

Court No. - 34

Reserved
A.F.R.

Case :- WRIT - A No. - 15614 of 2023

Petitioner :- Reddy Veerraju Chowdary

Respondent :- Insolvency Professional/Resolution

Professional, C.A. Sai Ramesh Kanuparthi And Another

Counsel for Petitioner :- Adarsh Singh, Indra Raj Singh

Counsel for Respondent :- Rakesh Pathak

Hon'ble J.J. Munir,J.

1. The petitioner, Reddy Veerraju Chowdary, has applied for the issue of a writ of *mandamus* directing the respondents to consider for acceptance his letter of resignation from service and issue him with a no-objection certificate, relieving letter, and, doing a final settlement of his service dues, including arrears of salary and gratuity, within such period of time that this Court may determine.

2. The petitioner is an employee of a private limited company, called the Gayatri Projects Limited. The Company aforesaid is registered under the Companies Act, 1956. Gayatri Projects Limited (for short, 'the Company') was incorporated on 15.09.1989. The Company has its registered office at T.R.S. Tower, B-1 6-3-1090, Raj Bhawan Road, Somajiguda, Hyderabad, Telangana. The Company was incorporated with the object of carrying out construction of Public Roads, State Highways and National Highways, undertaking these projects for Governments, that is to say, the State Governments and the Government of India. The Company would undertake these projects on contracts awarded.

3. Eschewing unnecessary detail, suffice it to say that the petitioner was selected and appointed with the Company on the

post of an Account Assistant for their project site, UP-4, located at Jhansi *vide* letter of appointment dated 02.07.2005. According to the petitioner, he was a sincere and devoted employee. He was promoted to the position of an Associate General Manager (Accounts and Finance) and posted at the Regional Office of the Company, located at Varanasi, since 21.09.2015. The petitioner was associated with the construction of the National Highway-56 and 233 in Varanasi, as an employee of the Company. For whatever reason, the Company became insolvent and an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, 'the Code of 2016'), being CP (IB) No.308/07/HDB/2022 was instituted against the Company before the National Company Law Tribunal, Hyderabad Bench.

4. The Tribunal passed an order dated 15.11.2022, admitting the aforesaid application and directing the initiation of Corporate Insolvency Resolution Process. The Tribunal further ordered the appointment of respondent No.1, Mr. Sai Ramesh Kanuparthi as the Interim Resolution Professional for the Company. He will hereinafter be referred to as the 'Interim Resolution Professional'. The Interim Resolution Professional issued a public announcement, which was published in newspapers under Regulation 6 of the Insolvency and Bankruptcy Code of India, notifying the public that the Company had been ordered by the National Company Law Tribunal for a Corporate Insolvency Resolution Process on 15.11.2022. The creditors were, therefore, called upon to submit their claims with proof on or before 01.12.2022 to the Interim Resolution Professional. The petitioner was continuously paid salary until the month of April, 2023. The petitioner, however, dissatisfied with the conduct of the Senior Vice-President (Projects) of the

Company, submitted his resignation via email 13.05.2023, which was transmitted to the correct email address of the second respondent as well as the Human Resource Manager, Regional Office, Varanasi. The petitioner requested for acceptance of his resignation after the expiry of one month's advance notice.

5. The grievance of the petitioner is that although a month's notice period came to end on 12.06.2023, following which he handed over charge to the concerned Authority on 14.06.2023, the Company failed to issue a relieving certificate, a no-dues certificate, payment of the petitioner's gratuity and arrears of salary for the period May 1st to June 14th, 2023. A number of requests were sent to the Company via different emails to relieve the petitioner, etc.

6. It is the petitioner's case that despite repeated demand, he is faced with inaction on respondents' part, where they have failed to pay heed to his claim for being relieved in furtherance of the resignation and have his dues fully and finally settled. It is in these circumstances that this petition has been instituted.

7. Notice was issued to the respondents and a counter affidavit dated 08.10.2023 has been filed jointly on behalf of the Company and the Interim Resolution Professional. The matter was heard on 10.10.2023 and judgment reserved.

8. Heard Mr. Adarsh Singh, learned Counsel for the petitioner and Mr. Rakesh Pathak, learned Counsel for the respondents.

9. Upon the merits of the matter, the stand taken on behalf of the respondents in brief is that the petitioner has left the Company after sending an email about his resignation without

handing over charge. It is further said that despite repeat request that the petitioner should not leave the Company till completion of the project/ audit, he has deserted post without completing the formalities required under the law before leaving charge of the position of an Assistant General Manager. It is also said that he held charge of all four projects i.e. Varanasi to Jaunpur, Jaunpur to Sultanpur, Varanasi to Lalganj and Lalganj to Azamgarh. Then there are other details about the imperative for the petitioner not to desert post, but with all that we are not much concerned.

10. The further case is that the petitioner is the mainstay of the Company's projects and is stationed at Varanasi, associated with the Company's work since the inception of the project. His assistance is necessary for the Company and the Interim Resolution Professional to complete the project's audit. He has personal and intimate knowledge relating to all financial matters of the Varanasi project. The stand then taken is that the respondents have no intention to withhold the petitioner's salary and other service benefits, but the petitioner has left the Company without completing all necessary formalities. It is said that there are formalities necessary to be observed before the petitioner can leave the Company's harness. A no-dues certificate has to be given to him. Also without handing over responsibilities and settling accounts and finance, that are worth Rs.3500 crores, the petitioner has deserted the project. He has simply followed up the matter by sending out false emails. The Interim Resolution Professional, acting for the Company, has said that the petitioner is deliberately harassing the respondents with his emails about relieving him and paying off of his dues, though for his part he has not completed the Varanasi project's audit and deliberately left station without

completing the necessary formalities.

