

(1973) 12 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 187 of 1971

R.D. Singh

APPELLANT

Vs

The Secretary, Bihar State Small Industries Corporation and
Another

RESPONDENT

Date of Decision : 06-12-1973

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 298

Citation : AIR 1974 Patna 212 : (1975) 45 CompCas 527 : (1974) 7 PLJR 113

Hon'ble Judges : Shambhu Prasad Singh, J;S. Anwar Ahmad, J

Bench : Division Bench

Advocate : Basudeo Prasad, Bhalbhadra Singh and Renuka Sharma, for the Appellant; R.P. Katriar, S.K. Katriar and Tara Kant Jha, S.C. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Shambhu Prasad Singh, J.—This application under Articles 226 and 227 of the Constitution of India by the petitioner, who was in the service of the Bihar State Small Industries Corporation (hereinafter referred to as "the Corporation") and since retired, has been made for issuance of a writ in the nature of mandamus calling upon respondents 1 and 2, who are the Secretary and the Managing Director respectively of the Corporation, to pay provident fund deposits of the petitioner. According to the case of the petitioner, the provident fund deposit amounts to Rs. 11,000/-. In the counter affidavit filed on behalf of the respondents it is admitted that the total balance accumulation of the provident fund of the petitioner is Rupees 10,678.05 P.

2. Mr. Basudeo Prasad appearing for the petitioner has not challenged the correctness of the above statement in the counter affidavit of the respondents and submitted that a writ may issue only to the extent of that amount. In the counter affidavit filed on behalf of the respondents, it is further stated that payment of the said amount of provident fund has been delayed for the accounts

of the time of the petitioner have not been completed. According to this counter affidavit, for sometime the regular accountant was on leave and the petitioner was in charge of writing out of accounts and custody of cash as well and that earlier there had been defalcation of the amount of rupees one lac in the Common Facility Service Workshop when the petitioner was in charge and a departmental proceeding against the petitioner involving a sum of Rupees 35,934.62 paise in respect of the supply of bicycles in excess of the prescribed limit is pending.

3. Mr. R. P. Katriar appearing for the respondents has raised a preliminary objection as to the maintainability of this writ application. He has submitted that as the Corporation is a Company incorporated under the Indian Companies Act (hereinafter referred to as "the Act"), no writ under Article 226 of the Constitution can issue to it. In reply to this preliminary objection of Mr. Katriar, Mr. Basudeo Prasad, learned counsel for the petitioner, has urged that as the State of Bihar is the owner of entire shares of the Corporation, it is really "State" within the meaning of Article 12 of the Constitution and a writ can be issued against it. In *K.C. Verma and Others Vs. Managing Director, Bokaro Steel Ltd. and Another*, a Bench of this Court (of which I was also a member) held that the Bokaro Steel Ltd., a Public sector undertaking of the Government of India and cent per cent shares whereof were owned by the Government of India, was not "State" within the meaning of Article 12 of the Constitution. This decision is binding upon us, but Mr. Prasad has contended that since the decision did not take into consideration Article 298 of the Constitution, it is not binding upon another Bench or at least requires reconsideration. Article 298 of the Constitution inter alia says that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. Article 162 of the Constitution, to which our attention has also been drawn by Mr. Prasad, lays down that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. According to Mr. Prasad, since the State, while carrying on of any trade or business, exercises executive power, the Corporations or the Companies, which are entirely owned and controlled by the State, are run and managed in exercise of the executive powers and, therefore, they are also "State" within the meaning of the term under Article 12 of the Constitution. On the other hand. Mr. Katriar has submitted that the Corporations or the Companies, which are incorporated under the Act, are separate legal entity and cannot be equated with their shareholder or share-holders.

4. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, it was held that the said Company being registered under the Act and governed by the provisions of the Act was a separate legal entity and could not be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. The Union Government owned 56 per cent shares of that Corporation; 32 per cent of the shares were owned by the Government of Andhra

Pradesh and the remaining 12 per cent shares were owned by the public. This decision is also against the contention of Mr. Prasad but he has attempted to distinguish It on two grounds: firstly, that all the shares of the Praga Tools Corporation were not owned by the State and secondly that in that case too Article 298 of the Constitution was not considered. Mr. Prasad has also relied on a decision of this Court in Sindri Workers' Union Vs. Commissioner of Labour and Others, . In that case Article 298 of the Constitution was referred to and it was held that the Sindri Fertilizers and Chemicals Limited was an industrial establishment under the control of the Central Government and, therefore, the Labour Commissioner of the State of Bihar had no jurisdiction to certify the draft Standing Orders of the Company u/s 5 of the Industrial Employment (Standing Orders) Act, 1946 (Act XX of 1946). Really this is not a decision which holds that a company or corporation, which is incorporated under the Act, is "State". It was observed: in that case "As a matter of law it does not make any difference that the President holds the majority of shares in his name or that the authority to issue directives or the authority to Appoint or remove Directors is vested in the President of India, and not expressly in the Central Government by name." In my opinion for the purpose of application of Article 298 of the Constitution of India it is not material whether the State owns all the shares in a Company or owns only some of the shares. Orders for carrying on of any trade or business by the States in either case shall have to be passed in exercise of the executive powers conferred upon the State under Article 298 of the Constitution. It has been observed in Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, that "the mere fact that the entire share capital of the Heavy Engineering Corporation Ltd., Ranchi was contributed by the Central Government and the fact that all its shares are held by the president and certain officers of the Central Government does not make any difference." In that case the question, which arose for consideration, was whether the Central Government or the State Government was the appropriate Government to make a reference u/s 10 of the Industrial Disputes Act 1947. The Complainant concerned was the Heavy Engineering Corporation Limited, Ranchi. It was conceded before the High Court that the Company was not an industry carried on by the Central Government but it was contended that as the entire share capital was contributed by Central Government and extensive powers were conferred on it, the Company must be regarded as an industry carried on under the authority of the Central Government and, therefore, it was an agent of the Central Government. That contention was not accepted by the Supreme Court. Before the Supreme Court also it was conceded that the Company was not an industry carried on by the Central Government and Justice Shelat, who delivered the judgment for the Court, observed that it was rightly so conceded. After these decisions of the Supreme Court, in my opinion, it is not possible to contend that corporations incorporated under the Act, entire shares whereof are owned by the State, are "State" within the meaning of the term as defined in Article 12 of the Constitution. True it is that this decision also does not expressly refer to Article 298 of the Constitution but that won't make any difference.

5. I would now refer to some of the decisions, which have been relied on by the learned counsel for the parties and which refer to Article 298 of the Constitution. In *Union of India (UOI) and Another Vs. Ladu Lal Jain*, , on which Mr. Prasad has placed strong reliance, It was merely held with reference to Article 298 of the Constitution, that running of railways by the Central Government was a business. The decision is no authority for the proposition that a corporation incorporated under the Act the entire shares whereof are owned by the State is "State" for the purpose of Article 12 of the Constitution. The other decision relied on by Mr. Prasad is of *Lajpat Rai Mago Vs. Governor of Haryana and Others*, . In this case a writ was prayed for both against a Corporation and the State. The petitioner of that case was in service of the State Government and thereafter he was deputed to the Corporation. He was again reverted to the State service. No writ was issued against the Corporation but a writ was issued against the State for giving due place to the petitioner of that case in the State service. Some observations no doubt have been made in this judgment by the learned single Judge of Punjab and Haryana High Court, which do support the contention of Mr. Prasad but those observations, it appears were not necessary for the decision of the case. In *Ranjit Kumar Chatterjee Vs. Union of India (UOI) and Others*, , Basu, J., who is considered as an authority on the constitutional law, dealing with similar contention advanced before him, observed as follows:--

"(iii) Mr. Dutt, for the petitioner relied strongly upon the provision In Article 298, as amended by the Constitution (Seventh Amendment) Act, 1956, to argue that when Government takes up a business, it does so In the exercise of its "executive power" and therefore, whatever be the agency through which Government may carry on a business, that is identified with the Government.

