The Workmen Of Buckingham And Carnatic ... vs The State Of Tamil Nadu And Two Ors. on 7 April, 1982

Equivalent citations: [1982(45)FLR304], (1982)IILLJ90MAD

ORDER

Sathiadev, J.

1. The prayer in the writ petitions filed by the Buckingham and Carnatic Mills Staff Union is for the issue of a writ of mandamus, directing the second respondent-Commissioner of Labour, Madras to prohibit the 3rd respondent. The Management of Binny limited (Buckingham and Carnatic Mills Unit) from laying off the staff until such time the voluntary retirement scheme is implemented as per clause (v) of the Memorandum of Understanding which is annexed as Annexure "A" to the settlement dated 6-6-1981. In substance the petitioners are seeking a writ of mandamus to compel the second respondent-Commissioner of Labour to enforce a settlement arrived at between the parties under S. 12(3) of the Industrial Disputes Act. One of the questions, therefore, that arises for adjudication in this writ petition is the jurisdiction of this Court under Art. 226 of the Constitution of India to issue a writ of mandamus, directing the Commissioner of Labour to enforce a settlement arrived at between the management and the workmen under S. 12(3) of the Industrial Disputes Act. The Writ petition No. 11168 of 1981 (K. Kalaimani - 114 others v. Govt. of India, Ministry of Commerce, by Its Secretary, New Delhi, & 6 others) was filed by some of employees of the Buckingham and Carnatic Mills against the management as well as the Commissioner of Labour, for an identical relief Ramanujam, J., before whom the writ petition came for admission, dismissed the writ petition in limine. The learned Judge has rendered an elaborate judgment and has come to the conclusion that once there is a S. 12(3) settlement between the management and its workmen, then the matter becomes a binding contract between the contracting parties and thereafter the relationship is purely contractual and if there is any breach of the settlement or its terms by any of the parties, then that matter has to be agitated elsewhere and not in proceedings under Art. 226 of the Constitution.

2. While, Mr. V. P. Raman, learned counsel for Buckingham and Carnatic Mills would state that the question of the maintainability of the writ petition is concluded by the judgment of Ramanujam, J., Mr. Prasad, the learned counsel for the petitioners would contend that the view taken by Mr. Justice Ramanujam, regarding the maintainability of the writ petition is not correct and requires reconsideration. The learned counsel also would urge that the said judgment is not binding on me as it was dismissed at the stage of admission and has, therefore, no binding effect. No doubt, as rightly contended by Mr. Prasad, this decision cannot be a binding precedent on me as it has been dismissed at the stage of admission (vide-Dabur (D. R. S. K. Burman) v. The Workmen (1968)-I. M.L.J. (SN) 8) However, I am satisfied that the learned Judge, while disposing of the earlier petition, had elaborately considered the matter. In the circumstances, I feel that in substance, the

correctness or otherwise of the view taken by Ramanujam, J., has to be considered. Further, the question raised is of some importance and is of frequent occurrence under the provisions of the Industrial Disputes Act. I, therefore, consider it as appropriate that the matter should be heard and disposed of by a Bench. The Writ petition will be, therefore, placed before My Lord, the officiating Chief Justice for appropriate directions as to the writ petition being posted before a Bench.

3. Mr. Prasad, learned counsel for the petitioners states that in view of the urgency of the matter he got a date fixed for the expenditious disposal of the writ petitions and that is why the writ petitions had appeared at the top of the list. Learned counsel, therefore, makes a fervent appeal that the matter should be directed to be placed before the Bench at the top of the list. Any direction regarding the posting has only to be done by My Lord, the Officiating Chief Justice. I, therefore, recommend for the consideration of My Lord, the Officiating Chief Justice the plea made by Mr. Prasad for an early posting of the case before a Bench.

Case Note:

> Labour and Industrial - breach of settlement - Sections 12, 29, 34 and 39 of Industrial Disputes Act, 1947 and Article 12 and 226 of Constitution of India - settlement deed executed between management of mill and its employee - one of parties not ready for implementation of settlement - aggrieved party may prosecute other party under section 29 - mill not instrumentality or agency of Government within of Article 12 - writ is not appropriate remedy for such breach of settlement.
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> JUDGMENT S. Padmanabhan, J.

