
(2002) 04 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17272 of 2000

Priyadarshini Jattu Kuli Samkshema Sangham Dowleshwaram APPELLANT
Vs

Senior Regional Manager, Food Corporation of India and RESPONDENT
Others

Date of Decision : 26-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 16, 19(1), 21, 226

Citation : (2002) 4 ALT 706

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : D.V. Sitharama Murthy, for the Appellant; M. Ratna Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The writ petitioner, Priyadarshini Jattu Kuli Samkshema Sangham, Dowleshwaram East Godavari. represented by its Secretary, in short hereinafter referred to as "Sangham" had filed the present Writ Petition seeking the relief particularly one in the nature of writ of mandamus to declare as illegal, arbitrary and violative of the provisions of Articles 14, 16, 19(1)(g), 21 and 43 of the Constitution of India the action of the respondents - Food Corporation of India, in short referred to as "FCI" hereinafter, in seeking to exclude the members of the petitioner-Sangham for consideration for engagement under Direct Payment Scheme as per Circular No. 1R(L)/31(21)/97 dated 5-11-1997 after declaring Clause IV(ii) of the said Circular requiring working of 9 months during the previous "12 months or 12 months preceding cessation of operation in the depot, and for a consequential direction to consider engagement of the members of the petitioner-Sangham under the Direct Payment Scheme at FCI Godowns, Dowleshwaram, East Godavari District and pass such other suitable orders.

2. Clause IV of the aforesaid Circular deals with General Conditions and Clause IV(ii) of the said Circular which is questioned in the present Writ Petition reads as follows:

"The workers who are workers who are presently working and had worked had been paid wages for at least 9 months during the last 12 months or the 12 months preceding cessation of operation in the concerned depot will be considered for employment under Direct Payment System or "No work No pay" System, as the case may be, as above".

3. As can be seen from the respective pleadings of the parties, certain prior proceedings viz., W.A.Nos.520/95, 780/98 and also W.P.No. 28994/98 had been referred to. The main grievance of the Sangham is that the members of the Sangham are also workers belonging to Dowleshwaram who lost their lands and occupation by reason of the acquisition proceedings and who in fact have been working as labourers right from the time the godowns were constructed in 1987 and due to their misfortune they were not working at the time of issue of Circular dated 5-11-1997 and that they have worked as labourers quoting 99.99% rates below the S.S.R. and they have no other livelihood, and in the said circumstances they are aggrieved of the Circular dated 5-11-1997 insofar as it seeks to exclude the members of the Sangham for being considered under the Direct Payment Scheme depriving them of having their livelihood.

4. In the counter-affidavit filed by the FCI, several details had been narrated and ultimately specific stand was taken that the Writ Petition itself is not maintainable as being barred by constructive res judicata in view of the decision made in W.P. No. 28994/98.

5. Sri D.V. Sitharam Murthy, the learned Counsel representing the petitioner-Sangham with all emphasis had contended that as far as Clause IV(ii) of the Circular dated 5-11-1997 is concerned, there is no object, reason or rationale behind such condition being imposed in the Circular and by imposing such condition in the said Circular, the members of the petitioner-Sangham are excluded from being considered. The learned Counsel also had contended that this is a matter concerned with public employment and equal opportunities should be provided and even if the Circular's termed as policy of the FCI, the policy should be in conformity with the Constitutional provisions and it cannot be irrational or unreasonable. The learned Counsel also had pointed out that even in the counter-affidavit filed, the FCI is unable to take a clear stand relating to the reason for introducing such a condition and at any rate, the introduction of the said condition has absolutely no object or rationale behind it and it is arbitrary and illegal, being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. The learned Counsel also would maintain that the FCI cannot take shelter under the doctrine of constructive res judicata so as to get Clause IV(ii) of the impugned Circular validated since it is, not in dispute that the Circular as such was not impugned in the prior Writ Petition. The learned Counsel also had taken me through the Judgment in W.A.Nos. 520/95 and 780/98 and also in W.P.No.

28994/98.

6. On the contrary, Sri Rama Reddy, the learned Standing Counsel representing the FCI had taken me through several details narrated in the counter-affidavit and had submitted that the Circular dated 5-11-1997 was in fact issued after series of consultations with various authorities and Labour Unions and the norms prescribed under the Circular are reasonable and hence the Circular being a general policy decision, cannot be assailed on any one of the grounds raised by the writ petitioner-Sangham. The learned Counsel also had drawn my attention to the Judgment in W.P. No. 28994/98 and had contended that though the Circular was not questioned the aspect in fact had been decided and even otherwise since the Circular was in existence even as on that date the same should have been questioned in the prior proceedings itself and even in this view of the matter, the said question cannot be reagitated again, being barred by constructive res judicata, at any rate.

