Panchu Mondal and Others Vs Central Bank of India and Others

C.O. No. 4760 (W) of 1993

Court: Calcutta High Court

Date of Decision: Jan. 31, 2002

Acts Referred:
Constitution of India, 1950 â€" Article 226, 32

Citation: (2002) 2 LLJ 506

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: Kalyan Banerjee, for the Appellant;M.R. Sarbadhikary, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.

Case of the Petitioners:

1. The petitioners are the employees of the canteen of the Central Bank of India. They claimed to be absorbed on the principle as enunciated in the

case of Parimal Chandra Raha v. Life Insurance Corporation of India, reported in AIR 1995 SC 1666 : 1995 (2) SCC 611 Parimal Chandra and

Others Vs. Life Insurance Corporation of India and Others, Drawing inspiration from the decision in Indian Overseas Bank Vs. I.O.B. Staff

Canteen Workers" Union and Another, t is contended that the petitioners are similarly situated with the Canteen Workers involved in the said case,

and as such should be granted the same benefit of absorption. He elaborately submits and points out various materials before this Court, in order

to come to conclusion that the provisions for canteen is a part of the conditions of service and as such the employees are the workmen of the Bank

concerned. He sought to distinguish the decision in the case State Bank of India and Others Vs. State Bank of India Canteen Employees" Union

(Bengal Circle) and Others, .

Case of the Respondents:

2. The learned Counsel for the respondents, on the other hand, points out that there is nothing to show that the petitioners are working in the

canteen from the materials produced along with the writ petition. It is only when it was so pointed out in the opposition, in reply some documents

have been produced. The petitioners'' claim is to be decided on the basis of the writ petition, in view of the reason that the respondents had no

opportunity to controvert the documents disclosed in the reply. He further contends that there is nothing to show that canteen facility was agreed to

be provided for by the Bank and that it was a part of the conditions of service. He has also sought to make a distinction so far as the decision in

Indian Overseas Bank (supra) is concerned, on the ground that Indian Overseas Bank had entered into an agreement for providing canteen

facilities, whereas the present Bank is permitting canteen facilities as part of its welfare activities and as such it was neither statutory obligation nor

implicit or explicit non-statutory obligation to provide canteen facilities. Therefore, the decision in Indian Overseas Bank (supra) would not be

attracted. On the other hand, having regard to the facts and circumstances of this case the decision in State Bank of India (supra) would be

attracted. Even then on the materials on record, it cannot conclusively be decided that the obligation is explicit or implicit non-statutory obligation.

He contends that there is nothing to show that the obligation is a statutory one. As such the question being a disputed question of fact, this Court

cannot decide the same. At best it can be agitated in appropriate proceedings under the Industrial Disputes Act. Therefore, this writ petition should

fail.

Reply by Petitioners:

3. In reply, learned Counsel for the petitioners, contends that the State Bank of India is constituted under a different statute, whereas the Indian

Overseas Bank and Central Bank of India are constituted by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and

as such stands at par, with the present Bank. He had also relied on the decision of a Division Bench of the Gauhati High Court in respect of the

Central Bank wherein this very question has since been referred to the Tribunal and if this Court feels, in that event, it may also do so.

4. 1 have heard the learned Counsel for the respective parties at length.

Status of canteen workers:

5. Though reference has been made to various decisions by the learned Counsel for the petitioners, it is not necessary to go into the question. The

answer to the relevant question may be had from the decision in Management of R.B.I. v. Their Workmen, referred to by the petitioners, since

reported in 2000 III LLJ 1633, where similar question was gone into. In the said decision, it was held that canteen employees were not the

employees of the Bank. However, it had laid down certain principles, on which they can be treated as employees of the Bank. In the said decision,

the decision in Parimal Chandra Raha (supra) was quoted with approval. The Apex Court had held in paragraph 35 of the decision in State Bank

of India (supra), as quoted below:

35. The learned Counsel for (he employees further relied upon the decision in Parimal Chandra and Others Vs. Life Insurance Corporation of

India and Others, and submitted that as held in paragraph 25 of the said decision, it should impliedly be held that Bank was under an obligation to

provide canteen facilities to the employees as part of the service conditions. Relevant para is as under:

What emerges from the statute law and the judicial decisions is as follows:

(i) Where under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his

employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the

management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the

canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide

a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation does not

become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer

either by an agreement or an award, etc., it may be inferred from the circumstances, and the provisions of the canteen may be held to have become

apart of the service conditions of the employees. Whether the provision for canteen service has become a part of the service conditions or not, is a

question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment

and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly part of the service conditions of the employees or not, will depend, among others,

on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether

the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees

employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously

available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing,

maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the

service available etc.

