

(1985) 07 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 905 of 1985

Roche/anglo-french Employees" Union	APPELLANT
Vs	
P.B. Banne and another	RESPONDENT

Date of Decision : 01-07-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(1), 33, 33(1), 9A

Citation : (1986) 2 LLJ 31

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The Petitioner is a Trade Union registered under the Indian Trade Unions Act and represents the employees employed by respondent No. 2. The respondent No. 2 is a Public Limited Company incorporated under the Indian Companies Act and is engaged in the manufacture of Pharmaceutical and Fine Chemical Products. The respondent No. 2-Company has a factory at Bangalore and its registered Office and distribution Office including Stores is situated at Parel, Bombay. It also has a Marketing and Materials Management Divisions at Worli, Bombay. The respondent No. 2-Company has employed about 66 workmen at its establishment at Parel and about 30 workmen at its establishment at Worli. In the year 1983, several industrial disputes arose in respect of the employees of the Company in regard to the payment of customary ex-gratia and other matter. The employees could not secure favourable response from the Company and thereupon observed one day protest strike. That resulted into strained relations between the employer and the employees.

On 10th December, 1984, the Company displayed a notice intending to close down the establishment and transferring all the workmen to Bangalore. The petitioner-Union protested against the proposed action claiming that it is not bona fide and the threat to transfer all the workmen is only to intimidate the workmen and the Union to surrender their legitimate demands. The Company addressed individual letters to workmen from December, 1984 calling upon the

employees to accept the transfer under threat of action. The Union thereupon addressed a Demand dated 4th February, 1985 calling upon the Company to withdraw the notice of transfer and letters to individual workmen. The Union approached the Commissioner of Labour but as the Company was not inclined to withdraw the notice, a Notice of Strike was served on the Company commencing illegal strike from 22nd January, 1985. The strike was ultimately withdrawn on 10th May, 1985.

2. The Union addressed letter dated 7th February, 1985 to the Commissioner of Labour (Conciliation) requesting him to intervene and admit the Union's demand under the provisions of the Industrial Disputes Act. The respondent No. 1 - Conciliation Officer - informed the parties that the demand has been admitted in conciliation under S. 12(1) of the Industrial Disputes Act. The conciliation proceedings are still pending before the Conciliation Officer. Subsequently, by letter dated March 6, 1985, the Union requested the Conciliation Officer to admit additional demand and that too was admitted and is pending. The additional demand was made because the Union complained that the Company was threatening to discharge or dismiss the employees or close down the Bombay establishment. While conciliation proceedings in respect of these two demands were pending in conciliation, the Company issued a Notice of Closure dated April 4, 1985 and that has given rise to the filing of the present petition. The petitioner complains that the notice of closure is mala fide and is merely a device to terminate the employment of the employees working in Bombay establishment. The petitioner-Union also complains that the notice of closure amounts to change and the change is effected without obtaining prior approval of the Conciliation Officer as demanded by S. 33 of the Act. The reliefs sought are : (1) Writ of Mandamus against the Company for withdrawing the notice of closure and (2) from desisting from taking any steps towards the implementation of the notice of closure. It is required to be stated that no relief is sought against respondent No. 1 - the Conciliation Officer.

3. On behalf of the respondent No. 2, Shri Mohan Mangesh Wagh, Secretary of the Company, has filed return sworn on 10th June, 1985 and several contentions are raised in answer to the reliefs sought by the petitioner-Union. Shri Srikrishna, learned counsel appearing on behalf of respondent No. 2, raised a preliminary objection to the maintainability of the petition submitting that the writ of mandamus cannot be issued against respondent No. 2 which is a private Company incorporated under the Indian Companies Act. As the preliminary objection raised by Shri Srikrishna goes to the root of the matter, I heard the counsel at great length and I find that the preliminary objection is correct and deserves acceptance.

Shri Nariman, learned counsel appearing on behalf of the Union, submitted that writ of mandamus can be issued under Art. 226 of the Constitution of India against private individual and in support of the submission, reliance is placed upon two decisions of the Supreme Court and on decisions of some High Courts

other than Bombay High Court. Before advertng to the decisions relied upon by Shri Nariman, it is necessary to point out that a writ of mandamus is issued to enforce the performance of the duties which are obligatory. Where a statute imposes a duty, the performance or non-performance of which is not a matter of discretion, a mandamus will be granted, ordering that to be done which the statute requires to be done, and it is not necessary that the party or Corporation on whom the statutory duty is imposed should be a public official or an official body. Shri Seervai on page 1383 of Constitutional Law of India, Third Edition, observes :

"As mandamus lies to secure the discharge of public duties which are clearly incumbent under the law for the time being in force, it will not lie against private parties."

