

## Bihari Lal Chauhan Vs Director of Factories and Another

**Court:** Allahabad High Court

**Date of Decision:** Jan. 7, 2003

**Acts Referred:** Constitution of India, 1950 " Article 226

**Citation:** (2003) 1 UPLBEC 675

**Hon'ble Judges:** Prakash Krishna, J; M. Katju, J

**Bench:** Division Bench

**Advocate:** S.N. Tripathi, for the Appellant;

**Final Decision:** Dismissed

### Judgement

M. Katju, J.

Heard learned Counsel for the petitioner. The petitioner is challenging the Transfer Order dated 19.12.2002.

2. In our opinion this writ petition is liable to be dismissed on two grounds. Firstly, transfer is an exigency of service and the Court cannot ordinarily

interfere with a Transfer Order. Secondly, the writ petition has been filed against a private company i.e., Samtal Color Ltd. Ordinarily no writ lies

against a private body except a writ of habeas corpus.

3. No doubt the language of Article 226 of the Constitution is very wide. Article 226 states :-

226. (1) Notwithstanding, anything in Article 32 every High Court shall have power, throughout the territory in relation to which it exercises

jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs

including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of

the rights covered by Part-III and for any other purposes.

4. A perusal of Article 226(1) shows that it is mentioned therein that the High Court can issue writs to any person for enforcement of fundamental

rights or for any other purpose. If a literal interpretation is given to Article 226(1) it will follow that the scope of Article 226 is very wide, and writs

can be issued to any person i.e., writs can even be issued to private bodies of individuals, and for any purpose whatsoever e.g., for granting

divorces, holdings in criminal trials, etc. However, by judicial interpretation narrower interpretation has been given to Article 226.

5. The correct interpretation of Article 226 is that a writ can be issued to the person to whom, and for the purpose for which writs were

traditionally issued by British Courts on well established principles. No doubt the powers of the Indian High Courts, under Article 226 are wider

than those of the British Courts as held by the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur* and

Another, but, that does not mean that writs can be issued by our High Courts to any person whomsoever, and for any purpose whatsoever. There

are several well established limitations on the powers of Indian High Courts to issue writs which have been laid down by our Supreme Court in

several decisions. For instance it has been held in a series of decisions that no writ can ordinarily be issued against a private body except a writ of

*habeas corpus*, vide *Biran Devi Vs. Sechu Lal and Others*, ; *Workmen of Pepsico India Holdings Limited Vs. Deputy Labour Commissioner*,

*Kanpur* and another, ; *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, ; *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. H.M.*

*Jagtiani*, ; *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], etc.

6. Learned Counsel for the petitioner has placed reliance on a Supreme Court decision in *Andi Mukta Sadguru Shree Muktajee Vandas Swami*

*Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and submitted that a writ can be issued against the respondent-

Company because the service conditions of the petitioner are covered by the U.P. Factories Welfare Officer Rules, 1955, which are statutory

rules made under the Factories Act.

7. We find no merit in the submission of the learned Counsel for the petitioner. Merely because there are statutory rules governing the services of

the petitioner, it does not mean that the respondent-Company is an instrumentality of the State. If the plea of the learned Counsel for the petitioner

is accepted then logically it will have to be held that a writ can be issued against a private factory owner since every factory is governed by

statutory rules, e.g., the Factories Act, Industrial Disputes Act. etc. Such a view cannot be countenanced. It is in very exceptional cases, where a

public duty is imposed upon the person concerned that a writ can be issued to him. No such public duty has been shown to exist in the present

case.

8. Learned Counsel for the petitioner then submitted that the petitioner has no other remedy except to file a writ petition under Article 226 of the

Constitution. In our opinion, assuming that there is no other remedy, yet this does not entitle the High Court to issue a writ in a case, where a writ

petition is not maintainable at all.

9. There is no merit in this petition and it is dismissed.