

Bajranglal Vs. National Mineral Development Corporation Ltd.

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Court : Rajasthan

Decided On : Dec-22-1971

Reported in : 1971WLN681

Judge : P.N. Shinghal, J.

Appeal No. : S.B. Civil Writ Petition No. 406 of 1967

Appellant : Bajranglal

Respondent : National Mineral Development Corporation Ltd.

Disposition : Petition dismissed

Judgement :

P.N. Shinghal, J.

1. As this writ petition fails on a preliminary objection in regard to its maintainability, it is not necessary to state all the facts. It will be sufficient to say that the petitioner was appointed as a security sepoy of the Khetri Copper Project of the National Mineral Development Corporation Ltd. which is the sole respondent in the case. Disciplinary action was taken against him and he was removed from service by order Ex. 11 dated October 19, 1966. An application was made by the Rashtriya Khetri Tamba Project Mazdoor Trade Union for starting conciliation proceedings, but it ended in failure. The petitioner filed an appeal to the General

Manager, but it was rejected on the ground that it was barred by limitation. The petitioner has therefore challenge the order of his removal by this petition on a number of grounds.

2. The respondent has traversed the claim of the petitioner altogether, and it has taken a number of additional pleas, one of which is a plea to the effect that as the respondent is a company registered under the Companies Act, no petition for the issue of a writ of mandamus or any other writ lies against it. It has been contended in this connection that the respondent has not been constituted under any statute and does not perform any public duty or discharge any responsibility imposed by a statute, and that the relationship between the petitioner and the respondent was purely contractual in nature.

3. The petitioner has filed a rejoinder in which it has been admitted that the respondent has been registered under the Companies Act, but it has been urged that it is still a statutory body as it is owned by the Government of India, and is therefore a part and parcel of the Central Government. Then it has been stated that the respondent is a statutory corporation and is performing public functions so that it is a 'State' within the meaning of Article 12 of the Constitution. It has been stated that the relationship between the petitioner and the respondent was not of a contractual nature. '

4. In view of the averments made in the rejoinder, I anxiously looked into any averment in the petition and the rejoinder which could justify the contention that the respondent is a statutory body or that it could be said to be performing public functions, but I am constrained to say that there is no factual basis for any such contention of the petitioner, and I have no hesitation in rejecting it as an incorrect statement of fact. The precise factual position therefore is that the respondent is a Company registered under the Companies Act of 1956 and it cannot be said to be having a public as opposed to a purely private or domestic character. The question therefore is whether a writ of certiorari or mandamus can be issued against it?

5. The position regarding the issue of a writ of certiorari has been examined recently in *R.V. Criminal Injuries Compensation Board, ex. p. Lain* 1967 (2) All. E.R. 770 and Lord Parker, C.J., has stated the legal position as follows.-

The ambit of certiorari can be said to cover every case in which a body of persons, of a public as opposed to a purely private or domestic character, has to determine matters affecting subjects provided always that it has a duty to act judicially.

It is therefore one of the essential requisites of a petition for the issue of a writ of certiorari that it should be asked for against a body of persons of a 'public' as opposed to a purely private or domestic character. As I have stated already, the respondent Company cannot be said to be a body of a persons of a public character, so that there could be no occasion for the issue of a writ of certiorari against it. The other contention that the respondent is a State within the meaning of Article 12 of the Constitution, is also futile because it has not been constituted under any statute and is admittedly a company which has been registered under the Companies Act. Reference in this connection may be made to the decision in *D M. Nagaraja Rao v. Indian Oil Corporation Ltd.* : (1969)IILLJ479SC in which a similar view has been taken.

6. I have also considered the question whether the petitioner could be said to be entitled to the issue of a writ of mandamus, and I find that in view of the law laid down by their Lordships of the Supreme Court in *Praga Tools Corporation v. C.V. Imanual and Ors.* : (1969)IILLJ479SC , on which reliance has been placed by the learned Counsel for the respondent, it is not possible to grant any relief to the petitioner. In that case their Lordships have laid down the law as follows,-

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.

So when the respondent is a non-statutory body on which no statutory or public duty has been imposed by statute, the petitioner is not entitled to apply for the issue of a writ of mandamus also.

7. I have in this connection examined the remaining question whether the petitioner is entitled to a declaration against the validity of the impugned order of

his dismissal but, there again, the law laid down by their Lordships of the Supreme Court in the case of Praga Tools Corporation AIR 1969 S.C. 1306 is as follows:

It is therefore fairly clear that such a declaration can be issued against a person or an authority or a corporation where the impugned act is in violation of or contrary to a statute under which it is set up or governed or a public duty or responsibility imposed on such person, authority or by such statute.

In this view of the law, the petitioner is not entitled to a declaration also.

8. In the result, I have no hesitation in upholding the objection raised by the learned Counsel for the respondent against the maintainability of the petition. The learned Counsel for the petitioner tried to meet the objection by the reference to the decisions in Madan Mohan Sen Gupta and Anr. v. State of West Bengal and Ors. : AIR1966 Cal23 and Mohinder Singh v. Union of India 1969 L.I.C. 649, but it will be sufficient to say that, so far as the former case is concerned, the law relating to the maintainability of a petition for the issue of mandamus has been laid down by their Lordships of the Supreme Court in the case of Parga Tools Corporation's case : (1969)11LLJ479SC , and the latter case does not seem to have any bearing on the question of the maintainability of the petition. The petition is therefore not maintainable and is dismissed with cost.

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