4. These two writ petitions have been filed by the General Secretary of the Buckingham and Carnatic Mills Staff Union and two others. In W.P. No. 11489 of 1931, the petitioners have prayed for the issue of a writ of mandamus directing the second respondent, Commissioner of Labour Madras, to take all measures to see that the third respondent, M/s. Buckingham & Carnatic Mills Ltd., hereinafter referred to as the Management, implements clause (v) of the Memorandum of understanding which is annexed as Annexure ('A') to the settlement, dated 6-6-1981 reached under S. 12(3) of the Industrial Disputes Act, by offering voluntary retirement to the extent of the staff found excess as a result of the revised manning strength. In W.P. No. 11483 of 1981, the petitioners have prayed for the issue of a Writ of mandamus directing the second respondent to prohibit the third respondent from laying off the staff until such time the voluntary retirement scheme is implemented.

5. The facts leading to the filling of the writ petitions may be stated as follows : The B & C Mills in which about 10,000 workers and 1029 staff members (Admn. and Tech.) were employed was closed on 1-1-1981. Thereafter, attempts were made by the members of Parliament belonging to various political parties in Tamil Nadu and the Minister for Commerce, Government of India, to find out ways and means of re-opening the mills to avoid a number of workers being rendered jobless. This resulted in a memorandum of understanding being arrived at on 28-3-1981. The said memorandum was signed by the then Joint Secretary, Department of Textiles, Ministry of Commerce, Government

of India, and the B & C Workers Union representing the staff and the workmen. The said memorandum of understanding declared that a representative of the Tamil Nadu Government would assist the workers union and the management to arrive at a settlement. The memorandum of understanding further provided for a revised workload/productivity/manning/staff pattern to be given effect from the date of reopening of the mills and the date limit for implementation of the revised workload/productivity/manning/staff pattern was fixed as from the date of re-opening of the mills. Just before the re-opening of the mills, a settlement was entered into between the management of B & C Mills and the workmen before the Commissioner of Labour under S. 12(3) of the Industrial Disputes Act, hereinafter referred to as the "Act" and Rule 25(1) of the Industrial Disputes, hereinafter referred to as the "Rules". It is the case of the petitioners that the memorandum of understanding dated 28-3-1981 contained a voluntary retirement scheme which permitted the employees to voluntarily retire with retirement benefits of 50 per cent of the emoluments (wages and dearness allowance only) last drawn (to be paid in lump sum or monthly on the option of the voluntarily retiring employees) till he reached the age of retirement fixed under the standing orders, viz., 58 years. It is the case of the petitioners that the management did not act in terms of the memorandum of understanding and also in terms of the settlement entered into between the parties under S. 12(3) of the Act. The mills were reopened on 19-6-1981. On the re-opening of the mills contrary to the terms contained in the memorandum of understanding dated 28-3-1981 and S. 12(3) settlement dated 6-6-1981, the management laid-off about 270 persons as surplus staff without allowing them to take advantage of the voluntary retirement scheme envisaged under clause (v) of the memorandum of understanding.

6. In this context, it may also be mentioned that the petitioners by a letter dated 7th August, 1981 called upon the management to extend the benefit of voluntary retirement scheme to the said 270 persons. This was not accepted by the management. Thereupon, the petitioners made a representation to the Commissioner of Labour. The Commissioner of Labour, the second respondent held discussions between the management and members of the union. Thereafter, the Commissioner, of Labour addressed the first respondent, the Government of Tamil Nadu, to refer to the Industrial Tribunal, Madras, the issue relating to the question of interpretation of the settlement arrived at between the Parties on 6-6-1981 for adjudication. On 18-11-1981, the Government requested the Commissioner of labour to advise the management and the union to settle the various issues between the management and workmen amicably. The Commissioner of Labour, Madras in turn advised the petitioners and the management accordingly. It is in these circumstances, the petitioners have filed these writ petitions.

