
(1999) 04 AHC CK 0129

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 13666 of 1999

Subhas Ganguli, Agra

APPELLANT

Vs

Industrial Tribunal, Agra & Anr.

RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 04 AHC CK 0129

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—The petitioner is an employee of Mercury "Travels (India) Limited which is a registered company under the Companies Act. In paragraph 2 of the writ petition it has been contended that since the said company is a tour operator and agents for all the principal Airlines as such it is a State within the meaning of Article 12 of the Constitution of India. Affiliation as tour operator and agents for Airlines does not confer any characteristic on the company to the extent of its being instrumentality and agency of the State. Admittedly no ingredients as specified in the decision in the case of Raman Daya Ram Shetty v. The International Airport Authority of India and others, AIR 1979 SC1628 has been shown to have been satisfied from the pleadings made out in the writ petition in order to bring the respondent No. 2 within the scope and ambit of an authority within the meaning of Article 12 of the Constitution.

2. Mr. VN. Agarwal, learned Counsel for the petitioner had contended that the order contained in Annexure 7 by which the services of the petitioner were dispensed with on the ground of absence in Bangalore after holding an enquiry in absentia could not have been passed since an industrial dispute is pending before the Tribunal for the last two years with regard to the issue as to whether the transfer of the petitioner to Bangalore was legal and valid. According to him such an order could not have been passed in view of Section 6E of the U.P. Industrial Dispute Act. Therefore, the order having been passed in violation of

statutory provisions viz Section 6E of the Industrial Dispute Act, the said order appears to have been passed in discharge of statutory obligation as provided in Section 6E of the said Act. On these grounds Mr. Agarwal contends that this writ petition is maintainable.

3. I have heard Shri VN. Agarwal, learned Counsel for the petitioners and Shri V.K. Rai, learned brief holder of respondent No. 1 at length.

4. Section 6E of the U.P. Industrial Dispute Act, 1947 provides that during the pendency of any proceeding either before the conciliation officer or before Labour Court or Tribunal in respect of any industrial dispute no employer shall punish by dismissal or otherwise a workman connected with such dispute except with the permission from the labour Court. In case such an Order is passed in contravention of Section 6E, the workman has a remedy under Section 6F to make a complaint in writing in the prescribed manner to the labour Court or tribunal as the case may be and on receipt of which the labour Court or Tribunal shall adjudicate the complaint as if it were a dispute referred to or pending before it. U.P. Industrial Disputes Act provides the machinery for settlement of dispute between the employer and the workmen. It prescribes certain procedure as well as creates rights and obligations on the part of the employer and the workmen and vice versa. By reason of the said Act no statutory obligation is conferred on the employer or the workmen as the case may be. On the other hand any dispute between them can be settled through the machinery provided therein. Therefore, in dismissing, the petitioner in view of Section 6E it cannot be said that the respondent had discharged its statutory obligation. It would be stretching interpretation to an unimaginable extent to touch the horizon of the interpretation of Article 12 for determining the characteristic of instrumentality and agency of the state in a person or a body of person or legal entity. I do not find any substance in the submission of Mr. Agarwal to that extent.

5. In the case of U.P State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey, 1999(1) UPLBEC 296, it is held that writ lies even against a private individual and the right that is infringed may be under Part III, of the Constitution or any other right which the law validly made might confer upon him. But then the power of the High Court under Article 226 of the Constitution have laid down guideline through selfimposed limitations subject to which such jurisdiction is to be exercised by the High Court. But such, guidelines are not mandatory in all circumstances. At the same time the High Court does not act like a proverbial bull in a China shop in exercise of its jurisdiction under Article 226.

6. In the said judgment, a distinction has also been made between private law right and public law right. In the case of Sri Konaseema Cooperative Central Bank Ltd. v. N. Seetharama Raju, AIR 1990 A.P. 171, a Full Bench of the Andhra Pradesh High Court has held that "even if a Society cannot be characterized as a State within the meaning of Article 12, even then a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against

the Society. In such a case it is unnecessary to go into the question whether the society is being treated as a "person" or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Mandamus, *ceniorari* and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a "State" within the meaning of Article 12, does not necessarily belong to public law field. A Society, which is a "State" may have its private law rights just like a Government. A contractual obligation, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution."

7. In the case of *Cooperative Central Bank v. The Additional Industrial Tribunal andhra Pradesh & others*, 1999(2) SCC 43, it was held that the relation between employer and employee unless governed by the statutory provisions, the service rule though may be a contract of employment between employer and employee cannot have statutory force unless they are governed by some rules having such statutory force. In the said case it was held that the byelaws of the Society governing the services of the employees of the society do not have any statutory force, neither do have standing order certified under the Industrial Employment (Standing Orders) Act, 1946.

