The Praga Tools Corporation

Vs

Shri C. A. Imanual and Others

Civil Appeal No. 612 of 1966

(J.M. Shelat, V. Bhargava JJ)

19.02.1969

JUDGMENT

SHELAT, J. -

1. The Praga Tools Corporation (hereinafter referred to as the company) is a company incorporated under the Indian Companies Act, 1913. At the material time, however, the Union Government and the Government of Andhra Pradesh between them held 56 per cent and 32 per cent of its shares respectively, and the balance of 12 per cent shares were held by private individuals. Being the largest share-holder, the Union Government had the power to nominate the company's directors. Even so, being registered under the Companies Act and governed by the provisions of that Act, the company is a separate legal entity and cannot be said to be either a Government Corporation or an industry run by or under the authority of the Union Government.

2. At the material time there were two rival workmen's unions in the company, the Praga Tools Employees Union and the Praga Tools Corporation Mazdoor Sabha (hereinafter referred to as the Union and the Sabha respectively). On July 1, 1961, a settlement was arrived at between the company and the said union under which the workmen inter alia agreed to observe industrial truce for a period of three years and not to resort to strikes, stoppage of work or go-slow tactics. On December 10, 1962 the company and the said union entered into a supplementary settlement under which the company agreed not to retrench or lay-off any of the workmen during the said period of truce on an assurance from the said union of co-operation and willingness of the workmen to carry out alternative tasks assigned to them even if they were in a slightly lower cadre without loss of emoluments. The said two settlements were arrived at and recorded in the presence of the Commissioner of Labour under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 and were to be in force as aforesaid until July 1, 1964. On December 20, 1963, however, the company entered into an agreement with the said union to which the said Sabha was not a party. The agreement recited that there were several disputes between the company and the union and that some of them were the subject-matter of conciliation proceedings and some were pending arbitration or adjudication. Clause (1) provided that the said agreements dated 1 July 1961 and December 10, 1962 to the extent that they were inconsistent with this agreement would stand automatically repealed or modified by this agreement. Clause (6) stated that there was an immediate, unavoidable need for reducing substantially the overhead expenditure of the company and for effecting economy and therefore notwithstanding the agreement dated December 10, 1962 "both the parties prepared a list of the categories and persons who would be retrenched after careful consideration". The said list was attached to the agreement as Annexure VI. Clause (6) also provided that the agreement dated December 10, 1962 stood modified so as to allow the said retrenchment to take place immediately in accordance with law. The clause further provided that in

order to mitigate the consequences of the proposed retrenchment the company had evolved a scheme of voluntary retirement with terminal benefits superior to those provided under the Industrial Disputes Act, but the scheme of voluntary retirement would be available to the workmen only for a period of 10 days from the date of the agreement. It further provided that the company and the said union had agreed that an attempt would be made to rehabilitate the retrenched persons by helping them to obtain alternative employment and the company had for that purpose contacted public sector and other industries and in particular the Heavy Engineering Corporation, Ranchi for absorption as far as possible of the retrenched personnel. The effect of this agreement was to enable the company, notwithstanding the two earlier settlements, to carry out retrenchment of 92 workmen mentioned in Annexure VI thereto with effect from January 1, 1964.

3. Respondent 1 and 40 other workmen thereupon filed a writ petition under Article 226 in the High Court of Andhra Pradesh challenging the validity of the said agreement impleading therein the company, the said union and the Regional Assistant Commissioner as respondents. The petition claimed a writ of mandamus or an order in the nature of mandamus or any other order or direction restraining the respondents to implement or enforce the said agreement. The writ petition was in the first instance heard by a learned single Judge of the High Court before whom the workmen raised the following contentions : (1) that the said agreement dated December 29, 1963 was invalid as it was entered into by the union in collusion with the company and was in violation of the said two earlier settlements, (2) that there could be no industrial dispute within the meaning of Section 2(k) of the Act as the said two earlier settlements, not having been terminated under Section 19(2), were in force, that therefore there could not be a valid conciliation under Section 12 and accordingly the fact of the conciliation officer having signed the impugned agreement gave no binding force to it, (3) that the retrenchment of the 92 workmen was illegal and void as it was in breach of Section 25(F) inasmuch as no notice thereof was given to the appropriate Government, and (4) that the company being under the management of the Union Government, the appropriate Government in regard to the dispute was the Central Government and not the State Government and consequently the impugned agreement which was signed by the conciliation officer appointed by the State Government was not valid and no retrenchment could validly be effected under the force of such agreement.

4. The learned single Judge negatived these contentions holding that the company was neither an industry run by or under the authority of the Union Government nor under its management but being a company registered under the Companies Act the appropriate Government was the State Government. He also held that there was no proof of the said union having entered into the impugned agreement in collusion with the company. He further held that the union by its letter dated April 5, 1963, had raised an industrial dispute and had thereby requested that the question of retrenchment should be settled between the parties, that the said dispute with the consent of the company and the union was brought for conciliation before the conciliation officer and that the impugned agreement, having been brought about in the course of said conciliation proceedings, was binding on all workmen including the petitioners in the writ petition despite the fact that they were members of the Sabha and not of the Union. In this view the learned single Judge held that it was not necessary for him to decide the preliminary objection raised by the company that no writ petition for a mandamus could lie against it. He dismissed the writ petition on merits on the basis of the aforesaid findings given by him. 28 out of the said 41 workmen who had filed the writ petition filed a letters patent appeal against the said judgment. The Division Bench of the High Court which heard the appeal held : (1) that since the dispute relating to the company's right to retrenchment was already settled under S. 18(1) by the said supplementary settlement of December 10, 1962, no industrial dispute could be said to exist or arise until the said settlement was duly terminated under

