329-330) :

"17. In paragraph 16 of the above Judgment the Division Bench the Supreme Court has compared the language employed in Section 25F with that employed in

Section 25FFF(1) and noted the effect of difference on the rights of the workmen. The Division Bench, accordingly, held that the payment of compensation was not condition precedent to effecting the closure.

18. The aforesaid decision of the Supreme Court and other decisions dealing with the liability of the employer to pay compensation to the workmen u/s 25FFF have however not laid down anywhere that the employer, although not bound to offer payment as condition precedent, may not make payment at all of the amount or need not make payment of the amount of compensation within a reasonable period. In my view, all such and similar provisions must be read particularly when they have been interpreted so as not to render payment conditions precedent, that such payment must be made or effectively and reasonably offered to be made within a reasonable period from the date of closure. Not to read such provisions in the manner above indicated would be to make a mockery of the salutary protection given by such provisions to the workmen. What would be reasonable cannot be fixed with rigidity but in the given circumstances it is always easy to hold what is not reasonable. In the instant case, right upto the time of the impugned decision of the Industrial Court, the employer did not indicate to the workmen that they could collect the payment due to them u/s 25FFF or even to indicate the place from which the payment would be made. As a matter of fact, since the ad interim injunction was granted and vacated only in February 1979, the simple effect would be that there could have been no effective or valid closure till the date on which the ad interim injunction was raised. This is irrespective of the fact of non-compliance with Section 25FFF. Even if we extend the starting point of employer's liability to this later date, viz. the date of decision of the learned Member of the Industrial Court, which was some time in February 1979, then surely the employer was bound to make payment or make effective offer of payment to the workmen within say, three to four months of the said decision at the latest. Mr. Ramaswamy fairly conceded that for over one year thereafter no such payment has been made and that even today out of about 480 employees, only about 350 or 360 had been paid."

In the light of the above observations, it was concluded in para 19 that the employer had contravened both Secs. 25FFA and 25FFF the former by not giving the necessary notice and the latter by not making or offering payment of the dues or compensation to the concerned workmen within a reasonable time of the closure becoming effective. In para 33 of the report, final conclusion was reached that as there was specific non-compliance with Secs. 25FFA and 25FFF, result was that the closure was illegal, invalid and ineffective.

7. We wholly concur with the aforesaid view of the learned single Judge of the Bombay High Court. Even though for applicability of Section 25FFF, offering of compensation may not be a condition precedent in the light of the decision of the Supreme Court in Avon Services (supra), as rightly held by the Bombay High Court in the aforesaid decision, if the said provision is wholly observed in breach and no compensation is offered at any time at all, the closure would become

invalid and inoperative. In the facts of the present case, it is not in dispute by either side that nothing has been offered till date to the concerned workmen who are covered by the notice at Annexure "B". More than 3 1/2 years have elapsed since issuance of notice at Annexure "B" and all the 74 employees are stranded in life and out of job with consequential economic disaster not only for them but for members of their families.

8. In such type of case, the question arises whether violation of statutory provisions which has effected the wholesale uprooting of the entire working force, contrary to the obligations flowing from Secs. 25FFA and 25FFF, can be considered to be within the domain of private duty or public duty. If these statutory obligations cast on the company like respondent No. 3 are in the domain of private duty and not public duty, then obviously the petitioner's petition would not lie and the remedy will be by way of proceedings under the Act. In our view, when the entire working force in a concern is dispensed with without following the statutory provisions of Secs. 25FFA and 25FFF, it cannot be said that such wholesale termination would still remain in the domain of private rights and obligations between the concerned workmen on the one hand and the employer on the other. But such wholesale termination contrary to these provisions would project a picture of violation of public duty as it affects the entire working force and their dependents. Such action would also be violative of Art. 21 of the Constitution and even if petition under Art. 226 may not lie against such companies for enforcement of Art. 21, still the question will remain whether they can with impunity violate statutory obligations flowing from Secs. 25FFA and 25FFF and in an arbitrary manner dispense with the entire working force of their concerns and still urge that what they have done is affecting private rights and duties and statutory obligations enacted to control such actions are not imposing public duties. In our view, such a contention would not be available to the concerned respondents on such fact situations. Provisions like Secs. 25FFA and 25FFF have been enacted by the Legislature with a view to seeing that the concerns do not snap the livelihood of entire segment of working force as it is bound to spell economic disaster for vast segment of the society consisting of not only the entire working force but their large number of dependents who would be put to economic death. Consequently, when the dispute does not remain between a workman or a group of workmen on the one hand and the employer on the other but it becomes comprehensive one encompassing the entire working force and when it is alleged that this is done in breach of statutory duty on the part of the employer, then in such contingencies, once the employer is covered by the sweep of Art. 226(1), even a private employer would be liable to be called upon by a writ of mandamus or any other suitable writ, order or direction in the nature of mandamus to perform its statutory obligations of public nature flowing from such action on its part, and to suffer the consequences of its action being declared null and void.

