

CASE NO.:
Appeal (civil) 4596 of 1999

PETITIONER:
Chain Singh

RESPONDENT:
Mata Vaishno Devi Shrine Board & Anr.

DATE OF JUDGMENT: 28/09/2004

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T
With

Civil Appeal Nos. 4597-4598 of 1999 and
Civil Appeal No. 6334 of 2004
@ Special Leave Petition(C) No. 8192 of 2001

B.N.SRIKRISHNA, J.

These civil appeals and the special leave petition arise out of and impugn the same judgment of the Division Bench of the High Court of Jammu & Kashmir which allowed the Letters Patent Appeals of the respondents.

A popular Hindu Shrine in Jammu thronged by devotees all round the year, Mata Vaishno Devi is situated on the Trikuta Hills, approximately 45 kilometers from Jammu city. The Shrine was originally managed by a trust known as 'Dharmarth Trust', which managed, not only the affairs of the shrine, but also looked after the welfare of the pilgrims. The actual duties of performance of Pooja and protection of the Shrine were carried out by Baridars, who belonged to the two villages in the vicinity of the Shrine. With the popularity of the Shrine increasing, there was an exponential increase in the number of pilgrims visiting the Shrine. When the number of devotees visiting the Shrine became unmanageable, there were complaints with regard to administration and management of the temple, and the facilities made available for the pilgrims. This led to the enactment of 'The Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1986' (Governor's Act No. XXXIII of 1986) which was replaced by an Act of Legislature, passed in 1988, (Act No. XVI of 1988) called 'The Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 (hereinafter referred to as the '1988 Act')'.

A statutory Board is constituted under Section 5 of the 1988 Act, of which the Governor of Jammu & Kashmir is the ex-officio Chairman. The administration, management and governance of Shri Mata Vaishno Devi Shrine and the Shrine Fund vest in the Board, which comprises a Chairman and not more than ten members. Under Section 6 of the 1988 Act, the Board is deemed to be a body corporate and shall have perpetual succession and a common seal and by the said name the Board can sue and be sued. Under Section 14 of the 1988 Act, the Board is empowered to appoint a Chief Executive Officer and such other officers and servants as it considers necessary with such designations, pay, allowances and other conditions of service as determined from time to time. Section 15 of the 1988 Act provides that the employees of the Board are deemed to be public servants

within the meaning of Section 21 of the State Ranbir Penal Code (which corresponds to the Indian Penal Code) as applicable in Jammu & Kashmir area.

One of the drastic change brought about by the 1988 Act was that by reason of Section 19, all rights of Baridars stood extinguished.

Section 20 provides that no suit or other proceedings shall lie in any court against the Board or its officers for anything done or purported to be done in good faith under the Act.

Section 24 empowers the Board to make bye-laws 'not inconsistent with the Act' for carrying out its duties.

Civil Appeal No. 4596 of 1999:

The appellant, Chain Singh, is an ex-service man who claims that in the year 1983, he became the tenant of a shop premises let out to him by Shri Mata Vaishno Devi Dharmarth Trust at an annual rent of Rs. 15,000/-. The appellant was carrying on the business of selling petty items for use of the pilgrims in his shop and had obtained licences from the different authorities, including the Assistant Director, Tourism, for carrying on his trade. After the Jammu & Kashmir Mata Vaishno Devi Shrine Act, 1986 Act came into force (later replaced by the '1988 Act'), the appellant claims that, by reason of Section 19(3), he became the tenant of the Board. It is his case that he thereafter continued as a tenant of the Board. Upon the Board coming into existence, the appellant was shifted from the original shop allotted to him by the Dharmarth Trust to a new shop constructed by the Board. According to the appellant, the new shop premises were smaller in area and there was also interference in his day to day business by the officers of the Board, who were bent upon throwing him out therefrom, so that they could extract higher rent from a new tenant.

The appellant filed a writ petition in the High Court of Jammu & Kashmir being OWP No. 184/94, which was disposed of by a learned Single Judge of the High Court with the direction that the Board shall consider an appropriate representation of the petitioner with regard to his grievance. Soon thereafter, on 10.7.1995, the Board gave a notice informing him that he had failed to file a representation, as directed by the High Court, and, that unless he signs an agreement with the Board within three days, he would be subjected to further action as deemed appropriate. The petitioner protested against this notice and followed it up by another writ petition OWP No. 523/95 before the High Court by which he asked for various reliefs, including the relief of quashing the notice issued to him and a mandamus to the officers of the Board to refrain from interfering with his business activities. This writ petition came to be dismissed by a learned Single Judge of the High Court on 8.2.1999 holding that the writ petition was not maintainable in view of the decision of the Division Bench of the High Court in LPA No. 182 of 1992 decided on 27.1.1999. Hence, this appeal.

