

(1981) 03 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1988 of 1980

T. Gattaiah and Others

APPELLANT

Vs

Commissioner of Labour and Another

RESPONDENT

Date of Decision : 02-03-1981

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1981) 1 APLJ 280 : (1981) 43 FLR 202 : (1981) 2 LLJ 54

Hon'ble Judges : P.A. Chowdhary, J

Bench : Single Bench

Judgement

1. This is an application under Art. 226 of the Constitution filed by eighty-seven workmen of I.D.L. Chemicals Limited, Hyderabad (hereinafter referred to as "the company complaining against their lay-off and retrenchment by the said company. These petitioners had been laid-off on 8th February, 1980, and they were later retrenched on 7th April, 1980. The petitioners claim that their lay-off as well as retrenchment was brought about by the said company contrary to the mandatory provisions of the Industrial Disputes Act, 1947 as amended by the Industrial Disputes (Amendment) Act, 1976 (XXXII of 1976). It is on that basis that they pray this Court should issue a writ in the nature of mandamus or nay other appropriate writ or direction directing Commissioner of Labour, the first respondent herein to hold that their lay-off and retrenchment were in violation of the statutory provisions and are, therefore, null and void and to direct the said company to continue them in service with back wages.

2. The Commissioner of Labour, Hyderabad although served with rule nisi of this Court, entered no appearance and filed no counter. He virtually remained ex parte. The company, the second respondent, had filed a counter and contested this application. The company while admitting the facts relating to lay-off and retrenchment and feebly attempting to justify the same raised an important question relating to the competence of this Court to issue a writ to the aforesaid company under Art. 226 of the Constitution. The company's contention is that it

was merely an association of private individuals incorporated under the Companies Act like many other companies and that its activities were purely private in nature without there ever being any control exercised by it over others or its activities being shared or participated in by the State or Central Governments. The company pleaded that it had no public duties to perform or responsibilities to discharge and that, therefore, it is not a proper person to be reached under Art. 226 of the Constitution. In paragraph 3 of its counter, the company said. -

"It is well settled that no writ can lie against a company merely incorporated under the Indian Companies Act and the second respondent is one such. It is not attracted to "other authorities" within the ambit of Art. 12 of the Constitution and falls entirely outside the purview of the connotation of a State. The second respondent is not a corporation established by a statute and muchless, an instrumentality or agency of the State. The activities of the second respondent are purely private activities. No control over its functions is exercised by the State and the functions carried by the second respondent are not public functions. The second respondent is neither a statutory company nor one having public duties or responsibilities imposed on it by a statute. It is, therefore, submitted that no question of a writ of any kind, whether of mandamus or otherwise, being issued against the second respondent-company would arise."

3. On merits, the company justifies the lay-off on the ground of 30 per cent, power-cut imposed by the Andhra Pradesh State Electricity Board on the supply of electricity to all industries, with effect from 4th September, 1979, and also on the ground of non-availability of high speed diesel oil. According to the company as the lay-off was due to power cut and non-availability of diesel oil, no question of obtaining previous permission of the State authorities as provided under the Industries Disputes Act could arise.

4. Regarding retrenchment the case of the company was that after the expiry of 45 days from the date of lay-off, the 87 workmen could be retrenched by the company in pursuance of the second proviso to S. 25C of the Industrial Disputes Act after giving them one month's notice as require under clause (a) of S. 25F or after paying them the compensation due to them under that section and as that had been done no cause for complaint survives.

5. The first question that should be considered is whether the petitioners' lay-off and retrenchment effected by the company were legally authorised or not. It was admitted by the company that the petitioners were laid-off with effect from 8th February, 1980 and were retrenched with effect from 10th April, 1980.

