**CALCUTTA HIGH COURT**

Ranjit Kumar Chatterjee

Vs.

Union of India

C.R. Nos. 1330 and 1864 of 1967

(D. Basu, J.)

28.06.1968

**ORDER**

**D. Basu, J.**

1. Common questions of law have been raised by these two petitions brought by two employees of the Durgapur Steel Plant appertaining to the Hindusthan Steel Ltd.

2. In C. R. 1330, the Petitioner was the General Manager, who was appoint ed on 9-4-65 by the order of the President of India, which is at Annexure A. The Petitioner alleges that in the first week of July, 1967, he was verbally ask ed to resign by Sri Rao, Chairman of the Hindusthan Steel Ltd., (Respondent No. 4). On the 17th July, he was hand ed over the impugned letter at Ann. B, by the Chairman. This letter states that –

> (a) Government "have decided to terminate your services..... with effect from the forenoon of the 19th July, 1967";
> (b) The Petitioner had, however, the option of submitting resignation, which would be readily granted;
> (c) The Petitioner might also terminate the contract with the Hindusthan Steel by sending a notice with a leave application before the 19th July, in which case he would be granted all the leave that was due to him and thereafter his services would stand terminated on the expiry of that leave or on the expiry of three months from 19-7-68, whichever was later.

3. The Petitioner was asked to into mate his option as to the three alternatives aforesaid and was also told that the Relieving Officer would take over charge from the Petitioner on 19-7-68 and at that time deliver to the Petitioner the formal order of the President. The Petitioner came to Court the next day and obtained this Rule, challenging the validity of the impugned letter.

4. The Petitioner's case is that the Hindusthan Ltd., is a Government Company and that he holds a civil post under the Union of India, so that his services cannot be terminated without complying with the requirements of Article 311 (2) of the Constitution and that if Paragraph 97 (a) of its

Articles of Association says anything to the contrary, the said Article should be held to be ultra vires Article 311 (2) of the Constitution.

5. In C. R. 1864 (W)/67, the Petitioner was initially appointed to the post of Assistant Superintendent, Coke Ovens Department, on a contract of November, 1957, for a period of 5 years (vide Annexure A to the Petition). The Petitioner's case is that that contract has been renewed and was still subsisting at the material time and is due to expire on 8-2-68. In the year 1965, he was promoted by the General Manager to the post of Chief Superintendent. He was served with the Chairman's letter dated 17-7-67 (Annexure D), which is in sub stance similar to that served upon the Petitioner in the other case and he was asked to hand over charge to Sri Mohan on 19-7-67. Annexure E is the formal order upon Sri Mohan to take over charge from the Petitioner, with copy to the Petitioner. He was also served with an undated order at Annexure E1. The facts are thereafter complicated by the fact that this Petitioner exercised his option of tendering resignation. He offered resignation 'provisionally', by the letter at Annexure F and prayed for granting full leave due to him. The resignation was accepted by the Chairman by the letter at Annexure H, of 22-7-67, which gave him the leave due from 19-7-67 and stated that the resignation would take effect from the expiry of that leave. The Petitioner changed his mind and by the letter at Annexure I, issued through his lawyer, he stated that his letter of resignation was obtained from him under official coercion and that he had not tendered resignation; he also urged that his services had not been terminated in terms of his letter of appointment.

6. By the letter at Annexure K, dated 11-8-67, the General Manager wrote that the undated order at Annexure E1 was withdrawn and instead, he was granted leave for three months from 19-7-67 to 18-10-67 and that his resignation would be effective from the date of expiry of that leave.

7. In response to the Petitioner's re presentation, by the letter dated 19-8-67, the Petitioner was informed by the Se nior Personnel Officer that instead of three months, he had been granted, as a special case, six months' leave from 19-7-67 to 14-1-68 and to this extent, the order at Annexure K was modified.

8. The Petitioner however reported to duty on 21-8-67 cancelling the leave and successive days and on the refusal of the Respondents to allow him to join he came to Court on 13-9-67 and obtained this Rule.