7. Heard both the counsel and also perused the material available on record.

8. The essential facts of the case are as hereunder:

The petitioner is a Labour Contract Society with Registration No. 543/1985. Its members are labourers. There is another Society known as Priyadarshini Jattu Workers Labour Contract Co-operative Society with Registration No. D-1947, Dowleshwaram. The petitioner is working in collaboration and close association with this Society and there was common membership and right now the said Society is not functioning. In 1980, the FCI acquired 70 acres of land in Dowleshwaram, East Godavari District for construction of godowns and persons who are displaced by the acquisition and agricultural labour who were also rendered jobless pursuant to the acquisition constituted the petitioner-Sangham. It is stated that for the purpose of handling and transporting foodgrains at Dowleshwaram Godowns, the FCI was required to employ labourers and instead of employing labourers directly, the FCI was inviting tenders on the basis of which handling and transport contracts were being granted and on account of acute and unhealthy competition and to stay in contention the petitioner quoted a rate of 99.99% below the scheduled rate of the contract and thus for the period between 14-4-1988 and 8-11-1990 the handling and transport contract was given to the Sangham at a rate 99.99% below the notified schedule of rates and by reason of this the Sangham was paid Rs. 300/- for the work valued at Rs. 30 lakhs. It was further stated that for the subsequent period between 9-11-1990 and 30-10-1992 one Sri Venkateswara Labour Contract Co-operative Society, Rajahmundry quoted 99.99% below the S.S.R. which was the lowest and accordingly it had obtained the contract for the said period. It is further submitted that for the years 1992-94 the FCI did not call for tenders but awarded contract on nomination basis to Sri Venkateswara Labour Contract Cooperative Society to do the work at scheduled rates prescribed by the FCI and the Sangham challenged the said action in W.P.No. 13673/92 which was allowed on 1-4-1994 holding that the contract ought not to have been awarded on

nomination basis, and the said judgment was also confirmed in Writ Appeal filed by the parties. It is further submitted that thereafter the FCI invited tenders and in response to the invitation the Sangham submitted its tender and offered to undertake work at the rate of 0.01 paise for the work valued at Rs. 1 lakh, and though this rate was the lowest the FCI awarded the contract to Sri Venkateswara Labour Contract Co-operative Society at the notified scheduled rates after calling for negotiations at Hyderabad on 16-7-1994 and the said contract was for the period 17-7-1994 to 16-7-1996, and aggrieved by the aforesaid action the Sangham filed W.P.No. 13707/94 which was dismissed on the ground that the grant of contract to the Sangham at the rate quoted would result in exploitation of labour and encouragement of unfair labour practice and that the grant of contract to Sri Venkateswara Labour Contract Co-operative Society at S.S.R. rate was not unreasonable or arbitrary, and moved by the disturbing facts the Court took up the issue of payment of fair wages to the labourers suo motu and passed the following directions:

"5. "In the facts and circumstances of the case and in exercise of the extraordinary powers of this Court under Article 226 of the Constitution of India, I feel it just and necessary to direct 1st, 2nd, 3rd and the 5th respondents herein to deposit with the Collector, East Godavari District of Andhra Pradesh:

(1) A sum of Rs. 30 lacs minus Rs. 300 = 29 lakhs, 99 thousand, 7 hundred along with interest at the rate of 12 per cent per annum from 9-11-1990 to the date of deposit for the contract period 14-4-1988 to 8-11-1990 for being paid to the labourers directly, who actually performed the work, in the manner hereinafter indicated; and

(2) A further sum of Rs. 30 lakhs minus Rs. 30 = 29 lakhs, 99 thousand, 9 hundred, 70 only along with interest at the rate of 12 per cent per annum from 01-11-1992 to the date of deposit for the contract period 09-11-1990 to 30-10-1992 for being paid to the labourers directly who actually performed the work, in the manner hereinafter indicated; within a period of 2 months from the date of this judgment. The direction for payment of interest, though may appear to be punitive in nature, is not in fact punitive. It is just and necessary, as well as reasonable in the circumstances of the case. A Government of India Undertaking just like that of the 1st respondent Food Corporation of India ought not have even thought of earning or saving income in the fashion it has done in the present case. The money, thus, saved was utilized by it during all these years and must not, therefore, hesitate to pay interest at the most nominal rate of 12 per cent per annum."

