Balmer Lawrie & Co. Ltd. & Ors vs Partha Sarathi Sen Roy & Ors on 20 February, 2013

Equivalent citations: 2013 AIR SCW 1365, (2013) 124 ALLINDCAS 247 (SC), AIR 2013 SC (SUPP) 926, (2013) 4 MAD LW 166, (2013) 1 CURLR 848, (2013) 114 CORLA 312, (2013) 3 KCCR 305, (2013) 3 ALL WC 2557, (2013) 4 CAL HN 124, (2013) 2 SCALE 696, 2013 (8) SCC 345, (2013) 2 SCT 232, (2013) 137 FACLR 19, AIR 2013 SC (CIVIL) 1011

Author: B. S. Chauhan

Bench: B.S. Chauhan, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 419-426 OF 2004

Balmer Lawrie & Co. Ltd. & Ors. …Appellants

Versus

Partha Sarathi Sen Roy & Ors.
…Respondents

WITH

CIVIL APPEAL NO. 926 OF 2013

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. These appeals have been preferred against the impugned judgments and orders of the High Court of Calcutta dated 30.1.2002 and 24.12.2002 in FMA No. 301/2001, CO. 2038/1993, WP. Nos. 778/1992, 2613, 2798 & 3169/2000, 1109/1998 and 1739/1996, by which the Calcutta High Court by a majority decision held that the Balmer Lawrie & Co. Ltd. – appellant, is a State within the purview of Article 12 of the Constitution of India, 1950 (hereinafter referred to as, the 'Constitution'), and is thus, amenable to writ jurisdiction.

2. Facts and circumstances giving rise to these appeals are:

A. The appellant is a public limited company incorporated under the Indian Companies Act, 1956. The shares of the appellant company were originally held by Indo-Burma Petroleum Co. Ltd., Life Insurance Corporation, Unit Trust of India, General Insurance Corporation and its subsidiaries, Nationalised Banks and also by the public. Subsequently, in 2001 its majority equity shares, i.e. 61.8% of its shareholding, which was held by IBP Co. Ltd., was transferred to Balmer Lawrie Investments Ltd. (BLIL), a Govt. company in which 59% shares are held by the government.

B. The appellant company carries on business in diverse fields through various Strategic Business Units (SBUs). None of these SBUs have monopoly in any business. The said SBUs are involved in the manufacturing of packing materials, i.e. steel drums and LPG cylinders, grease and lubricants. They also provide air freight services, ocean freight services, and project cargo management. They operate under a broader segment classified as 'Logistic Services', providing space and scope for segregation, storage and aggregation of containerized cargo, i.e. an infrastructural service carried on outside the port premises for handling, loading/unloading and storage of containerized import, as well as export cargo. The appellant company also deals with leather chemicals and tea blending and packaging.

C. The respondents-employees joined the services of the company at different times. However, for the purpose of deciding this case it would be convenient to take up the facts presented by respondent, Partha Sarathi Sen Roy.

The said respondent joined the appellant – company in May 1975 as a Management Trainee, and was later on confirmed vide order dated 1.6.1976 as an officer in Grade-III, subject to the terms and conditions mentioned in the letter of confirmation w.e.f. 20.5.1976.

He had previously worked in different branches of the company in Dubai, the United Arab Emirates etc. as an Accountant-cum- Administrative Officer. His services were terminated vide order dated

27.2.1981, in view of Clause 11(a) of the letter of appointment which provided that the company would have a right, which would be exercised at its sole discretion, to terminate the services of such employees by giving them three calendar months' notice in writing, without assigning any reason for such decision. The respondent challenged the said termination order by filing writ petition (C.R. No. 1562 (W) of 1981) in the High Court of Calcutta, praying for the issuance of a writ of mandamus, directing that the said termination order be quashed.

D. The appellant company contested the said writ petition contending that it was not an authority within the meaning of Article 12 of the Constitution, and therefore was not amenable to writ jurisdiction. The terms and conditions of contractual rights and obligations could therefore, not be enforced through writ jurisdiction. The matter was decided by the learned Single Judge vide judgment and order dated 19.12.2000, holding that the appellant was neither a State, nor any other authority within the meaning of Article 12 of the Constitution, and thus the writ petition itself was not maintainable.

