(2009) 07 AHC CK 0337

In the Allahabad High Court

Rajesh Kumar Tiwari APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2010) 2 AWC 1891

Hon'ble Judges : S.P. Mehrotra, J;Anil Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Anil Kumar, JJ.—The present writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the notice dated 6.6.2009 (Annexure-1 to the writ petition) issued by the respondent No. 3, inter alia, requiring the petitioner to deposit the balance amount due from the petitioner under Hire Purchase Agreement.

2. The respondent No. 3 is Mahindra and Mahindra Financial Services Limited:

3. We have heard Sri Manjit Singh, learned Counsel for the petitioner and Sri Amol Kumar, learned Counsel appearing for the respondent No. 3.

4. Sri Amol Kumar, learned Counsel appearing for the respondent No. 3 raises a preliminary objection that the said Mahindra and Mahindra Financial Services Limited is a company incorporated under the Companies Act, 1956, and it is not covered within the definition of the word "State" as defined under Article 12 of the Constitution of India, and therefore, writ petition against the respondent No. 3 is not maintainable.

5. Sri Manjit Singh, learned Counsel for the petitioner submits that in view of the decision of the Supreme Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, writ petition against the respondent No. 3 is maintainable.

6. Sri Manjit Singh, learned Counsel for the petitioner refers to Test No. 5

mentioned amongst the tests laid down by their Lordships of the Supreme Court in paragraph No. 9 of the said judgment.

7. We have considered the submissions made by the learned Counsel for the parties.

8. It is not disputed that the said Mahindra and Mahindra Financial Services Limited (respondent No. 3) is a company incorporated under the Companies Act, 1956 as submitted by Sri Amol Kumar, learned Counsel appearing for the respondent No. 3.

9. In Ajay Hasia case (supra), their Lordships of the Supreme Court have laid down as under:

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, These tests are not conclusive or clinching, but these are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

(3) It must also be relevant factor.... whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a''relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government.

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the

International Airport Authority case, be an ''authority'' and, therefore, ''State'' within the meaning of the expression in Article 12.

10. Test No. 5, relied upon by the learned Counsel for the petitioner, shows that if the functions of the Corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the Corporation as an instrumentality or agency of Government.

11. In our opinion, this test is not satisfied in respect of the respondent No. 3 which is a Company incorporated under the Companies Act, 1956, and is engaged in business activity. The functions of the respondent No. 3 are not of public importance or closely related to Governmental functions. Thus, the respondent No. 3 is not covered within the meaning of ''State'' as defined under Article 12 of the Constitution of India.

12. Even otherwise, it has not been shown that any statutory duty on the part of the respondent No. 3 has been violated.

13. In view of the above, the writ petition filed by the petitioner is liable to be dismissed as not maintainable, and the same is accordingly dismissed.

It will be open to the petitioner to raise his grievance before the appropriate forum.