

(1982) 02 CAL CK 0027

Calcutta High Court

Case No: None

Central Inland Water Transport
Corporation Ltd.

APPELLANT

Vs

Prabirendu Sen and Others

RESPONDENT

Date of Decision: Feb. 19, 1982**Acts Referred:**

- COMPANIES ACT, 1956 - Section 14, 252, 27, 33
- Constitution of India, 1950 - Article 12, 19, 226, 309, 32

Citation: (1982) 1 CALLT 8 : 86 CWN 609 : (1983) 1 LLJ 374**Hon'ble Judges:** P.K. Banerjee, J; B.N. Maitra, J**Bench:** Division Bench

Judgement

P.K. Banerjee, J.

The petitioner in April 1979 was holding the post of Joint Financial Adviser and Chief Accounts Officer of the Central Inland Water Transport Corporation Limited, a Government of India Undertaking. From 25th September, 1978 the petitioner was deputed to look after the current duties of Financial Adviser and Chief Accounts Officer in addition to his own duties as Joint Financial Adviser and Chief Accounts Officer and he was also looking after the jobs of Project Manager with effect from 13th September, 1978. While the petitioner was posted in Raja Dock Yard, the petitioner on 26th February, 1976 received a note from the General Manager, Raja Bagan Dock Yard, in connection with cleaning of different types of Boilers, Bunkers, Oil Tanks, Loading and Unloading of Coal and Oil to and from vessels at Raja Bagan Dock Yard and T.T. shed and Contract No. E.1/ Gm/T-M/105 dated 7th January, 1974 thereof with M/s. Azmat Ali. By the said note the petitioner was directed to arrange for the fresh tender in respect of the said job. Be that as it may, it is stated that the petitioner-respondent was charge-sheeted by letter dated 21st April, 1979. The charge-sheet is to be found in Annexure "C" to the petition at pages 67 to 72. From the charge-sheet it appears that the petitioner was charge-sheeted on many

grounds. The petitioner replied to the charge-sheet and asked for some papers which were relied upon by the Disciplinary Authority. Thereafter an enquiry was held. The petitioner was found guilty of the charges and by letter dated 25th October, 1979 the petitioner was dismissed from the service. An appeal was taken and the appeal was dismissed. Hence the petitioner moved this Court and obtained the present rule which was made absolute by the Hon"ble single Judge. Hence the appeal by the Central Water Transport Corporation Limited.

2. Mr. S.C. Bose on behalf of the appellant contended that the Writ in the matter between the master and servant does not lie and secondly the appellant is not State within the meaning of Article 12 of the Constitution of India and there is no violation of the principle of natural justice in the proceeding. It is further argued by Mr. Bose that in matter between the master and servant the only remedy of the petitioner is by way of damages and not by way of application.

3. On behalf of the respondent Mr. Saktinath Mukherjee argued that the appellant is a State within the meaning of Article 12 of the Constitution of India. In view of the different judgments, if it is State and as there is no statutory regulation, at least the principle of natural justice applies and if there is violation of principle of natural justice, the petitioner is entitled to the relief under Article 226 of the Constitution of India.

4. The question for our consideration in this case is whether the appellant is the State or any other authority under Article 12 of the Constitution of India. In the case reported in (S.T. Corporation of India v. Commercial Tax Officer AIR 1963 SC 1811, it has been held by the majority that the State Trading Corporation, a company registered under the Indian Companies Act, 1956 is not a citizen within the meaning of Article 19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to citizens under the said article. In a case reported in [The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others](#), it has been held by the Supreme Court that the Tools Corporation is a company incorporated under the Indian Companies Act. At the material time the Union Government and the Government of Andhra Pradesh between them held 56 per cent and 32 per cent of its shares respectively and the balance of 12 per cent shares were held by private individuals. Being the largest shareholder, the Union Government had the power to nominate the company's Directors. Even so, being registered under the Companies Act and governed by the provisions of that Act, the company is a separate legal entity and cannot be said to be either a Government corporation or an industry run by or under the authority of the Union Government. In the said case the respondent No. 1 and 40 other workmen filed a writ petition under Article 226 in the High Court of Andhra Pradesh challenging the validity of the agreement impleading therein the company the said union and the Regional Assistant Commissioner as respondent. The petitioner prayed for a writ of mandamus or an order in the nature of mandamus or any other order or direction restraining the respondents to