E. Aggrieved, the respondent filed an appeal (FMA. No. 301/2001), against the said judgment and order of the learned Single Judge. However, in the meantime, another writ petition No. 778/1992 was decided by another learned Single Judge of the same High Court, holding that the appellant was infact a State within the meaning of Article 12 of the Constitution. Thus, the appellant preferred an appeal against the said judgment and order dated 27.3.2001, and the matters were heard together by a Division Bench. Both the Judges delivered their judgment on 30.1.2002 taking different views on the aforesaid issue. The matter was referred to a third Hon'ble Judge, who vide judgment and order dated 24.12.2002, held the appellant to be a State within the meaning of Article 12 of the Constitution, and directed that the matter be placed before an appropriate bench for decision of the writ petitions on merits.

Hence, these appeals.

3. Shri Sudhir Chandra, learned senior counsel appearing for the State, has submitted that the appellant company cannot be held to be a State within the meaning of Article 12 of the Constitution, or any other authority for that matter, as there is no deep and pervasive control exercised by the government over the company, though certain financial aid was given by it for specific purposes. The government however, does not have control over the day-to-day functioning of the company. Merely because the appellant company is a subsidiary of a government company, and is itself a government company, the same would not make the appellant company fall within the purview of the word 'State' as intended by Article 12 of the Constitution. Moreover, it does not carry out any public function which could render it as, 'any other authority', for the purposes of Article 226 of the Constitution. It also does not have any kind of monopoly over its business, in fact, it carries on a variety of business activities and faces competition from all the other industries that operate in the same fields as it does. The terms of employment therefore, cannot be enforced through writ jurisdiction. Thus, the only remedy available to the respondent was to file a suit for damages. The appeals deserve to be allowed.

4. Per contra, Shri Sangaram Patnaik, Mr. Bijan Kumar Ghosh and Mr. P.K. Roy, the learned counsel appearing for the respondents have submitted that the appellant company is a government company, and is a subsidiary of a government company, which is controlled entirely by the government and that the government has absolute control over the company. The majority judgment of the Calcutta High Court, holding the appellant company to be a State within the meaning of Article 12 of the Constitution cannot be found fault with. Even otherwise, law does not permit an employer, particularly the State or its instrumentalities, to terminate the services of its employees by adopting a "hire and fire" approach, as it would be hit by the equal protection clause enshrined in Article 14 of the Constitution of India (hereinafter referred to as, the 'Constitution'). Additionally, the respondent died long ago, and no attempt was ever made by the appellant company to substitute him with his legal heirs. Thus, the appeal stands abated qua him. The facts and circumstances of the case do not warrant any interference by this court, and the appeals are therefore, liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

There is sufficient material on record, and the Memorandum and Articles of Association of the appellant company make it abundantly clear, that the same is a government company and is a subsidiary of IBP, which is also a government company. The share holding of the appellant company has been referred to hereinabove, and more than 61.8% shares are held by IBP, a government company. However, the question for consideration before us is, whether in light of the aforementioned facts and circumstances, the appellant company is, in fact, a State within the meaning of Article 12 of the Constitution.

6. The said issue has been considered by various larger benches, and it has been held that in order to meet the requirements of law with respect to being a State, the concerned company must be under the deep and pervasive control of the government. The dictionary meaning of 'pervasive' has been provided hereunder:

> "It means that which pervades/tends to pervade in such a way, so as to be, or become, prevalent or dominant." "Extensive or far reaching, spreading through every part of something."