9. It is true that mandamus or writ in the nature of mandamus cannot be issued to any person unless the concerned person enjoined to exercise a public duty.

However, as seen above, the aforesaid statutory provisions of the Act do impose a public duty on the concerned employer which he decided to close down the concern and to dispense with the entire working force. The statute itself has provided for certain guidelines and procedural safeguards to be followed and once these statutorily imposed procedural safeguards are thrown to the winds by the concerned employer, result would be that his action will spell under disaster to a sizeable segment of society, viz., the entire working force as well as members of their families depending on them. Such type of provision, therefore, has to be treated to be a provision imposing statutory public duty on the concerned employer. In this connection, we may profitably draw upon the analogy of situations wherein there are disturbances of "law and order" on the one hand and "public order" on the other. It is well settled by a catena of decisions of the Supreme Court and this Court that individual assault on a person on a public street may cause disturbance of law and order. But if the assault mounted is of such magnitude that it disturbs even tempo of public life in a given locality, it would amount to disturbance of public order. Similarly, if the action of the employer hurts an individual workman or group of workmen similarly situated but does not harm their colleagues who continue to work in the concern, the nature of statutory obligation cast on the employer while passing the orders of termination of services of the concerned individual workman or group of workmen may remain in the realm of private duty and may not be available for being corrected by a writ of mandamus, but if the action of the employer in closing down the concern results in uniform treatment to the entire working force and if it is alleged to be contrary to the statutory procedure enacted by the legislature for safeguarding the entire working force in the concern and which would naturally include safeguarding interest of the dependent family members who are total outsiders to the employer-employee relationship and who also are likely to suffer from economic death on account of their bread winners losing livelihood, then in such case of comprehensive breaches of statutory obligations, where public policy itself would remain violated and stultified even tempo of public life of sizable segment of society would stand disturbed and to that extent, therefore, the action of the employer would amount to breach of public duty cast on it by the relevant statutory provisions like Section 25FFA and 25FFF. Consequently, appropriate relief under Art. 226 of the Constitution can legitimately be asked for by the aggrieved party if such breach of legal duty of public character is brought home to the employer.

Discussion of citations :

10. We may now turn to the relevant authorities to which our attention was invited by the learned Advocates of rival parties. We shall first deal with the decision on which reliance was placed by Mr. Buch for the respondent-concern who had raised this preliminary objection about maintainability of the petition. In the case of *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, , the question before the Supreme Court was whether certain notices and circulars issued by respondent authorities were invalid or not. Without expressing

any opinion on the merits of the contentions, the Supreme Court confirmed the findings of the High Court that the proper remedy available to the appellants to ventilate their grievance in respect of the said notices and circulars is to take recourse to Section 10 of the Act or seek relief, if possible under Secs. 74 and 75 of the Act. The decision centered round the question of alternative remedy and not on the maintainability of petition under Art. 226(1) and hence, the said decision cannot be of any assistance to the respondents.

11. The Full Bench decision of the Punjab and Haryana High Court in the case of *Manohar Lal Vs. State of Punjab and Another*, which was relied upon by Mr. Buch for the respondent also falls in line with *Basant Kumar's* case (supra) as the question in the said case was whether the mode of redress provided to a workman by claiming a reference u/s 10 of the Act could be refracted as an alternative remedy to ordinarily bar the filing of writ petition under Art. 226. As seen earlier, we are not concerned with alternative remedy but with the aspect of violation of Secs. 25FFA and 25FFF as there is no dispute that procedure was not followed by respondent No. 3 while issuing the impugned notice. Consequently, there is no question of relegating the petitioner to the alternative remedy to raise an industrial dispute when the facts are not disputed and only legal effect of undisputed violation of these provisions is the only question on the anvil of the High Court.

12. Thereafter, Mr. Buch placed reliance on the decision of the Supreme Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, . In that decision, it has been laid down as under : (pp. 753-754) :

"No doubt, Art. 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus, etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for its has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character, nor can such an application be maintained to secure performance of obligations owed by a company towards its workman and to resolve any private dispute (see *Sohanlal Vs. The Union of India (UOI)*, ."