9. The question common to both the Petitions is whether the posts held by the Petitioners under the Hindustan Steel Ltd., can be held to be 'civil posts under the Union' within the meaning of Article 311, so as to attract Clause (2) thereof.

10. Though the cases were ably argued on behalf of the Petitioners, the question appears to have already been decided by the Supreme Court in the negative, in various decisions.

11. From the Articles of Association produced before me. it appears that the Hindustan Steel Ltd., is a Company formed under the Companies Act, 1956, of which all the shares are owned by the President of India and his two Secretaries and no private individual can acquire its shares. Extensive powers regarding management and control are given to the President of India (e.g., Articles 11, 44, 47, 50, 96) and powers of appointment and removal of superior officers of the Company, such as the General Manager, are conferred on the President (Article 97).

12. Since the special features of this Company are fully dealt with by P. B. Mukharji, J., in

*Varghese v. Union of India*[1], I need not go into further details.

13. I. Little authority is required for the proposition that a company register ed under the Companies Act has a legal entity of its own, separate from that of its shareholders whoever they may be, *Tata Engineering Co. v. State of Bihar*[2] *State Trading Corpn. v. Commercial Tax Officer*[3]. at p. 1822. The reason is quite pa tent, namely, that the Company is a juristic 'person', - its personality emerging from the incorporation.

14. II. The question is whether it makes any difference where the entirety of the capital is subscribed by the Government or the company is controlled by the Government and run, in substance, as a Government Department. The question has been answered in the negative by the Supreme Court in the case of *Valjibhai v. State of Bombay, AIR 1963 Supreme Court 1890* at p. 1894. This case related to the State Transport Corpn., a Company similar to the Hindusthan Steel Ltd., in its composition and management and it was held that it was a separate legal en tity and not a Department of the Government, even though it might be controlled by the Government and if the Corporation was wound up, its assets would go to the Government - see also *Andhra Pradesh State Road Transport Corpn. v. Income-tax Officer*[4], *at p. 1493; AIR 1963 Supreme Court 1811 at pp. 1848-9.*

15. III. Mr. Dutt on behalf of the Petitioners, relies strongly upon the fact that in the recent case of *Rajasthan State Electricity Board v. Mohan Lal*[5], at pp. 1861-3, the Supreme Court has held that a statutory corporation, such as a State Electricity Board, which exercises statutory powers, even though it may be carrying on commercial functions, should be held to be 'State' within the definition of that term in Article 12 of the Constitution, for the purpose of enforcement of Fundamental Rights against them, - a position which had not been acknowledged by the High Court so long. But this decision does not help the Petitioners in the instant cases inasmuch it has not been held by the Supreme Court in the cited case that when a statutory corporation exercises statutory powers, it is identified with the Government or a Government Department; on the other hand, the decision of the Court is that it comes under the expression 'other authority' in the definition given in Article 12 and that is be cause it exercises statutory powers conferred by the State, affecting private individuals just as any other State action might do. But the question under Article 311 is not whether a corporation exercises statutory powers, but whether its employees can be held to be holding their posts or offices under the Union or a State Government. That question has not been answered nor could it be answered in favour of the Petitioners in view of the other decisions of the Supreme Court where it has been held that a statutory corporation maintains its separate juristic entity even where it exercises statutory powers or is controlled by the Government cf. *Mafatlal v. Divisional Controller*[6], *at p. 1365.* Above all, it cannot be forgotten that the instant cases before me relate to a non-statutory corporation or a Company, which exercise no statutory powers - vide *Kartick v. West Bengal Small Industries Corporation Ltd*[7]., at p. 234. Hence, the cited decision of the Supreme Court relating to Article 12 is of no avail to the Petitioners in the instant cases.