7. In Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam and Anr. AIR 2005 SC 411, this court held, that in order to examine whether or not an authority is a State within the meaning of Article 12 of the Constitution, the court must carry out an in depth examination of who has administrative, financial and functional control of such a company/corporation, and then assess whether the State in such a case is only a regulatory authority, or if it has deep and pervasive control over such a company/corporation, whether such company is receiving full financial support from the government, and whether administrative control over it has been retained by the State and its authorities, and further, whether it is supervised, controlled and watched over by various departmental authorities of the State, even with respect to its day-to-day functioning. If it is so, then such company/corporation can be held to be an instrumentality of the State under Article 12 of the

Constitution and therefore, will be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

8. In Lt. Governor of Delhi & Ors. v. V.K. Sodhi & Ors. AIR 2007 SC 2885, a similar test was applied, and it was held that once finances are made available to the company, and the administration of such finances is left to that company, and there is no further governmental control or interference with respect to the same, such company/corporation or society cannot be held to be a State, or a State instrumentality within the meaning of Article 12 of the Constitution. In this case, this court came to the conclusion that the very formation of an independent society under the Societies Registration Act, may be suggestive of the intention that such a society, could not be a mere appendage to the State.

9. A Seven-Judge Bench of this Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors. (2002) 5 SCC 111 held, that while examining such an issue, the court must bear in mind whether in the light of the cumulative facts as established, the body is financially, functionally and administratively, dominated by, or is under the control of the Government. Such control must be particular to the body in question, and must be pervasive. If it is found to be so, then the body comes within the purview of State within the meaning of Article 12 of the Constitution. On the other hand, when the control exercised is merely regulatory, whether under a statute or otherwise, the same would not be adequate, to render the body a State. The court, while deciding the said issue placed reliance upon its earlier judgments in Rajasthan State Electricity Board Jaipur v. Mohan Lal & Ors. AIR 1967 SC 1857; and Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr. AIR 1975 SC 1331, wherein it was held that such a body must perform certain public or statutory duties, and that such duties must be carried out for the benefit of the public, and not for private profit. Furthermore, it was also laid down that such an authority is not precluded from making a profit for pubic benefit. The court came to the conclusion, that although the employees of the Corporation may not be servants of either the Union, or of the State, at the same time, such a company/corporation must not represent the “voice and hands” of the government. Therefore, this court in Pradeep Kumar Biswas (supra), held that financial support of the State, coupled with an unusual degree of control over the management and policies of a body, may lead to an inference that it is a State. Additionally, other factors such as, whether the company/corporation performs important public functions, whether such public function (s) are closely related to governmental function, and whether such function (s) are carried out for the benefit of the public, etc. are also considered. The court also considered the case of Ramana Dayaram Shetty v. International Airport Authority of India & Ors. AIR 1979 SC 1628, wherein it was held that a corporation can be said to be an instrumentality or agency of the government therein under certain conditions, and the same are summarised below :

> “(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
>
> (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation

being impregnated with governmental character.

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." The Court also considered the cases of Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc. AIR 1981 SC 487; and Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Assn. & Anr. AIR 2002 SC 609.

10. In M/s. Zee Telefilms Ltd. & Anr. v. Union of India & Ors., AIR 2005 SC 2677, this Court, after applying tests laid down in various cases, examined the facts of that case and came to the conclusion that the body was not a State within the meaning of Article 12 of the Constitution, or for that matter, 'any other authority' for the purposes of Article 226 of the Constitution, while observing as under

:

"23. The facts established in this case show the following:

1. The Board is not created by a statute.

2. No part of the share capital of the Board is held by the Government.

3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.

4. The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-

protected.

5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.

6. The Board is not created by transfer of a government- owned corporation. It is an autonomous body." This Court further observed:

> "35. In conclusion, it should be noted that there can be no two views about the fact that the Constitution of this country is a living organism and it is the duty of Courts to interpret the same to fulfil the needs and aspirations of the people depending on the needs of the time. It is noticed earlier in this judgment that in Article 12 the term "other authorities" was introduced at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under the Statute and which discharge State functions. However, because of the need of the day this Court in Rajasthan State Electricity Board (supra) and Sukhdev Singh (supra) noticing the socio- economic policy of the country thought it fit to expand the definition of the term "other authorities" to include bodies other than statutory bodies.

