SUPREME COURT OF INDIA

VST INDUSTRIES LTD.

Vs.

VST INDUSTRIES WORKERS UNION & ANR.

07/12/2000

(S R Babu, S N Variava)

Appeal (civil) 670 1997

JUDGMENT

RAJENDRA BABU, J. :

Civil Appeal No. 670 OF 1997

The appellant is a company incorporated under the Companies Act, 1956 with the object of manufacture and sale of cigarettes. Members of general public are the shareholders and the shares of the company are traded in through various stock exchanges in the country. A petition was filed under Article 226 of the Constitution by respondent No.1 seeking for a writ of mandamus to treat the members of the respondent- union who are employees working in the canteen of the appellants factory as employees of the appellant and for grant of monetary and other consequential benefits. The canteen is provided in the factory premises of the appellant pursuant to Section 46 of the Factories Act, 1948 [hereinafter referred to as the Act], which obliges a factory employing more than 250 workmen to provide such a canteen. On behalf of the respondents, it is contended that the appellant had been managing the canteen up to the year 1982 and thereafter introduced the contract system for maintaining the canteen so established; that though the management of the canteen had been entrusted to the contractors from time to time, the personnel employed in the canteen were retained by all the contractors and they have been paid salaries through contractors; that the workmen employed in the canteen have been provided with ESI benefits under the Code No. VST, the appellant, and benefits arising under the Employees Provident Funds Act are also provided similarly; that the appellant has also provided a building along with furniture, utensils, cutlery, gas, electricity, water supply and other facilities; that the contractor is engaged only to prepare the food and serve it to the employees and that the quality of the food and the rates are controlled by the management of the appellant.

On behalf of the appellant, contention was raised that no writ would lie against the appellant inasmuch as the appellant is a company, which is not an authority or a person against whom a writ would lie. It was submitted that they do not discharge any public duty and hence the writ cannot be issued. On the merits of the matter, the appellant disputed various questions of fact and urged that the decision of this Court in Parimal Chandra Raha vs. Life Insurance Corporation of India, 1995 Supp. (2) SCC 611, would not be applicable to the appellant in the facts and circumstances of the case. The learned Single Judge, who decided the matter in the first instance, held that a writ would lie against a company under a private management following the decision in T. Gattaiah vs.

Commissioner of Labour, 1981 [II] LLJ 54, in which it was held that establishment of a canteen and its maintenance is a statutory requirement; under Section 46 of the Act a public duty is imposed on the company to establish and maintain the canteen; inasmuch as members of the respondent-union are working in the canteen they are entitled to seek a mandamus. He, therefore, held that when a public duty is called upon to be discharged by a private management, a writ of mandamus would lie and could be issued under Article 226 of the Constitution. He thus rejected the contention.

On the merits of the matter, the learned Single Judge followed the decision in Parimal Chandra Rahas case holding that when the duty had been enjoined on the appellant to provide and maintain a canteen facility under the Factories Act it becomes the obligation of the appellant to establish a canteen and that is what the appellant had done. Therefore, when that work is got done through somebody else by providing the necessary infrastructure and other facilities, when the personnel did not change though the contractors changed from time to time, he held that they become employees of the appellant. On that basis the learned Single Judge granted reliefs sought for by the respondents, however, imposing certain restrictions with regard to the age, being medically fit, on the date of the writ petition, had put in a minimum of three years of continuous service and such service prior to the attainment of the minimum qualifying age under the company should be ignored.

On appeal, the Division Bench of the High Court affirmed the view taken by the learned Single Judge. The Division Bench referred to their decision in Rakesh Gupta vs. Hyderabad Stock Exchange Ltd. Hyderabad & Ors., AIR 1996 AP 430, that a writ in the nature of mandamus, certiorari and prohibition are recognised as public law remedies and are not available to enforce private law rights. However, noticing that the expression any person or authority used in Article 226 of the Constitution should not be confined only to statutory authorities and instrumentalities of State but would cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on that body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. On that basis, the Division Bench of the High Court dismissed the writ appeal. Hence this appeal.

On behalf of the appellant contention put forth at the forefront is that a writ would not lie against the appellant inasmuch as the appellant is engaged in the manufacture and sale of cigarettes and as an incident thereto has provided a canteen to its workmen pursuant to an obligation under Section 46 of the Act. Shri S. Ganesh, learned counsel for the appellant, pressed into service the decision of this Court in Anadi Mukta Sadguru Shree Muktajee Vandas Swami Survarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R.Rudani & Ors., 1989 (2) SCC 691, to contend that mere running of a factory to manufacture and sell of cigarettes can never be considered to be a public duty much less an incident thereto such as providing a canteen to its workmen. On behalf of the respondent, heavy reliance was placed on this decision and also the decision of the High Court in T. Gattaiahs case, to contend that in running a canteen under Section 46 of the Act, the appellant was discharging a public duty and, therefore, a writ of mandamus would lie against it.