Reference can be made in this connection to the decision of the Supreme Court in the case of Sohanlal Vs. The Union of India (UOI), where it was observed :

"Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to this office and is in the nature of a public duty (Halsbury's Laws of England, Vol. 11, Lord Simonds Edition, p. 84)."

4. Shri Nariman relied upon the decision of the Supreme Court in the case of The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, but in my judgment the decision of the Supreme Court, instead of supporting the petitioner, goes against the contention urged. In the case before the Supreme Court, Praga Tools Corporation was a Company incorporated under the Indian Companies Act and there were two rival Workmen's Unions in the Company. A settlement was arrived at between the Company and one of the Unions and the Writ Petition was filed before the Andhra Pradesh High Court for a writ of mandamus for enforcement of rights. The petition was dismissed by the Andhra Pradesh High Court on the ground that the writ petition was not maintainable against the Company. The Supreme Court upheld the decision holding that 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 any such statutory or public duty. It would be convenient to set out para 6 of the judgment of Mr. Justice Shelat in its entirety :

"In our view the High Court was correct in holding that the writ petition filed under Art. 226 claiming against the Company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he but the company who sought to implement the impugned agreement. 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 it 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 owned by a company towards its workmen or to resolve any private dispute. (See *Sohan Lal v. Union of India*, (supra). In *Regina v. Industrial Court*, (1965) 1 Q.B. 377, mandamus was refused against the Industrial Court though set up under the Industrial Courts Act, 1919 on the ground that the reference for arbitration made to it by a Minister was not one under the Act but a private reference. "This Court has never exercised a general power" said Bruce, J., in *R. v. Lewisham Union*, (1897) 1 Q.B. 498 "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 a mandamus should have a legal and a specific right to enforce the performance of those duties." 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 duty is imposed need 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. (Cf. *Halsbury's Law of England* (3rd Ed.), Vol. II, p. 52 and onwards)."

This decision in no manner supports *Shri Nariman* because it clearly lays down that a writ of mandamus cannot be issued unless there is a public duty cast upon the respondents. *Shri Nariman* submitted that it should be held that public duty is cast upon the respondent-Company because in the matters arising under the Industrial Disputes Act, the disputes are not restricted only to the employer or employees but would affect the public at large. The mere fact that the disputes affect the public at large would not lead to the conclusion that there is a public duty upon the respondents to observe the requirement of S. 33 of the Act. The second decision of the Supreme Court relied upon by Mr. Nariman is reported in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*,

The learned counsel relied upon the observation of Mr. Justice Krishna Iyer to the following effect :

"The expansive and extraordinary power of the High Courts 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."

It is not possible from the observations made by the learned Judge to conclude that the writ of mandamus can be issued against private individuals even when there is no public duty cast upon person under any statute.

5. Shri Nariman placed strong reliance upon two decisions of the Andhra Pradesh High Court. The first is reported in *T. Gattaiah and Others Vs. Commissioner of Labour and Another*, The question which arose before Mr. Justice P. A. Chowdhary of Andhra Pradesh High Court was whether writ of mandamus can be issued against a private management for the enforcement of its statutory duty under Chapter V of the Industrial Disputes Act. The learned Judge referred to the provisions of the General Clauses Act and Art. 367(1) of the Constitution and held that the private person or an incorporated Company cannot be taken out of the sweep and the contemplation of Art. 226 of the Constitution. The learned Judge made reference to the decision of the Supreme Court in *Praga Tools Corporation's case* (supra) and held that Chapter V-B of the Industrial Disputes Act imposes a public duty on the Company not to retrench the employees except in accordance with the conditions laid down by the Act. The learned Judge felt that the limitations are conceived not merely in the interests of individual workman but in the general interest of industrial peace and, therefore, a writ of mandamus can be issued. I am afraid, I am unable to share the view of the learned single Judge. It is futile to suggest that merely because certain restrictions are provided under the Industrial Disputes Act for retrenchment of workmen, it should be held that thereby a public duty is cast upon the employer. The expression "Public Duty" cannot be considered in such wide terms merely to issue writ of mandamus against an individual. The mere fact that the action of the employer may cause hardship to the employees or the Court feels sympathetic towards the employees is no consideration for widening the ambit of the expression "public duty". The other decision of the Andhra Pradesh High Court is reported in *Eid Parry Staffs' Association and Others Vs. Deputy Commissioner of Labour-I, Madras, I, Madras* and where the writ of mandamus was sought against the employer as contemplated under S. 33 of the Industrial Disputes Act. The learned single Judge after quoting the section observed that S. 33(1)(b) creates a statutory mandatory obligation upon the employer not to alter the conditions of service and any such alteration made is a penal offence. The learned Judge felt that if any alteration is proposed or is likely to take place, the Court would be perfectly justified in issuing writ of mandamus. The learned single Judge has not given any reasons for his conclusion, nor has even suggested that any public duty is cast upon the employer by provisions of S. 33