Section 19(2), that therefore there could be no valid conciliation proceedings in respect of the question of retrenchment and that the impugned agreement permitting the company to retrench, though it bore the signature of the conciliation officer, was not a valid agreement; (2) that so long as the earlier settlements were not terminated they held the field, and (3) that the said letter dated April 5, 1963 relied on by the learned single Judge as having raised an industrial dispute regarding retrenchment did not in fact contain or raise any such question. The Division Bench held that the said letter raised only the question of revision of wage-structure and other demands but not the question of retrenchment. The letter of July 29, 1963 of the conciliation officer to the company relied on by the company also referred to the demands contained in the said letter of April 5, 1963, namely, the revision of wage-structure, dearness allowance, promotion and other matters, but not the question of the company's right of retrenchment. The Division Bench therefore held that there was nothing on record to show that retrenchment was the subject-matter of any conciliation before the conciliation officer and therefore any agreement conferring on the company the right to retrench so long as the said earlier settlements were not terminated was invalid in spite of the conciliation officer having given his assent to and affixed his signature on it. The learned Judges, however, held that the company being one registered under the Companies Act and not having any statutory duty or function to perform was not one against which a writ petition for a mandamus or any other writ could lie. No such petition could also lie against the conciliation officer as on the facts of the case that officer did not have to implement the impugned agreement. The Division Bench, however, held that though the writ petition was not maintainable it could grant a declaration in favour of three workmen, namely, appellants 6, 16 and 25 before it, that the impugned agreement was illegal and void and dismissed the writ petition subject to the said declaration. The company challenges in this appeal by special leave the validity of this judgment making such a declaration.

5. Thus the only question which arises in this appeal is whether in the view that it took that the writ petition was not maintainable against the company the High Court could still grant the said declaration.

6. In our view the High Court was correct in holding that the writ petition filed under Art. 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not be, but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc., or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of restatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute (See Sohan Lal v. Union of India). (1957 SCR 738) In Regina v. Industrial Court and Others ((1965) 1 QB 377) mandamus was refused against the Industrial Court though set up under the Industrial Courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the Act but a private reference. "This Court has never exercised a general power" said Bruce, J. in R. V. Lawisham Union ((1897) 1 QB 498, 501) "to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming

it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. 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. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (Cf. Halsbury's Laws of England, (3rd ed.), Vol. II, p. 52 and onwards).

7. 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. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company.

8. The grievance of the company, however, is that though the High Court held rightly that no such petition was maintainable, it nevertheless granted a declaration in favour of three of the said workmen, a declaration which it could not issue once it held that the said writ petition was misconceived. The argument was that such a declaration, if at all, could only issue against public bodies or companies or corporations set up or controlled by statutes in respect of acts done by them contrary to or in breach of the provisions of such statutes. If a public authority purports to dismiss an employee otherwise than in accordance with mandatory procedural requirements or on grounds other than those sanctioned by the statute the courts would have jurisdiction to declare its act a nullity. Thus, where a Hospital Services' Board dismissed a clerk for reasons not authorised by the relevant conditions of service a declaration was granted to the applicant by the House of Lords. (Mc. Clelland v. Northern Ireland General Health Services Boards). ((1957) 1 WLR 594) Even where the statutory power of dismissal is not made subject to express procedural requirements or limited to prescribed grounds courts have granted a declaration that it was invalidly exercised if the authority has failed to observe rules of natural justice or has acted capriciously or in bad faith or for impliedly unauthorised purposes. (See Ridge v. Baldwin (1964 AC 40) and Short v. Poole Corporation (1926 Ch 66 at pp. 90 to 91)). Declarations of invalidity have often been founded on successful assertions that a public duty has not been complied with. (See Attorney-General v. St. Ives B.D.C. (1961) 1 QB 366)). 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 body by such a statute.

9. The High Court, however, relied on two decisions of this Court as justifying it to issue the said declaration. The two decisions are Bidi, Bidi Leaves' and Tobacco Merchants Association v. The State of Bombay (1962 Supp (1) SCR 381) and A. B. Abdulkadir v. The State of Kerala (1962 Supp (2) SCR 741). But neither of these two decisions is parallel case which could be relied on. In the first case, the declaration was granted not against a company, as in the present case, but against the State Government and the declaration was as regards the invalidity of certain clauses of a notification issued by the Government in pursuance of power under Section 5 of the Minimum Wages Act, 1948 on the ground that the said clauses were beyond the purview of that section. In the second case also, certain rules made under the Cochin Tobacco Act of 1081 (M.E.) and the

Travancore Tobacco Regulation of 1087 (M.E.) were declared void ab initio. These cases were therefore not cases where writ petitions were held to be not maintainable as having been filed against a company and despite that fact a declaration of invalidity of an impugned agreement having been granted. In our view once the writ petition was held to be misconceived on the ground that it could not lie against a company which was neither a statutory company nor one having public duties or responsibilities imposed on it by a statute, no relief by way of a declaration as to invalidity of an impugned agreement between it and its employees could be granted. The High Court in these circumstances ought to have left the workmen to resort to the remedy available to them under the Industrial Disputes Act by raising an industrial dispute thereunder. The only course left open to the High Court was therefore to dismiss it. No such declaration against a company registered under the Companies Act and not set up under any statute or having any public duties and responsibilities to perform under such a statute could be issued in writ proceedings in respect of an agreement which was essentially of a private character between it and its workmen. The High Court, therefore, was in error in granting the said declaration.

10. The result is that the appeal must be allowed and the said declaration set aside. In the circumstances of the case we make no order as to costs.

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