6. The law relating to the question of lay-off and retrenchment relating to employees like the petitioners is to be found not in any private contract but in the law made by the Parliament and embodied in Chapter V-B of the Industrial Disputes Act as amended by the Central Act XXXII of 1976. Section 25K of Chapter V-B of the Industrial Disputes Act makes the provisions of that Chapter

applicable to all industrial establishments which are not less than 300 workmen are employed on an average per working day for the preceding twelve-months. The respondent-company with its 2,000 and odd workmen employed all around the year and engaged in the manufacturing activity fully answers these specifications mentioned in S. 25K of Chapter V-B of the Industrial Disputes Act. It follows, therefore, that the provisions of Chapter V-B of the Industrial Disputes Act are clearly attracted to the company. Equally clearly they apply to and control the activities of the company. Now S. 25M of Chapter V-B forbids any industrial establishment of the kind described above from laying-off a regular workman except with the previous permission of such authority as may be specified by the appropriate Government, unless such lay-off is due to shortage of power or to natural calamity. It follows that the lay-off of the petitioners on 8th February, 1980, would be unjustifiable, unless it is justifiable on the ground of shortage of power. The respondent-company in its counter-affidavit had offered its explanation that the lay-off was effected for the reason of 30 per cent power-cut imposed by the A.P. State Electricity Board all over the State with effect from 4th September, 1979. This explanation of the company which was not seriously disputed by the petitioners appears to me to be true justifying the action of lay-off effected by the company. It is not disputed that 30 per cent power-cut was imposed by the A.P. State Electricity Board in September, 1979, But the plea of the petitioners is that this is merely a ruse for effecting the lay-off. As the relevant provisions of the Industrial Disputes Act do not quantify the power shortage as justifying the lay-off and as 30 per cent power-cut cannot be regarded as minimal I hold overruling the petitioners' contention that the lay-off of the petitioners by the company with effect from 4th September, 1979. Is justified in terms of the above Statute. But the lay-off in this case was followed by total retrenchment of these petitioners on 10th April, 1980. A further question arises whether the retrenchment was in terms of the Statute. Section 25N of Chapter V-B of the Industrial Disputes Act dealing with retrenchment does not admit any exceptions of circumstances. Unless the retrenchment was brought about in accordance with S. 25N of the Industrial Disputes Act, the retrenchment should be held to be null and void. The aforementioned S. 25N denies power to an industrial establishment to which Chapter VB of the Industrial Disputes Act applies to retrench any workman, who has been in continuous service for not less than one year, unless the retrenchment is effected following the particular procedure prescribed under that section. That procedure is : (a) the workman should have been given three months notice in writing indicating the reasons for retrenchment; (b) the workman should have been paid at the time of retrenchment compensation; and (c) notice should have been served to the appropriate Government and the permission of such governmental authority obtained.

It is not the case of the respondent-company that any of these conditions for retrenchment had been satisfied. On the other hand, they freely confess that they had not complied with these requirements, but they claim that they had

retrenched the petitioners acting under the second proviso to S. 25F of the Industrial Disputes Act after the expiry of 45 days from the date of lay-off. This raises the question whether S. 25C that occurs outside Chapter V-B applies to this case at all. The very purpose of Chapter V-B of the Industrial Disputes Act is to make special provisions in relation to certain categories of industrial establishments where not less than 300 workmen were employed continuously all round the year. The matter of retrenchment of those workmen employed in such industrial establishments is governed by the provisions of Chapter V-B of the Industrial Disputes Act which is a Special Code relating to such large industrial establishments. Section 25F occurring in Chapter V-A, which is a general section occurring in a general Chapter, has no application to these establishments to the extent that they are specially governed by Chapter V-B. The argument of the respondent-company, therefore, that its action of retrenchment is justifiable under S. 25F cannot be accepted. Under S. 25F a workman is entitled only to one month's notice whereas under S. 25N he is entitled to three months' notice. These differences in the quantum of protection to which a workman is entitled would clearly show that the Parliament intended that where S. 25N applies, the application of S. 25 should be excluded. The explanation of the respondent-company justifying the retrenchment of the petitioners based on S. 25F should, therefore, be rejected and the retrenchment of the petitioners must be held to be contrary to S. 25N of Industrial Disputes Act.