Civil Appeal Nos. 4597-98 of 1999:

The appellants in these two appeals were employees of the Board, who were holding different posts under the Board. It is the case of the appellants that, their conditions of service were unsatisfactory and they formed a trade union for collective bargaining so as to improve their conditions of service. Their trade union was registered with the Registrar of Trade Union, Jammu and Kashmir Government under registration No. 705 dated 11.12.1990. On 15.1.1991, the Registrar of Trade Union, J&K, Jammu addressed a letter to the President, Shrine Board Employees Union, Panthal Road, Katra informing him that they could not form themselves into a trade union since the Shrine Board, the employer, was not a Trade or Industry. He further said, "the terms of employment of all the servants of the Board are governed by the J&K Mata Vaishno Devi Shrine Act, 1988 and since its employees

have duly been declared as 'Public Servants' under Section 15 of the aforementioned Act and, as such, its employees are not registerable as a Union under the Trade Unions Act, 1926 and cannot be said to be in employment in any Trade or Industry." He, therefore, informed the trade union that he felt satisfied that the registration issued under the aforementioned number had been obtained by mistake which should be deemed to have been withdrawn from 10th day of March, 1991.

Undaunted by the withdrawal of the registration granted to them, the appellants and other employees carried on with their trade union activities. According to the appellants, these trade union activities brought them into disfavour with the officers of the Board, who started victimising them for the legitimate trade union activities. Victimisation comprised systematic action taken against the activists of the trade union, some of whom were even removed from service. The aggrieved employees filed writ petition WP No. 497 of 1992 before the High Court challenging the termination of their services and sought a writ of mandamus and a direction to the Board to reinstate them with full back wages and all consequential benefits. This writ petition was opposed by the first Respondent Board. A learned Single Judge partly allowed the writ petition and granted reliefs to some of the employees and rejected reliefs to the other employees. The employees who were refused reliefs filed LPA No. 182 of 1992 before the High Court. The Board filed LPA No. 183 of 1992 challenging the reliefs granted to some of the employees. By a common judgment dated 27.1.1999 the Division Bench of the High Court dismissed the LPAs. by holding:

"The Board does not satisfy the tests laid down by the Supreme Court referred to in the preceding part of this judgment. It is not State within the meaning of Article 12 of the Constitution of India. Therefore, writ petition is not maintainable. Having said so, we need not examine merits of impugned orders of termination passed against the petitioners. Preliminary objections raised by the Appellant succeeds."

The aggrieved employees are before this Court by these appeals.

Special Leave Petition (Civil) No. 8192 of 2001:

The petitioner was appointed as a Chowkidar on 6.10.1978 in the Dharmarth Trust and claims to have become an employee of the Shrine Board after coming into force of the Jammu & Kashmir Shri Mata Vaishno Devi Shrine Act, 1986. It is the case of the petitioner that he was employed as a Receptionist when the Board came into existence. It is his grievance that he was not being paid due salary by the Board. The petitioner filed writ petition SWP No. 663/1993 before the High Court for appropriate reliefs, which is stated to be pending.

On 2.3.1998 the petitioner was served with a charge sheet levelling allegations of misconduct against him for alleged misappropriation of Rs.20/-. An enquiry was held and a show cause notice dated 21.3.1998 was served on the petitioner to show cause why his service should not be terminated. Finally, after considering the reply, the petitioner was dismissed from service on 30.3.1998. The petitioner filed the writ petition before the High Court challenging termination of his service. The learned Single Judge referred the writ petition to a larger bench in view of the important question of law arising therein. Finally, a Division Bench of the High Court by its judgment dated 23.1.2001, following the earlier Division Bench judgment in LPA No. 182/92 and 183/92 dated 27.1.1999, held that the writ petition was not maintainable and dismissed the writ petition. The petitioner seeks special leave to appeal against the judgment of the High Court.

C.A. Nos. 4596/99, 4597-4598/99 and SLP(C) No. 8192/2001:

Leave granted in the special leave petition.

