

(1986) 01 BOM CK 0057

Bombay High Court

Case No: Appeal No. 584/85

Roche Anglo-french Employees"
Union, Bombay

APPELLANT

Vs

Conciliation Officer, Industrial
Disputes Act and another

RESPONDENT

Date of Decision: Jan. 13, 1986

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33, 33(2), 9A

Citation: (1985) 51 FLR 244 : (1987) 2 LLJ 169 : (1986) MhLj 308

Hon'ble Judges: Sujata V. Manohar, J; P.S. Shah, J

Bench: Division Bench

Judgement

Shah, J.

The short question that arises in this appeal is whether a writ of mandamus can be issued against the respondent - company in enforcement of its obligation under the provisions of Section 33 of the Industrial Disputes Act, 1947. The facts which are indeed not in dispute and in so far as they are material are these. The appellant, M/s. Roche Anglo-French Employees" Union is a trade union registered under the Trade Unions Act, 1926. The union represents the employees of respondent No. 2-company, M/s. Roche Anglo-French Drug Co. (Eastern) Ltd. which is a public limited company incorporated under the Indian Companies Act. Respondent No. 2 company is engaged in the manufacture of pharmaceutical and fine chemical products. It has a factory at Bangalore and its registered office and distribution office including stores is situate at Parel, Bombay. Its marketing and materials management division is at Worli, Bombay. The company had employed about 66 workmen in its Parel establishment and about 30 workmen in its Worli establishment. On December 10, 1984, the company displayed a notice intending to close down its entire establishment at Bombay and transferring all the workmen to Bangalore. The Union protested against the proposed action alleging that it is not

bona fide and the threat to transfer all the workmen was with sole intention of intimidating the workmen and the union to surrender their legitimate demands. The Union addressed a demand notice dated February 4, 1985, calling upon the company to withdraw the notice of transfer and also the individual letters addressed by it to the workmen from December 1984 calling upon them to accept the transfer under threat of action. The Union approached the Commissioner of Labour. However, as the company was not inclined to withdraw the notice, a notice of strike was served by the Union on the company commencing a legal strike from January 22, 1985, which was ultimately withdrawn on May 10, 1985. In the meantime by a letter dated February 7, 1985, addressed by the Union to the Commissioner of Labour (Conciliation) requesting him to intervene and admit the Union's demand under the provisions of the Industrial Disputes Act.

While the conciliation proceedings were pending, by their letter dated March 6, 1985, the Union requested the Conciliation Officer to admit additional demands. The Conciliation proceedings are pending. The additional demand was made because the Union complained that the company was threatening to discharge or dismiss the employees or close down the Bombay establishment. While the proceedings in the conciliation in respect of the aforesaid demands were pending before the Conciliation Officer, the company issued a notice of closure dated April 4, 1985. The petitioners, therefore, filed a petition in this Court under Article 226 of the Constitution for a writ of mandamus direction the company to withdraw and/or cancel the notice of closure dated April 4, 1985, and also forbear and desist from taking any steps and/or proceedings towards the implementation and/or advancement and/or the application of the said notice of closure.

2. At the hearing of the petition before the learned Single Judge a preliminary objection as to the maintainability of the petition was raised on behalf of the company. It was contended that a writ of mandamus under Article 226 of the Constitution cannot be issued against the company incorporated under the Indian Companies Act. The objection was upheld by the learned Single Judge, with the result that the petition was dismissed as not maintainable.

3. Aggrieved by the aforesaid decision, the Union has preferred this appeal.

4. It was urged by Mr. Nariman, learned counsel, appearing for the Union, that Section 33(2) of the Act imposes statutory duties and obligations on the employer and a writ of mandamus can be issued in appropriate case for statutory as well as public duties under a statute. He submitted that the object of the Industrial Disputes Act is to determine the rights and obligations between the employer and the workmen and the provisions affect a large number of workmen and as such the obligations and duties cast on the employer under the provisions of the Act must be treated as public duties and therefore, there is no reason why merely because the company is not a statutory Corporation a writ of mandamus cannot be issued against them. It was further submitted that Industrial adjudication is a distinct

branch of the jurisprudence which is developing in recent times and the provisions are intended by and large to benefit the public and also to maintain industrial peace and harmony. It was, therefore, submitted that even if strictly the duties imposed u/s 33(2) may not be said to be having a public character or imposing a public duty on the employer, it has close resemblance to the enforcement of duties of a public nature.

