BURNISHED LAW JOURNAL

DIPANWITA CHATTERJEE

CENTRAL INLAND WATER TRANSPORTCORPORATION LTD. & ANR. ETC. Vs BROJO NATH GANGULY & ANR.

Bench: MADON,D.P.

Case number: Appeal Civil 4412 of 1985

Facts:

The Central Inland Water Transport Corporation which was incorporated on February 22, 1967 is a company owned by the Government of India and the State Governments of West Bengal and Assam. It is a Government company within the meaning of section 617 of the Companies Act, 1956. Corporation was under the complete control of the Central Government as all the shares were and are owned by the Central Government and two by the State Governments.

Two employees of the Corporation, both are the victims of Rule 9(*i*), challenged the termination of their services in writ petitions before Calcutta High Court. The writ petition was issued under article 226 rule nashi was issued and an ex parte ad interim order staying the operation of notice. Brojo Nath Ganguly the first respondent in Civil Appeal No. 4412 of 1985 was at the date when the said scheme of arrangement became effective, working in the said company a Plaintiffs worked in a company which got dissolved by Court's order and they were then inducted into defendant Corporation upon latter's Terms and Condition. After years of serving Corporation, plaintiffs were arbitrarily removed out of the Corporation by virtue of Rule 9(i) which said notice under clause (i) of Rule 9 of the Service Rules was given to Ganguly terminating his services with the Corporation with immediate effect. of said terms and condition which provided for termination of employees' services on three months' notice or salary. Plaintiffs requested Court to quash Rule 9(i) on grounds of unconscionability (doctrine in contract law that describes terms that are so extremely unjust, or overwhelmingly one-sided in favor of the party who has the superior bargaining power.)[1]

[1] https://www.legalmatch.com/law-library/article/what-is-an-unconscionable-contract.html

The plea was that Rule 9(*i*) was arbitrary, unreasonable and, hence, violative of Article 14 of the Constitution. The High Court agreed. The petitions were allowed. The termination was set aside. Rule 9(*i*) was struck down. Justice was delivered by Justice M. M. Dutt.[2]

Issues:

- Whether the government company as defined in section 617 of companies act1956 is the state within the meaning of art 12 of the constitution of India?

- Whether an unconscionable term in a contract of employment is void under section 23 of Indian Contract Act 1872 can be held to be void under Indian Contract Act the term that talks about the termination of employs when it is infringing article 14in case a government company is "the state" under article 12 of constitution?

Arguments:

Arguments on behalf of the Appellants: -

1. A government company stands on a wholly different from a statutory corporation for while a statutory corporation is recognized by a statute, a Government company is merged like any other company by obtaining a certificate of merger under the Companies Act and, therefore, a Government company cannot come within the possibility of the scope of the term "The State" as defined in Article 12 of the Constitution.

2. A statutory establishment is usually established in order to create a domination in the State in respect of a particular activity. A Government company is, however, not proven for this purpose;

3. The Establishment does not have the domination of inland water transport but is only a trading company as is shown by the objects clause in its Memorandum of Association; and

[2] Judgment of the High Court is reported as *Central Inland Water Transport Corporation Ltd.*v. *Tarunkanti* in 1986 Lab IC 494, at p. 496 (para 9).

4. Assuming a Government establishment is "the State" within the meaning of Article 12, a contract of employment entered into by it is like any other contract entered into between two parties and a term in that contract cannot be struck down under Article 14 of the Constitution on the ground that it is arbitrary or unreasonable or unconscionable or one- sided or prejudiced.[3]

Arguments on behalf of the Respondents:

1. The definition of the expression "the State" given in Article 12 is wide enough to include within its possibility and reach a Government company.

2. A State is allowed to move on any activity, even a trading activity, from side to side any of its instrumentalities or agencies, whether such instrumentality or agency be one of the branches of the Government, a statutory corporation, a statutory authority or a Government company incorporated under the Companies Act.

3. Simply because a Government company transmits on a trading activity or is authorised to carry on a trading activity does not mean that it is excluded from the definition of the expression "the State" confined in Article 12.

