

**In Re: V.S. Hariharan**

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**Court :** Andhra Pradesh

**Decided On :** Sep-19-1959

**Reported in :** AIR1960AP518; (1960)ILLJ164AP

**Judge :** Seshachalapati, J.

**Acts :** [Constitution of India](#) - Article 226; Companies Act; [General Clauses Act, 1897](#) - Sections 3(39)

**Appeal No. :** Writ Petn. No. 858 of 1959

**Appellant :** In Re: V.S. Hariharan

**Advocate for Pet/Ap. :** D. Narasaraju, Adv. General and ;V. Parthasarathi, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Seshachalapati, J.**

1. This is a petition filed under Article 226 of the [Constitution of India](#) for the issue of a writ of certiorari to the respondent, the Managing Director, Hindustan Shipyard Ltd., Visakhapatnam, and to quash his order PD/36/26 dated 30-6-1959.

2. The petitioner was employed in the respondent-company as a Superintendent of the Stores from 6-11-52 till 30-6-59. In 1955 there were certain shortages in the stores and suspicion fell on the petitioner. He was placed under suspension and charges were framed against him with a view to take disciplinary action. He submitted his explanation. But before any final orders were passed on that enquiry the matter was entrusted to the police, who arrested the petitioner and registered the case against him under Section 420 I. P. C. (C. C. No. 287 of 1957). After trial the criminal case was decided in favour of the petitioner and he was acquitted on 9-3-1959. Thereafter, the petitioner requested the respondent-company to reinstate him in service. On 29-6-1959 the Managing Director of the respondent-company notified to the petitioner that he should report himself to duty at 9-45 a.m. on 30-6-1959. After he reported himself at about 10-45 a.m. on 30-6-1959, he was served with an order to the effect that his services were terminated with effect from 30-6-1959 under Sub-rule 1 of Rule 24 of the Officers' Service Rules of the Company, and that the Chief Accountant would pay six calendar months' salary together with dearness allowance in lieu of notice in terms of the above rule along with the other dues. The amounts were duly paid.

3. After receiving the above order, the petitioner and the Officers' Association made unavailingly certain representations to the Managing Director that the order terminating the petitioner's services should be rescinded. The petitioner got no relief. This petition therefore, is filed by him for quashing of the order of the Managing Director D/- 30-6-1959, as being unjust and in contravention of the terms of Sub-rule 1 of Rule 24 of the Officers' Service Rules of the Hindustan Shipyard Ltd.

4. It is not the case of the petitioner that he is a member of a civil service of the Union or the State Government, or that he holds a civil post under the Union Government or the State Government to whom Article 311 of the Constitution or the appropriate Union or State Service Rules would apply, and the infraction of which would entitle him for applying for a writ of certiorari.

5. The question, therefore, is whether in the circumstances of this case, a writ could issue to the respondent company and whether the impugned order is liable

to be quashed.

6. The Hindustan Shipyard Limited, is a Company registered under the Indian Company's Act, governed by its own Memorandum and Articles of Association and its affairs are administered by a Board of Directors. Article 226 of the Constitution provides that the High Court could issue to any person or authority, including in appropriate cases any Government within whose territories, directions, orders or writs, including writs in the nature of habeas corpus. Mandamus, prohibition, quo-warranto, and certiorari, or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It was sought to be argued that the expression 'any person' used in Article 226 is of wide import and it would take in a case of a limited liability company like the respondent-company. It is true that the expression 'person' as defined in Section 3 Clause 39 of the General Clauses Act includes a company or association or body of individuals whether incorporated or not. But the expression 'person' cannot be detached from the context and viewed apart from the nature of the writs that are enumerated in the article.

7. It is now well established that the purposes for which and the conditions under which these writs could be issued in India by the Supreme Court or the High Courts as the case may be, are analogous to the purposes for and the circumstances under which similar writs were and are issued by the Court of King's Bench Division in England. In England these writs had their origin in the exercise of the King's prerogative powers of superintendence over the due observance of the law by his officials and tribunals and were issued by the court of the King's Bench. But gradually the scope of the prerogative writs was enlarged over various bodies or authorities which are not courts in the strict sense, but which by statute were invested with powers and duties resembling those of inferior courts.

These statutory bodies are considered quasi-judicial bodies and their decisions as quasi-judicial decisions (vide *Province of Bombay v. Khushaldas S. Advani*, : [1950]1SCR621 ). The writ of certiorari, as the very expression itself would imply, is issued in England for the purpose of knowing whether any proceedings

commenced against a subject are in conformity with the law. It is not the practice of the English Courts to issue writs of certiorari to a private body or tribunals having no juridical or quasi-judicial authority (vide R. v. Disputes Committee of the National Jt. Council for the Craft of Dental Technicians, 1953-1 All ER 327 and in Lee v. The Showmen's Guild of Great Britain, (1952) 2 QB 329. The same principles would apply in India.