In Anadi Muktas case, the contention, similar to the present case, had been raised. Writ petitioners were seeking for a writ of mandamus to put them back in the college and they were claiming only a terminal benefit or arrears of salary payable to them. In that background, it was observed that if the rights are purely of a private character no mandamus could be issued and also, if the management of the college were purely a private body with no public duty mandamus would not lie. In that case, the respondent was managing the affiliated college to which public money is paid as Government

aid which played a major role in the control, maintenance and working of educational institutions. The aided institutions, it was noticed, like Government institutions discharge public function by way of imparting education to students. They were subject to the rules and regulations of the affiliating University and their activities were closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character inasmuch as the service conditions of the academic staff were controlled by the University particularly in regard to their pay scales and the protection by University decisions creating a legal right or duty relationship between the staff and the management. When there is existence of such relationship mandamus could not be refused to such an aggrieved party. It was further explained in that decision that the term authority used in Article 226 of the Constitution should receive a liberal meaning unlike the term in Article 12, which is only for the purpose of enforcement of fundamental rights under Article 32. The words any person or authority used in Article 226 are, therefore, not be confined only to statutory authorities or instrumentalities of the State but would cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on that body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.

In De Smith, Woolf and Jowells Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law, e.g., the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarized the position with the following propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a public or a private body. (2) The principles of judicial review prima facie govern the activities of bodies performing public functions. (3) However, not all decisions taken by bodies in the course of their public functions are the subject matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and (b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic Tribunals) has been agreed by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

The High Court has relied very strongly on the decision of a learned Single Judge in T. Gattaiahs case wherein it was stated that a writ may lie under Article 226 of the Constitution against a

company incorporated under the Companies Act, 1956 as it is permissible to issue a writ against any person. Prima facie, therefore, a private person or an incorporated company cannot be taken out of the sweep and the contemplation of Article 226 of the Constitution. That decision does not take note of the fact as to the nature of the functions that a person or an incorporated company should be performing to attract judicial review under Article 226 of the Constitution. In Anadi Muktas case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function. Incidental to that activity there is an obligation under Section 46 of the Act to set up a canteen when the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare device for the benefit of its work force unlike a provision where Pollution Control Act makes it obligatory even on a private company not to discharge certain effluents. In such cases public duty is owed to the public in general and not specific to any person or group of persons. Further the damage that would be caused in not observing them is immense. If merely what can be considered a part of the conditions of service of a workman is violated then we do not think there is any justification to hold that such activity will amount to public duty. Thus, we are of the view that the High Court fell into error that appellant is amenable to writ jurisdiction.

This Court in Indian Petrochemicals Corporation Ltd. & Anr. vs. Shramik Sena & Ors., 1999(6) SCC 439, referred to the decisions in Parimal Chandra Rahas case, Reserve Bank of India vs. Workmen, 1996 (3) SCC 267, and M.M.R.Khan vs. Union of India, 1990 Supp. SCC 191, and held that the workmen of a statutory canteen, as in the present case, would be workmen of an establishment for the purposes of the Act only and not for other purposes. Thereafter, this Court further examined whether the material on record would show that the workmen are employees of the management for all purposes and adopted some of the tests as follows:

1. The canteen has been there since the inception of the appellants factory. 2. The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen. 3. The premises, furniture, fixture, fuel, electricity, utensils, etc. have been provided for by the appellant. 4. The wages of the canteen workers have to be reimbursed by the appellant. 5. The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor. 6. The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant. 7. The workmen have the protection of continuous employment in the establishment.

In the present case, the findings recorded by the learned Single Judge on examination of the facts available is that there had been a canteen within the premises of the appellant up to the year 1982 and it is only from 1982 onwards the management of the canteen has been entrusted to a private contractor; that even after change of the contractor, the canteen workers have continued to be the same irrespective of the change in the contractors from time to time; that wages were paid to the workmen in the canteen by the management through the contractor; that the appellant has provided the accommodation, furniture, fuel, electricity, utensils, etc.; that the management exercises control over the standard in quality, quantity and the rate of the food items supplied to the workmen for whose benefit the canteen is established. Thus, these circumstances clearly indicate that the

appellant has a complete control over the activities in respect of the canteen and the contractor has absolutely no discretion either in regard to the menu, quality and quantity of the food items much less the rate at which the same are supplied to the workmen. When the management of the appellant exercises such a complete control, the canteen shall be deemed to be run by the management itself. The appellant in any manner cannot controvert these facts.