4. A Government company being "the State" within the meaning of Article 12 is bound to act fairly and reasonably and if it does not do so its action can be struck down under Article 14 as being indiscriminate.

5. A contract of employment stands a different footing from other contracts. A term in a contract of employment arrived into by a private employer which is unfair, unreasonable and unconscionable is bad in law. Such a term in a contract of employment entered into by the State is, therefore, also bad in law and can be struck down under Article 14.[4]

[3] https://www.legalauthority.in/judgement/central-inland-water-transportcorporation-ltd-anr-etc-vs-brojo-nath-ganguly-anr-30779

[4] https://www.legalauthority.in/judgement/central-inland-water-transportcorporation-ltd-anr-etc-vs-brojo-nath-ganguly-anr-30779

Judgement

Sukhdev Singh, Oil & Natural Gas vs Bhagat Ram, Association, 1975[5] was referred:

The question raised is whether these statutory corporations are authorities within the meaning of Article 12.

whether regulations framed under Oil and Natural Gas Commission Act, 1956 these statutes have the force of law.

Judgement by Justice Mathew at pages 654 or 655 of the report[6] says "If the state had chosen to carry on this business through the medium of government departments there would have been no questions that thw actions of these departments are state actions why then should actions of these corporations not be state actions?.."

Sukhdev Singh, Oil & Natural Gas vs Bhagat Ram Sardar Singh Rajvanshi[7] , International airport authority case (Ramana Dayaram Shetty vs The International Airport)[8] by Justice P.N Bhagwati, , Ajay hasia case(Ajay Hasia Etc vs Khalid Mujib Sehravardi & Ors.) by bench of Justice Chandrachud, Y.V. (Cj), Bhagwati, P.N., Krishnaiyer, V.R., Fazalali, Syed Murtaza, Koshal, A.D. [9] There is no question that the corporation is the state within the meaning of article 12 of the constitution state.

The definition of states was taken in consideration and article 12 was taken into consideration for purposes of both 3rd and 4th part of the constitution.

[5] AIR 1975 SC 1331
[6] Scc pp 458-59 para 109 and 111
[7] AIR 1975 SC 1331
[8] 1979 AIR 1628
[9] 1981 AIR 487

Effective provisions for securing Right to Work cannot be taken away without giving reason and snatching their livelihood (*Workmen* v. *Hindustan Steel Ltd*. A standing Order provided for dismissal of an employee without inquiry.) [10]

A Standing Order provided for dismissal of an employee without inquiry.

It is violative of article 14 and also Directive Principle of State Policy(DPSP) clause (a) of article 39 and in Article 41.

In the further judgement it was said that Calcutta High court was right in putting down the disputed orders dated February 26, 1983, terminating the services of the contesting Respondents and directing the Corporation to restore them and to pay them all debts of salary. The High Court was, however, not right in announcing clause (i) of Rule 9 in its entirety as ultra vires(act done beyond one's legal powers or authority) Article 14 of the Constitution and in striking down as being void the whole of the clause. What the Calcutta High Court overlooked was that Rule 9 also confers upon a permanent employee the right to resign from the service of the Corporation. By entering in a contract of employment a man does not sign a bond of slavery and a permanent worker cannot be deprived of his right to resign.

A resignation by a worker would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when a worker wants to leave in the middle of a work which is serious or significant and for the accomplishment of which his presence and participation is necessary.

An employer can also decline to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of a worker. The Corporation must make suitable provisions on the behalf of the said Rules. Therefore, while the judgment given by the High Court requires to be complete. Hence the declaration given by the High court requires to be suitably modified.

As a result, both these Appeals fail and are dismissed but the order passed by the Calcutta High Court is modified by substituting for the declaration given by it a declaration that clause (i) of Rule 9 of the "Service, Discipline & Appeal Rules - 1979" of the Central Inland Water Transport Corporation Limited is void under section 23 of the Indian Contract Act, 1872, as

[10] *Sudhir Chandra Sarkar* v. *Tata Iron and Steel Co. Ltd*., the Supreme Court held that "Conditions of service prescribed in Standing Orders get incorporated in the contract of the service of each employee with his employer". *See* (1984) 2 SCC 369, at p. 379 (para 14)

being opposed to public policy and is also ultra vires(act done beyond one's legal power or authority) Article 14 of the Constitution. It confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay the allowance of such notice.