This development of law by judicial interpretation culminated in the judgment of the 7-Judge Bench in the case of Pradeep Kumar Biswas (supra). It is to be noted that in the meantime the socio-economic policy of the Government of India has changed [See Balco Employees' Union (Regd.) v. Union of India and Ors. (2002 2 SCC 333)] and the State is today distancing itself from commercial activities and concentrating on governance rather than on business. Therefore, the situation prevailing at the time of Sukhdev Singh (supra) is not in existence at least for the time being, hence, there seems to be no need to further expand the scope of "other authorities" in Article 12 by judicial interpretation at least for the time being. It should also be borne in mind that as noticed above, in a democracy there is a dividing line between a State enterprise and a non- State enterprise, which is distinct and the judiciary should not be an instrument to erase the said dividing line unless, of course, the circumstances of the day require it to do so." (Emphasis added)

11. Often, there is confusion when the concept of sovereign functions is extended to include all welfare activities. However, the court must be very conscious whilst taking a decision as regards the said issue, and must take into consideration the nature of the body's powers and the manner in which they are exercised. What functions have been approved to be sovereign are, the defence of the country, the raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory etc. and the same are not amenable to the jurisdiction of ordinary civil courts. (Vide: N. Nagendra Rao & Co. v. State of A.P., AIR 1994 SC 2663; and Chief Conservator of Forests & Anr. v. Jagannath Maruti Kondhare etc.etc., AIR 1996 SC 2898).

In Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors., AIR 1978 SC 548, this Court dealt with the terms "Regal" and "Sovereign" functions, and held that such terms are used to define the term "governmental" functions, despite the fact that there are difficulties that arise while giving such a meaning to the said terms, for the reason that the government has now entered largely the field of industry. Therefore, only those services, which are governed by separate rules and constitutional provisions such as Articles 310 and 311, should strictly speaking, be excluded from the sphere of industry by necessary implication.

Every governmental function need not be sovereign. State activities are multifarious. Therefore, a scheme or a project, sponsoring trading activities may well be among the State's essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, corporates and companies. Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would not render an enterprise sovereign in nature. (Vide: Agricultural Produce Market Committee v. Ashok Harikuni & Anr. etc. AIR 2000 SC 3116; State of U.P. v. Jai Bir Singh, (2005) 5 SCC 1; Assam Small Scale Ind. Dev Corporation Ltd. & Ors. v. M/s. J.D. Pharmaceuticals & Anr., AIR 2006 SC 131; and M.D., H.S.I.D.C. & Ors. v. M/s. Hari Om Enterprises & Anr., AIR 2009 SC 218).

12. A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the government and the legislature alone, and it includes within its ambit, various other instrumentalities of State action. The law may bestow upon such organization, the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The State being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society. In a given case, the court must decide, whether such a company or society is an instrumentality or agency of the government, so as to determine whether the same falls within the meaning of expression 'authority', as mentioned in Article 12 of the Constitution, upon consideration of all relevant factors.

In light of the aforementioned discussion, it is evident that it is rather difficult to provide an exhaustive definition of the term "authorities", which would fall within the ambit of Article 12 of the Constitution. This is precisely why, only an inclusive definition is possible. It is in order to keep pace with the broad approach adopted with respect to the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, that whenever possible courts have tried to curb the arbitrary exercise of power against individuals by centres of power, and therefore, there has been a corresponding expansion of the judicial definition of the term State, as mentioned in Article 12 of the Constitution.

In light of the changing socio-economic policies of this country, and the variety of methods by which government functions are usually performed, the court must examine, whether an inference can be drawn to the effect that such an authority is infact an instrumentality of the State under Article 12 of the Constitution. It may not be easy for the court, in such a case, to determine which duties form a part of private action, and which form a part of State action, for the reason that the conduct of the private authority, may have become so entwined with governmental policies, or so impregnated with governmental character, so as to become subject to the constitutional limitations that are placed upon State action. Therefore, the court must determine whether the aggregate of all relevant factors

once considered, would compel a conclusion as regards the body being bestowed with State responsibilities.

13. When we discuss 'pervasive control', the term 'control' is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word 'regulate', would mean to control or to adjust by rule, or to subject to governing principles. (Vide: State of Mysore v. Allum Karibasauppa & Ors., AIR 1974 SC 1863; U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association & Ors. etc.etc., AIR 2004 SC 3697; M/s. Zee Telefilms Ltd., (supra); and Union of India (UOI) & Ors. v. Asian Food Industries, AIR 2007 SC 750).