[1] AIR 1963 Cal 421 at p. 424 [3] AIR 1963 SC 1811 [5] AIR 1967 SC 1857
[2] AIR 1965 SC 40 [4] AIR 1964 SC 1486 [6] AIR 1966 SC 1364
[7]AIR 1967 Cal231

16. IV. Even where a company is a 'Government Company' within the meaning of Section 617 of the Companies Act, 1956, the juristic character of the Company does not change and it is not identified with the State and its employees do not become holders of civil posts under the Union or a State Government as has been held by me in A. *B. Biswas v. Hindusthan Cables Ltd*[8]., at p.

290 (Cal), or by the Di vision Bench of this Court in *S. K. Debnath v. Mining and Allied Machinery*[9], The reason is that the separate treatment of this cate gory of companies in Section 617 of the Companies Act is only to place them under a certain special system of control (e.g., under Section 619) and to confer upon them certain privileges, for the purposes of the Companies Act. But, as pointed out in the last cited decision of the Division Bench, if the President so permits, it is possible for a Government Company to be converted into an ordinary private company, transferring the entire share capital to private owners.

17. For the same reason, even service under a statutory corporation has been held not to be service under the Government, even where Government control over such corporation and employment under it are obvious - *Narayanaswamy v. Krishnamurthi*[10], *Ramiah v. State Bank of India*[11]. In the instant case, however, we need not go so far as this is a case of a company as distinguished from a statutory corporation, having statutory powers.

18. Once it is held that a company registered under the Companies Act is not the State or a Department or agent there of, the fact that its employees are appointed or removed by the President can not make such employees holders of civil posts under the Union within the purview of Article 311 (2), as has been held in *Subodh Ranjan v. Sindri Fertilisers*[12], Even though appointed by the President, the employees remain the employees of the company and not of the Government (ibid) see also *Baleswar v. State Bank of India*[13],

19. V. As against the mass of decisions so far discussed, the learned Advocate for the Petitioner has relied upon the following:

(i) *Hutche Gowda v. State of Mysore*[14], This decision is of no assistance in the instant case, because there it was held that by virtue of the provisions of the Bombay State Road Transport Order, 1956 and Section 109 of the States Reorganization Act, follow ed by an order of Mysore Government, the employees of the Statutory Road Corporation of Bombay had become the employees of the Mysore Government to which all the rights and liabilities of the Statutory Corporation had been transfer red by the States Reorganization Act.

There is no such situation here.

(ii) The observations at para 29 of AIR 1958 Madras 343 are also of no application to the instant cases, because the observations were made in relation to a corporation 'created under a statute' and not a company formed under the Companies Act.

(iii) Mr. Dutt, for the Petitioner relied strongly upon the provision in Article 298, as amended by the Constitution (Seventh Amendment) Act, 1956, to argue that

[8](1968) 16 Fac. LR 289 [10] AIR 1958 Mad 343 [11] AIR 1964 Mad 335, AIR 1966 SC 1364 [9](1967) 72 Cal WN 144 at p. 150 : AIR 1968 Cal 322 at p. 326 [12] AIR 1957 Patna 10.

[13] AIR 1958 Pat 418

[14] AIR 1963 Mys 66

when Government takes up a business, it does so in the exercise of its 'executive power' and, therefore, whatever be the agency through which Government may carry on a

business, that is identified with the Government.