At the outset, we asked the learned counsel appearing for the appellants as to why they did not seek relief before an appropriate forum-Civil Court in the case of the dispute with regard to licence/tenancy, and Labour Court, with regard to the dispute pertaining to the service matter. Learned counsel replied that the appellants have been placed in a very unenviable predicament, being treated neither as fowl nor fish. According to the appellants, Section 20 of the 1988 Act bars the civil court from entertaining a suit or proceeding against the Board or its officers for anything done or purported to be done in good faith under the 1988 Act. Learned counsel contended that the section is so widely worded that it conceivably bars all proceedings in Civil Courts as also before Labour Courts/Tribunals. On this understanding of the provision of Section 20, the appellants in this case chose to move the High Court by their writ petitions under Article 103 read with Article 10 of the Constitution of Jammu and Kashmir (corresponding to Article 226 of the Constitution of India). Counsel urge that it is unfortunate that the High Court has erroneously held that the Shrine Board is not even amenable to the writ jurisdiction, as it is not "State" within the meaning of Article 12 of the Constitution of India. In the submission of the learned counsel, the High Court has fallen into error on two counts. First, in considering itself bound by certain pronouncements of the decision of this Court in Bhuri Nath and Ors. v. State of J & K and Ors. although, the observations were made in a totally different context, wholly distinguishable, and do not lay down the proposition of law as understood by the High Court. Secondly, for deciding the issue as to whether the Shrine Board was "State", the High Court has applied certain tests which are erroneous, and failed to apply other tests which have now been held necessary in view of the judgment of a Bench of Seven learned Judges of this Court rendered in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. . The High Court has relied on the tests prescribed in Sabhajit Tewary v. Union of India , which has been specifically overruled in Pradeep Kumar Biswas (supra).

The learned counsel for the respondents, however, maintained that the observations made in Bhuri Nath (supra) were directly relevant and applicable. On the second issue, however, learned counsel for the respondents contended that if this Court comes to the conclusion that the present appeals are not concluded by the decision in Bhuri Nath (supra) then the matters may be remitted to the High Court for deciding the tenability of the writ petitions in the light of the law laid down in Pradeep Kumar Biswas (supra).

The facts in Bhuri Nath (supra) and the background in which the relevant observations in Paragraph 33 were made need to be considered in detail.

As already recounted, the direct result of the 1988 Act coming into force was the extinction of the rights of the Baridars by reason of sub section (1) of Section 19 of the 1988 Act. Sub section (1) of Section 19 provides, "all rights of Baridars shall stand extinguished from the date of commencement of this Act." There is a proviso thereto under which the Governor is empowered to appoint a Tribunal which could recommend the compensation to be paid by the Board in lieu of extinction of the rights of the Baridars, after having due regard to the income which the Baridar had been deriving as Baridars. The Board is, thereafter, required to examine the recommendations forwarded to it by the Tribunal and take such decision as it may deem appropriate and its decision shall be final. Where a Baridar surrenders his rights and offers himself for employment to the Board, there is certain preferential right of appointment, subject to suitability. Section 19 deals with three kinds of persons: (i) Baridars -- their rights stand extinguished on the coming into force of the 1988 Act, (ii) Employees of the Dharmarth Trust -- they become employees of the Board on the commencement of the 1988 Act, (iii) Shopkeepers and other lease holders, who were tenants -- they become the tenants of the Board.

Some of the Baridars, whose rights stood extinguished by reason of

the 1988 Act, challenged the constitutional validity of the 1988 Act, as infringing Articles 19(1)(f) and 31 of the Constitution of India, which continue to apply to the Jammu & Kashmir area.

Bhuri Nath (supra) examined the scheme of the 1988 Act and noticed that under sub section (1) of Section 19, all rights of Baridars stood extinguished. It was contended on behalf of the Baridars that repeal of Articles 19(1)(f) and 31 of the Constitution of India by the Constitution (Forty-fourth) Amendment Act, 1978, w.e.f. 20.6.1979, does not apply to the State of Jammu & Kashmir; the right to property continued to be a fundamental right of the residents of Jammu & Kashmir; the 1988 Act made no provision for payment of compensation or guidelines for determination of compensation to Baridars, whose rights are extinguished; the Board being a controlled Corporation, is an arm of the Government; all the properties of the Shrine stand vested in the Government. They relied on several provisions of the 1988 Act with regard to the constitution of the Board in order to contend that the Board is a "State-controlled Corporation". The Baridars further contended that, offerings and other properties were acquired under the 1988 Act and got vested in the controlled Corporation, viz., the Board. For their abolition, the Baridars were entitled to compensation and inasmuch as Section 19 makes no provision for compensation, the 1988 Act was unconstitutional and ultra vires the powers of the legislature.