of the Act. I am unable to share the view of the learned single Judge that the writ of mandamus can be issued against a Company merely because there is likelihood of change of service conditions without satisfying the requirements of S. 33 of the Act.

6. Shri Nariman then relied upon the decision of Madhya Pradesh High Court in the case of Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others, . In the case before the Madhya Pradesh High Court, the question was as to whether a co-operative society is a statutory body and whether a writ can be issued to such Society. The Madhya Pradesh High Court felt that as the Co-operative Society is registered under the provisions of the Madhya Pradesh Co-operative Societies Act, normally such Societies will not be amenable to writ jurisdiction. It was further observed that in cases where according to the provisions of the statute or rules or regulations framed under the Act by which the Society is governed, and there is a statutory or public duty imposed on the Society, then the High Court has power to issue to any person or authority orders or writs in the nature of mandamus requiring to do a particular thing. The Madhya Pradesh High Court also referred to the decision of the Supreme Court in Praga Tools Limited (supra) and proceeded on the basis that writ can be issued provided there is a public duty cast upon such a person. In my judgment, the decision of the Madhya Pradesh High Court does not support the submission of Shri Nariman that a writ can be issued even in cases where there is no public duty. One more decision relied upon by Shri Nariman is reported in Kartick Chandra Nandi Vs. West Bengal Small Industries Corporation Ltd. and Others, but in this case also the learned single Judge held that the relief by way of mandamus will not be available unless the legal right of the petitioner and the legal duty of the respondent is of a public nature. It is, therefore, obvious that unless there is a public duty required to be performed by the respondents, writ of mandamus cannot be issued.

7. Shri Srikrishna, relied upon Divisional Bench decision of this Court in the case of Scindia Steam Navigation Co. Ltd. v. Scindia Employees' Union, reported in 1983 Lab IC 759 . In the case before the Division Bench, the Employees' Union sought writ of mandamus against a private Company for refusal to pay bonus in accordance with the settlement. The Division Bench consisting of Mr. Justice Chandurkar and Mr. Justice Lentin held that it is now well established that the mandamus lies to secure the performance of the public or statutory duty, though it is not necessary that the person or authority on whom the statutory duty is cast need be a public official or an official body. It was further observed that if it is found that the Company has some obligation to perform a statutory or a public duty, then it may not be possible to contend that no writ can be issued to the Company merely because the Company is registered under the Companies Act. The Division Bench referred to the observation in de Smith's Judicial Review of Administrative Action, Fourth Edition, p. 540 to the effect that the mandamus lies to secure the performance of a public duty. The Division Bench held that the writ of mandamus sought by the Union cannot be granted. I am bound by the dictum

laid down by the Division Bench and, in my judgment, the petitioner cannot seek writ of mandamus against the respondent-Company. Reference was made by Shri Srikrishna to the decision of the Delhi High Court in the case of National Seeds Corporation Employee's Union and Another Vs. National Seeds Corporation, New Delhi, where a writ of mandamus was sought for non-compliance of S. 9A of the Industrial Disputes Act. The Division Bench declined to grant relief holding that there is no statutory obligation on a private employer like a Company to follow S. 9A and the alleged violation of S. 9A of the Act may entitle the employee to raise Industrial Dispute but cannot enable him to claim writ of mandamus. The decision undoubtedly supports the submission of Shri Srikrishna. A reference was also made to the decision of the Full Bench of Patna High Court in the case of Dinesh Prasad and Others Vs. State of Bihar and Others, Pat but the question arising in the present petition was not specifically considered and the conclusion was that whenever an alternative remedy is available, a writ should not be issued.

8. In my judgment, the position seems to be well-settled that a writ of mandamus cannot be issued against an individual or a Company unless it is established that such individual or a Company is required to perform public duty. In the present case, the respondent No. 2 Company had no public duty and mere non-observation of the requirement of S. 33 of the Act, even if the claim of the Union in this respect is accepted, would not entitle this Court to issue writ of mandamus.

9. Accordingly, the petition fails and the rule is discharged but in the circumstances of the case, there will be no order as to costs.