This argument, however, overlooks the object and scope of the Amendment of the Article. Prior to this amendment, it was held in some cases that since there was no express provision empowering the Government to enter into a trade, this could not be done without legislative sanction - *Moti Lal v. State of U. P*[15]*.,* This view was over ruled by the Supreme Court in the case of *Ram Jawaya v. State of Punjab*[16]*,* and the Amendment of 1956 simply codifies the effect of the decision in Ram Jawaya's case, 1955-2 SCR 225 : ( AIR 1955 Supreme Court 549) namely, that legislation is not required to empower a Government to carry on a business, it can do so in the exercise of its executive power, except, of course, where a law is required by some other provision of the Constitution, say, Article 19 (6). But the effect of the amendment is not to convert a commercial function of the Government into a governmental function. It is to be noted that even where a State Government carries on a business, it cannot be treat ed as a governmental function to claim immunity from Union taxation, without a declaration by Parliament by law, under Article 289 (3) - vide AIR 1964 Supreme Court 1486 at p. 1492. If the Central Government carries on a business, it can never be treated as a governmental function to claim immunity from State taxation be cause Article 285 (1) simply speaks of 'the property of the Union' and no business. It has been held by the Supreme Court that even when the Government carries on a business departmentally, as in the case of a Railway, it cannot be treated as a 'sovereign function' for the purpose of 'suability'. But that principle would not apply for the purpose of determining the status of its employees under Article 311. When the business is carried on by a Department of the Government, as in the case of a Railway, obviously, the employees hold under the Govern ment and not under any separate juristic entity and so it has been held in numerous cases cf. *Parshottam v. Union of India*[17]*, Moti Ram v. N. E. F. Rly*[18]*.,* The reason is obvious, namely, where the employer is a Department of the Government, no question of a separate legal entity arises. The question, however, becomes different, where the business is carried on through a separate legal person, e.g., a statutory corporation or a company - vide AIR 1966 Supreme Court 1364, because in such a case, the employee is a servant of a legal entity other than the Government.

(iv) On behalf of the Petitioner, in C. R. 1330 much reliance is placed upon the fact that under Article 97 (a) of the Articles of Association of the Company, the power to appoint and remove a Ge neral Manager is vested in the President of India and that the Petitioner's appointment letter has, in fact, been issued by a Deputy Secretary to the Government of India.

Upon the latter fact, it has been argued that if the President's act, in this con text, be contended to be an act of the President in his personal capacity, the letter should have been issued by the President's Secretary and not a Secretary to the Government of India and that since the latter course has been adopted, the appointment must be held in law to be an appointment by the Government. Technically speaking, Article 77 (2) of the Constitution applies when the President's action is an 'executive action of the Government

[15] AIR 1951 All 257 (FB)
[16](1955) 2 SCR 225 : ( AIR 1955 SC 549)
[17] AIR 1958 SC 36
[18] AIR 1964 SC 600

of India' and where the President exercises some function, not by virtue of any provision of the Constitution, but in his personal capacity, under a private treaty, e.g., the Articles of Association

of a Company, it would be desirable to get his acts authenticated by an officer of his personal establishment and not by an officer of a Ministry in the Government of India. Respondents might do well to take note of this for future action. The converse, however, does not necessarily follow, viz., that because the order has been signed by a Deputy Secretary to the Government, the act of appointment must be held to be an executive action of the Government of India. When the President appoints a person in exercise of powers conferred by the Articles of Association of the Company, he does so as a limb of the Company and not by virtue of any powers under the Constitution and the person who is appointed does not become a servant of the Government instead of the Company by the mere fact that the letter is issued by the Ministry.

20. In this context, it has been argued vehemently on behalf of the Petitioners that the fact of appointment and removal has been applied as a test by the Supreme Court for determining whether a person holds 'an office of profit under the Government of India or of a State' (to) constitute a disqualification for member ship of the Legislature under Article 102 or Article 191. On this point, the decision in *Guru Gobinda v. Sankari Prasad*[19], is apparently encouraging to the Petitioner, inasmuch as it was a case relating to the Hindusthan Steel Ltd., itself and certain other 'Government Companies'. Under the provisions of the Companies Act, the auditors of Government Companies are appointed and removed by or with the approval of the Government of India (pp. 256-7, ibid.). It was held that an Auditor, so appointed, was the holder of an 'office of profit' under the Government of India and was thus disqualified to be a member of Parliament. But it would appear, on a close reading of this decision, that it is against the Petitioner before me instead of being in his favour, because in that case, the Court had clearly made out a distinction between the expression 'office of profit under the Government' in Article 102 and the expression 'holder of a post or service under the Government' in Articles 309-314. It cannot be overlooked that the tests applied in the case of disqualification for membership of the Legislature are bound to be wider because the object of such disqualification is to maintain the independence of members of the Legislature from any sort of Government control or influence. When, therefore, Government has a say in the matter of appointment or removal of a person, he should not be allowed to sit in the Legislature even though by such appointment, a relation of master and servant is not constituted between the Government and such person. In cases under Articles 309-311, on the other hand, the test is the relationship of master and servant be tween the Government and such person and it can hardly be overlooked that the provisions of the Constitution in Part XIV are, in fact, modifications of the common law relating to master and servant which have been engrafted because of the fact that where the master is the Government, such modifications were considered necessary by the makers of the Constitution. I would like to reproduce the following words of the unanimous Court in Guru Gobinda's case, AIR 1964 Supreme Court 254 at p. 258, ibid. –