14. In K. Ramanathan v. State of Tamil Nadu & Anr., AIR 1985 SC 660, this court held as under:

> "The power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed or the making of a rule with respect to the subject to be regulated. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation."

15. In Vodafone International Holdings B.V. v. Union of India & Anr., (2012) 6 SCC 613, this Court observed that:

> "'Control' is a mixed question of law and fact. The control of a company resides in the voting power of its shareholders and shares represent an interest of a shareholder which is made up of various rights contained in the contract embedded in the Articles of Association.
>
> The question is, what is the nature of the "control" that a parent company has over its subsidiary? It is not suggested that a parent company never has control over the subsidiary. For example, in a proper case of "lifting of corporate veil", it would be proper to say that the parent company and the subsidiary form one entity. But barring such case, the legal position of any company incorporated abroad is that its powers, functions and responsibilities are governed by the law of its incorporation.
>
> Control, in our view, is an interest arising from holding a particular number of shares and the same cannot be separately acquired or transferred. Each share represents a vote in the management of the company and such a vote can be utilized to control the company."

16. The need to determine and reach a conclusion as regards such an issue is of paramount importance as this Court has stated in Steel Authority of India Ltd. & Ors. etc. v. National Union Water Front Workers & Ors. etc.etc. AIR 2001 SC 3527, and held as under:

> "The principle is that if the Government acting through its officers was subject to certain constitutional limitations, a fortiori the Government acting through the instrumentality or agency of a corporation must equally be subject to the same limitations. It is pointed out that otherwise it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to override the Fundamental Rights by adopting the stratagem of carrying out its function through the instrumentality or agency of a corporation while retaining control over it." (See also: M/s. Star Enterprises & Ors. v. City and Industrial Development Corpn. of Maharashtra Ltd. & Ors. (1990) 3 SCC 280; LIC of India & Anr. v. Consumer Education and Research Centre & Ors. AIR 1995 SC 1811; and Mysore Paper Mills Ltd. (supra).

17. In order to determine whether an authority is amenable to writ jurisdiction except in the case of habeas corpus or quo warranto, it must be examined, whether the company/corporation is an instrumentality or an agency of the State, and if the same carries on business for the benefit of the pubic; whether the entire share capital of the company is held by the government; whether its administration is in the hands of a Board of Directors appointed by the government; and even if the Board of Directors has been appointed by the government, whether it is completely free from governmental control in the discharge of its functions; whether the company enjoys monopoly status; and whether there exists within the company, deep and pervasive State control. The other factors that may be considered are whether the functions carried out by the company/corporation are closely related to governmental functions, or whether a department of government has been transferred to the company/corporation, and the question in each case, would be whether in light of the cumulative facts as established, the company is financially, functionally and administratively under the control of the government. In the event that the Government provides financial support to a company, but does not retain any control/watch over how it is spent, then the same would not fall within the ambit of exercising deep and pervasive control. Such control must be particular to the body in question, and not general in nature. It must also be deep and pervasive. The control should not therefore, be merely regulatory.

18. In West Bengal State Electricity Board & Ors. v. Desh Bandhu Ghosh & Ors. (1985) 3 SCC 116, this Court considered a case where the respondent-employee was terminated by giving him only three months' notice, and without holding any enquiry or informing him about any actions on his part that were unwarranted. The court, after placing reliance on the judgment in Workmen v. Hindustan Steel Ltd. AIR 1985 SC 251, held that where a regulation enables an employer to terminate the services of an employee, in an entirely arbitrary manner and in a manner that confers vicious discrimination, the same must be struck down as being violative of Article 14 of the Constitution. Therefore, even Standing Orders must be non-arbitrary, and must not confer uncanalised and drastic powers upon the employer, which enables him to dispense with an inquiry and further enables him to dismiss an employee, without assigning any reason for the same, by merely stating, that doing so would not be expedient, and that it would be against the interests of the industry, to allow continuation of employment with respect to the employee. This is primarily because, such a procedure is violative of the basic requirements of natural justice. Such power would tantamount to a blatant adoption of the "hire and fire" rule.