6. XXXXXXXXXXXXX

7. On receipt of the said amounts, the Collector, East Godavari District shall first ascertain from the records of the petitioner and those of the respondent as to the:

(1) Names and addresses of the labourers who performed the work during the

periods 14-04-1988 to 08-11-1990 and 09-11-1990 to 30-10-1992; and

(2) The volume of work done by each of them;

and then after due identification of the person or persons claiming the amount, pay the amount due to them as per volume of work done at the S.R. rate less the amount already paid to them, plus the interest that is worked out on the amount payable to them. All this be done as expeditiously as possible and after completion of the work a report shall be submitted before this Court by the Collector, who shall be at liberty to seek any clarification or guidance or direction, in case any difficulty is felt in implementation of these directions."

Against this judgment, FCI filed Writ Appeal No. 520 of 1995 before this Court. Pending the appeal, this Court passed an interim order in W.A.M.P.No. 956 of 1995 and W.A.M.P.No. 94 of 1996. The learned Judge while declining to suspend the order of the learned Single Judge, modified the same to the effect that:

"irrespective of the presence of the Co-operative societies and irrespective of whether a labourer is a member of one or the other Co-operative society or is not a member of any of the societies at all, the Food Corporation of India shall engage labourers for work and pay to them fair wages which they themselves admit to have determined."

Against this order dated 07-02-1996, Sri Venkateswara Labour Contract Cooperative. Society filed SLP (Civil) Nos. 5704-5705/96 in the Supreme Court of India. The same was dismissed by an order dated 26-03-1996. However, on an appeal filed by FCI, the Supreme Court granted interim stay of operation of the order passed in W.A.M.P.No. 956/95 and W.A.M.P.No. 94 of 1996 while granting Leave to Appeal on 22-04-1996. The Civil Appeal Nos. 7321-7322 of 1996 filed by the Food Corporation of India against the order passed in two W.A.M.Ps. were disposed of by the Supreme Court on 11-12-1997. The Supreme Court while continuing the interim order and also clarifying that the stay order will have no impact on any subsequent agreement entered into by the FCI Workers Union with the management of FCI in connection with the introduction of direct payment scheme, left it open to all the parties to agitate before the High Court all the relevant issues in the Writ Appeal. Thus, their Lordships of the Supreme Court did not go into the merits of the case."

It was further stated in the affidavit filed in support of the present Writ Petition that W.A.Nos. 520 of 1996 and 780 of 1998 were disposed of by order dated 23-07-1998. Before the Court it was represented that from 1997 onwards Direct Payment System had been introduced in the FCI Godowns at Dowleshwaram which lays down criteria for engagement of Hamalies and the complaint of the Sangham that it is deprived work pursuant to the said Circular was not considered by the Honourable Division Bench which made the following observations:

"It is not proper and appropriate to decide this aspect, which is really collateral

to the controversy that has presented itself in the writ petition and the writ appeal. If the members of the writ petitioner-Society are deprived of the opportunity to work in the FCI Godown by reason of the aforementioned agreement or otherwise, it is open to the society or the workmen concerned to agitate the issue either by raising an Industrial Dispute or by taking any other appropriate steps. We have no reason to think that the FCI will not treat all sections of labour fairly subject to inherent limitations. We need not, therefore, dilate on this aspect any further."

It was further stated that the 3rd respondent issued Circular No. 1R(L)/31(21)/97 dated 05-11 1997 introducing Direct Payment System to Labour pursuant to abolition of contract labour system in the depots of FCI, A.P. Region where Labour Co-operative Societies were functioning. The Circular states that only those workers who were already working in the Labour Co-operative Societies shall be indicated as Direct Payment System workers. It is also stated that the following general conditions contained in Para IV(ii) excludes the members of the Sangham from being engaged in the Direct Payment System:

"(ii) The workers who are presently working and had worked and had been paid wages for at least 9 months during the last 12 months or the 12 months preceding cessation of operations in the concerned depot will be considered for employment under Direct Payment System or "No work No Pay" System, as the case may be, as above."