8. Under S. 25Q of the Industrial Disputes Act, an employer who contravenes the provisions of clause (c) of sub-s. (1) of S. 25N shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both.

9. A reading of Chapter V-B would, therefore, make it clear that the Parliament intended not merely to forbid the respondent-company from retrenching the petitioners in the particular way in which retrenchment was brought about by the respondent-company, but also intended to make the action of such a retrenchment into a crime punishable under law. It is elementary that such an illegal action should be denied all legal validity. It is well known that a corporate body has no legal capacity to act outside the limits imposed by the charter of its incorporation. Any action of a legal person such as that of a corporate body outside its field mapped by the incorporating chapter would be wholly void and would be incapable of producing any legal consequences, (see Vol. 9, Halsbury's Laws of England, 4th Edition, paras 1332 and 1333.) In law, therefore, it is beyond doubt that the retrenchment of the petitioners by the respondent-company is without any legal effect and that, therefore, in the eye of law the petitioners still continue to be workmen of the respondent-company entitled to all the wages and benefits of their employment. Whatever may be the position of a natural person where doctrine of ultra vires would apply subject to conditions and limitations, the position of an artificial person like an incorporated company is peculiarly subject to law of ultra vires. All the shareholders put together could

not have retrenched these petitioners except in accordance with the provisions of the applicable law (see *Ashbury Railway Carriage and Iron Co. v. Riche* [1875] L.R. 7 HL. 653 and also *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, .

10. Now, the only question which has to be considered by this Court is whether the petitioners who had been retrenched by the respondent-company contrary to the mandate contained in the Parliamentary law can be granted any relief by this Court in exercise of its powers under Art. 226 of the Constitution.

11. It is the argument of Sri P. R. Ramachandra Rao that the respondent-company is not a statutory corporation, but a company incorporated under the Companies Act and as it enjoys no sovereign power and exercise no State authority, it is not liable to be correct by this Court under Art. 226 of the Constitution.

12. The argument of the respondent-company that it is not a statutory corporation is of no legal consequence. Except in the peculiar Hindu system of caste mode of birth is irrelevant. The other argument of the respondent that the jurisdiction of the High Court to issue writs, orders or directions can be exercised only against a person or authority including in appropriate cases any Government requires to be examined. The respondent admit that a writ would issue under Art. 226 of the Constitution against a person exercising sovereign authority of the State. According to the respondents to the word "person" occurring in Art. 226 should be read to mean a person exercising State Authority. In other words "person" in Art. 226 would refer to another Government. As the respondent-company undoubtedly is not exercising any State authority the respondent-company argued that no writ would lie against it. I am free to say that this argument of the learned counsel for the respondent-company is supported by a considerable volume of decisional authority of several High Courts. But as all of them are based on an English principle given expression to by Atkin, L.J., I prefer to refer only to a select representative decisions on the topic.

13. In *Re: Gadea Nagabhushana Reddi and Another*, , the petitioner applied for the issuance of a writ of Prohibition against the election sub-committee of the All India Congress Committee, the President of the Andhra Provincial Congress Committee and other prohibiting them from holding Congress primary panchayat elections in the district of Guntur. It was argued for the petitioner in that case relying upon the words "to any person or authority" and "for the enforcement of any of the right conferred by part III and for any other purpose" occurring in Art. 226 of the Constitution, that the Court has jurisdiction to issue a writ against the All India Congress Committee for the protection of the legal rights of the petitioner, But, this argument was rejected by a strong Division Bench of the Madras High Court consisting of Rajamannar, C.J. and another mainly on the basis of the above English doctrine of Atkin, L.J. and also on the ground that the acceptance of that argument would practically abrogate the entire judicial system in the State. The learned Judges ruled that no writ would lie against the

Congress Party because it was not a public body entrusted by the law of the land with powers and duties relating to the rights of the people. The principle of this leading judgment was followed by several cases in several Courts of our country.