> "We agree with the High Court that for holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. The Constitution itself makes a distinction between 'the holder of an office of profit under the Government' and

[19] AIR 1964 SC 254

> 'the holder of a post or service under the Government'; see Articles 309 and 314....."

21. The distinction between these different juristic concepts is no doubt fine and somewhat

intriguing, but in the troubled waters of Jurisprudence, one has often to steer clear of shoals. The test for the application of Article 311 (2), in short, is whether, there is a master and servant relation between the Government and the employee concerned - *Pradyat Kumar v. Chief Justice of Calcutta High Court*[20]*, State of Assam v. Kanak Chandra*[21]*,* Hence, when a per son is a member of the staff of a Company, which is a juristic entity other than the Government, he cannot be said to be holding a post under the Government, whatever may be the mode of appointment and removal of such person.

22. The difficulty in the way of the Petitioners before me, in fact, is the theory of juristic personality of a company in jurisprudence and so long as that theory is not curbed by legislation, as I shall presently show, the Petitioners cannot succeed in the case made in the instant proceedings.

23. VI. Mr. Dutt draws inspiration, most strongly, from certain observations of P. B. Mukharji, J., in AIR 1963 Calcutta 421, which was also a case of termination of the service of an employee of the Durgapur Steel Project, under the Hindusthan Steel Ltd. Though the Rule was dis charged on other grounds, his Lordship made the following observation:

> "In an appropriate case in future it may be necessary to re-examine and thoroughly consider how far the doctrine of incorporation making the company a legal entity creates a veil that cannot be pierced and extends to prevent service under such company from being a service under the State....., specially in such companies like the Hindusthan Steel Ltd., where it is admittedly a complete Government owned company, with all the hinds of the capital and all the shares owned by the Government....."

24. The question of the legal status and liability of non-governmental bodies which have impact upon the rights of private individuals has arisen in recent times both in England and in India on account of the nature of their functions as well as their number, in a welfare State. There is however a marked difference in the manner and extent in which this question has been raised in these two countries:

> (i) In England, the question has presented itself in connection with statutory corporations and not in respect of non-statutory companies. In India, cases have come up in relation to both and it is therefore, necessary to remember the essential juristic differences between these two kinds of corporate bodies.
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> (ii) While in England the question has arisen from the point of view of Crown privileges, - as to whether these could be claimed by statutory corporations, in India, it is in the context of the liabilities of such bodies that the question has mostly come up before the Courts, namely, whether their action should be regarded as 'State action' for the purpose of enforcement of fundamental rights

[20](1955) 2 SCR 1331 at p. 1350: ( AIR 1956 SC 285 at p. 293)

[21] Civil Appeal No. 254 of 1964, D/d. 3-10-1966: (reported in AIR 1967 SC 884)

> against them under Article 12; or whether their servants may be regarded as civil servants for the application of the procedural safeguards under Article 311.