19. Where the actions of an employer bear public character and contain an element of public interest, as regards the offers made by him, including the terms and conditions mentioned in an appropriate table, which invite the public to enter into contract, such a matter does not relegate to a pure and simple private law dispute, without the insignia of any public element whatsoever. Where an unfair and untenable, or an irrational clause in a contract, is also unjust, the same is amenable to judicial review. The Constitution provides for achieving social and economic justice. Article 14 of the Constitution guarantees to all persons, equality before the law and equal protection of the law. Thus, it is necessary to strike down an unfair and unreasonable contract, or an unfair or unreasonable clause in a contract, that has been entered into by parties who do not enjoy equal bargaining power, and are hence hit by Section 23 of the Contract Act, and where such a condition or provision becomes unconscionable, unfair, unreasonable and further, is against public policy. Where inequality of bargaining power is the result of great disparity between the economic strengths of the contracting parties, the aforesaid principle would automatically apply for the reason that, freedom of contract must be founded on the basis of equality of bargaining power between such contracting parties, and even though ad idem is assumed, applicability of standard form of contract is the rule. Consent or consensus ad idem as regards the weaker party may therefore, be entirely absent. Thus, the existence of equal bargaining power between parties, becomes largely an illusion. The State itself, or a state instrumentality cannot impose unconstitutional conditions in statutory rules/regulations vis-à-vis its employees, in order to terminate the services of its permanent employees in accordance with such terms and conditions. (Vide: Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, AIR 1986 SC 1571; D.T.C. v. D.T.C. Mazdoor Congress, AIR 1991 SC 101; LIC of India (supra); K.C. Sharma v. Delhi Stock Exchange & Ors., AIR 2005 SC 2884; and Punjab National Bank by Chairman & Anr. v. Astamija Dash, AIR 2008 SC 3182).

20. A question may also arise as regards whether the court must examine only those facts and circumstances that existed on the date on which the cause of action arose, or whether subsequent developments, are also to be taken into consideration. The aforesaid issue was dealt with by this Court in Rajesh D. Darbar & Ors. v. Narasingrao Krishnaji Kulkarni & Ors. (2003) 7 SCC 219, and therein it was held as under:

> "The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, AIR 1941 FC 5 falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant

in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in Pasupuleti Venkateswarlu v. Motor & General Traders AIR 1975 SC 1409 read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (see V.P.R.V. Chockalingam Chetty v. Seethai Ache AIR 1927 PC 252)."

21. The above-mentioned appeals are required to be considered in light of the aforesaid settled legal propositions. However, at this stage it may also be pertinent to refer to the relevant Clauses of the Memorandum and Articles of Association, which read as under:

"7A. Notwithstanding anything contained in these Articles and so long as the Company remains a Government Company, the President of India shall subject to the provisions of Article 6 thereof and Section 255 of the Act, be entitled to appoint one or more Directors (including whole time Director

(s) by whatever name called) of the Company to hold office for such period and upon such terms and condition as the President of India may from time to time decide.

xx xx xx

17. The Company may, subject to the provisions of Section 284 of the Act, by ordinary resolution for which special notice has been given, remove any Director before the expiration of his period of office and may be ordinary resolution of which special notice has been given, appoint another person in his stead, if the Director so removed was appointed by the Company in General Meeting or by the Board under Article 10. The person so appointed shall hold office until the date upto which his predecessor would have held office if he had not been so removed. If the vacancy created by the removal of a Director under the provisions of this Article is not so filled by the meeting at which he is removed the Board may at any time thereafter fill such vacancy under the provisions of Article 10.

xx xx xx 26AA. Notwithstanding anything to the contrary contained in these Articles, so long as the company remains a Government company within the meaning of Section 617 of the Act, the President of India shall be entitled to issue from to time

such directives or instructions as may be considered necessary to the conduct of business and affairs of the Company. Provided that all instructions from the President of India shall be in writing addressed to the Chairman or Managing Director of the Company.

xx xx xx

146. No dividend shall be payable except out of the profits of the Company or of moneys provided by the Central or a State Government for the payment of the dividend in pursuance of any guarantee given by such Government and no dividend shall carry interest against the Company."