implement or enforce the said agreement. In para 9, the Supreme Court held that once the writ petition was held to be misconceived on the ground that it could not lie against a company, which was neither a statutory company nor one having public duties or responsibilities imposed on it by a statute, no relief by way of a declaration as to invalidity of an impugned agreement between it and its employees could be granted. The appeal by the Praga Tools Corporation was allowed and the writ application was dismissed.

5. The case reported in [Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis](#), is a case where an Tellis) [Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis](#), is a case where an employee was dismissed by the municipality without giving any reasonable opportunity of defending herself against the charge. Their Lordships of the Supreme Court held in paras 15, 16 and 17 as follows:

15. The cases of dismissal of servants fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

In para 18, it has been held that the termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity, however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authority or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statutes. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies. It has been held finally that the Municipality is a statutory body. The dismissal was violation of

statutory rules and therefore it has been held that the dismissal was ultra vires.

6. In the case reported in [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation](#), was a case in which Sukdev Singh and other employees of Oil and Natural Gas Commission challenged the order made by the Commission. Their Lordships considered the matter and held, inter alia, that the Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a company. The commission has the exclusive privilege of extracting petroleum. The management is by the Government and it can be dissolved only by the Government. In para 33 their Lordships held that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

7. In a case reported in [Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee](#), it was held by the Supreme Court that the U.P. State Warehousing Corporation is constituted under the Madhya Pradesh State Warehousing Corporation Act which was subsequently replaced by the M.P. Act 58 of 1962. It is a statutory body wholly controlled and managed by the Government. The Corporation is therefore "authority" within the meaning of Article 12 of the Constitution. It was further held that, even if, at the time of the dismissal of respondent-employee of U.P. State Warehousing Corporation, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the statutory body, the employer could not terminate the service of its employee without due enquiry in accordance with the statutory Regulations, if any, in force, or in the absence of such regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. That is to observe the rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show-cause notice for the proposed punishment.

8. The case reported in (Som Prakash v. Union of India) : (1981)ILLJ79SC , was case of an employee for pensionary benefit of Bharat Petroleum Corporation Limited. Their Lordships in Paras 37 and 38 of the said judgment held as follows:

38. The conclusion is impeccable that if the corporate body is but an "instrumentality or agency" of Government, then Part III will trammel its operations. It is a case of quasi governmental beings, not of non-State entities. We have no hesitation to hold that where the chemistry of the corporate body answers the test

of "State" above outlined it comes within the definition in Article 12. In our constitutional scheme where the commanding heights belong to the public sector of the national economy, to grant absolutism to government companies and their ilk from Part III may be perilous. The court cannot connive at a process which eventually makes fundamental rights as rare as "roses in December, ice in June", as Lord Byron lamented in English Bards and Scottish Reviewers. Article 12 uses the expression "other authorities" and its connotation has to be clarified. On this facet also the [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), supplies a solution:

If a statutory corporation, body or other authority is an instrumentality or agency of the Government, it would be an "authority" and therefore, "State" within the meaning of that expression in Article 12.

39. The decisions are not uniform as to whether being an instrumentality or agency of Government ipso jure renders the company or other similar body "State". This again involves a navigation through precedents and Bhagwati, J. in Airport Authority (supra) has spoken for the court, after referring to [Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others](#), [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation](#), [The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others](#), [Heavy Engineering Mazdoor Union Vs. State of Bihar and Others](#), [Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.](#), :

We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the corporation is an instrumentality of the government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action. [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#),).