After referring to the decision in *Regina v. Industrial Court* 1965 (1) QB 377 and observation of Bruce, J. in *R. v. Lewisham Union* 1897 (1) QB 498, 501 to the effect. "This Court has never exercised a general power to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for mandamus should have a legal and a specific right to enforce the performance of these duties.", the Supreme Court held (p. 754) :

"Therefore, the condition precedent for the issue of mandamus is that there is in

one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty.

It is, however, not necessary that the person or the authority on whom the statutory duties is imposed must be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities (Halsbury's Laws of England (3rd Ed) Vol II, P. 52 and onwards.)

The company being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus nor was there in its workmen any corresponding legal right for enforcement of such statutory or public duty."

In that case one C. A. Imanuel and 40 other workmen filed writ petition under Art. 226 challenging the validity of the agreement dated December 20, 1963 between the company and Praga Tools Corporation Majdoor Sabha inter alia providing for retrenchment according to a list of the categories and persons who would be retrenched, repealing or modifying earlier 2(p) settlements which were to be in force upto July 1, 1964. Writ of mandamus or order in the nature of mandamus against the implementation of impugned agreement was claimed. It was held that no mandamus or an order in the nature of mandamus could lie against the company.

13. It becomes obvious that in Praga Tools, obligations imposed on the company were not of public nature nor were they statutory in character. Only validity of the agreement was challenged. Rights and obligations were flowing from the said agreement. Such type of dispute obviously could not be made subject matter of writ petition under Art. 226. Such is not the case before us. Here, what is contended by the petitioner is that mandatory statutory duty of public nature as enjoined by Secs. 25FFA and 25FFF has been committed breach of by respondent No. 3 while issuing notice at Annexure "B". If that is so, on the basis of the aforesaid decision, writ petition would be maintainable, as it has been laid down, as seen above, that mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Nobody can dispute that the petitioner has sufficient legal interest in performance of a public or statutory duty as enjoined by the aforesaid provisions of respondent No. 3. The decision in Praga Tools (supra) therefore instead of helping the respondents would go against their contention.

14. Mr. Buch then placed reliance on *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, . That was a case of individual lecturer of a College who felt aggrieved by his termination of employment. It was obvious that such a writ would not be maintainable as there was no public employment involved in the matter nor was any statutory public duty imposed on the College which had passed the impugned order of termination against the lecturer. As we have already shown earlier, if individual workman or group of workmen comes forward with a grievance about illegal termination, such a grievance would not attract Art. 226(1) against the private employer even if it is a "person" within the meaning of the said clause. We have confined our present decision only to such gross cases where wholesale termination, without any exception, are resorted to contrary to the statutory provisions ensuring fool proof procedure in that connection. Only in such cases, in our view, writ of mandamus or writ in the nature of mandamus can lie against employers covered by Art. 226.

15. Reliance placed by Mr. Buch on the decision of the Supreme Court in *Vaish Degree College v. Lakshmi Narain* AIR 1976 SC 888, also falls in the same category of cases in which decision of the Supreme Court in *Vidya Ram's* case (supra) fell. In both the cases, the Supreme Court was concerned with the main question whether the college is statutory authority or body when it is not created by a statute. No such question arises in the present case, as it is not the contention of the learned Advocate for the petitioner that respondent No. 3 is a statutory authority. Hence this decision cannot be of any assistance to Mr. Buch.

16. On the same lines is the decision of the Supreme Court in *Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra*, . That was the case about suspension and termination of an individual employee and when the committee of management was not a statutory body functioning under any statute, no such individual grievance could be made subject-matter of writ petition under Art. 226(1) against such committee of management as ruled in that decision. The facts of the present case are entirely distinct and hence, this decision is also of no assistance to Mr. Buch.

17. We may now turn to the decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . Both Mr. Clerk and Mr. Buch for the respective parties placed reliance on this decision. The question before the Supreme Court was whether International Airport Authority was a State within the meaning of term of Art. 12 read with Art. 14 of the Constitution. Answering this question in the affirmative, Bhagwati, J. speaking for the Supreme Court considered various decisions of the Supreme Court on the point and took the view that International Airport Authority was a State within Art. 12 of the Constitution. In our view, this decision also cannot be of any assistance to either side, as we are not concerned with the question whether respondent No. 3 is an authority within Art. 12 as it is not disputed that it is not such an authority. It is not a creature of any statute nor any instrumentality of State and, therefore, this aspect of the matter need not detain us any further.