22. Admittedly, the appellant is a government company which is managed under the guidance of the Ministry of Petroleum and Natural Gas. The Ministry of Petroleum and Natural Gas exercises administrative control over the appellant company. The appellant company started its business as a partnership firm in 1867 and subsequently, the same was converted into a private limited company in 1924, and then eventually, into a public limited company in 1936.

Its past shareholding position has been reproduced as under:

Category of shareholders	%age of equity holding
IBP Co. Ltd.	61.80%
Financial Institutions & Banks	21.69%
Public	14.29%
Employees	0.85%
Foreign National	0.44%
Corporate Bodies	0.86%
U.P. State Government	0.02%
Directors & their relatives	0.85%

The present shareholding as per the Annual Report for 2005-06 has been as under:

Category of shareholders	%age of equity holding
Balmer Lawrie Investment Ltd.	61.80%
Mutual Fund & UTI	5.08%

Financial Institutions & Banks	12.85%
Foreign National	2.97%
UP State Government	0.05%
Private/Corporate Bodies	6.14%
Indian Public	11.10%
Directors & their relatives	0.01%

23. There is nothing on record to show that the Central Government provides any financial or budgetary support to the appellant company. The appellant company is a profitable company and meets its own working capital requirements, as well as its fixed capital requirements for all requisite purposes through internal funds generated by the re-deployment of its own profits, and also by borrowing short term funds from financial institutions. The grant given by the government to the appellant company is in fact very limited, and the extent of such grant has been shown by the company as under:

Year	Amount of grant given in lakhs	%age of the grant-vs-avg. yearly fund requirement of the appellant-co.(353.55 crores)
1999	91.29	0.26
2001	237	0.67
2002	20	0.06
2003	176	0.50

24. The appellant company carries on its business in diverse fields through various Strategic Business Units (hereinafter referred to as 'SBUs'), and its work is being carried on by (i) an SBU for Industrial Packaging; (ii) an SBU for Greases & Lubricants; (iii) an SBU for Logistics Services; (iv) an SBU for Projects & Engineering Consultancy; (v) an SBU for Travel & Tour; (vi) an SBU for Leather Chemicals; (vii) an SBU for Tea Blending & Packaging; and (viii) an SBU for Container & Freight Station.

25. Undoubtedly, the business carried on by the appellant company does not confer upon it any monopolistic character, as there are several private companies that are carrying on the same business and some of these businesses are even generally carried on by individual persons.

Under the Conduct, Discipline and Review Rules applicable to the officers of the appellant company, a letter dated 31.3.1989 written by Managing Director of the company, shows that government directives on the subject have been made applicable with certain modifications as required to the terms and conditions of employment that are applicable to various organizations of the company. The company is not only a Government of India enterprise, but is also under the Administrative control of the Ministry of Petroleum, Chemicals and Fertilizers, Government of India. Its directors are appointed mainly from government service. Article 26AA of the Articles of Association lays down that the President of India shall be entitled to issue from time to time, such directives or instructions, as may be considered necessary in regard to the administration of the business and affairs of the company. Article 7A thereof, provides that the President of India shall, subject to other existing provisions, be entitled to appoint one or more directors in the company for such period, and upon such terms and conditions, as the President of India may from time to time decide are required. In view of the provisions of Section 617 of the Companies Act, 1956, a government company has been defined by way of an inclusive definition, as that which is a subsidiary of a government company. The appellant company has also been receiving grant-in-aid from the Oil Industry Development Board by way of a grant and not as a loan. Some products of the company are in fact monopoly products, whose procurement and distribution are within the direct control of the Ministry of Petroleum which is under the Central Government. All Matters of policy and also, the management issues of the appellant company, are governed by the Central Government. The Central Government has control over the appointment of Additional Directors, and Directors, and their remuneration etc. is also determined by Presidential directives, and the same is applicable to deciding the residential accommodation of the Managing Director, his conveyance, vigilance, issues regarding the welfare of weaker sections etc. The functioning of the appellant company is of great public importance. Majority of its shares are held by a government company. Its day-to-day business and operations, do not depend on the actions and decisions taken by the Board of Directors, in fact the said decisions are taken under either Presidential directives, or in accordance with instructions issued by the Administrative Ministry or the Finance Ministry. Its basic function is related to the oil industry, which is generally handled by government companies. The appellant company cannot take any independent decisions with respect to the revision of pay-scales that are applicable to its employees, and the same are always subject to the approval of the Administrative Ministry. The annual budget of the company is also passed only if the same is approved by the Administrative Ministry.