By interim orders passed in the Petitions for Special Leave to Appeal filed by the Corporation, Court had granted pending the disposal of those Petitions a stay of the order of the Calcutta High Court in so far as it directed the reinstatement of the contesting Respondents. At that stage the Corporation had undertaken to pay to the said Respondents all arrears of salary and had also undertaken to pay thereafter their salary from month to month before the tenth day of each subsequent month until the removal of the said Petitions. Court vacate the stay order of reinstatement passed by us and direct the Corporation forthwith to reinstate the First Respondent in each of these Appeals and to pay to him within six weeks from today all debts of salary and payments payable to him, if any still unpaid.[11]

The First Appellant in both these Appeals, namely, the Central Inland Water Transport Corporation Limited, will pay to the First Respondent in each of these Appeals the costs of the respective Appeals. The other parties to these Appeals will bear and pay their own costs of the Appeals.[12]

Analysis

The judgment in *Water Transport*[13], for the first time draws that great magnanimity and potentiality under a cloud by making Article 14 dependent for meaning and energy on the provisions of a mere legislative enactment, the Indian Contract Act, 1872.[14]

- The expression local authority is defined in clause 31 of section 3 of **General Clauses Act.**
- Thus when expression state is used in 3rd and 4th part of constitution is not confined to only federating states or union of India or even both.
- **Three main aspects of article 12 are**:

[11] https://www.legalauthority.in/judgement/central-inland-water-transportcorporation-ltd-anr-etc-vs-brojo-nath-ganguly-anr-30779
[12] https://indiankanoon.org/doc/477313/
[13] 1986) 3 SCC 156
[14] http://www.ebc-india.com/lawyer/articles/87v2a1.htm#Note2

1. Definition in art 12 is not an explanatory or restrictive definition but an extensive definition

2. It is the definition of expression the state and not of the term state or states and _

3. It is for the purpose of part 3 and part 4 there off

- In present case, plaintiffs had much less negotiating power as compared to that of Establishment, for they did not have any sensible choice while agreeing to the terms and conditions of their appointment in the Corporation. If they would have declined to accept the said rule, it would have led to their termination from service and barely exposed them to consequent anxiety, harassment and ambiguity of finding substitute employment.

- **The short arms of Section 23 stretched**

Section 23 has a limited purpose.[15] It deals with the "consideration" or "object" of an agreement. It strikes at any agreement, the consideration or object of which is unlawful.

- **Examination of Reasonableness (Reasonability)**

Air India v. Nergesh Meerza[16]

This became popularly known as the *Air Hostesses case*. It was a significant case. It involved an examination of reasonableness — indeed, conscionability — of certain terms in the air hostesses' contract of employment with Air India. The impugned conditions of service compelled an air hostess to retire from service in any of the three contingencies viz. on marriage if it took place within four years of service, on first pregnancy, or on attaining the age of 35 years. The Supreme Court approved the first condition prohibiting marriage for four years. The other two *conditions of service* were struck down.

[15] The relevant portion of Section 23, Contract Act, reads as follows:
"23. The consideration or object of an agreement is lawful, unless . . . the court regards it as immoral, or opposed to public policy.
In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

[16] (1981) 4 SCC 335

Rejecting the argument of the airlines that "a woman after bearing children becomes weak in physique or in her constitution".

Justice Fazal Ali held:

"Having taken the Air hostess in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AIR HOSTESS not to have any children and thus *interfere with and divert the ordinary course of human nature*. It seems to us that the termination of the services of an AIR HOSTESS under such circumstances is *not only a heartless and cruel act but an open insult to Indian womanhood.* the most sacrosanct and valued institution. We are constrained to observe that such a course of action is *extremely hateful and abhorrent to the philosophies of a civilised society*. *Apart from being grossly unethical*, *it smacks of a deep-rooted sense of utter selfishness at the cost of all human values*. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits *naked despotism*."

Hence it clearly violative of Article 14 of the Constitution.