8. In the case of *Rajasthan State Road Transport Corporation v. Krishna Kant*, AIR 1995 SC 1715, it was held by the Apex Court that the standing order certified under the Industrial Employment (Standing Orders) Act 1946 does not have statutory force.

9. Admittedly in the present case the services of the petitioner have not been shown to be governed by any statutory rules particularly when the employer is a company registered under the Companies Act. Neither the State Government nor the Central Government hold any share nor any of these Governments have any control with regard to the affairs of the company. It is not a Government Company. It is neither established by any law of statute. It does not discharge any statutory obligation. By no stretch of imagination the company registered under the Companies Act, unless satisfy the ingredients as has been laid down in the case of *Raman Daya Ram Shetty v. The International Airport Authority of India and others*, AIR 1979 SC 1628, can be brought within the purview of instrumentality and agency of the State. Simply because it is affiliated with different Airlines it does not acquire the characteristic of an instrumentality and agency of the State.

10. Then again it does not discharge any statutory duty or statutory obligation in relation to its employees. Relation between the employee and employer so far as the petitioner and the company are concerned is purely contractual and is in the realm of private law. While regulating the service condition of the petitioner it discharges its private law obligation right arising out of its contract between the petitioner and the company. Similarly when the petitioner claims any right in respect of its service condition he claims such right out of its contract of service

which is not statutory in nature exercising private law rights. Even when the authority is a State it may discharge public law right and if the right is claimed within the scope and ambit of private law right then even if the authority is State within meaning of Article 12 in respect of such action it would not be amenable to writ jurisdiction. When it is not a State the said question does not come in. Unless it is pleaded and shown that any public duty or statutory obligation is cast upon the authority even though it is a private body the same cannot be amenable to writ jurisdiction. The right provided in Section 6E and the remedy provided under Section 6F of the U.P. Industrial Dispute Act is a procedure for protecting private law right between employer and employee arising out of the contract of services. Section 6E does not confer any statutory obligation on a private individual of a private body neither does it confer any statutory right, prohibition provided in the realm of private law, right and obligation. The procedure provided while creating a forum for deciding dispute is a procedural law and not a substantive law. The distinction between procedural law and substantive law is a wellsettled principle. The procedural law does not confer any statutory obligation or right in either of the parties as the case may be. If such an interpretation is given in that event it would work against the accepted principle of invoking writ jurisdiction set down through the decision of various High Courts and the Apex Court which had culminated and crystalised in form and practice. In order to draw the said concept and principle since crystalised even on a private body exercising its jurisdiction within private law right and obligation would be extending and are stretching the concept and principle beyond the extendable limit and detracting from the scope and ambit of the tests laid down by the Apex Court in its various decision. Following Raman Daya Ram Shetty (*supra*).

11. Admittedly writ may lie against private individual even when some acts taken by such private individual which on the fact of its effect fundamental right of the citizen. Here in this case the right alleged is in effect a legal right arising out of the contractual obligation. Though Mr. Agarwal, had contended that the right to employment is right to livelihood and thus is a fundamental right within the meaning of Article 21 of the Constitution as has been held in the case of *Olga Tellis & others v. Bombay Municipal Corporation and another*, AIR 1986 SC 180, but then that question was in respect of persons who by reason of their situation having been below the poverty line were little Indian incapable of espousing their own cause and having not been aware of their own right in a public interest litigation which position is clearly different from the present case where the petitioner has approached the Industrial Tribunal against his transfer, reference where to is still pending. But then the writ jurisdiction is invoked in cases where there are no efficacious alternative remedy. In the present case, the remedy provided in Section 6F of the U.P. Industrial Dispute Act is a complete adequate efficacious remedy which the petitioner is entitled to avail. Then again in *Olga Tellis* case (*supra*) *Bombay Municipal Corporation* was a State within the meaning of Article 12 of the Constitution a feature distinguishable from the present case.

12. In that view of the matter, I do not find any reason to exercise my discretion in the facts and circumstances as discussed above.

13. The writ petition, therefore, fails and is accordingly dismissed.

14. However, in case the petitioner lodges a complaint under Section 6F of the Act before the Authority, the same is expected to be decided at the earliest, if possible within a period of six months from the date of lodging of such complaint.

15. However, there will be no order as to cost.