It was further stated that the Sangham represented the matter but in vain. The members of the Sangham should have been included in the seniority list of handling labourers. It was further stated that the Circular dated 5-11-1997 cannot be so interpreted as to exclude the members of the Sangham and on the relevant date the members of the Sangham could not be awarded work on account of series of Court cases. It was further stated that the members of the Sangham are deprived of work and livelihood and the provisions of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India are violated. It was submitted that the Sangham filed W.P. No. 28994 of 1998 for directions to the respondents to call for tenders for handling and transporting contract works of FCI or to provide equal opportunity to the members of the Sangham along with members of Sri Venkateswara Labour Contract Co-operative Society in the matter of allotment of work and the said Writ Petition was dismissed by order dated 20-4-2000 on the ground that there was no challenge to the circular dated 5-11-1997, but however it was observed that the said order would not come in the way of FCI administration for considering the claims of the members of the Sangham for appointment. It was further stated that the FCI did not take further action in the matter on the probable ground that the above was only in the nature of pious hope expressed by the Honourable Court but had no force of writ or direction for being implemented.

9. A counter-affidavit was filed by respondents 1 to 4. It was stated that prior to introduction of Direct Payment System, handling and transport operations were

carried out through handling and transport contractor, finalized for every two years by open tender. It was for the handling and transport contractor to engage his own labour for fulfilling the contractual obligations. It was also stated that FCI was not aware as to whether the members of the Sangham were the owners of Dowleswaram land acquired by FCI and that the acquisition of land at Dowleswaram was through competent authority by paying fixed compensation and there was no provision for rehabilitation of the erstwhile owners and hence this issue cannot be a matter of dispute and the members of the Sangham cannot have any claim for demanding work on the strength of occupation of the land for a public purpose. It was also stated that FCI had paid the minimum wages to the workers as per the orders made in W.A.No. 520/95 and 780/98, dated 23-7-1998. It was stated that as per the procedure in vogue the contract was awarded to the existing society by fixing rate by taking increase in the price index into consideration and thereafter again FCI invited tenders. In paragraph-3 of the counter-affidavit the details of the compliance of the directions had been narrated in detail. It was further stated that the Headquarters Circular dated 5-11-1997 was issued after a great deal of consultations with various authorities including the Labour Unions and when such a policy decision like induction of labour under Direct Payment System in a vast organization like FCI is taken, there is a need for uniform National Policy/guidelines without which it would be practically impossible to implement the Scheme involving multifarious activities involving thousands of labourers throughout the Country. As the FCI has fairly implemented the provisions of the Circular dated 5-11-1997, the present Writ Petition is filed as an afterthought. The FCI had finalized the contract through an open tender giving reasonable opportunity to all the parties to participate in the tender enquiries and the condition laid down in the impugned Circular is based on the consideration that those who are working as on the date of induction into Direct Payment System or those who have worked not less than 9 months during the period of one year preceding the date of induction was considered by Headquarters of FCI as a criteria for eligibility. It was further stated that if no criteria is adopted to introducing Direct Payment System, the workers who worked for a short period or even before a decade or earlier may also come and claim and any criteria of this nature are built in to see that the workers presently working in the Depot are not thrown out or new workers who have worked for a period in the long past are not taken in. It was further stated that if the contention of the Sangham is that the present workers are to be thrown out to accommodate those who worked for some time in earlier period, it is nothing but unjust and unlawful and hence cannot be considered. Out of the workers eligible to be considered for induction into Direct Payment System, only those workers required as per work load were inducted and the leftover persons out of even the eligible workers as per Headquarters letter No. IR/30/21/97, dated 5-11-1997 are still waiting in the queue to be inducted and hence inducting ineligible workers like the members of the Sangham into the System does not arise. It was also specifically stated that the Writ Petition is barred by constructive res judicata in the light of the decision in W.P.No. 28994/98.

10. As can be seen from the Judgment in W.A.Nos. 528/95 and 780/98, dated 23-7-1998, it appears that the Writ Appeals had been disposed of with certain directions relating to the process of enquiry and the disbursement and a specific stand had been taken by the FCI in this regard that such directions had been in fact complied with. Evidently, it appears that since Clause IV(ii) of the impugned Circular is coming in the way of members of the Sangham to be considered by FCI, the Sangham had thought of filing the present Writ Petition. The principal stand taken by the FCI is that the impugned circular had been issued after due deliberations and wide consultations and it is a uniform policy evolved by the FCI and normally such policy cannot be interfered with unless it is arbitrary or opposed to any of the Constitutional provisions. On contrary, this portion of the Circular is mainly attacked by the Sangham being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India since by imposing such restriction and by putting such condition, equal opportunity to employment is denied and there is no object rationale or reason behind introducing such condition, except so as to exclude the members of the Sangham from being considered.