26. It is evident from the material on record that all the whole time Directors of the appellant company are appointed by the President of India, and such communications are also routed through the Administrative Ministry.

The appellant company is under an obligation to submit its monthly, as well as its half-yearly performance reports to the Ministry of Petroleum, Government of India. The company has also promoted the use of Hindi language in the course of official work, in consonance with the

circulars/guidelines that have been issued by the Government of India. The appellant company and IBP Company Limited, had a common Chairman. The remuneration structure of the employees of the appellant company, is also in conformity with those which are applicable to the Indian Oil Corporation and IBP, as has been fixed by the Bureau of Public Enterprises, Government of India. The reservation policy as enshrined in the Directive Principles of the Constitution, has also been implemented as per the directions of the Central Government in the appellant company.

27. In order to determine whether the appellant company is an authority under Article 12 of the Constitution, we have considered factors like the formation of the appellant company, its objectives, functions, its management and control, the financial aid received by it, its functional control and administrative control, the extent of its domination by the government, and also whether the control of the government over it is merely regulatory, and have come to the conclusion that the cumulative effect of all the aforesaid facts in reference to a particular company i.e. the appellant, would render it as an authority amenable to the writ jurisdiction of the High Court.

28. Clause 11(a) of the letter of appointment reads as under:

> "The Company shall have the right, at its sole discretion, to terminate your services by giving you three calendar months notice in writing and without assigning any reason. The Company also reserves the right to pay you in lieu of notice, a sum by way of compensation equal to three months emoluments consisting of basic salary, dearness allowance, house rent assistance and bonus entitlements, if any, after declaration of bonus".
>
> Undoubtedly, the High Court has not dealt with the issue on merits with respect to the termination of the services of the respondents herein. However, considering the fact that such termination took place several decades ago, and litigation in respect of the same remained pending not only before the High Court, but also before this Court, it is desirable that the dispute come to quietus. Therefore, we have dealt with the case on merits. In keeping with this, we cannot approve the "hire and fire" policy adopted by the appellant company, and the terms and conditions incorporated in the Manual of Officers in 1976, cannot be held to be justifiable, and the same being arbitrary, cannot be enforced.
>
> In such a fact-situation, clause 11 of the appointment letter is held to be an unconscionable clause, and thus the Service Condition Rules are held to be violative of Article 14 of the Constitution to this extent. The contract of employment is also held to be void to such extent. The dictionary meaning of the word 'unconscionable' is "showing no regard for conscience; irreconcilable with what is right or reasonable. An unconscionable bargain would therefore, be one which is irreconcilable with what is right or reasonable. Legislation has also interfered in many cases to prevent one party to a contract from taking undue or unfair advantage of the other. Instances of this type of legislation are usury laws, debt relief laws and laws regulating the hours of work and conditions of service of workmen and their unfair discharge from service,

> as also control orders directing a party to sell a particular essential commodity to another." Thus, we do not find any force in the said appeals. The same are dismissed accordingly.

29. As we have already mentioned, the present appeal stands abated qua respondent in C.A. No. 419/2004 owing to his death, and the non- substitution of his legal heirs. We would like to clarify that his legal heirs may enure the benefits of this judgment, to the extent that respondent was entitled to receive 60% of the arrears of wages due to him, from the date of his termination to the date of his superannuation. The benefit shall be calculated on the basis of periodical revision of salary and other terminal benefits which shall be paid to the LRs of the deceased employee within three months. If it is not given within three months then interest at the rate of 9% will accrue. Additionally, they shall also be entitled to all statutory benefits like gratuity, provident fund and pension, if any.

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30. The abovesaid appeal stands disposed of in terms of judgment in Civil Appeal Nos.419-426 of 2004.

.....J. (Dr. B.S. CHAUHAN) .....J. (V. GOPALA GOWDA) New Delhi;

February 20, 2013