On behalf of the Board, clause (2-A) of Article 31 of the Constitution of India was emphasised, which reads as under:

"(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

It was contended that the Shrine Board is not a 'controlled Corporation' and the properties and offerings vested in it are not owned or controlled by the State or their ownership is not transferred to any State controlled Corporation. It was also contended that the Board is a statutory authority under the 1988 Act set up for better management, administration and governance of the Shrine and its endowments including the lands and buildings attached, or appurtenant to the Shrine within the premises specified in the preamble of the 1988 Act. Relying on the judgments of Punjab & Haryana High Court in Hardwari Lal v. G.D. Tapase and Andhra Pradesh High Court in Kiran Babu v. Govt. of A.P., it was urged that when the Governor exercises his power under the Act in the capacity of ex-officio Chairman, he does not exercise power as the executive head of the State and his role is limited to the traditional role to ensure proper management and responsible administration of the religious institutions or endowments and of their properties and nothing more. Hence, it was contended by the counsel of the Shrine Board as well as the counsel for the State that, though the properties of the Shrine and funds are under the control of the State, the properties were not vested in the State and so the 1988 Act was a valid law. They distinguished between acquisition and deprivation. While the 1988 Act deprives Baridars of their right to receive offerings, there was no acquisition by the State, since mere deprivation does not amount to acquisition. Hence, it was urged that the 1988 Act was not ultra vires the Constitution.

This Court in Bhuri Nath (supra) accepted the distinction drawn between the executive power of the Governor as executive head of the State and power exercised under the Act by his role as ex officio Chairman. The Division Bench of two learned Judges raised the question, "when the Governor discharged this function under the Act as executive head of the State, is it with the aid and advice under the Council of Ministers or in his

official capacity as the Governor?" The Division Bench answered the question and said, "the exercise of power and functions under the Act is distinct and different from those exercises formally in his name with Council of Ministers headed by the Chief Minister."

Finally, taking up the question whether the Board is a "Controlled Corporation" within the meaning of clause (2-A) of Article 31, after examining the provisions of the 1988 Act in detail, and noticing the judgments in Gullapalli Nageswara Rao v. A.P. SRTC and Union of India v. Sudhansu Mazumdar, it was observed thus in Paragraph 33:

"33. In Constitutional Law of India by H.M. Seervai (3rd Edn.), Vol.II, at p. 1109 in para 30, it is stated that distinction between ordinary acquisitions where law provides full compensation and large schemes of social engineering or reform which would have to be located at from the point of view of justice to the individual as well as to the community, is harmonised by the legal view. In the afterlight of Bela Banerjee case, it is clear that the eminent lawyers (Founding Fathers of the Constitution) committed a grave error in leaving to implication what they could have clearly expressed in Article 31(2). Bela Banerjee case showed that the intention of the framers failed because it was not expressly embodied in Article 31(2). Obviously, an amendment of the Constitution is meant to change the existing law, and the 4th Amendment by excluding the challenge on the ground of adequacy of compensation was meant to change the law laid down in Bela Banerjee case that compensation under Article 31(2) meant a full and fair money equivalent. After the 4th Amendment, the word "compensation", could not mean a full and fair money equivalent, for if it did, the law would have remained unchanged and the 4th Amendment would have failed in its purpose. By excluding a challenge on the ground that the compensation provided by the law was not adequate, the 4th Amendment removed the restriction on legislative power in the sense that for the law to be valid it was no longer obligatory to provide for the payment of full and fair money equivalent. After the 4th Amendment a law which fixed compensation which amounted to 80 per cent of full and fair money equivalent would not violate Article 31(2) and was a valid law. The 4th Amendment achieved this result by introducing the concept of inadequate compensation. On consideration of above provisions, we have, therefore, no hesitation to hold that the Board is not a controlled Corporation within the meaning of Article 12 of the Constitution. By operation of clause (2-A) of Article 31 of the Constitution the Board or the properties of the Shrine did not vest in the State. The right to collection of the offerings or the divestment of the properties, if any, of the Baridars or the right to collection or a share in the offerings do not vest in the State. Consequently, Section 19(1) of the Act is not ultra vires Article 19(1)(f) or Article 31(2) of the Constitution."

It became necessary for us to make an indepth examination of the ratio in Bhuri Nath (supra), as it is strongly contended by the respondents, and accepted by the High Court, that Bhuri Nath clinches the argument against the appellants and holds that the Shrine Board is not amenable to the writ jurisdiction of High Court under Article 226 of the Constitution of India.