11. As can be seen from the impugned Circular, the subject referred to is "Demand of FCI Workers Union for abolition of contract labour system in depots of FCI in A.P. Region where Labour Co-operative Societies are/were functioning". The discussion relating to the demand of the Union and the meeting also had been referred to in the said Circular and several conditions had been specified. Under the General Conditions - Clause IV(ii), a condition was imposed that workers who are presently working and had worked and had been paid wages for at least 9 months during the last 12 months or the 12 months preceding cessation of operations in the concerned depot will be considered for employment under Direct Payment System or "No work No pay" system, as the case may be, and the Sangham is evidently aggrieved of the same inasmuch as if this condition has to be made applicable, the members of the Sangham will not fall within the area of consideration. Evidently, no other part of the Circular had been questioned. Further, the Circular is attacked on the ground that it is violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

12. As can be seen from the record, this litigation had already undergone checkered career and those proceedings, however, need not be referred to in detail. As far as W.P.No. 28994/98 is concerned, the same was dismissed with no order as to costs on 20-4-2000. But however, it was observed that the said order shall not come in the way of FCI administration in considering the claims of the members of Sangham for appointment if they are so advised. The relief prayed for in the said Writ Petition reads as follows:

"For the reasons stated in the accompanying affidavit it is prayed that this Hon"ble Court may be pleased to direct the respondent Nos. 1 to 3 herein to call for Tenders for the Handling and Transporting Contract work at the Food Corporation of India godowns at Dowleshwaram and/or to provide equal opportunity to the members of the writ petitioner-Society also along with the

members of the respondent No. 4 Society basing on the list of workers/members of the writ petitioner-Society who had really worked and who were exploited by the respondent-Corporation, that would be prepared by the District Collector, East Godavari District, as directed by this Hon"ble High Court in W.A.No. 520 of 1995 and W.A. No. 780/98, dated 23-07-1998, with all consequential benefits and attendant benefits declaring the action of the respondent Nos. 1 to 3 herein in not calling for tenders for Handling and Transporting Contract work in the Food Corporation of India godowns at Dowelshwaram and not providing equal opportunity to the members of the writ petitioner-Society in the matter of employment as illegal, arbitrary, discriminatory, irrational, illogical, irregular and violative of Articles 14, 16 and 21 of the Constitution of India, by the issuance of writ or order or direction essentially in the nature of writ of mandamus and pass such other order or orders as this Hon"ble High Court may deem fit, proper and necessary in the circumstances of the case."

It is not in dispute that the impugned Circular was in fact in existence even as on the date of the disposal of the said Writ Petition. It may also be relevant to just to have a look at the Judgment or at least the essential portion of the aforesaid Judgment in W.P.No. 28994/98, and in fact it was held in the said Judgment as follows:

"The question that arises at the threshold is whether the relief sought by the petitioners can be granted without violating the policy decision taken by the F.C.I. dated 05-11-1997 abandoning the tender system and introducing the D.P.S. Should it be noted that the petitioners have not assailed the validity or legality of the new policy decision of the F.C.I. Should it also be noted that if the policy decision taken by the F.C.I. administration holds the field, without declaring that policy as invalid being violative of Article 14 of the Constitution, the Court is not entitled to issue any direction which has the effect of directing the respondent authorities to violate the policy.

Sri J. Sudheer, the learned Counsel for the petitioners quite fairly and understandably and knowing limitations of judicial review of policy matters did not attack the new policy dated 05-11-1997. As pointed out supra, there is no challenge to the policy. There is no scope for the learned Counsel to attack the validity of the policy. The only limited contention and submission of the learned Counsel for the petitioners-Society is that there was absolutely no justification for the F.C.I. administration to abandon the steps that ought to have been taken in pursuance of the tender notification dated 05-07-1996, and if the F.C.I. were to take further steps in pursuance of the tender notification, there was every chance and scope for the petitioner-Society to secure the award of the Handling and Transport Contract work, and if the petitioner-society were to be awarded with the Handling and Transporting Contract work, its members would have gained experience, and that would have made them eligible for being considered for appointment in terms of the new policy dated 5-11-1997. This contention of the learned Counsel, in my considered opinion, is totally hypothetical. It could

not be stated with any certainty that if F.C.I. administration were to take further steps in pursuance of tender notification dated 05-07-1996, the handling and transporting Contract work should have been awarded to the petitioner-Society only, and not to the 4th respondent. It may be that no taking steps by the F.C.I. administration in pursuance of the tender notification dated 05-07-1996 was an irregularity in the light of the judgments of this Court in W.P.No. 7862 of 1990 dated 16-10-1990 and in W.P.No. 13673 of 1992 dated 01-04-1994, but only on the basis of that flaw the certainty of awarding Handling and Transporting Contract work to the petitioner-society for the block period 1996-98 cannot be inferred, and if the Court were to infer such certainty, it would tantamount to creating a fiction. Such a course is totally impermissible."