5. Now, it is well settled that where the applicant seeks to enforce the performance of duty of public character, a writ of mandamus can be issued. It is equally well settled that normally a writ of mandamus cannot be issued against a private person, though in proper cases where the performance of duties of a public nature is involved, such a writ can be issued even against a private individual. It is also equally well settled that writ of mandamus can be issued against public officials and public bodies failing to perform any public duty with which they have been charged. In the present case the writ is admittedly not sought against the respondent No. 1 who is the Conciliation Officer before whom the conciliation proceedings are pending. It is sought against the company which is a private body incorporated under the provisions of the Indian Companies Act. Section 33(2) undoubtedly makes a statutory provision imposing an obligation on the employer with regard to the matters mentioned in the provisions as regards the conditions of service or employment of different employees. Merely because the statute provides for certain service conditions which are binding on the employer notwithstanding the conditions of service which may be agreed upon between the employer and employees and merely because the provisions relate to a dispute which is common to the several employees of the company, it is difficult to accept the contention that they involved performance of duties of a public nature. The provision is obviously in the nature of regulating the terms of employment of the employees who have raised the dispute which is pending before the Conciliation Officer. In other words, the rights involved are of a private nature and cannot be given the status of public duty imposed on the employer. In our view, the question raised before us is well settled by the decisions of this Court as well as of the Supreme Court. As early as in the year 1957, [Sohanlal Vs. The Union of India \(UOI\)](#), held that normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing specified in the order, which appertains to his office and is in the nature of a public duty.

6. Again in the case of [The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others](#), the Supreme Court held that it is well understood that a mandamus under Article 226 lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to person,

corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of public duty. The Supreme Court also observed that it is not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. In the case of Praga Tools Corporation, the Praga Tools Corporation was a company incorporated under the Companies Act. There were rival workmen's unions in the company. The settlement arrived at between the company and one of the unions was not acceptable to the rival union and a writ petition was filed by the rival union in the High Court for the writ of mandamus under Article 226 of the Constitution. Andhra Pradesh High Court had dismissed the petition as not maintainable. The Supreme Court affirmed the said decision holding that the company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty.

7. The aforesaid decisions of the Supreme court have been followed by a Division Bench of this Court in the case of Scindia Steamship Navigation Co. Ltd. v. Scindia Employees' Union 1983 LIC 759.

8. A reference may also be made to a decision of the Delhi High Court in [National Seeds Corporation Employee's Union and Another Vs. National Seeds Corporation, New Delhi](#). In that case the trade union had filed a petition under Article 226 of the Constitution for the issue of a writ of mandamus against the Corporation directing it to restore the enhanced house rent allowance which the employees were getting, on the allegation that the orders passed by the Corporation were in violation of the provisions of Section 9A of the Industrial Disputes Act. The court held that the alleged non-compliance of the provisions of Section 9A of the Industrial Disputes Act cannot entitle the petitioners to claim that a mandamus be issued against the Corporation to comply with the said provisions because there is no statutory obligation on a private employer like a company incorporated under the Companies Act to follow Section 9A in the manner in which there would be statutory obligation on a company to comply with the provisions of the statute which brings it into existence.

9. Reliance was, however, placed by Mr. Nariman on two decisions : one of the Calcutta High Court and the other Andhra Pradesh High Court. It appears that the learned Single Judge of the Calcutta High Court held in the case of [Abani Bhusan Biswas Vs. Hindusthan Cables Ltd., Burdwan and Others](#), that the Standing Orders after they are duly certified have the force of law like any other statutory instrument, provided they are intra-vires. Reliance was particularly placed on the following observation in the judgment by Mr. Nariman :

"But even though I hold that the certified standing Orders have the force of law and also that there is authority for the proposition that even a private party or a company may be compelled by mandamus to perform the duties imposed upon it by statute, nevertheless, I hold that relief under Article 226 of the Constitution should be refused to the petitioner on the ground that the Industrial Employment (Standing Orders) Act has been held to be a self contained Code and that itself provides for an adequate remedy for a situation as that raised before me."