7. Before dealing with the various contentions advanced by the counsel for the petitioners as well as the management and respondents 1 and 2, it is necessary to set forth the terms of the memorandum of understanding dated 28-3-1981 and the settlement dated 6-6-1981. Clause (i) of the Memorandum of understanding states that talks between the B & C Mills and the workmen would commence with immediate effect with a view to consider proposals to improve existing workload/productivity/manning and to prescribe appropriate wage norms. A representative of the Tamil Nadu Government would assist in the talks. His decisions in disputed matters would be final subject to concurrence by the Central Government. As and when sectorial workload/productivity/manning/appropriate wage norms were settled, they would be implemented.

Clause (ii) provided that from the date of reopening of the mills, it would revert to 7-day 24 hour working. Clause (iii), which is the most relevant clause for the purpose of these writ petitions, deals with the voluntary retirement scheme. Both operative and non-operative staff of B & C Mills who had completed the age of 54 years as on 1-1-1981 would be entitled to take advantage of the voluntary retirement scheme. The option under the scheme has to be exercised within 30 days of the commencement of the scheme. The persons who opt for such scheme would be permitted to voluntarily retire with retirement benefits of 50% of the emoluments till he reached the age of retirement which was 58 years under the standing orders. The emoluments would take in only the wage and dearness allowance last drawn. The amount would be paid in lump sum or monthly at the option of the employees who volunteers to retire under the scheme. The benefit would be available in addition to the other benefits available to the employees under the Act. The clause envisages that about 1223 workers and 104 non-operative staff would opt for the scheme. If, however, that number of employees do not opt to retire under the voluntary retirement scheme, the offer would be extended to those employees who had completed the age of 50 years on 1-1-1981. However, in the case of those persons, compensation would be restricted to 50% of the emoluments for a period of 24 months, irrespective of their age. The clause further states that even after this extension, if sufficient number of people to make up the figure of 1327 personnel do not opt to voluntarily retire, the number required to make up the expected strength would be laid-off. Clause (i) states that the implementation of the scheme of voluntary retirement would be after the revised workload-productivity/manning/appropriate wages norms mentioned in clause (iv) was settled and implemented. Clause (v) states that the difference, if any, between the appropriate manning strength as arrived at on the basis of the norms mentioned in clause (i) and the manning strength that results consequent to the implementation of the voluntary retirement scheme as provided for in clause (iii) would be adjusted by extension of the voluntary retirement scheme further on the basis of age, failing which the surplus, if any, would be laid-off. The settlement dated 6-6-1981 entered into between the management and the workmen before the Commissioner of Labour, Madras under S. 12(3) of the Act states that the memorandum of understanding dated 28-3-1981 should be treated as an integral part of the settlement. It is not necessary to refer to the other clause in the settlement dated 6-6-1981.

8. On 30-3-1981, one Thiru Kamalarathnam, I.A.S. (Retired) was nominated by the Tamil Nadu Government as representative to decide the manning strength in terms of clause (i) of the memorandum of understanding. On 2-5-1981, Thiru Kamalarathnam called upon the employees between the age group of 54 years and 58 years to exercise their option in a prescribed form to go on voluntary retirement. As against the envisaged strength of 104 members of the staff only 87 offered to retire under the voluntary retirement scheme. Therefore, on 9-3-1981, Thiru Kamalarathnam issued notices to the petitioners' union and the workmen extending the voluntary retirement scheme to the lower age group. On 21-5-1981, he announced that the new manning strength for the staff is 607, but subsequently revised it to 619. The result of the determination of the manning strength was that the number of staff was brought down from 1029 to 619. On the basis of the new manning strength determined as 619, 410 members of the staff would be entitled to the advantage of the voluntary retirement scheme, 87 persons had already opted to retire pursuant to the notice issued by Thiru Kamalarathnam on 2-5-1981. Consequently, the management was bound to offer the voluntary retirement scheme to the remaining 323 employees. The grievance of the petitioners is

that there is no justification on the part of the management to refuse the benefit of voluntary retirement scheme to these 323 members of the staff and these persons should not be laid-off.