This argument, however, overlooks the object and scope of the Amendment of the Article. Prior to this amendment, it was held in some cases that since there was no express provision empowering the Government to enter into a trade, this could not be done without legislative sanction -- *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, . This view was overruled by the Supreme Court in the case of *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, and the Amendment of 1956 simply codifies the effect of the decision in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, namely, that legislation is not required to empower a Government to carry on a business, it can do so in the exercise of its executive power, except, of course, where a law is required by some other provision of the Constitution, say, Article 19(6). But the effect of the amendment is not to convert a commercial function of the Government into a governmental function. It is to be noted that even where a State Government carries on a business, it cannot be treated as a governmental function to claim immunity from Union taxation, without a declaration by Parliament by law under Article 289(3) -- vide *Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another*, . If the Central Government carries on a business it can never be treated as a governmental function to claim immunity from State taxation

because Article 285 simply speaks of "the property of the Union" and no business.

It has been held by the Supreme Court that even when the Government carries on a business departmentally as in the case of a Railway, it cannot be treated as a "sovereign function" for the purpose of "suability". But that principle would not apply for the purpose of determining the status of its employees under Article 311. When the business is carried on by a Department of the Government, as in the case of a Railway, obviously, the employees hold under the Government and not under any separate juristic entity, and so it has been held in numerous cases of *Parshotam Lal Dhingra Vs. Union of India (UOI)*, : *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* . The reason is obvious, namely, where the employer is a Department of the Government, no question of a separate legal entity arises.

The question, however, becomes different, where the business is carried on through a separate legal person, e. g. a statutory corporation or a company--vide *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another* , because in such a case, the employee is a servant of a legal entity other than the Government."

I am in respectful agreement with the above observations of Basu J. and differ from the observations made by the learned single Judge of the Punjab and Haryana High Court as to the interpretation of Article 298 of the Constitution. In *Panchamananda Dutta v. State of West Bengal 1972 Lab IC 877* (Call. P. Banenjee, J., of the Calcutta High Court, relying on the decision of the Supreme Court in the cases of *Praga Tools Corporation, Heavy Engineering Mazdoor Union and Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, and that of Basu, J. in the case of *Ranjit Kumar Chatterjee*, has held that the West Bengal Small Industries Corporation, which is a limited Company incorporated under the Companies Act and which has the entire share capital contributed by the State Government and its officers is not a "State" within Article 12 of the Constitution but is a different entity and no writ would lie against it. In the case of *Dr. S.L. Agarwal* it was held by the Supreme Court that Hindustan Steel Ltd. has its independent existence and by law relating to corporations it is distinct even from its members. The observations made by the Supreme Court in various cases, referred to above, leave no room for doubt that a corporation incorporated under the Act has got separate legal entity and has to be treated as distinct from its member or members. A corporation incorporated under the Act, even when cent per cent. shares of it are owned by the State, cannot be "State" under Article 12 of the Constitution and is not amenable to the writ jurisdiction of this Court as such. Article 298 of the Constitution does not make any difference to this position at law.

6. Mr. Prasad also relied on two decisions of this Court in *Borhan Kumar Vs. Assistant Personnel Officer, Indian Oil Corporation, Refineries Division, Barauni Unit and Others*, and *Chini Mazdoor Sangh and Others Vs. The State of Bihar and*

Others, . The first case was a case under the Industrial Disputes Act and it as well established that in such cases a writ can issue even to companies. In the latter case, the State Government had purchased a sugar mill from a limited company and was managing it as "State". The sugar mill was not being managed by a corporation incorporated under the Companies Act. These decisions, therefore, are of no real help to the petitioner. The preliminary objection taken by Mr. Katriar, therefore, must prevail and the application must fail.

7. I would like, however, to observe that since the respondents have admitted that a sum of Rs. 10,678/05 Paise as provident fund accumulations of the petitioner is lying with the Corporation, it is expected that the Corporation and the State Government also, if necessary, would decide the Question of payment of the said amount to the petitioner as expeditiously as possible and make payment to him of whatever amount he is found legally entitled to.

9. In the result, the application is dismissed. In the circumstances of the case, however, there will be no order as to costs.

Anwar Ahmad, J.

10. I agree