8. In Nagabhushana Reddy, In Re : : AIR1951 Mad249 , Rajamannar C. J. and Somasundaram J., have held that under Article 226 of the [Constitution of India](#) a writ could be issued originally only against inferior courts, tribunals or bodies, entrusted by law of the land with powers affecting the rights of parties. In Indian Tobacco Corporation v. State of Madras, : AIR1954 Mad549 Rajamannar C. J. and Venkatarama Ayyar J. have held that the writ of Mandamus could only be issued to compel the performance of duties of a public nature and it will not be issued for private purpose, namely, the enforcement of a mere private right arising from a contract or otherwise. In Sohanlal v. Union of India, : [1957]1SCR738 it has been held by the Supreme Court that normally a writ of mandamus does not issue or an order in the nature of mandamus is not made against a private individual.

9. So far as the writ of certiorari is concerned, its nature and the conditions under which it is governed have been stated by Atkin, Lord Justice, in R.v. Electricity Commissioners, (1924) 1 K.B. 171 in a passage which has since become a classic in these terms:

'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 these writs'.

10. The Supreme Court of India and the other Indian High Courts have generally accepted the above test, as further explained by Slessor, Lord Justice in King v. London County Council, 1931-2 KB 215 as the correct exposition of the circumstances under which a writ of certiorari could issue. It is unnecessary to multiply authorities on a question so well known and sustained by highest judicial opinion.

11. The question is whether the Hindustan Shipyard Limited could be regarded as a body having legal authority to determine a question affecting the rights of subjects and having the duty to act judicially or performing quasi-judicial functions. It is not in dispute that it is a company registered under the Indian Company's Act. But what is contended for by the petitioner is that the Government of India have subscribed 80 per cent of the share capital, that 10 of the 13 Directors are nominated by the Government of India and that large subsidies and advances are being given by the Union Government from out of the Shipping Development Fund and, therefore, the Government of India must be regarded as having a controlling and administrative authority over the respondent-company. These circumstances will not in my opinion, make any difference to the jural character of the respondent company. It is still a limited liability company and can in no sense be called a judicial or quasi-judicial tribunal or public or statutory authority discharging judicial or quasi-judicial functions. In *Ram Kishun v. Central Bank of India Ltd.*, : AIR1958 All413 the Allahabad High Court held that where disciplinary action was taken against an employee of the Central Bank a writ of certiorari could not be issued against the Central Bank, as it was not a judicial body or a tribunal. I agree with the principle of this decision.

12. Reliance was placed upon a decision of the Madras High Court in *Sekkilar v, Krishnamurthi*, : AIR1952 Mad151 . In that case a student of the college was expelled from the hostel. He filed a petition under Article 226 for the issue of a writ of mandamus. On behalf of the College an argument was advanced that a writ could not issue to the college as it was not a public authority. Subbarao J., held that the college was affiliated to the University of Madras and was being governed and administered under the various statutes, rules and regulations of that University and that it was also administered in accordance with the scheme of administration settled by the High Court of Madras. In these circumstances, the learned Judge held that the principal could be regarded as quasi-judicial authority though on the merits the learned judge took the view, that no interference was called for. I am unable to discover, how this case would support the contention of the petitioner.

The University is a public authority, because it is the creature of a statute and a college which is an integral part of the University may partake of that character. But that reasoning cannot apply to the case of an incorporated company with share capital of its own and whose main intention is earning profits to be divided amongst the share-holders. It is neither a creature of a statute, nor a public authority, charged with the functions of adjudicating upon the rights of the subjects. Reference was also made to a decision of the Madras High Court in the *University of Madras v. Shantha Bai*, : AIR1954 Mad67 . The facts in that case were that a lady student applied for admission into an affiliated college. It was refused by the Principal on the ground that woman student could not be admitted into the college as there was no special sanction of the Syndicate. The student thereupon filed an application for the issue of a writ of Mandamus and it was contended that the action of the Principal was in Violation of Article 15(1) of the [Constitution of India](#). In that connection the main question that fell to be decided by the learned Judge was whether the University was 'the State' or local or other authority within the meaning of Art, 12 of the Constitution. It was held that the University was not a State or local or other authority. In the course of the judgment a distinction was drawn between 'state maintained' institutions, to which the provisions of Part III of the Constitution would apply, and to 'state aided' institutions, to which the said articles would not apply. I do not think that this decision has any direct bearing on the facts of this case for two reasons r firstly, the respondent-company is not a state-maintained institution, and secondly, no question of infringement of fundamental rights arises in this case.

13. In the view I have taken that a writ of certiorari cannot be directed against the respondent-company, it is not necessary for me to consider whether, the order that is sought to be quashed to this petition, is in violation of Sub-rule 1 of Rule 24 of the Officers' Service Rules, or whether such a violation could give the petitioner any cause of action at law.

14. The petition fails and is dismissed.

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