Thus, the said decision in Management of R. B. I. (supra) has followed the case of Parimal Chandra Raha (supra). It appears that the decision in

State Bank of India (supra) was rendered on April 17, 2001 whereas the decision in Indian Overseas Bank (supra) was rendered on April 11,

2000. However, the decision in State Bank of India (supra) has not taken note of the decision in Indian Overseas Bank (supra). Be that as it may,

in Indian Overseas Bank (supra), there was a decision, having regard to the facts and circumstances of the said case, that it was an obligation

implicit that the Indian Overseas Bank was obliged to provide canteen facilities, whereas in State Bank of India (supra), it was held that there was

no explicit or implicit obligation to provide canteen facilities. On the other hand, it was part of the welfare policy to promote welfare of employees.

Both the matters, Indian Overseas Bank (supra) and the Management of R.B.I. (supra) came through Industrial Tribunal, where these questions

were decided by the Tribunal on facts and both the Courts had the facilities of finding of fact with regard to the question, by the Tribunal, which is

absent in the present case.

Crystallization of the law:

6. As discussed above, the law appears to have become crystallized. The question is now dependent on two factors namely, (1) statutory

obligation as under the Factories Act and (2) non-statutory obligation. This non-statutory obligation can be sub-divided in two parts: (i) obligation

to provide canteen and (ii) obligation to provide facilities to run canteen. Out of this sub-division, the obligation to provide facilities to run canteen

does not make the canteen a part of the establishment. But the obligation to provide canteen makes canteen a part of the establishment. This

obligation to provide canteen may also be distinguished in two sub-categories: (a) obligation to provide canteen is explicit; (b) the obligation is

implicit. The explicit obligation could be ascertained where such obligation is accepted by an agreement or an award and in such cases, it may be

held to be a part of the service conditions. Whereas the implicit obligation can be ascertained from the nature of services, the facilities available, the

contribution of the employer to the service in order to increase the efficiency of the employees. The other factors that are material are whether the

service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in

the establishment and the number of employees, who avail of the services, the length of time for which the service was continuously available, the

hours during which it is available, the nature and character of Management and the interest taken by the employer in providing, maintaining,

supervising and controlling the service, the contribution made by the Management in the form of infrastructure and funds for making the service

available etc. Thus, in order to decide this question, the consideration is confined to the guidelines as laid down in Parimal Chandra Raha (supra),

since approved in State Bank of India (supra), as discussed above. Where this obligation is statutory, there cannot be any difficulty so far as this

question is concerned while exercising writ jurisdiction. Such a question can be determined since it would not involve any disputed question of fact.

But, where the obligation is non-statutory, in that event, if it is found that it is only an obligation to provide facilities to run the canteen on the basis

of the materials available, and with regard to which there may not be any scope of doubt or dispute, this Court can determine that the canteen is

not a part of the establishment, and as such it can be decided in exercise of writ jurisdiction, as well, in the negative. Where the question is explicit

by reason of an agreement or an award, the same can also be undertaken by this Court in exercise of writ jurisdiction. Inasmuch as, in such a case

it is only the award or the agreement that will clinch the issue. Where the existence of such award or agreement is proved, the question can be

decided by this Court, but where the canteen facilities has become the part of the service condition is to be inferred from any award or agreement,

which is not so explicit in the award or the agreement, then it becomes a question of fact to be determined on the facts and circumstances of each

case. If the finding is in the affirmative, then it is a part of the establishment and the canteen workers become the employees of the Management.

Similarly, whether canteen facility or service has become implicitly part of the service condition of the employees or not, depends upon the nature

of the service facilities, the contribution of the service to the efficiency of the employees of the establishment. Whether the service is available as a

matter of right to all the employees simply because they are employees without any further qualification, the number of employees employed in the

establishment and the number of employees to whom such service is available, the length of time for which the service is available, the hours during

which it is available, the nature and character of the Management, the interest taken by the employer in providing, maintaining, supervising and

controlling the service, the contribution made by the Management in the form of infrastructure and fund for making service available. These are

pure question of facts, which are to be determined in order to establish an implicit obligation. In exercise of writ jurisdiction, this Court cannot

undertake determination of these factors, which can best be done before a forum competent to determine question of facts and entertain evidence,

if necessary.

The scope of writ jurisdiction: Disputed question of fact:

7. The jurisdiction of the High Court while exercising writ jurisdiction does not permit it to determine disputed question of fact and/or take evidence

with regard thereto. The Court is supposed to avoid determination of such facts. The jurisdiction under Article 226 is a discretionary jurisdiction;

normally the jurisdiction exercised under Article 226 is in the nature of summary proceeding, it does not require detailed examination of evidence (

D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, ; Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu

Religious Trusts and Others, , as may be had in a Suit Union of India (UOI) Vs. Ghaus Mohammad, Bokaro and Ramgur Ltd. Vs. The State of

Bihar and Another, ; Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others, ; Smt. Gunwant Kaur and

Others Vs. Municipal Committee, Bhatinda and Others, ; Indu Bhushan v. State of U.P., (1979) U.J.S.C. 620 (para 25)). The object of Article

226 is the enforcement and not the establishment of right (Sohanlal Vs. The Union of India (UOI), or title Thakur Amar Singhji Vs. State of

Rajasthan, , New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, . This principle is also extended even to mixed

question of facts and law (In the Matter of Madhu Limaye and Others, ; The Delhi Development Authority, New Delhi Vs. Lila D. Bhagat and

Others, . A disputed question of fact is not investigated in a proceeding under Article 226. This is, however, a rule of discretion and of exclusion of

jurisdiction. Hence the Court is not, in a proceeding under Article 226, incompetent to decide an issue of fact, which can be determined from the

materials on record (Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, .