14. This Court in *Narasimhan (K.V.) Vs. Chicacole Co-operative Central Bank Limited*, purporting to follow the aforesaid Madras decision refused to quash an order terminating the services of a co-operative bank employee passed by its President. In that case, the petitioner applied for a writ of certiorari to quash the orders of the President of the Co-operative Central Bank Ltd., Srikakulam, terminating his services. The learned Judges referred to the above judgment *In re, Nagabhushan Reddy*, (1950) 2 M.L.J. 278 and ruled that an order of the President of a Co-operative Central Bank was not liable to be quashed as the law of the land did not entrust the President of co-operative society with powers to affect the rights of the parties. The learned Judges went further and said :

"The writ which is available to an aggrieved party cannot be issued to private bodies or organisations like companies or co-operative marketing societies as in the present case".

15. In *Re: V.S. Hariharan, , Seshachalapathi, J.*, held that as writs of certiorari cannot be issued to a private body or Tribunal having no judicial or quasi-judicial authority, no writ would lie against Hindustan Shipyard Limited terminating the services of its employee notwithstanding the fact that the Hindustan Shipyard Limited was owned upto 80 per cent by Government of India and controlled by the Government of India through appointment of its Directors and issuance of instructions, advances and subsidies. Seshachalapathi, J., held that the above features of the Hindustan Shipyard Limited would not take away the distinct and separate jural entity of the limited company which make it a separate legal person.

16. Sri P. Ramachandra Rao also referred to the decision reported in *Maturi Durgaiah Vs. Agent, Tandur Collieries, Bellampalli, ,* wherein a Division Bench of this Court went further and held that merely because a statute or a rule having and force of a statute requires a company or some other body to do a particular thing, that company would not possess the attributes of a statutory body and accordingly no mandamus could be issued to such a body. Sri Ramachandra Rao also cited a recent decision of the Madras High Court reported in *R. Lakshmi Vs. Neyveli Lignite Corporation Ltd. and Another, ,* where a learned single Judge of the Madras High Court held that a writ would not lie against the Neyveli Lignite Corporation to quash its orders terminating the services of its employees, because it was a private body without investiture of any sovereign powers of the State.

17. These cases and others of the Punjab and Calcutta, and Jammu and Kashmir High Courts which have been referred to by the learned counsel for the respondent-company, do undoubtedly furnish abundant authority for the argument of the respondent-company that no writ would lie against it which was

incorporated under the Companies Act. If I were to follow these judgments I should have rejected this writ petition on the ground that it was not maintainable. But, I regret to say that both on principle and on present authority of our Supreme Court and the English Courts, I am unable to follow these judgments.

18. The ratio which underlies the above decisions was first articulated in *R. v. Electricity Commissioners* [1924] 1 K.B. 171. In that judgment, Atkin, L.J., dealing with the nature of writs of prohibition and certiorari said that :

"Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in this writ."

19. It may be admitted that a literal analysis of the structure and content of the above observations would undoubtedly show that Atkin, L.J., intended that writs of certiorari and Prohibition should issue only against person having legal authority to determine questions affecting the rights of subjects, when those persons have a duty to act judicially. It is the principle of the above rule laid down by Atkin, L.J., that was adopted by our Courts in the above-mentioned cases. But, in my humble opinion the above decisions adopted Atkin, L.J., without examining the nature of the English pronouncements. A question would always arise regarding the appropriateness of the literal application of those observations of the English law to the cases and situations governed by the language of Art. 226 of the Constitution. It would also become necessary to consider the further question whether the particular language used by Atkin, L.J., is to be regarded as definitive, exhaustive and conclusive for all times and claims.

