

(1988) 05 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4462 of 1982

Sailendra Narain Choudhary and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Constitution of India, 1950 — Article 12
Industrial Disputes Act, 1947 — Section 10

Citation : (1989) PLJR 902

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh and Mukteshwar Singh no. 2, for the Appellant;
Mani Lal and Siya Sharan Pd. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this application the petitioners have prayed for issuance of a writ of certiorari for quashing the Office Order No. 573 dated 22.7.82, whereby and whereunder the Secretary of the Bihar State Agro Industries Development Corporation Limited (hereinafter referred to as "the Corporation") acting under the order of the Managing Director thereof sought to revise the pay scale of the petitioners, although the same was contrary to the recommendations of the 4th pay Revision Committee and also for issuance of a writ of or in the nature of mandamus directing the respondents to fix the petitioner's pay in the pay scale of Rs. 880-1510/- as has been made applicable to the similarly situated persons in the government department. The facts of the case lie in a very narrow compass. The petitioners are employees of the respondent Corporation which is State within the meaning of Article 12 of the Constitution. The petitioners at the relevant time were initially appointed in the posts of Collection Inspectors which was later on upgraded as Agro Inspector.

2. According to the petitioners their duties and responsibilities expanded after the aforementioned posts were designated Agro Inspector from the post of

Collection Inspector.

3. The petitioners have asserted that the State of Bihar constituted a Pay Revision Committee popularly known as 4th Pay Revision Committee. The recommendation of the 4th Pay Revision Committee were accepted by the State of Bihar by resolution bearing no. 10770 dated 30.12.1981. In this Resolution it was pointed out that there may be cases where it has not been possible for the Committee to fix the scale of pay; in such a situation the departments concerned were advised to examine each such case on the basis of prescribed qualification, nature of duties, the corresponding revised scale and other relevant factors and to refer each such case to Finance Department for advice. The petitioners have asserted that the Bureau of Public Enterprises solicited advice from Managing Director of all Public Sector Undertakings including that of the respondent corporation regarding the manner in which the pay scale of the employees should be revised and fitted into the general pattern of revised pay scales. The Managing Director of the respondent-corporation constituted a committee for that purpose, whereafter a statement was prepared and sent to the Bureau of Public Enterprises between 22nd and 24th April, 1982,

4. According to the petitioners, the Bureau of Public Enterprises mechanically fitted the petitioners in the revised Pay scale of Rs. 785-1210/- without taking into consideration the relevant factors such as qualification, responsibilities, duties, area of operation etc. The petitioners made representations before the respondents which were, however, rejected.

5. It has been admitted in the petition that the respondent corporation is incorporated under the Companies Act, 1956. It is also an admitted position that the State of Bihar constituted the 4th Pay Revision Committee for the purpose of revision of pay scale of its own employees. It is also admitted that the State of Bihar accepted the recommendation of the 4th Pay Revision Committee, which necessarily meant to be implemented in relation to its own employees. The aforementioned resolution bearing no. 10770 dated 30.12.1981 and the consequent direction to the concerned department to examine such cases, where a particular employee could not be fitted in a particular scale of pay or where there has been some anomalies in the scale of pay of some employees working in the departments of the State of Bihar. The petitioners have merely asserted that the respondent-corporation is an instrumentality of the Government being a State government undertaking. It has further been stated that the State has deep and pervasive control over the corporation and it has got a monopoly business and thus is "State" within the purview of Article 12 of the Constitution of India.

6. Plainly enough the respondent corporation is a separate juristic person and is not a department of the Government. The control of the State Government, if any, over such corporation evidently is by reason of its article of Association and not by reason of any provisions of statute. The resolution of the State of Bihar accepting the recommendation of the 4th Pay Revision Committee was thus not

binding upon the corporation. In other words if the corporation or for that matter Bureau of Public Enterprises has not given effect to the aforementioned resolution of the State of Bihar, the petitioners can not be said to have acquired any legal right to enforce the said resolution upon the respondent-corporation or the respondent no. 4 by obtaining a writ of mandamus from this Court.

7. In my opinion, the petitioners have acquired no legal right so as to compel the respondent corporation or the respondent no. 4 to follow the direction contained in its resolution bearing no. 10770 dated 30.12.1981.

8. Further from a bare perusal of the said resolution it would be evident that the same was meant for the department of the State of Bihar. By reason of the said resolution the Finance Department was authorised to take appropriate steps in that regard. Evidently (he said resolution has no application in relation to the Public Sector Undertakings which are registered and incorporated under the Companies Act and not the department of the State of Bihar.