Similarly, as regards the condition that an air hostess would retire on attaining the age of 35 years, the Supreme Court held:

The argument that AIR HOSTESS should be young and attractive and should possess pleasing manners seems to suggest that AIR HOSTESS should by their sweet smiles and pleasant behaviour entertain and look after the passengers which cannot be done by women of older age. This argument seems to us to be based on pure speculation and an artificial understanding of the qualities of the fair sex and, if we may say so, it amounts to *an open insult to the institution of our sacred womanhood*. *Such a morbid approach is totally against our ancient culture and heritage as a woman in our country occupies a very high and respected position in the society as a mother*, *a wife*, *a companion and a social worker*. It is idle to contend that young women with pleasing manners should be employed so as to act as show pieces in order to cater to the varied tastes of the passengers when in fact older women with greater experience and goodwill can look after the comforts of the passengers much better than a young woman can. Even if the Corporation had been swayed or governed by these considerations, it must immediately banish or efface the same from its approach. More particularly such observations coming from a prestigious corporation like A.I. appear to be in bad taste and is proof positive of *denigration of the role of women* and a demonstration of *male chauvinism* and verily involves nay discloses an element of *unfavourable bias against the fair sex* which is palpably unreasonable and smacks of pure official arbitrariness.

- **Principle of Natural Justice**

Union of India and Another vs Tulsiram Patel and Others

Bench: Chandrachud, Y.V. (Cj), Tulzapurkar, V.D., Pathak, R.S., Madon, D.P., Thakkar, M.P. (J)

Tulsiram Patel's Case this Court said (at page 476):

"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this

Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Article 12, is charged with the duty of deciding a matter."

As pointed out above, Rule 9(i) is both arbitrary and unreasonable and it also wholly ignores and sets aside the audi alteram partem rule (listen to the other side", or "let the other side be heard as well".) it, therefore, violates Article 14 of the Constitution.[17]

K.L. Tripathi v. State Bank of India

Questions arised in this case was; whether a term in a contract of service could be held to be valid if it was in derogation of principles of natural justice.

Justice Sabyasachi Mukharji, speaking for the Supreme Court, agreed with the submission that:

"Even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a statutory corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of services of an employee."

In other words, a period in a contract of employment cannot not be held to be good and valid if it offended principles of natural justice. The underlying current was, once again, Article 14. Modern constitutional thinking characterises Article 14 as the "constitutional guardian "of principles of natural justice.[18]

[17] 1985 AIR 1416

[18] In *Union of India v. Tulsiram Patel*, Justice Madon lent voice to this new thinking and set forth the rationale behind it in perspicacious terms :

"The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of the article. Shortly put, the syllogism runs thus; violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14; therefore, a violation of principles of natural justice by a State action is a violation of Article 14." *Ibid*. at p. 476 (para 95)

The judgment in *Water Transport*[19], for the first time draws that great magnanimity and potentiality under a cloud by making Article 14 dependent for meaning and energy on the provisions of a mere legislative enactment, the Indian Contract Act, 1872.[20]

Highlights of the Judgements

- In this case the Supreme court laid down the following principle in this regard:

"If there is instrumentality or agency of the state which has assumed the grab of a government company as defined in S.617 of Companies Act, it does not follow that it is thereby ceases to be an instrumentality or agency of the state. For the purpose of Art 12, one must necessarily see through the corporate veil to ascertain whether behind the veil is the face of an instrumentality or agency of the state."[21]

- The termination rule was declared invalid and voilative of article 14 on the ground that it is unconscionable.

- It was held to be voilative of Arts 39(a) and 41 and ultra vires Article 14. The court has observed that

  "An adequate means of livelihood cannot be secured [ART 39(a)] to the citizens by taking away without any reason the means of livelihood. The mode of making effective provisions for securing right to work [Article 41] cannot be by giving employment to a person and then without any reason throwing him out of employment."[22]

[19] 1986) 3 SCC 156
[20] http://www.ebc-india.com/lawyer/articles/87v2a1.htm#Note2
[21] AIR 1986 SC 1571
[22] AIR 1992 SC 789,785s


B
BURNISHED LAW JOURNAL