

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION NO.26464 OF 2018

Between:

K.Venkateshwara Rao s/o. K.Laxmi Kondal Rao,
Aged 58 years, Technician (Emp.No.74864056),
SIEMENS Ltd., Plot No.89, 90, IDA Gandhinagar,
IDPL Post, Balanagar, Hyderabad, Telangana
State and others.

.....Petitioners

and

State of Telangana, rep.by its Principal Secretary,
Industries Department, Telangana Secretary,
Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 09.08.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.26464 OF 2018

%09.08.2018

K.Venkateshwara Rao s/o. K.Laxmi Kondal Rao,
Aged 58 years, Technician (Emp.No.74864056),
SIEMENS Ltd., Plot No.89, 90, IDA Gandhinagar,
IDPL Post, Balanagar, Hyderabad, Telangana
State and others.

.... Petitioners

Vs.

\$ State of Telangana, rep.by its Principal Secretary,
Industries Department, Telangana Secretary,
Hyderabad and others.

.... Respondents

!Counsel for the petitioners : Mr. Balamukund for Mr.Ch.Ganesh

Counsel for the Respondents: Government Pleader for Industries
& Commerce (TG) for respondent No.1;
Mr.Salloori Ramesh for respondents 2 & 3

<Gist :

>Head Note:

? Cases referred:

1. 2008 (1) ALD 257
2. (2003) 10 SCC 733
3. 2005 (4) SCC 649
4. (2002) 5 SCC 111
5. (2015) 4 SCC 670

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.26464 OF 2018

ORDER:

Petitioners are working as workmen in SIEMENS Limited. Their grievance in the present writ petition is that they are not continued beyond the age of 58 years and till they attain the age of 60 years. According to petitioners, the respondent company has establishments in various parts of the country including the one at Hyderabad, where petitioners are working. In the matter of fixation of age of superannuation, company is not adopting the uniform yardstick or policy. In some of the Units, employees are continued till they attain the age of 60 years and in some other units, like one in Hyderabad, employees are made to retire on attaining the age of 58 years and, therefore, such action is arbitrary, discriminatory and thus unconstitutional.

2. Heard learned counsel Mr. Balamukund for Mr. Ch.Ganesh, learned counsel for petitioners and learned counsel appearing for respondent company.

3. As the Court entertained doubt on maintainability of writ petition under Article 226 of the Constitution of India praying to issue mandamus on the 2nd respondent company to continue the petitioners in service beyond the age of 58 years, learned counsel for petitioners was requested to assist the Court on the issue of maintainability.

4. According to learned counsel for petitioners, SIEMENS though a multinational company, it is required to follow the statues, rules, regulations formulated by the Government of India

on all aspects including the service conditions of employees, such as, contribution to the provident fund under the Employees Provident Fund Act, 1952, Gratuity Act, 1972, Industrial Disputes Act, 1947 and similar enactments and, therefore, respondent company is amenable to writ jurisdiction of this court. In support of his contention, he placed reliance on the decision of learned single Judge of this Court in **Police Officers Association, Adilabad Unit, Adilabad v. United India Insurance Co.Ltd., Chennai and another**¹.

5. *Per contra*, learned counsel appearing for 2nd respondent company would submit that SIEMENS is a multinational company and is a private company and relationship between the petitioners and the 2nd respondent company is purely contractual. Second respondent company does not answer the description of 'other authority' as enshrined in Article 12 of the Constitution of India. It is not discharging any public duty. Thus, it is not amenable to writ jurisdiction, more so for enforcement of terms of contract of employment.

6. Writ remedy is available to an aggrieved person alleging that his rights are affected by an order/decision or not deciding in a given time frame by an authority vested with responsibility to discharge public functions and thereby, offending his right. In case of public employment, person can complain of offending right to equality and equal treatment and violation of constitutional safeguards or statutory rules/regulations. A citizen can invoke jurisdiction of writ Court under Article 226 of the Constitution of

¹ 2008 (1) ALD 257

India alleging violation of equality clause enshrined in Article 14 of the Constitution of India; rights conferred in Article 19; Right to life as enshrined in Article 21 or violation of other fundamental rights or statutory right vested in him. Even against a private person writ is maintainable if such person is involved in discharging public duty or the cause espoused in the writ petition has public law element or to enforce statutory obligations against him. But, such remedy is not available to a person seeking enforcement of terms of contract vis-à-vis private employer.

7. In the case on hand, grievance of petitioners is that they are not continued in service by their employer beyond 58 years. This claim is based on the premise that in other Units of respondent company employees are continued till they attain the age of 60 years. There is no public law element involved in this case. There is no statutory prescription to continue petitioners till they attain the age of 60 years. It is purely enforcement of terms of contract between the petitioners and their employer.