9. In the case reported in [1981-I L.L.J. 103] (Ajay Hasia v. Khalid Mujib) the Supreme Court held, inter alia, that where a Corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence, subject to the same basic obligation to obey the Fundamental Rights as the government. It has been further held that it is immaterial for determining whether a Corporation is an authority whether the Corporation is created by a statute or under a statute. The test is, whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be, not as to how the juristic person is born, but why it has been brought into existence. The

Corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act or it may be a society registered under the Societies Registration Act or any other similar statute. Whatever be its genetically origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12. A juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. In that case the Supreme Court was pleased to hold that the Regional Engineering College, Srinagar is one of the fifteen Engineering Colleges in the country sponsored by the Government of India. The College was established and its administration and management are carried on by a Society registered under the Jammu and Kashmire Registration of Societies Act, 1898. Having regard to the Memorandum of Association and the Rules of the Society, it was held that the Society is an instrumentality or the agency of the State and the Central Government and it is an "authority" within the meaning of Article 12.

10. On consideration of the case hereinafter stated, it can be said for the present moment that, it is not required that the authority to be "State" should be created by a statute or under a statute. Juristic personality coming into existence by registration of the Companies Act and Societies Registration Act, Government company or any other organisation so registered can be agency or instrumentality of the Government if the relevant fact on being considered it is found that they are agency or instrumentality of the Government.

11. In the present case, we are concerned whether Central Inland Water Transport Corporation Limited is an agency or instrumentality of the Government. It appears that all the shares of the company are held by the President of India, Deputy Secretary to the Government of India, Ministry of Transport & Aviation, New Delhi, Managing Director, Rivers Steam Navigation Co, Ltd., Joint Director, Ministry of Transport & Aviation, and Under Secretary to the Government of India, Ministry of Transport & Aviation. It is found that the powers of the Directors are reserved for the consideration of the President in respect of any proposal to borrow at a time exceeding Rs. 15 lakhs, any proposal to borrow at a rate of interest exceeding the Reserve Bank rate by more than 1 per cent per annum, if the Managing Director considers that such a rate of interest is unduly high. Any proposal for investment in a particular type of security or shares, if such investment exceeds Rs. 10 lakhs. Issue of Debentures. Acquisition, construction or sale of vessels involving an amount exceeding Rs. 10 lakhs. Voluntary winding up of the company. Any important matter

relating to the company's establishment. Any other matter which in his opinion involves an important issue of general policy. No action shall be taken by the company in respect of any matter reserved for the consideration of the President as aforesaid until his approval to the same has been obtained. In a matter of appointment of persons who have already attained the age of 58 years whether they are from public or private sector to posts carrying the pay scale of Rs. 2500-3000 and above the prior approval of the President of India should be required. Appointment of any foreign national except foreign technical personnel to any post in the company and disposal of any property having an original book value of Rs. 10 lakhs etc. etc. the prior approval of the President of India should also be obtained. It has been further provided u/s 14(a) that subject to the provisions of Section 252 of the Companies Act, 1956, the President shall, from time to time, determine in writing the number of Directors of the Company which, however, shall not be less than two and more than twelve. Likewise u/s 27(a) the President, so long as he is a shareholder of the company, may from time to time, appoint one or more persons (who need not be a member or members of the company) to represent him at all or any meetings of the company.

12. From all these provisions, it is quite clear, that the company actually is being carried on by the President and the Officers of the Government are the authority and the members of the Board of Directors. The President of India has control over the function and financial dealings by the Company and, therefore, in our opinion, the Company is an agency or instrumentality of the Central Government and therefore is an authority and therefore "State" within the meaning of Article 12 of the Constitution.

13. Mr. Bose appearing for the appellant, however, contended that no Writ lies against such company and no Writ can go as against such Corporation. In a case between the company and the employee, application under Article 226 of the Constitution is not the proper remedy. Mr. Bose relied upon the case report in [Fertilizer Corporation Kamgar Union \(Regd.\), Sindri and Others Vs. Union of India \(UOI\) and Others](#), in particular para 38, where the Supreme Court held "that lest there should be misapprehension, we wish to keep the distinction clear between the fundamental right to enforce fundamental rights and the interest sufficient to claim relief under Article 226 and even under other jurisdictions". The learned Attorney General almost agreed, under pressure of compelling trends in the contemporary law of procedure, that Article 226 may probably enable the petitioner to seek relief if the facts suggested by the court hypothetically existed. Shri A.K. Sen also took up a similar position. I will put aside Article 32 for a moment and scan the right under Article 226. There is nothing in the provision (unlike under Article 32) to define "person aggrieved", "standing" or "interest" that gives access to the Court to seek redress.