18. Similarly, decision of the Supreme Court in *Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another*, also cannot help Mr. Buch as, in that case, the short question before the Supreme Court was whether an employee who was dismissed can maintain a writ petition against an authority which was not the creature of a statute but was an entity like a company or a co-operative society. It was not a case in which it was alleged that any public duty was committed breach of by the concerned respondent and it was purely an individual dispute of an employee against the employer that was not a creature of any statute.

19. Mr. Buch then invited our attention to a Full Bench in our view, the aforesaid observations of Full Bench squarely get attracted to the facts the present case. Even while accepting the admitted position that respondent No. 3 is not a State within the meaning of Art. 12, once it is found that it was under a statutory public duty imposed on it under Secs. 25FFA and 25FFF, if its action of wholesale termination was violative of these provisions, it can be properly examined under Art. 226 of the Constitution as laid down by the Full Bench in the above decision. In the said decision it is also laid down that mandamus, certiorari and prohibition are public law remedies. They are not available to enforce private law rights. There cannot be any dispute about the said proposition. However, once it is found that provisions of Secs. 25FFA and 25FFF imposed a public duty on the employer, breach of such duty can legitimately be made subject-matter of mandamus under Art. 226.

We may now turn to the decision on which reliance was placed by Mr. Clerk for the petitioner. In the case of *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, it was held by the Supreme Court (p. 463) :

"So far as Art. 24 of Constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against everyone and by reason of its compulsive mandate, no one can employ a child below the age of 14 years in a hazardous employment."

Taking a clue from these observations, Mr. Clerk submitted that violation of Art. 21 also can be enforced against private individual, In this connection, he placed strong reliance on a decision in the case of *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . In that decision, by majority, it has been laid down, to which minority decision did not differ, that the right to life includes right to livelihood. We must, therefore, proceed on the basis that if an employment is denied or terminated in an illegal manner it offends art. 21 of the Constitution as it amounts to imposing of economic death on the concerned employee and his family members. Consequently, such illegal termination of employment would be covered by the sweep of Art. 21. still, however, the moot question remains whether violation of Art. 21 by the employer can attract provisions of Art. 226(1) of the Constitution on that ground. So far as this aspect is concerned, the Constitution Bench of the Supreme Court in the case of *P.D. Shamdasani Vs. Central Bank of India Ltd.*, stares in the face of the petitioner. The Constitution

Bench in that case has ruled that there is no express reference to the State in Art. 21. But could it be suggested on that account that that Article was intended to afford protection to life and personal liberty against violation by private individuals. The words "except by procedure established by law" plainly exclude such a suggestion. In view of this decision on Art. 21 and its applicability against private individuals it must be held that even if termination of employment of a concerned employee may be violative of Art. 21, no writ would lie against employer who is not a State within the meaning of Art. 12 of the Constitution, or who is not statutory authority or body created by any statute and even though such employer may be a person within the meaning of Art. 226(1). The decision in People's Union case (supra) cannot therefore, be of any avail to Mr. Clerk, so far as applicability of Art. 21 is concerned, as that decision is confined to Art. 24 with which we are not concerned on the facts of the present case.

Reliance placed by Mr. Clerk on Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, , is also of no avail to him as in that case, the Supreme Court was concerned with the question whether award given by the Arbitrator u/s 10A can be challenged under Arts. 226/227 before the High Court. Answering the question in the affirmative, observations were made by Krishna Iyer, J. to the effect that (p. 278) :

"The expensive and extraordinary power of the High Court under Art. 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."

However, these general observations on the scope of Art. 226 have to be read in the light of the controversy on the anvil of the Supreme court in that decision. As seen earlier, Art. 226 will cover any person and would also include a private company but the nature of statutory obligations imposed on it must cull out a public duty cast on such private company before it can be made to answer the challenge under Art. 226(1).

20. Mr. Clerk then placed reliance on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . We fail to understand how this decision can be of any avail to the petitioner. In that case, the Supreme Court was concerned with the question whether a rule empowering the Government-Corporation to terminate service of its permanent employees by giving notice or pay in lieu of notice period was opposed to public policy and violative of Art. 14 and directive principles contained in Art. 29(a) and Art. 41. Answering this question in the affirmative, it was held that Rule gave arbitrary power to the Corporation to hire and fire the employees at its sweet will. The said action was Government action which was within Art. 12 of the Constitution and, therefore, question about maintainability of writ petition against such Government Corporation was not at all on the anvil, as it is in the present case.

