

D. Sasidharan and Vs. Sipcot and ors.

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SooperKanoon Citation : sooperkanoon.com/773671

Court : Chennai

Decided On : Nov-09-1989

Reported in : [1992]73CompCas44(Mad)

Judge : M. Srinivasan, J.

Acts : [Constitution of India](#) - Articles 12, 14, 32 and 226

Appeal No. : Writ Petition Nos. 13883 and 14134 of 1989

Appellant : D. Sasidharan and ;A.R. Jagadeesan

Respondent : Sipcot and ors.

Judgement :

Srinivasan, J.

1. Both the writ petitions are taken up for hearing by consent of parties.

2. The prayer in W.P. No. 13883 of 1989 reads as follows :

'... to issue a writ of mandamus or other appropriate writ, direction or order directing the first and second respondents and respondents Nos. 3 to 46, 72 and 90 being the directors of the company to forbear from transferring the shares held by the proposed transferors being respondents Nos. 4, 7, 10, 11, 12, 14, 18, 21, 22, 24, 25, 35, 36, 37, 38, 41, 44 to 121 held by them in the second respondent

company to any other person who is not a shareholder of the second respondent-company.'

3. The prayer in W.P. No. 14134 of 1989 reads as follows :

'... to issue a writ of mandamus or other appropriate writ, direction or order directing the first respondent to forbear from transferring any shares of the second respondent-company from the existing shareholders to any other person, which transfer is sought to be effected subsequent to September 25, 1989, by deposit of the share certificates along with the transfer applications with the second respondent-company on or after September 25, 1989.'

4. The petitioners in both the writ petitions are shareholder/directors in the second respondent company, viz., Sree Ayyanar Spinning and Weaving Mills Ltd. It is not necessary to refer in detail to the various facts set out in the affidavits filed in support of the petitions. The facts which are relevant can be stated in a very short compass.

5. The second respondent-company has obtained a loan of about Rs. 81 lakhs from the first respondent, besides other loans of Rs. 81,000,00 odd, the directors of the second respondent-company gave an undertaking to the first respondent that they shall not transfer, assign, dispose of, pledge, charge or create any lien or, in any way, encumber their existing or future shareholdings in the company in favour of any person so long as any money remained due by the company to the first respondent or till the project was duly completed, whichever was later, without the first respondent's prior written approval.

6. Some of the directors as well as shareholders wanted to transfer their shares to third parties and applied to the first respondent for permission to effect such transfers, by a letter dated October 10, 1989. All the letters of request for transfer of shares were enclosed. The first respondent sent a communication on October 18, 1989, to the second respondent-company approving the disposal of shares by 19 of the present ordinary directors and also 6 of the extraordinary directors of the second respondent company subject to certain conditions. The second respondent, accordingly, effected transfers, but such registration of transfers

commenced on October 14, 1989, and concluded on October 20, 1989.

7. In the meanwhile, the petitioners in these two writ petitions filed the writ petitions for the prayers already extracted. The main ground on which the prayers are made, as found in the affidavits, is that, by a convention obtaining in the company, transfer of shares belonging to the directors should be effected only to other members of the families of such directors and not to strangers and that such convention is being broken by the proposed transfers. It is alleged that the first respondent owes a duty to all the directors who gave an undertaking to the first respondent at the time of taking the loan not to transfer their shares as referred to earlier, to prevent the effecting of transfers until the loans are discharged. The contention of the writ petitioners is that the first respondent being State within the meaning of article 12 of the [Constitution of India](#) and it being State instrumentality, it is amenable to the jurisdiction of this court with regard to every action of the first respondent and, in this particular case, the first respondent has failed to prevent the transfers sought to be made by some of the directors and shareholders. No doubt an allegation has been made in the affidavits that the proposed transfers affect the interests of the company substantially but no particulars have been given in either of the affidavits as to how the interest of the company would be affected by the proposed transfers; nor have any details been given in the affidavits as to whether the interests of the first respondent would be affected and if so how.

8. When the writ petitions were taken up for hearing, a preliminary objection was raised on behalf of the first respondent that the prayers as against the first respondent are not sustainable in the form in which they have been made. The objection is really two-fold. The first objection is that even when the writ petitions came up for admission, transfers had already been effected and, at any rate, the approval of the first respondent for such transfers had been given and, therefore, there could not be a prayer for issue of a mandamus to the first respondent to prevent the transfers from being effected. In other words, the contention is that the writ petitions had become infructuous on the dates when they came up for admission. The second objection is that there cannot be a mandamus directing the first respondent to prevent the transfer of shares held by certain directors and

shareholders in the second respondent-company. In other words, the contention is that the first respondent-company cannot have any say with regard to the legality or validity of transfer of shares, if effected by the second respondent-company without the prior approval of the first respondent.

9. It is seen from the undertaking given by the directors that they agreed with the first respondent not to transfer their shares until either of the events mentioned therein took place. That will not, in any way, give jurisdiction to the first respondent to say that a particular transfer of shares is invalid in law. If a transfer is effected without the prior approval of the first respondent, it is certainly open to the first respondent to say that the agreement between respondents Nos. 1 and 2 has been violated and the second respondent is not entitled to get the benefits of the agreement thereafter. In those circumstances, this court cannot issue a mandamus to the first respondent to stop the transfer of shares to be effected by the second respondent-company. Hence, I am inclined to uphold the preliminary objection.