It was no doubt observed that the petitioners have not assailed the validity or legality of the new policy decision of the Food Corporation of India. But however, it was also observed that as pointed out supra there is no challenge to the policy and there is no scope for the learned Counsel to attack the validity of the policy. In the light of the said decision, now it has to be seen whether the present Writ Petition is barred by the principles of constructive res judicata.

13. In *Daryao and Others Vs. The State of U.P. and Others*, it was observed by the Apex Court as follows:

"But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in Section 11 of the CPC has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

In considering the essential elements of res, judicata one inevitably harks back to the judgment of Sir William B. Hale in the leading *Duchess of Kingston's* case, 2 Smith Lead Case. 13th Ed.pp.644, 645. Said Sir Willaim B. Hale "from the variety of cases relative to judgments being given in evidence in Civil suits, these two deductions seem to follow as generally true: First, that the judgment of a Court of concurrent jurisdiction, directly upon the point is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another Court; Secondly, that the judgment of a Court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another

Court for a different purpose." As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all Courts that there must be an end of litigation." Halsbury's Laws of England, 3rd Ed., Vol. 15, Paragraph 357, p.185. Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what Court the former proceeding was taken, provided only that it was a court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause " (p. 187, paragraph 362). "Res judicata", it is observed in Corpus Juris, "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity which makes it to the interest of the State that there should be an end to litigation interest republicae ut sit finis litium; the other, the hardship on the individual he should be vexed twice for the same cause - nemo debet bis vexari proceedings (sic. pro una et) eadem causa", Corpus Juris, Vol.34, p. 743. In this sense the recognized basis of the rule of res judicata is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on maxims which are taken from the Roman Law", Ibid p. 745. Therefore, the argument that res judicata is a technical rule and as such is irrelevant in dealing with petition under Article 32 cannot be accepted."

In Rahman Khan P. Vs. Assistant General Manager, Region-VI, SBI Zonal Office and Another, it was held that a party cannot be permitted to reagitate a question if the same is barred by the principles of constructive res judicata. It is needless to say that the general principles of res judicata are applicable to the writ proceedings as well (See Virudhunagar Steel Rolling Mills Limited Vs. The Government of Madras, ; Union of India (UOI) Vs. Nanak Singh, , State of Punjab Vs. Bua Das Kaushal, , The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara, , Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , Haji Esmail Noor Mohammad and Co. and Others Vs. The Competent Officer, Lucknow and Others, , Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another, .

14. It is relevant and pertinent to note that this ground of attack of a particular portion of the Circular, a policy decision by the FCI, was available to the Sangham, since even by the date of filing of the prior Writ Petition the Circular was in fact in existence and though such ground of attack was available the same was not raised in the prior Writ Petition. But however, as can be seen from the Judgment, it was referred to and the grounds of attack had not been discussed in detail, evidently for the reason that the Circular as such was not questioned. Apart from this aspect of the matter, the reason for imposing such a Clause in the Circular had been well explained in the counter-affidavit, and hence it cannot be said that this policy is adopted by the FCI either with a mala fide intention or with any other ulterior motive and on a reading of all the Clauses of the Circular put together, it cannot be said that the Circular is either arbitrary or unreasonable. Apart from it, this being a policy decision taken by the FCI, even

in view of the limitations imposed on the writ Court to exercise the power of judicial review in such matters, I am of the opinion that since the impugned clause of the Circular does not suffer from the vice of arbitrariness or in the facts and circumstances it cannot be said to be violative of Articles 14, 19(1)(g) and 21 of the Constitution of India, and in the light of the limitations imposed on the writ Court in interfering with such Circulars involving policy decisions in general, I am not inclined to hold that a portion of the Circular, as impugned in the present Writ Petition, is bad in law and accordingly I am of the opinion that the Writ Petition is devoid of merits and the same is dismissed. But in the peculiar facts of the case, without costs. However, this order shall not come in the way of FCI in considering the claims of the members of the Sangham, if any, if they are so advised.