11. After hearing learned Counsel for the parties, we may notice that a preliminary objection has been raised in the counter affidavit that the second respondent are a private limited company, and, therefore, not State within the meaning of Article 12 of the Constitution. This writ petition is urged to be not maintainable. If we may dare say, the maintainability of a writ petition before the High Court under Article 226 of the Constitution, unlike the Supreme Court, is not dependent upon the 'Article 12 test'. The High Court under Article 226 of the Constitution has jurisdiction to issue writs, orders or directions of the kind mentioned or in their nature, or any one of them to any 'person' or 'authority', including in appropriate cases, 'any Government', to quote the phraseology of Article 226.

12. Thus seen, a writ, order or direction under Article 226 of the Constitution may be issued by this Court even to a private person. The only condition is that the person, which would include a body or association of persons, corporate or otherwise, must be engaged in the discharge of a public function and the breach complained of, in respect of which the relief is sought, must be related to the discharge of that public function. It is true, no doubt, that the second respondent are a public limited company, which by their own constitution, have no presence or control of the Government. They are not a face of the State nor have trappings of it. But, the Company, now in the hands of the Interim Resolution Professional, are engaged in the discharge of the essentially public function of construction of National Highways, State Highways and Public Roads. It is said to be in keeping with the object of the Company, currently in the hands of the Interim Resolution Professional, to execute projects involving construction of four Highways, to wit,

Varanasi to Jaunpur, Jaunpur to Sultanpur, Varanasi to Lalganj and Lalganj to Azamgarh. This appears to be a part of the project entrusted to the Company, presumably by the National Highway Authority for the construction of the National Highway-56 and National Highway-233, as the petitioner says. The details, the Interim Resolution Professional has given about the highway construction projects, may be with some additions to the National or State Highway projects given to the Company. The petitioner is part of the project given to the Company and was headquartered at Varanasi when he resigned. All these projects, according to the petitioner himself, are managed by the Company's office located at Varanasi. A combined reading of the petitioner's case and that put forward by the Interim Resolution Professional shows that for the execution of these National or State Highway projects, the petitioner holds a pivotal position. He has been associated with these projects since inception. He is aware of the accounts and finances of these projects.

13. Now, in these circumstances though the Company may be a private entity, but the functions that it is discharging in the execution of the project, are essentially public functions, to wit, the construction of National or State Highways. Many a time, the State, for limitation of resource, contract out or entrust through statute some of its functions to private bodies, associations or even individuals for the end of fulfillment of the State's duties and functions. So long as a body corporate, essentially private, an association or individuals, are undertaking an enterprise of the State, which is essentially a public function, the said body, about those functions thereof, is amenable to the writ jurisdiction of this Court. Now, if it is a relief at the instance of a party against the body corporate in regard

to the discharge of its public functions, that is, the construction of a National Highway, a writ under Article 226 would be maintainable.

14. Here, the relief that the petitioner seeks is not about Company's public functions as such. It is a matter or a dispute that arises out of the contract of service between the petitioner on one hand and the Company on the other. The Interim Resolution Professional just represents the Company and in no way changes its character or the rights relating to the contract of employment *inter se* the petitioner and the Company. The dispute between the petitioner and the Company about the petitioner resigning and walking away, without handing over charge, arises out of the contract of employment. The Company being essentially a private body and no face or establishment of the State, a breach of the contract of employment, either by the petitioner or the Company, unless it be the breach of some law or a statutory rule, would not entitle the petitioner to maintain a writ petition under Article 226 of the Constitution. In this connection, reference may be made to the decision of the Supreme Court in **Binny Ltd. and another v. V. Sadasivan and others, (2005) 6 SCC 657**. In **Binny Ltd. (supra)**, it has been held by their Lordships:

"9. The superior court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction the High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing a public law function. Before

considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subba Rao, J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in *Dwarkanath v. ITO* [(1965) 3 SCR 536 : AIR 1966 SC 81] (SCR, pp. 540 G-541 A):

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this

Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on *Judicial Review of Administrative Action* (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:

"A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides 'public goods' or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as

these are just as capable of abusing their powers as is Government.”

30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or government authorities at all levels are increasingly employing contractual techniques to achieve their regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably.

31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in *State of U.P. v. Bridge & Roof Co. (India) Ltd.* [(1996) 6 SCC 22] and also in *Kerala SEB v. Kurien E. Kalathil* [(2000) 6 SCC 293]. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not “State” within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts

entered into between the parties.”

15. In view of what we have held and the position of the law discussed hereinabove, it is held that this writ petition is not maintainable. This order will, however, not prevent the petitioner from seeking redress before a competent forum or invoking such remedy, as may be advised.

16. Subject to the above remarks, this writ petition fails and is **dismissed as not maintainable.**

17. There shall be no order as to costs.

Order Date :- 08.4.2024

Anoop

(J.J. Munir, J.)