9. The case of the management is that the writ petitions themselves, being mainly directed against the third respondent-management, are not maintainable on two grounds. Firstly, the B & C Mills is not a public authority and consequently, this Court would have no jurisdiction to issue any writ in exercise of its powers to enforce settlement entered into between the management and the representative of the union under S. 12(3). Further, the petitioners have got an adequate and effective remedy under the provisions of the Act for the redressal of their grievance arising out of the threatened lay-off. Further, it would be equally open to the petitioners to move the first respondent-Government of Tamil Nadu for interpretation of clause (v) in the memorandum of understanding dated 28-3-1981 for adjudication by the Industrial Tribunal, Madras. As a matter of fact, the petitioners have approached the Government of Tamil Nadu for referring the question of interpretation of clause (V) of the memorandum of understanding for adjudication by the Industrial Tribunal, Madras and the matter is receiving the attention of the Government. In the circumstances, the writ petitions themselves are not maintainable. It is then contended that the Commissioner has no powers either under the provisions of the Act or otherwise to issue any directions to the third respondent in the manner prayed for in the writ petitions. The counter-affidavit further proceeds to state that the voluntary retirement scheme was commenced on 8-5-1981 for workmen above 54 years of age. It was extended to lower age groups in terms of clause (iii) of the memorandum of understanding. In terms of the memorandum of understanding in, the workman and the staff had only 30 days to exercise their option to take advantage of the voluntary retirement scheme. Consequently, Thiru Kamalarathnam refused to receive applications from the workman and the staff to voluntarily retire on the ground that the 30 days time for making the applications as envisaged in the memorandum of understanding had expired. Though Thiru Kamalarathnam has fixed the last date as 20th May, 1981 for receiving applications from employees to voluntarily retire, he extended the date to 9-6-1981. Among the applicants there were persons below the age of even 50 years. In these circumstances, the management decided to retrench the surplus staff. The management further contended that W.P. No. 11168 of 1981 had been filed by some of the employees for identical reliefs. Ramanujam, J. took the view that once a settlement under S. 12(3) is entered into between the management and the workman, it becomes a binding contract between the parties and if there is any breach of the settlement or the terms by any of the parties, the matter could not be agitated in proceedings under Art. 226 of the Constitution of India to prevent a breach of contract by the parties or for specifically enforcing the contract.

10. On 22-2-1981, the petitions have filed a supplemental affidavit to the effect that the B & C Mills is an "authority" within the meaning of Art. 12 of the Constitution of India. The management has filed a counter-affidavit denying the stand of the petitioners that B & C Mills is an "authority" within the meaning of Art. 12 of the Constitution of India and is amenable to the jurisdiction of this Court under Art. 226 of the Constitution of India.

11. Mr. N. G. R. Prasad, the learned counsel for the petitioners, raised the following contentions. (1) Under the terms of the memorandum of understanding dated 28-3-1981, the appropriate manning strength for the mills has got to be determined by Thiru Kamalarathnam. It is only after the

manning strength is determined, it would be possible to know the exact difference in the number of members of the staff as originally envisaged and the number of members who have to be declared surplus. Once that figure is arrived at it would be the duty of the management to extend to the surplus staff the opportunity to take advantage of the voluntary retirement scheme. The time-limit of 30 days as envisaged in clause (iii) of the memorandum of understanding cannot be applied before the manning strength is determined. The failure of the management to offer retirement benefit scheme to the members of the staff, who have become surplus by reason of the determination of the manning strength at 619, amounts to a breach of the settlement arrived at between the management and its workmen under S. 12(3) of the Act. It is the statutory duty of the second respondent. Commissioner of Labour, Madras before whom S. 12(3) settlement was arrived at to see that the management implements the terms of the said settlement. (2) There is no doubt with regard to the interpretation of clause (v) of the memorandum of understanding. In the circumstances, there is no need for referring any question of interpretation with regard to clause (v) for adjudication before the Industrial Tribunal, Madras. In any event, the first respondent - State Government must be deemed to have turned down the recommendation of the Commissioner of Labour for referring the question of interpretation of clause (v) of the memorandum of understanding for adjudication by the Industrial Tribunal, Madras. That being the case, it this Court comes to the conclusion that there is no ambiguity in clause (v) of the memorandum of understanding and the management has failed to act in terms of the said clause, it would be open to this Court to compel the Commissioner of Labour, the second respondent, to direct the management to implement the terms of the settlement and also to prohibit the management from retrenching the surplus staff in violation of the terms of the settlement. Assuming, without admitting, that no writ would issue against the second respondent for directing the management to implement the settlement dated 6-6-1981 and to prohibit them from retrenching the surplus staff, this Court could issue appropriate writ or direction in the nature of a writ direct to the management directing them to implement the settlement dated 6-6-1981 by offering voluntary retirement scheme to the surplus staff and by prohibiting them from retrenching them. In this context, the learned counsel further urged that B & C Mills is a public authority within the meaning of Art. 12 of the Constitution of India. In any event, the learned counsel urged a writ under Art. 226 of the Constitution of India could be issued even against a private individual.