9. In Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, it was held as follows :--

Before considering the authorities cited by counsel before us, we proceed first to examine the meaning of the words used by Parliament in the definition clause "appropriate Government". It is an undisputed fact that the company was incorporated under the Companies Act and it is the Company so incorporated which carries on the undertaking. The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of Post and conceded both in the High Court as also before us that it is not an industry carried on by the Central Government. That being the position, the question then is, is the undertaking carried on under the authority of the Central Government. There being nothing in Section 2(a) to the contrary, the word "authority" must be construed according to its ordinary meaning and, therefore, must mean a legal power given by one person to another to do an Act. A person is said to be authorised or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or so as to produce the same effect as if the person granting the authority had for himself done the act. For instance, if authorities to B sell certain good, for and on his behalf and B does so, B incurs no liability for so doing in respect of such goods and confers a good title on the purchaser. There clearly arises in such a case the relationship of a principal and an agent. The words "under the authority of" mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. Can, the respondent-company, therefore, be said to be carrying on its business pursuant to the authority of the Central Government.

That obviously cannot be said of a Company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association, and the articles of association. An incorporated

company as is well known, has a separate existence and the law recognises it as a juristic person separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the persons subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate or a corporation aggregate and the new person begins to function as an entity (C.F. *Saloman v. Saloman Co.* 1977 AC 22). Its rights and obligations different from those of its shareholders. Action taken against it does not directly affect its shareholders. The Company in holding its property and carrying on its business is not the agent of the shareholders. An infringement of its right does not give a cause of action to its shareholders. Consequently, it has been said that if a man trusts a corporation he trusts that legal persons and must look to its assets for payment, he can call upon the individual shareholders to contribute only if the Act or charter creating the corporation so provides. The liability of an individual members is not increased by the fact that he is the sole person beneficially interested in the property of the Corporation and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess only a nominal interest in its property or hold it in trust from him (C.F. Halsbury's Laws of England, 3rd Ed., Vol 9 p. 9). Such a company even possesses the nationality of the country under the laws of which it is incorporated, irrespective of the nationality of its members and does not cease to have that nationality even if in times of war it falls under enemy control. (C.F. *Janson v. Driefontain, Consolidated Mines*, 1902 AC 484 and *Kuenigl v. Donners Mark* (1955) 1 QB 515). The Company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company 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. The company and the shareholders being as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government. A notice to the President of India and the said Officers of the Central Government, who hold between them all the shares of the company, would not be a notice to the company nor can a suit maintainable by and in the name of the Company be sustained by or in the name of the President and the said officers.

5. "It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But, these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case.

Where a Statute setting up a corporation so provides such a corporation can easily be identified as the agent of the State as in *Graham v. Public Works Commissioner* (1901) 2 K.B. 81, where Philmore, J. said that the crown does in certain cases established with the consent of parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting the principals. In the absence of statutory provisions, however a commercial corporation acting on its own behalf even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a Minister appoints the members or directors of a Corporation and he is entitled to call for information, to give directions which are binding on the Directors and to supervise over the conduct of the business of the Corporation does not render the corporation an agent of the government (See *The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others*,) per Shah, J. and *Tamlin v. Bansafor* (1950) 1 K.B. 1 at page 25.26) Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions (*C.F. London County Territorial and Auxiliary Force Association v. Nishels* (1948) 2 All E.R. 432).

In *Ramanna Dayaram Shetty v. The International Airport Authority of India and others* the Supreme Court has clearly held that by an instrumentality or agency of the respective government is meant that its action is within the meaning of Article 12 of the Constitution but it is not an agent of the Central Government or the State Government in the sense of Principal and Agent.

10. In this connection it will be useful to quote the following :--

The second decision to which we must refer is that in *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, . The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Limited (herein-after referred to as the Corporation) and the Union made by the State of Bihar u/s 10 of the Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry in question was carried on under the authority of the Central Government, and the reference could, therefore, be made only by the Central Government. The Court held that the words under the authority mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master and on this view the court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously no because the corporation was carrying on business in virtue to the authority derived from its memorandum or articles of association and not by reason of any authority granted by the Central Government. The Corporation in carrying on business was acting on its own behalf and not on behalf of the Central Government and it was, therefore, not a servant or agent of the Central Government in the sense that its

actions would bind the Central Government. There was no question in this case whether the Corporation was an authority within the meaning of Article 12 . We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the Government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government its action in reality is in the nature of State action. This decision with an altogether different point has no bearing on the present issue-

(underlining is mine).

In this view of the matter there cannot be any doubt whatsoever that this court either directly or indirectly can not issue any writ upon the respondents to abide by the resolution of the State of Bihar dated 30.12.1981 In any event as I have mentioned hereinbefore, the said Resolution does not and is not meant to apply to the employees of such public sector undertaking who were registered and incorporated under the Companies Act.

In the result this writ application is not maintainable and the same is dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.