25. In England, it is now established that to decide whether a particular sta tutory corporation would be entitled to claim Crown privilege in litigation or whether it would be bound by a statute it is to be determined whether the corporation in question may be held to be a servant or agent of the Crown - *Tamlin v. Hannaford*[22], Of course, no difficulty arises where the statute which creates the corporation expressly states that it shall act on behalf of the Crown - cf. *Glassgow Corpn. v. Central Land Board*[23],

26. Where, however, the statute makes no express provision, the Courts have ap plied the test of the nature of functions of the corporation to answer the question:

> (a) If it is merely a commercial corporation, it cannot claim Crown immunity or privilege, even though it may be con trolled by the Government - *Central Control Board v. Cannon Brewery*[24], *British Broadcasting Corpn. v. Johns*[25], The reason, as explained in Tamlin's case, 1949-2 All England Reporter 327 : 1950-1 KB 18 is that the personality of the corporation is separate from that of the Crown or any Department of the Government, - since the Corporation is the owner of the pro perty vested in it by the statute and answerable in law for its acts like any other private person, subject, again to the limitations imposed by the relevant statute or statutes.
> (b) But the Courts have refused to apply the foregoing principle where the statutory corporation which exercises a governmental function or carries out a public service of the Crown, e.g., a Territorial Force Association - *Territorial and Auxiliary Forces Assocn. v. Nichols*[26], or a Hospital Board or Committee - *Nottingham Hospital Management Committee v. Owen*[27], *Pfizer Corpn. v. Minister of Health*[28], The principle upon which this distinction is made is that where a statutory body exercises a governmental function, e.g., matters connected with the defense of the realm, it is, in essence, an agent of the Crown and therefore holds property in trust for the Crown - *Bank Voor Handel v. Slatford*[29],

27. Whatever be the logic according to which the separate juristic personality of a statutory corporation belonging to this latter group has been ignored in England, it is to be noted that it has never been applied to a non-statutory joint stock company and not even to a statutory corporation which carries on commercial functions, such as the British Transport Corporation or the British Broadcasting Corpn., (1965) Ch 32, even though it may be presided over by a Minister of the Crown. In fact, Tamlin's case, 1949-2 All England Reporter 327 : 1950-1 KB 18 (ibid.) was decided on the analogy of a limited liability joint-stock company.

28. Since the Hindusthan Steel Ltd., is a non-statutory joint-stock company, the principle applied in England, to statutory bodies exercising governmental functions, cannot be
invoked in the cases before me.

[22](1949) 2 All England Reporter 327
[23]1956 SLT 41 : (1956) SC (HL) 1
[24](1919) AC 744 at p. 757; (1950) 1 KB 18
[25](1965) Ch 32
[26](1948) 2 All England Reporter 432
[27](1957) 3 All England Reporter 358
[28](1965) 1 All England Reporter 450
[29](1953) 1 QB 248

29. Under the law as it exists to-day, thus, whether in England or in India, it is impossible

"to pierce the veil" in the case of a non-statutory company, such as the Hindusthan Steel Ltd. The obiter of P. B. Mukharji, J., in AIR 1964 Calcutta 421 at p. 427 was made in the hope of building up a 'new jurisprudence'. I, too, join with him so far as the object is concern ed. It is, however, not possible for the Courts to overturn the juristic personality of corporations whether statutory or non-statutory, without some progressive legislation which is yet to come.

30. As has been pointed out by the Supreme Court in the Tata Engineering Co., case, AIR 1965 Supreme Court 40 at p. 46, the Legislature has already been obliged to make certain exceptions to the doctrine of separate personality of a corporation as a result of the impact of complex economic factors in the world and these may grow in number in course of time. Thus, Article 311 of the Constitution it self may some day be amended to pro vide that the employees of statutory corporations or 'Government Companies' should be deemed to be holders of posts under the Union or a State, as the case may be. Or, the Legislature may pass an appropriate statute to extend to such employees all the safeguards which have been deduced by the Courts from the expression 'reasonable opportunity' in Article 311 (2), in which case, these employees will get similar protection in Courts of law, without invoking the Constitution.