14. Mr. Bose also relied upon the case reported in (*Sirsi Municipality v. C.K.V. Tellis*) (*supra*). It has been held by the Supreme Court that the dismissal by the Municipality is in violation of Rule 143 and the dismissal order is ultra vires,

15. In a case reported in [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation](#), the Supreme Court held at para 33 that an ordinary individual in a case of master and servant contractual relationship can enforce breach of contractual terms. The remedy in such contractual relationship of master and servant is damages, because personal service is not capable of enforcement. In case of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies.

16. In the case of statutory bodies, it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe statutory regulation by statutory bodies is enforced by Courts by declaring dismissal in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

17. It is argued by Mr. Bose, therefore, that even though the appellant is the State within the meaning of Article 12, Article 309 is not applicable and, therefore, the application filed by the petitioner should have been discharged. In our opinion, however, though the appellant is an authority and therefore a State within the meaning of Article 12, still in a matter of master and servant, the rule of natural justice must be followed.

18. In our opinion, in the present case, the rules of natural justice have not been followed, firstly on the ground that the Hon"ble Single Judge held that the Appellate authority itself and the Disciplinary Authority were the same. The Disciplinary Authority was one who sat to hear out the appeal of the respondent.

19. It appears that there are number of documents which were relied upon by the Enquiry Officers, (but) were not supplied to the respondent, namely, the preliminary report on which the charge was framed was not given to him. The deposition of Mr. Bhowmick was also not given to him so that when Mr. Bhowmick came to depose the delinquent could not effectively cross-examine him on his previous statement. It will further appear that the charge-sheet is vague because in the charge-sheet there are mention of "various irregularities" which have not been enumerated in the statement of allegation accompanying the charge but even then the petitioner was found guilty of the charge levelled against him. The Enquiry Officer held "not guilty" to the allegation, namely, the allegation that "it is not possible for two contractors to

work on the same Boiler at the same time for works relating to the fire side and another on the water side". It is also held that there is no scope for division of work but still the petitioner was found guilty of the charges because he has not put up the matter to the Gm/Fa/CMD. It is curious to know how the financial loss of Rs. 61,028.47 can be fastened on the petitioner respondent because he has given note to give contract to one contractor not two such contractors as it is not possible to carry out the work in one boiler by two contractors at the same time. Moreover, M/s. M.M. Mondal & Co.'s Proprietor Sri S.P. Roy were not called as witnesses though in the list of witnesses Mr. Roy's name appeared. It appears to us that this is the case of violation of the principles of natural justice which must go to the benefit of the respondent and his order of dismissal cannot be sustained.

20. We have made it clear that we have not decided whether Article 309 of the Constitution of India is applicable. In a case where the respondent is an authority therefore "State" within the meaning of Article 12 of the Constitution, we are of the opinion, that in a matter of dispute between the Company and its Officers it must follow the rules of natural justice and must act fairly and justly. It appears to us that the regulation has been framed being Central Inland Water Transport Corporation Ltd. Conduct Rules, 1970 in Rule 1. In Section 33 onwards provisions have been made for the procedure to be followed in the matter of punishment of its Officers. It appears to us that though this may not be statutory it is provided for the Officers concerned to give evidence in reply to the show cause notice and in reply to the charge-sheet and the rule embodies all the principles of natural justice.

21. We are, therefore, of the opinion, that for the grounds stated hereinbefore the appeal must stand dismissed without any order as to costs.

22. The operation of the order will remain stayed for a period of four weeks from today.

B.N. Maitra, J.

23. I agree.