8. In the decision relied by the learned counsel for petitioners, respondent was insurance company. The respondent insurance company entered into contract with the petitioners' association and offered to issue 10 years long term Group Janata Personal Accident Insurance Policy to its members working in Police Department, covering the risk of death and disability arising out of any accident or otherwise on payment of one time premium in lump sum and issued Group Insurance Policy. While so, petitioner association received communication informing the association that the policy is terminated w.e.f. 27.04.2002. Aggrieved thereby, writ

petition was instituted. The Court held that respondent company being a public authority could not have cancelled/withdrawn the policy by invoking clause in the policy without assigning reasons. The Court opined that as the cancellation was affecting the rights of members of petitioner association, such cancellation ought not to have been made without affording due opportunity. With respect, said decision do not come to the aid of petitioners herein.

9. The issue for consideration is whether writ petition seeking enforcement of terms of contract of employment against private company is maintainable ?

10. In the following decisions, Supreme Court considered this issue.

10.1. In **Federal Bank Ltd. v. Sagar Thomas and others**², Supreme Court was considering maintainability of writ petition vis-à-vis private Bank. Reliance was placed on provisions of Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949 to contend that State has deep and pervasive control over the functioning of the private Bank and, therefore, such bank is amenable to writ jurisdiction, identical contention as urged in this writ petition. Said contention was rejected. Supreme Court held that exercise of power by the Reserve Bank of India under the Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949 is only to ensure compliance of statutory provisions.

² (2003) 10 SCC 733

10.2. Supreme Court held as under:

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. **But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.**

32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory

measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.” (emphasis supplied).

10.3. In **Zee Telefilms Ltd. and another v. Union of India and others**³, Supreme Court noted that principles laid down by Constitution Bench in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**⁴. Paragraph-22 reads as under:

³ 2005 (4) SCC 649

⁴ (2002) 5 SCC 111

“22. Above is the *ratio decidendi* laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in *Pradeep Kumar Biswas case* [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] . Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in *Pradeep Kumar Biswas case* [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] for a body to be a State under Article 12. They are:

(1) Principles laid down in *Ajay Hasia* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must *ex hypothesi*, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.”

10.4. In **K.K.Saksena v. International Commission on Irrigation & Drainage and others**⁵, this very issue was elaborately considered by Supreme Court. It is useful to note what Supreme Court observed in paragraphs-49 to 53. They read as under:

“49. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In *Praga Tools Corpn. v. C.A. Imanual* [(1969) 1 SCC 585] , as already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action

⁵ (2015) 4 SCC 670

was essentially of a private character. That was a case where the employee concerned was seeking reinstatement to an office.

50. We have also pointed out above that in *Saka Venkata Rao* [*Election Commission of India v. Saka Venkata Rao*, AIR 1953 SC 210] this Court had observed that administrative law in India has been shaped on the lines of English law. There are a catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In *R. (Hopley) v. Liverpool Health Authority* [2002 EWHC 1723 (Admin) : 2002 Lloyd's Med Rep 494] (unreported)(30-7-2002), Justice Pitchford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are: (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

51. Even in *Andi Mukta Sadguru* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691], which took a revolutionary turn and departure from the earlier views, this Court held that “any other authority” mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasised that if the rights are purely of a private character, no mandamus could issue.

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and “status” to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal.

53. In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no “public law rights” have accrued in favour of the appellant which are infringed. The service conditions of the appellant are not governed in the same manner as was the position in *Andi Mukta Sadguru* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691] ”.

11. It is not in dispute that 2nd respondent is a multinational company registered under the Companies Act and is a private company involved in manufacturing goods and services. No material is placed on record to show exercise of control by the Government of India over the management and administrative functions of respondent company in any manner including employment aspects of the company. As contended by learned counsel for respondent company, the company formulates its own employment policy and regulates conditions of services of its employees.

12. In the case on hand, respondent company works in a particular field of its activity and it does not have any monopoly status in its sphere of activity. Company is not created by a statute. No investment is made by the State to establish the company nor it extended financial support. The State has no control over its internal affairs, much less deep and pervasive

control. It only exercises statutory powers to enforce compliance of statutory requirements.

13. The relationship between the petitioners and the respondent company is one of contract of service regulated by the terms of appointment granted to them. As it is a registered company, it is also governed by the provisions of Industrial Disputes Act, 1947 and industrial standing orders in addition to various other statutes. Thus, if an employee is aggrieved by decisions of the company affecting his conditions of service, he can take recourse to the provisions of the industrial standing orders and/or the Industrial Disputes Act.

14. There is no statutory prescription fixing age of superannuation of its employees. It is not discharging any public utility service. Only when essential Governmental functions are placed or allowed to be performed by a private body, it must be held to have undertaken a public duty or public function. There is no public law element in the issue agitated in the writ petition. It is purely on enforcement of terms of contract of service.

15. Therefore, writ petition seeking enforcement of service conditions of employees working in 2nd respondent company is not maintainable. It is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 09.08.2018
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HON'BLE SRI JUSTICE P.NAVEEN RAO



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