Hence, the Court cannot dismiss in limine a petition under Article 226, merely observing that it raises a question of fact, without determining

whether the question can be decided on the materials on the record, whether the Petitioner has an efficacious alternative remedy and whether the

case is otherwise fit for exercise of the writ jurisdiction, (Om Prakash v. State of Haryana (1970) U.J.S.C. 481; Jagdish v. State of U.P. AIR

1971 SC 1224 e.g., that it raises important constitutional questions (Mohammed Hanif Vs. The State of Assam,). It follows that the Court should

not reject a petition under Article 226 on the ground that it raises a question of disputed facts, where the question can be determined from the

materials on the record (Chaudhury v. Secy., Govt. of Bihar (1979) U.J.S.C. 926 (para. 3). However, the question may be different, where it

involves infringement of Fundamental Rights. As has been stated earlier under Article 32, the Supreme Court has held (Kavalappara Kottarathil

Kochunni Moopil Nayar Vs. The State of Madras and Others, ; Kharak Singh Vs. The State of U.P. and Others, ; Tata Iron and Steel Co.,

Limited, Bombay Vs. S.R. Sarkar and Others,) that where the breach of a fundamental right has been prima facie established, the Court would

not be justified to reject the petition on the simple ground that it involves a determination of disputed questions of fact, because it is the duty of the

Supreme Court to enforce fundamental rights. There is no reason why the above principle should not be applicable to a petition under Article 226

(Hanif v. State of Assam (supra); Kochunni v. State of Madras (supra); Kharak Singh Vs. The State of U.P. and Others, ; Tata Iron & Steel Co.

v. Sarkar (supra); The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, ; Devilal Modi, Proprietor, M/s. Daluram

Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, ; Kerala Education Bill, In re., AIR 1958 SC 956; Shivram Poddar Vs. Income Tax

Officer, Central Circle II, Calcutta, and Another, where it has been brought for the enforcement of a fundamental right, for the duty of the High

Court to protect the fundamental rights cannot, in any way, be less than that of the Supreme Court. But the Supreme Court has held in some cases

that even where the infringement of a fundamental right is alleged, the High Court would be justified in dismissing an application under Article 226

in limine where the determination of the constitutional question dependent upon the investigation of complicated questions of fact, on taking

evidence (D.L.F. Housing v. Delhi Municipality, (supra); Arya Vyasa Sabha and Others Vs. The Commissioner of Hindu Charitable and Religious

Institutions and Endowments, Hyderabad and Others,). Of course, the earlier doctrine (Kochunni v. State of Madras, (supra) Kharak Singh v.

State of U.P., (supra) Tata Iron & Steel Co. v. Sarkar, (supra) that where fundamental rights are affected, it is the duty of the Supreme Court to

interfere has been seriously weakened by later decisions, which have applied the doctrines of laches even to applications under Article 32

Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, ;

D. Cawasji and Co. and Others Vs. State of Mysore and Another, ; Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and

Others, . Nevertheless, a distinction must be made between considerations like laches or acquiescence which disentitle a litigant by his own

conduct, and the problem of investigating facts which is founded on the Court''s reluctance, which should not be allowed to be made into a rule of

thumb to dismiss a petition under Article 32 or 226, even where there is a prima facie invasion of a fundamental right. To do so would, as HEGDE,

J., in his dissenting judgment in Tilokchand''s case (supra)) observed, ""pull down from the high pedestal now occupied by the fundamental rights to

the level of other civil rights "", thus ""downgrading the fundamental rights Guaranteed under the Constitution"" (Tilokchand v. Munshi, (supra);

Rabindra v. Union of India, (supra); Cawasji v. State of Mysore, (supra) Amrit Lal v. Collector, (supra).

Conclusion:

8. In the present case, though an attempt has been made on the part of the petitioners to show that there was an explicit and implicit obligation to

provide canteen facilities, but from the materials on record, it does not appear so. It might be a part of welfare policy to promote canteen facilities.

But from the materials on record, it does not appear that there is any control exercised over the recruitment or employment or in the conditions of

service of these workmen, by the Bank. This question cannot be gone into having regard to the materials produced before this Court as to whether

there is an implicit or explicit non-statutory obligation on the part of the Bank to provide canteen facilities. This can be decided by the Tribunal in

appropriate case.

Order:

9. As it appears before this Court from the materials on record that it is not possible for this Court to decide such question, therefore, I am not

inclined to grant any relief as prayed for.

10. This writ petition, therefore, fails and is accordingly dismissed.

11. However, this order will not prevent the workmen to seek their appropriate remedy under the Industrial Disputes Act, if they are so advised.

However, all points are kept open.

12. Xerox plain copy of this order duly counter signed by the Assistant Registrar (Court) be given to the learned Counsel for the parties on the

usual undertaking.