20. It is partially true that our Articles 32 and 226 of the Constitution are founded on the English system of prerogative writs. But this partially correct statement of law is subject to severe limitations dictated by the peculiar language employed by our Constitution in the above two Articles. Those Articles speak of directions, orders or writs including writs in the nature of habeas corpus, mandamus, Prohibition, quo-warranto and certiorari. The addition of the word "directions" is clearly an Indian innovation. Even of the writs, they only speak of writs in the nature of. Further, under Art. 226 a writ would lie not merely against a governmental authority, but also against any person. Under the provisions of the General Clauses Act, 1897, which is made applicable by Art. 367(1) for the interpretation of the Constitution, the word "person" would include an incorporated body. Prima facie, therefore, a private person or an incorporated company cannot be taken out of the sweep and the contemplation of Art. 226. But, it is suggested that the word "person" here should be understood as meaning a person exercising governmental authority as that word must take its colour from the associated words "authority and Government". If that were to be its meaning, then, the word "person" occurring in Art. 226 of the Constitution would be a mere surplusage, because it adds nothing more to

authority. Such an interpretation would be contrary to the well-settled principles of interpretation of a Statute, particularly of a Constitution which forbids reading of any part as useless. Above all, Arts. Like 17, 18, 23 and 24 would show that the writ machinery erected by the Constitution would be available and operational against private persons. Article 17 of the Constitution forbids untouchability which is practised by the upper Caste Hindus. As this Article occurs in Part III of the Constitution a High Court can issue a writ to a private person belonging to Hindu Upper Caste practising untouchability contrary to Art. 17 which is made into a fundamental right. Similarly, under Art. 18(2) a writ can issue against a private citizen who had accepted any title from any foreign State. Article 23 which prohibits private persons from trafficking in human beings and Art. 24 which forbids private persons from employing children below the age of fourteen years in any factory or mine or in any other hazardous employment conclusively demonstrate the availability of writs under our Constitution against private individuals. In principle, therefore, I am not prepared to blindly apply the above quoted dictum of Atkin L.J., to cases arising under Art. 226 of the Constitution. The very wide and special language of Art. 226 of the Constitution occurring as it does in a primordial document like the Constitution must, in my opinion, be given its full meaning. In doing so, we must take note of the fact that the Constitution itself declares that the General Clauses Act would apply to its interpretation. According to the General Clauses Act, the word "person" refers not only to a natural person but even to a legal person. If so done, there is no doubt, in my opinion, that a writ under Art. 226 of the Constitution would be available not only against an authority or Government, but also against a private person. The restrictive meaning suggested to be given to the word "person" occurring in Art. 226 would render that word a surplusage because according to that interpretation the word "person" can only mean another governmental authority. The rule of interpretation that the meaning of a word should be ascertained from the association it keeps cannot, therefore, be applied to the word "person" occurring in Art. 266 of the Constitution. The above considerations in my opinion, would clearly liberate the writ jurisdiction under Art. 226 of the Constitution from the limiting constraints of the dictum of Atkin, L.J., in the above mentioned case, I, therefore, hold that in appropriate cases a writ under Art. 226 of the Constitution could issue even against private persons.

21. Even in England the aforesaid dictum of Atkin, L.J., can no longer be taken as a representative of the English Law. Changes have rapidly overtaken the English life and English Law. In *R. v. Joint Council for Dental Technicians Ex. P. Neate*, [1953] I Q.B. 704 at 707, Lord Goddard, C.J. reiterating the classical theory of prerogative writs said :

"But the bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom the Parliament has conferred statutory powers and duties which when exercised may lead to the detriment of subjects who may have to be subjected to their jurisdiction".

22. The law so laid down by the English classical theory had been found in a latter day world where the State has undertaken positive responsibilities towards the welfare of the subjects to be inadequate to protect the citizen from the State. In days of negative Police State, the classical theory of law was found adequate to protect the subjects from the State authority. Corresponding to this situation, the law drew distinctions between privileges and rights and confined its protection to the rights of the people. The limiting of judicial supervision to those acts of the State that interfered with a subject's liberty in those cases was considered as adequate. The subjects then required no more protection. The dictum of Atkin, L.J., was adequate to protect English freedom and liberty but not the right to equality and equal protection of laws. With the ushering in of a welfare State, the citizens' life came to be governed not merely by what was hitherto regarded as law but more by administration. Lord Beeveridge made a difference not only to English public finance but even to English law, The English law has valiantly responded to this new situation. In answer to these new needs, Lord Parker, C.J. in *R. v. Criminal Injuries Compensation Board Ex. P. Lain* [1967] 2 Q.B. 864, ruled for the first time that writ of certiorari would issue "against the decision of Criminal Injuries Compensation Board established for the purpose of awarding compensation to victims of criminal injuries by administrative directions."

