

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) No. 9278/2009**

% Judgment delivered on: 26.05.2009

Indian Oil (MD) Employees SC/ST Welfare
Association NR

..... Petitioner

Through: Mr Abhay Mani Tripathi, Advocate for petitioner.

versus

Indian Oil Corporation and Ors.

..... Respondents

Through: Mr. Munindra Drivedi, Advocate for R-1 and R-2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1. By way of this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to respondent Nos. 1 and 2 to ask respondent No.3 to join his place of posting. The petitioner also seeks directions to R-1 and R-2 to recover all the

monetary benefits drawn by respondent No.3 for the period he did not render any work. Direction is also sought against respondent No.3 for recovery of money used for payment of rent of the car used unauthorisedly by him from the welfare fund.

2. Brief facts relevant for deciding the present petition are as under:-

3. The respondent No.3 is working as Operation Officer Grade-II with respondent No.2 and his present place of posting is at Shakurbasti, New Delhi since 16.11.1987. In the year 2001 he got elected as General Secretary of the Petroleum Workers Union having its office at 1st Floor, Indian Oil Bhawan, Yusuf Sarai, New Delhi. Since the time of his election he is regularly sitting at the Yusuf Sarai Office though his place of posting is at Shakurbasti Terminal at Shakurbasti in other words he is drawing all the benefits including monthly pay without doing any working at his place of posting. Not only this, respondent No.1 Corporation has provided a car bearing No. DL-3AP-4973 for his to and fro journey from office to home despite the fact that he is not entitled for the same and the monthly fare which comes to Rs.25,000/- per month is being reimbursed from the Welfare Fund of the employees. It is further impressed upon that the place of

posting of respondent No.3 is at Shakurbasti Terminal at Shakurbasti but he remains sitting throughout day at Yusuf Sarai and is withdrawing salary without doing any work. To enquire about all these anomalies a notice under Right to Information Act dated 2.7.2008 was sent and reply thereto dated 30.7.2008 was received from respondent No.1 declining to disclose any information. The petitioner is having grievance against the respondent No.2 as he is not raising any objection and asking the respondent No.3 to join office at his actual place of posting. The petitioner has claimed that the inaction of respondent Nos. 1 and 2 is causing discontent and unrest among other employees. Aggrieved with the said actions of the respondent Nos. 1 and 2 the petitioner has preferred this petition.

4. Counsel for the petitioner submits that the action of respondent Nos.1 and 2 is against the rules of the corporation. The petitioner has further claimed that the welfare fund is meant for the welfare of the employees of the corporation and not for the personal use of any particular employee. Counsel for the petitioner further submits that the respondent No.2 is committing gross illegality by not directing the respondent No.3 to report and join duty at the place of his actual posting. Counsel for the petitioner also submits that these

actions of respondent Nos. 1 and 2 are causing unrest in the other employees of the corporation.

5. I have heard ld. Counsel for the petitioner at considerable length.

6. The Constitution framers of the country with the notion of basic natural rights in their mind inculcated the concept of fundamental rights within our constitution. Far away from merely paper hopes or fleeting promises, the fundamental rights are the constitutional guarantees and so long as they find a place in it, they cannot be emasculated in their application by a narrow and constricted judicial interpretation.

7. Part III of the Constitution, which deals with Fundamental Rights, begins with the definition of 'state', as adumbrated in Article 12. Most of the Fundamental Rights are claimed against the state and its instrumentalities and not against any private bodies.

8. A writ petition under Art. 226 can be filed only against a "State" or authority within the meaning of Article 12. But now the scope of "state" under Article has been widely expanded. Article 226 confers power on the High Courts to issue writs for enforcement of the

fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party.

9. Explaining the scope of "State" under Article 12 of the Constitution of India, the Hon'ble Apex court in **Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649**, observed as under:

152. Judicial review forms the basic structure of the Constitution. It is inalienable. Public law remedy by way of judicial review is available both under Articles 32 and 226 of the Constitution. They do not operate in different fields. Article 226 operates only on a broader horizon.

153. The courts exercising the power of judicial review both under Articles 226, 32 and 136 of the Constitution act as a "sentinel on the qui vive". (See *Padma v. Hiralal Motilal Desarda*⁷³, SCC at p. 577.)

154. A writ issues against a State, a body exercising monopoly, a statutory body, a legal authority, a body discharging public utility services or discharging some public function. A writ would also issue against a private person for the enforcement of some public duty or obligation, which ordinarily will have statutory flavour.

155. Judicial review casts a long shadow and even regulating bodies that do not exercise statutory functions may be subject to it. [*Constitutional and Administrative Law*, by A.W. Bradley and K.D. Ewing (13th Edn.), p. 303.]

156. Having regard to the modern conditions when the Government is entering into business like the private sector and also undertaking public utility services, many of its actions may be State action even if some of them may be non-governmental in the strict sense of the general rule. Although the rule is that a writ cannot be issued against a private body but thereto the following exceptions have been introduced by judicial gloss:

(a) Where the institution is governed by a statute which imposes legal duties upon it.

(b) Where the institution is "State" within the meaning of Article 12.

(c) Where even though the institution is not "State" within the purview of Article 12, it performs some public function, whether statutory or otherwise.

10. Be that as it may, the situation in this petition is similar to a situation, where in the woods one animal of a breed intruding in the territory of other animal of the same breed becomes an aching pain in the eye of its own breed. This petition has been preferred by the President of petitioner union in whose territory the newly elected Secretary has penetrated and this unwarranted entry is the bone of contention between these two office bearers of the same union. Based upon the above discussion, the Union does not satisfy the ingredients of a "state" under article 12 of the Constitution of India. Clearly, the matter is private in nature and powers of this court exercisable under Art. 226 cannot be evoked by the petitioner.

11. In view of the foregoing discussion, the writ petition is not maintainable and the same is hereby dismissed.

May 26, 2009
pkv

KAILASH GAMBHIR, J.