In our view, the contention has no merit. Bhuri Nath was not

concerned with the issue as to whether the sweep of Article 226 could extend to the Shrine Board. As already pointed out, the question before the court was whether the right to property of the Baridars had merely been extinguished or it had been transferred to a 'State controlled Corporation', which would determine whether the Baridars had a right to compensation or not. This, in turn, would determine the constitutional validity of the 1988 Act, which prescribed no principles or guidelines on which compensation was to be paid to the Baridars, whose rights were extinguished. None of these issues touched the question whether the Shrine Board was amenable to the writ jurisdiction of the High Court. All that was decided is that the Shrine Board is not a 'State controlled Corporation'. This issue, per se, is not determinative of the issue as to whether the Shrine Board is amenable to the writ jurisdiction of High Court under Article 226 of the Constitution of India. The sweep of Article 226 of the Constitution is much wider. It can be exercised against "any person or authority", including in appropriate cases "any Government".

Article 12 finds its place in Part III, and reads as under:

12. Definition.- In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

Its purpose is to define the word 'State' where it occurs in Part III relating to fundamental rights. Here also, the inclusive definition takes within its fold, apart from the Government, Parliament of India and the Legislature of the States, "all local or other authorities". It is in this context, that the theory of 'instrumentality' or 'agency of State' was developed in *Ajay Hasia v. Khalid Mujib*, and *Ramanna v. International Airport Authority of India*, wherein detailed tests were laid down. Notwithstanding the tests laid down, certain institutions, which were incorporated as Societies, were held to fall outside the purview of Article 12 in *Sabhajit Tewary's case* (supra). The apparent inconsistencies which had developed in the law were reconciled by the larger Bench of Seven learned Judges in *Pradeep Kumar Biswas* (supra) which has laid down the correct tests to be applied to decide whether any entity is an instrumentality or agency of the State, and therefore, amenable to the writ jurisdiction of the High Court.

Perhaps, in some respects, the correctness of some of the observations in *Bhuri Nath* (supra) are open to debate in the light of the principles laid down in *Pradeep Kumar Biswas case* (supra). Since, however, the High Court had no occasion or benefit of considering the law laid down in *Pradeep Kumar Biswas* (supra), it would be inappropriate for us to express any opinion thereupon. Suffice it for us to say that, *Bhuri Nath* does not, in any way, lay down the law as understood by the High Court, namely, that the Shrine Board is not amenable to the writ jurisdiction of the High Court.

We are inclined to agree with the learned counsel for the respondents, *Shri P.P. Rao*, that the matter should be remitted to the High Court for consideration of the issue of the amenability of the Board to the writ jurisdiction of the High Court in the light of the law laid down in *Pradeep Kumar Biswas* (supra). The High Court has also not gone into the merits of the cases before it in view of its decision on the maintainability of the writ petitions.

Taking all these circumstances into consideration, we are of the view that the impugned judgments of the High Court are required to be set aside.

Hence, the following order:

We allow the appeals and setting aside the impugned judgments of the High Court, remit LPA No. 182 of 1992, LPA No. 183 of 1993, writ

petition, OWP No. 523 of 1995 and writ petition, SWP No. 930 of 1998 to the High Court for hearing and decision in accordance with the law laid down by this Court in Pradeep Kumar Biswas case (supra).

We have refrained from expressing any view on the apprehension voiced by the learned counsel for the appellants that Section 20 of the 1988 Act bars civil suits and adjudications under labour laws. The High Court shall, therefore, first consider the maintainability of the writ petitions under Article 226 of the Constitution of India by examining whether the Shrine Board is amenable to the writ jurisdiction of the High Court, by applying the principles and tests laid down in Pradeep Kumar Biswas case (supra).

The High Court shall also consider whether any alternative remedy is available to the writ petitioners by way of civil suit or industrial adjudication. It shall be open to the High Court to take an appropriate decision thereupon, including the relegation of the parties to the appropriate remedy, if the High Court upon interpretation of the provision of Section 20 of the 1988 Act comes to the conclusion that such alternative remedy is available to the writ petitioners before it.

In case the High Court takes the view that writ petitions are tenable, and that no other equally efficacious alternative remedy is available to the writ petitioners, then the High Court shall decide the writ petitions on their merits.

Although, learned counsel have cited before us a large number of authorities, we consider it unnecessary to refer to them in the view we are inclined to take.

All contentions of the parties are kept open to be canvassed before the High Court.

Considering that the writ petitions have been pending for quite some time, and that they also pertain to cases of termination of services of employees, it is preferable that the hearing of the writ petitions is expedited. The High Court is requested to dispose of the writ petitions, preferably, within a period of six months from the receipt of this judgment.