23. Rejecting the aforesaid objections based on the dictum of Atkin, L.J. that the Compensation Board was not a statutory body and has no power to affect the rights of citizens and, therefore, no writ would lie, Lord Parker, C.J., said that "the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined" and that they had been "extended to meet changing conditions". The boast of English law is that it was never static and dogmatic. The glory of its theory is its freedom from dogma. The French no doubt made fun of the English by pointing out that the English have no Constitution. But the pragmatic English law has never failed to expand itself to rescue subjects from the clutches of injustices, no matter what gloves they wore. The Scottish refrain of Prof. Mitchell that there is no developed system of Public Law in England should be regarded as an unintended tribute to the British genius. It has grown from precedent to precedent as justices demanded. In principle, therefore, the above mentioned decisions of our Courts which have taken a static view of the English law cannot be held to be right.

24. That apart the State power to render justice between a citizen and a citizen and between a citizen and the State belongs to the constitutional courts of our country more by reason of their establishment and less by reason of conferment of power by the co-ordinate organs of the State acting under the constitution. Renunciation of such jurisdiction can not easily be accepted. Some of aforementioned cases drew a picture of dreadful consequences as flowing from giving a wider meaning to the word "person" In my humble opinion, there is no scope for any such apprehension so long as we understand that the power under Art. 226 of the Constitution is exercised on basis of this public law foundations

and the field of public law is clearly different from the field of private law. Although there is high authority and uniform practice to the contrary we cannot in principle issue the private remedy of an injunction in the place of the public remedy of mandamus or vice versa. Regarding Hariharan case [1979-I L.L.J. 164], of our High Court and the Neyveli Lignite case (1966) 1 M.L.J. 468, of Madras High court, I must make a special mention. Both these cases had proceeded on the assumption that the limited companies in those two cases although owned and controlled by the Government of India are two separate and distinct legal entities from the Government and that therefore, they are not amenable to the writ jurisdiction under Art. 226 of the constitution. This is a view which in my humble opinion, totally missed to take into account the significances of the great American doctrine of State action as applicable to Arts. 32 and 226 of the constitution. I am one of those few who have first sought for the applicability of this American doctrine in our Courts. In *D. Jayasri v. Kakatiya Medical College, Waramgal* (1967) 1 An. W.R. 247, this Court held that a writ would lie at the instance of the petitioner seeking admission into a medical college against a society which was a registered under the Societies Registration Art. It further sought for the enforcement of this American doctrine of State action in case like *Nookavarapu Kanakadurga Devi Vs. The Kakatiya Medical College and Others*, *Subhadra Devi v. Andhra Girls College* (1973) 1 An. W.R. 94 and *P.V. Nayudu and Others Vs. Andhra Pradesh Mining Corporation and Others*, and also in unreported judgment in Writ Petitions No. 4239 of 1969 dated 12th May, 1970 and 3103 of 1975., dated 17th April, 1978. This doctrine has now been firmly implanted into our Corpus Juris by a recent judgment of the Supreme Court reported in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, The acceptance of this doctrine by our court would clearly constitute at least partial though not total rejection of the dictum of *Atkin, L.J.*, in the above case. According to the traditional theory in incorporated company is a distinct legal person as *Hindustan Shipyard* and *Neyveli Lignite Corporation* are undoubtedly. The Constitution did not confer any powers on these bodies to affect the traditional rights of the citizens relating to the freedom and liberty. If the dictum of *Atkin, L.J.*, was to be followed, no writ would issue to such bodies. The fact that writs are now being issued against such bodies would clearly *Atkin L.J.*, had suffered. For our constitutional purposes it is now clear that the private person can transform himself into a person in authority not merely by sharing in and exercising the State power affecting the rights of the citizen but even by possessing power to grant bounties and facilities. Such a private person's activities should be amenable to writ jurisdiction.