20-A. We may now turn to the decision of the Supreme court in Andi Mukta

Sadguru Shree Mukтажее Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, on which reliance was placed by the learned Advocate of both sides. The supreme Court was concerned with the very question which is posed before us for consideration. The question was when mandamus can issue under Art. 226 to "person" or statutory authorities and instrumentality of the State". In that case, a public trust was running a College. Its employees had by a writ of mandamus under Art. 226 sought intervention of this Court. Answering this question in the affirmative and confirming decision of this court, the following pertinent observations were made by the Supreme Court (pp. 328-331) :

"If the rights are purely of a private character no mandamus can issue; if the management of the college is purely a private body with no public duty, mandamus will not lie. These are three exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied The law relating to mandamus has made the most spectacular advance Art. 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English Law.

Under Art. 226, writs can be issued to "any person or authority". It can be issued" . It can be issued" for the enforcement of any of the fundamental rights and for any other purpose" The term "authority" used in Art. 226, in the context, must receive a liberal meaning unlike the term in Art. 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers powers on the High courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights.

The words "any person or authority" used in Art. 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Art. 226."

Scope of the Article has been explained by Subha Rao, J. in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another,, scope of Art.

226 has been laid down as under :

"This Article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The connotation designedly used wide language in describing the nature of the power, the purpose for which and the reasons or authority against whom it can be exercised Thereafter, High Court can issue directions, orders or writs other than the prerogative writs. It enables the High courts to mould the reliefs to meet the peculiar and complicated requirements of this country. An attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restriction grown over the years in a comparatively small country like England with a unitary form of Govt. into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself."

In our view, the aforesaid decision of the Supreme Court squarely gets attracted on the facts of the present case. Even though respondent No. 3 is not an instrumentality of State nor it is creature of any statute, it has been enjoined to follow statutory obligations imposed on it by Secs. 25FFA and 25FFF before it can close down its undertaking and render entire working force in its institution to destitute and starving As seen earlier this statutory obligation imposed on it is not of a private character but it partakes character of a public duty as segment of society gets adversely affected by non-compliance of such statutory duty by respondent No. 3 and consequently, the grievance voiced against such wholesale illegal termination of employment of the entire working force contrary to these statutory provisions highlights the injury of public nature and does not remain in the domain of infringement of purely private right on the one hand and corresponding private duty on the other. In view of the aforesaid latest pronouncement of the Supreme Court in Shri Andi Mukta Sadguru's case (supra), about maintainability of writ petition under Art. 226 in such contingencies, which squarely gets attracted to the facts of the present case, it is not necessary for us to deal with decisions of other High Courts and this Court rendered in connection with the question of maintainability of such writ petitions against persons who are not "State" within the meaning of Art. 12.

21. It, therefore, becomes clear that present writ petition under Art. 226(1) is maintainable against respondent No. 3 insofar as it has effected wholesale termination of its entire working force by notice Annexure "B" without following statutory obligations imposed on it under Secs. 25FFA and 25FFF.

22. Once this conclusion is reached, result becomes obvious. There is no defence on merits so far as issuance of notice at Annexure "B" is concerned. As already seen earlier, the learned Advocate for respondent No. 3 could not even whisper that procedure of Secs. 25FFA and 25FFF was ever followed by respondent No. 3 While terminating services of 74 workmen, viz., the entire working force by a stroke of pen when they were told not to come from the next day. This type of

wholesale termination which in substance amounted to closure of the concern for all of them clearly violated Secs. 25FFA and 25FFF. Under the circumstances, the said closure and wholesale termination of employees remain inoperative, ineffective and invalid in law. The impugned notice at Annexure "B" has to be quashed and set aside. Concerned 74 employees listed in the enclosed statement at Annexure "B" would be treated to have continued in service of respondent No. 3 all throughout as procedure under Secs. 25FFA and 25FFF qua them has not been followed by respondent No.3. It may be stated that it is not the contention of respondent No. 3 that these workmen were gainfully employed in the meantime . On the contrary, the learned Advocate for the petitioner stated before us that they are unemployed all throughout till date. As there is no controversy on this aspect, it has to be directed that these 74 employees covered by notice at Annexure "B" are entitled to monetary benefits flowing from the declaration that the impugned notice at Annexure "B" was null and void and inoperative in law and they will be entitled to be reinstated in service of respondent No. 3 with continuity of service and all consequential monetary benefits till respondent No. 3 chooses to follow proper procedure under Secs. 25FFA and 25FFF in future and legally snap the employer-employee relationship qua these workmen. We direct respondent No. 3 accordingly. Respondents Nos. 4 and 5 who are in-charge of respondent No. 3 will also be directed accordingly. The petition will stand allowed against respondents Nos. 3,4, and 5 accordingly.

23. (Rest of the Judgment is not material for the Reports.)

24. Rule made absolute.