We do agree that the respondents have a strong case on merits. Since we have held that the High Court had no jurisdiction to entertain a petition under Article 226 of the Constitution, we would have set aside the order made by the High Court. However, in the special features of the case, although we do not agree with the High Court on the first question raised, we feel, after clarifying the legal position, that we should not disturb the decision given by the High Court.

The appeal, therefore, stands dismissed subject to what is stated in regard to writs to be issued by the High Court in respect of persons or authorities exercising public duty or otherwise. No costs.

Civil Appeal Nos. 6533/97 & 6534/97

In these appeals, on a reference made on the question whether certain persons employed in the canteen should be treated as employees of the appellant and, if so, in what category they are to be fitted in and to what wages they are entitled to, the Industrial Tribunal, Hyderabad, [hereinafter referred to as the Tribunal] inquired into the matter. The contesting respondents contended that the workmen in the canteen had been working right from its inception, that is, since 1967; that from 1976 onwards, after expiry of the contract with the Industrial Catering Services, they had been directly working with the appellant without any contractor; that they sought for regularization of their services by letter dated 28.2.1978; that the said letter was corrected and redrafted by the Personnel Manager to indicate the idea of floating an Association/Society to run the canteen; that this modified request contained in Ex.W-49 was stated to be contradictory to the stand taken by the workmen all through. The Tribunal concluded that there was no doubt that the Personnel Manager modified Ex.W-50 and obtained Ex.W-49 in the modified form. The Tribunal held against them, as there was no material to show that the management had discussed on each point and thereafter an agreement had been drafted. The Tribunal recorded the findings that the canteen had been working for the benefit of the workmen within the premises provided by and with the equipment supplied by the appellant; that the appellant supplies the provisions for the preparation of foodstuffs; that the appellant issues token to the employees, who on production of the same obtain foodstuffs from the canteen; that the Committee appointed by the appellant decides the menu and as per the directions and supervision of the Catering Officer, the canteen functions; that the quality and quantity of the foodstuffs is supervised by him, who functions under the Committee. The contributions like ESI, Provident Fund, etc. had also been categorically specified to be provided by the appellant and ESI code for the permanent establishment and for the present workmen was the same; that after the evidence was tendered by the workmen the appellant got the code changed and the appellant transferred the workmen from one place to another and that the amount to be surrendered by way of unpaid salaries had to be remitted back to the management. Thus the Tribunal held that these facts clearly indicated that the appellant exercised administrative, financial and disciplinary control over the workmen in question. The Tribunal held that no other material is required to hold them to be employees of the appellant. In those circumstances, the Tribunal passed an award that these workmen should be treated as employees of the appellant and they are entitled to payment of appropriate scales and designations in terms of Ex.W12 and W14 from 1.4.1979 with all consequential and attendant benefits of arrears of pay, etc. together with counting of entire service for the purpose of terminal benefits. Against this award, a writ petition was filed before the High

Court. The High Court dismissed the same stating that it is covered by another matter. It is unnecessary to examine the contention whether the matter is covered by a subsequent decision or not as the facts of the present case stand on its own. The reference had been made to the Tribunal and adjudication had been made by the Tribunal as to the status of the workmen, the nature of employment, control exercised by the appellant, which leave no room for doubt that they are the employees of the appellant.

A contention is also sought to be made that it is not possible to run a canteen in the refinery area. It is contended that under the Petroleum Rules framed under the Petroleum Act, 1934, there are certain hazardous areas where there cannot be a canteen as no fire, furnace, source of heat or light capable of igniting inflammable vapours shall be allowed except in the firing spaces or stills and boilers. However, there is no material on record to show that the canteen is located in such an area where it would be hazardous to have a fire, furnace, source of heat or light to cook food. In the absence of such material, we find no substance in this contention. It is brought to our notice that a fire had taken place on a tank on 14.9.1997 and that it was extinguished after 14 days, which severely damaged all the building including the canteen and that food and beverages being provided to its employees by making an arrangement to obtain the same from outside the premises of the appellant. These facts are brought to our notice by an affidavit filed on 21.11.2000. But these factors do not come in the way of the award made by the Tribunal, as it is possible to locate the canteen in an appropriate place where there is no hazard of the kind envisaged under the Petroleum Rules. This contention is also rejected.

In the circumstances aforesaid, the contention vis-�-vis the findings recorded by the Tribunal, we find absolutely no merit in these appeals and the same shall stand dismissed. No costs.