25. The Judgment of Lord Reid in *Ridge v. Baldwin* [1961] 2 All E.R. 523, had considerably weakened the other requirement of *Atkin, L.L.J.* that there should be a duty to act judicial before a writ would issue. All in all, it must now be taken that the famous judgment of *Atkin, L.J.*, in *R. v. Electricity Commissioners* [1924] 1 K.B. 171, cannot be fully applied to our Constitution and the above-quoted decisions which have merely followed that judgment can no longer be taken as

laying down a correct law. This is particularly so after the judgment of our Supreme Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, which categorically, laid down Art. 226 of the constitution 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.

26. For all the aforesaid reasons, I am clearly of the opinion that, therefore, the present writ would be maintainable against the respondent company for the enforcement of its statutory duties under Chapter V-A of the Industrial Disputes Act.

27. It must be particularly noted that what we are concerned in this case is with the issuance of a writ of mandamus. "A writ of mandamus is always held to be available even against corporate bodies and companies". A mandamus was held to be available to compel the production of books and documents where there is provision for their production and inspection and also to command registration of stock in the books of a "company". An order of mandamus will be granted ordering that to be done which a statute requires to be done and for this rule to apply it is not necessary that for this rule to apply 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. (see Vol. I, Halsbury's Laws of England. 4th edition, para 99). The last amended Prof. De Smith wrote in this Judicial Review of Administrative Action And just as *certiorari* will issue to quash determinations of the Criminal Injuries Compensation Board, a non-statutory body set up by administrative action for the discharge of a public function, so mandamus can be awarded to order the Board to hear an application.

27. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, the Supreme court observed that :

"It is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the on who applies for it has a sufficient legal interest. 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."

28. It is, therefore, clear that a writ of mandamus would lie against the respondent-company to compel it to carry out directions of the Parliamentary enactment contained in Chapter V-B of the Industrial Disputes Act. But because mandamus is a public law remedy, its use is governed by considerations which are peculiar and appropriate for the exercise of such public law remedy. In this case there is no doubt that Chapter V-B of the Industrial Disputes Act imposes a public duty on the respondent-company not to retrench the petitioners except in

accordance with the conditions laid down by the Parliament. Those limitations are conceived not merely in the interests of individual workman but in the general interest of industrial peace. In an unreported judgment in W.P. No. 3086 of 1978, this Court has held that Chapter V-B of the Industrial Disputes Act imposes public duties on the manufacturing concerns. Following that, I hold that the respondent-company is under a public duty to observe those conditions mentioned in Chapter V-B of the Industrial Disputes Act. If so, for the reasons which are mentioned above, I hold that a writ of mandamus should issue against the respondent-company not to retrench the petitioners except in accordance with conditions laid down by the Parliament. According to Parga Tools case, it is not the body that matters, but it is the nature of the duty that is important. A statutory duty cast on a private body so long it is public duty can be mandamus, according to that decision. The body must be functionally assessed to find out whether it is performing public duty or not. For the purpose of this assessment, the question whether a body is private body or a public body is immaterial. As I held that the respondent company is under a public duty to observe the conditions mentioned in Chapter V-B of the Industrial Disputes Act, I hold that writ of mandamus is competent to issue to the respondent-company.

29. It has also been argued by Sri P. R. Ramachandra Rao, for the respondent-company that even under the assumption that this Court has jurisdiction, this Court should refuse to exercise its jurisdiction under Art. 226 as the petitioners can have their relief under the Industrial Law. This argument does not appeal to me. It is now well-settled that the existence of an alternate remedy would not bar the exercise of jurisdiction by this Court under Art. 226 of the Constitution. Here is a case where the respondent-company had in contemptuous defiance of the Parliamentary law retrenched the petitioners. I shall not allow this to be done. Accordingly I reject this argument.

30. These are my reasons for allowing this writ petition with costs on 8th December, 1980.