31. The desirability of some such safe guards as in Article 311 (2) in the case of the employees of these statutory and non-statutory corporations can hardly be over-emphasized when it is realized that a very large proportion of the educated population is now engaged in these establishments in the public sector and their number is sure to be going on increasing with the expansion of the economic activities of the welfare State; that just as a security of tenure is necessary to at tract men of the right calibre to the Government Departments so is it necessary to secure the proper personnel to these large establishments entrusted with the public welfare; that loss of employment to a modern man means no less than what loss of a zemindary meant to a feudal owner in mediaeval times.

32. I am afraid, however, that if some such legislation is carried through some day, Government may lose the incentive of setting up such companies or corporations, for, it is obvious that such bodies are set up only to avoid Governmental liability for their acts or the liability to wards their personnel. That, however, is a matter for the political world; the Courts are powerless to legislate and must hold, so long as such legislation does not see the light, that the employees of a Government Company like the Hindus than Ltd., is not an employee of the Government, or, to be more precise, they do not hold 'civil posts under the Union or a State', so as to attract Article 311 of the Constitution.

33. That finding is sufficient to dis charge both the Rules before me.

34. In C. R. 1864 (W) of 1967 there is another ground for failure of the Petitioner in the instant proceeding.

35. The admitted case of the Petitioner is that his service is founded on a written contract which is still subsisting. It is settled since the case of *Satish Chandra v. Union of India*[30], [30] AIR 1953 SC 250 that neither Article 311 (2) nor Article 226 is applicable to enforce a contract of service. Whatever be the grievance of the employee, he must seek his relief under the general law and not under Article 226 - vide *Boolchand v. Kurukshe tra University*[31], at p. 298 in the absence of any

statutory right or liability, even where the contract is with the Government: *Burmah Construction Co. v. State of Orissa*[32],

36. Both the Rules are, accordingly, discharged, but without prejudice to the right, if any, of the Petitioners to pursue other remedies before any other appropriate forum. I make no order as to costs.

37. As prayed for on behalf of the Petitioners, the operation of this Order shall remain stayed for a period of six weeks from this date.

38. (1-7-1968) Mr. Dutt, on behalf of the Petitioner, has made a verbal application for a certificate for leave to appeal to the Supreme Court under Article 132 of the Constitution on the ground that the case involves a substantial question as to the interpretation of Article 298 of the Constitution. Article 298 has, of course, been referred to on behalf of the petitioner in course of the argument and its scope has been dealt with in the judgment of this Court but the real question upon which the petitioner sought relief in this case was two-fold, namely, that Article 311(2) of the Constitution was attracted to the case of his employment but was not complied with and secondly, that there was no termination of his service in terms of the clauses of the service contract.

39. So far as Article 311 (2) of the Constitution is concerned, his contention was that his service under the Hindusthan Steel Limited, which was a Government company within the meaning of Section 617 of the Companies Act, 1956, should be deemed to be a service or a post under the Union of India so as to at tract Article 311(2) of the Constitution. This contention has been negatived by this Court on the primary ground that "the question appears to have already been decided by the Supreme Court in the negative, in various decisions," and the judgment is an elaboration of this pro position. If that be so, the question is no longer substantial.

40. The other ground on which this case has been discharged is that the admitted case of the petitioner is that his service is founded on the written contract which is still subsisting and that, accordingly, neither Article 311 (2) nor 226 was applicable to enforce the contract of service and that whatever might be the grievances of the petitioner, he must seek his relief under the general law and such remedy has been preserved by the judgment. On this alternative ground, therefore, which does not involve a constitutional question, the petitioner is not entitled to any relief.

41. In these circumstances, though the question might be one of public importance with which contention I have agreed in the judgment itself, it cannot be said to come under the terms of Article 132 of the Constitution.

42. The certificate prayed for, cannot, therefore, be granted and is refused.
Certificate for leave to appeal, refused.

[31] AIR 1968 SC 292

[32] AIR 1962 SC 1320