It is difficult to see how this passage helps Mr. Nariman. These observations clearly show that the question did not really arise in that case, since the petition was disposed of merely on the ground that the petitioner had other alternative adequate remedy.

10. In [T. Gattaiah and Others Vs. Commissioner of Labour and Another](#), a learned Single Judge of the Andhra Pradesh High Court held that a writ of mandamus can be issued against a private management for the enforcement of its statutory duties under Chapter V of the Industrial Disputes Act. After referring to the decision of the Supreme court in Praga Tool Corporation (supra) the learned Judge held that Chapter V-B of the Industrial Disputes Act imposes a public duty on the company not to retrench the employees except in accordance with the conditions laid down by the Act. It appears that the learned Judge was of the view that the limitation on the powers of the employer imposed by the provisions of the Industrial Disputes Act being not merely on the interests of individual workman but in the general interest of industrial peace, a writ of mandamus could be issued. With respect, it is not possible to agree with the view taken by the learned Judge. Merely because the enactment prescribes certain statutory restrictions in the matter of retrenchment of workmen it would not follow that thereby a public duty is cast upon the employer. Such provisions merely regulate the relationship between the employer and the workmen and put limitations on the exercise of the right of the employer. Such statutory provisions cannot be likened with public duties, performance of which can be directed issuing a writ of mandamus. It is not possible to agree with the view expressed by the Andhra Pradesh High Court, which, in our view, runs counter to the law laid down by the Supreme Court in the above mentioned decisions.

11. Mr. Nariman, however, submitted that the view taken by the Andhra Pradesh High Court has been affirmed by the Division Bench of this Court in Scindia Steam Navigation Co. Ltd., v. Scindia Employees' Union (supra) He particularly relied on the observations in para-31 of the judgment where a reference is made to the decision of the Andhra Pradesh High Court in T. Gattaiah's case (supra). While referring to the said case, the Division Bench observed -

"The question in that case was whether a writ of mandamus will issue against a private management for the enforcement of its statutory duties under Chapter V of the Industrial Disputes Act and a learned single Judge of the Andhra Pradesh High Court held that in appropriate case, a writ of mandamus under Article 226 of the

Constitution could issue even against a private person and the petition in that case would be maintainable against the management for the enforcement of its statutory duties under Chapter V of the Industrial Disputes Act. This decision does not lay down any new principle but only gives effect to the established principle that if there is any statutory duty case upon an individual, that will be enforced under Article 226."

We do not see how the approval of the general observations of the Andhra Pradesh High Court by the division Bench of this Court can assist the petitioner in this case. The Division Bench merely approved of the general principles in the matter of issuing a writ of mandamus and not its application to the facts of a particular case. In our view, Section 33(2) of the Industrial Disputes Act does not involve the performance of any duties of a public nature. They merely regulate the conditions of employment and the procedure to be followed in the circumstances mentioned in the provisions. As a matter of fact, it is significant that the Division Bench in that case held that right for bonus under settlement cannot be enforced by a writ of mandamus, although the settlement had a statutory force. The other decision of the Andhra Pradesh High Court in *M/s. I. D. L. Chemical Karmika Sangam v. State of Andhra Pradesh*, 1985 LIC 1273, merely follows the earlier decision in *T. Gattaiah's* case. We are unable to agree with the view taken by the Andhra Pradesh High Court.

12. The learned single Judge in this case, therefore, was right in taking the view that the company had no public duty and mere non-observance of the provisions of Section 33(2) of the Act would not entitle the High Court to issue a writ of mandamus. In the result, the appeal fails and is dismissed. In the circumstances of the case there shall be no order as to costs.

Mr. S. P. Dalal today appearing for the appellant orally applies for a certificate under Article 133(1)(a) of the Constitution. Since we have applied the well settled principles as laid down by the Supreme Court, leave applied for is refused.