10. On the facts, it is already seen that the transfer has been effected with the approval of the first respondent. It is contended by the petitioners that the approval given by the first respondent is vitiated by mala fides. Learned counsel for the petitioners referred to the fact that the loan was advanced in July, 1989, and the undertaking was taken by the first respondent at that time and within a period of three months, they approved all the proposed transfers by some of the directors to strangers. It is also stated that the approval of the first respondent was obtained by the third respondent with his influence over the first respondent. This averment found in the affidavit is not sufficient to accept the contention that there are mala fides on the part of the first respondent. As pointed out already, unless it is made out in the affidavit that the interests of the first respondent or the interests of the second respondent company were prejudiced by the approval of the proposed transfers, there cannot be any inference of mala fides in the action of the first respondent. According to learned counsel, the undertaking given by 54 directors would mean that the first respondent would hold all the 54 directors jointly liable and responsible for the discharge of the loan and the first respondent is not entitled to release some of them by substituting third parties in their place. I cannot

agree with this contention, as the right of the first respondent is only to take such steps as are necessary to safeguard its interests in the matter of recovery of the loan advanced to the second respondent-company. If the first respondent is satisfied that the recovery of loan will not, in any manner, be prejudiced by the substitution of certain shareholders with third parties, then it is not for the petitioners in the writ petitions or this court to say that the first respondent ought not to have given approval for the transfer of such shares.

11. Learned counsel persists by saying that, if the action of the first respondent is vitiated by mala fides, this court can certainly give its directions to the first respondent as the first respondent happens to be an instrumentality of the State. In this connection, learned counsel placed reliance on certain observations made by the Supreme Court of India in *LIC of India v. Escorts Ltd.* [1986] 59 Comp Cas 548. Learned counsel invites my attention to paragraphs 101 and 102 which read thus (p. 636) :

'It was, however, urged by learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary. Learned counsel relied on the decisions of this court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* : (1975)ILLJ399SC , *Maneka Gandhi v. Union of India*, : [1978]2SCR621 , *Ramana Dayaram Shetty v. International Airport Authority of India*, : (1979)ILLJ217SC and *Ajay Hasia v. Khalid Mujib Sehravardi*, : (1981)ILLJ103SC . The learned Attorney-General, on the other hand, contended that actions of the State or an instrumentality of the State which do not properly belong to the field of public law but belong to the field of private law are not liable to be subjected to judicial review. He relied on *O'Reilly v. Mackman* [1982] 3 ALL ER 1124 (HL), *Davy v. Spelthorne Borough Council* [1983] 3 ALL ER 278 (HL), *I Congreso del Partido* [1981] 2 All ER 1064 HL, *Reg v. East Berkshire Health Authority* : *Ex parte Walsh* [1984] 3 All ER 425 CA and *Radha Krishna Agarwal v. State of Bihar* : [1977]3SCR249 . While we do find considerable force in the

contention of the learned Attorney-General, it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see. We also desire to warn ourselves against readily referring to English cases on questions of constitutional law, administrative law and public law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the technical rules which have hampered the development of the English law. While we do not, for a moment, doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under article 226 or article 32 of the Constitution, we do not construe article 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

For example, if the action of the State is political or sovereign in character, the court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to a contractual obligation or obligations arising out of tort, the court may not, ordinarily, examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action, and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change management by a resolution of the company, like any other shareholder.'

12. In my opinion, the observations made by the Supreme Court of India as extracted above are really against the contention put forward by the writ petitioners. The Supreme Court has clearly laid down that even a State instrumentality is entitled to enter into ventures just as a private individual or a businessman and, when it dons the robes of a shareholder, it will have all the rights available to a shareholder. The last sentence in the passage extracted above puts the matter beyond any doubt. In view of this dictum, there can be no doubt that the first respondent, having exercised its power to grant or refuse approval and, in this case, granted the approval for transfer of shares, this court will not have any jurisdiction to say that the first respondent has acted erroneously. As pointed out by the Supreme Court, if the matter falls within the private law field, then the court will have no jurisdiction. In this case, this is a matter which falls within the private law field, as it is a right accruing to the first respondent out of a contract between the first respondent and the second respondent and, in those circumstances, the writ petitions are not sustainable.

13. I should point out before parting with these cases that these writ petitions are really a camouflage for enforcing the alleged rights of the petitioners as against another group of shareholders of the same company. Article 226 will not provide an arena for a fight between two private parties. In this case, the first respondent has been added as a party only to bring it within the scope of article 226 apparently. But, if the corporate veil is pierced and the real dispute is looked into, it is only between the writ petitioners on the one hand and the persons who seek to transfer their shares to strangers on the other. The basis of the claim of the petitioners is a right of pre-emption available to the members of the family which has to be established only before the appropriate forum in appropriate proceedings. That cannot be done in these writ petitions as it is a question of fact which requires evidence to be adduced before any finding is given thereon.

14. In view of the above reasons, these two writ petitions are dismissed with costs. Counsel's fee Rs. 2,000 one set.