12. On the other hand, Mr. V. P. Raman, the learned counsel for the management urged that when once a settlement has seen arrived at between the management and the workmen under S. 12(3) of the Act, the Commissioner of Labour has no further powers to compel the management to give effect to the terms of the settlement, even if it is assumed for the sake of argument that the management had committed a breach thereof. Further, on the facts of the case on a representation made by the petitioners, the second respondent, Commissioner of Labour, had discussions with the petitioners and the management. The Commissioner of Labour came to the conclusion that there was a genuine difficulty in interpreting clause (v). Accordingly the Commissioner recommended to the State Government to refer the question of interpretation of clause (v) of the settlement, dated 6-6-1981 for adjudication by the Industrial Tribunal. The said question is still under the consideration of the Government. The petitioners are not correct in saying that the Government have turned down the recommendations of the Commissioner for reference of the question for adjudication by the Industrial Tribunal. The writ petitions do not contain a prayer for the issue of a writ of mandamus

against the management. Even granting that this Court can mould the relief to be granted to the petitioners in an appropriate manner, this Court cannot issue a writ of mandamus to the management as it is not an authority within the meaning of Art. 12 of the Constitution of India, as contended for by the learned counsel for the petitioners. Further, the management also would not be amenable to the jurisdiction of this Court under Art. 226 of the Constitution of India, as it is not performing any public or statutory duty. The settlement entered into between the management and the workmen on 6-6-1981 is purely contractual in character and consequently the petitioners cannot invoke the jurisdiction of this Court under Art. 226 of the Constitution of India. The learned counsel also urged that the present writ petitions are barred by res judicata by the dismissal of W.P. No. 11168 of 1981 by Ramanujam, J. In any event argued Mr. Raman, even on the merits the petitioner's contentions cannot be sustained.

13. The learned Government. Advocate Mr. S. Jagadeesan argued that the writ petitions are not maintainable. The petitioners filed a representation before the Commissioner of Labour. The Commissioner accordingly held discussions with the petitioners and the management and recommended to the Government that, in view of the difficulty in interpreting clause (v) of the settlement dated 6-6-1981, the question should be referred for adjudication by the Industrial Tribunal. The Government have not passed final orders on the petition, in fact, the petitioners themselves have invoked the jurisdiction of the Government under S. 36A of the Act for referring the question for adjudication by the Industrial Tribunal, Madras. Further, the Government have not taken a final decision on the matter. By the letter dated 18-11-1981, the Government have only requested the Commissioner of Labour to advice the management and workmen to resolve their various differences amicably. However, that does not mean that the government have turned down the recommendations of the Commissioner of Labour to refer the question for adjudication by the Industrial Tribunal.

14. Before considering the question whether a writ of mandamus as prayed for by the petitioners can be issued against the second respondent, Commissioner of Labour, it is necessary to consider the scope and nature of a writ of mandamus. A writ of mandamus is a command issued by a Court to a person holding public office or against a corporation or inferior court for the enforcement of duties which under the law for the time being in force are clearly incumbent upon such person or Court in his or its public character or corporation in its corporate character. I Halasbury's Laws of England, Third Edition, Volume II, at page 84 it is stated thus :

> "The order of mandamus is an order of a most extensive remiedial nature, and is, in for, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to apply defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right."

15. Prof. De Smith in his Judicial Review of Administrative Action, Fourth Edition, at page 540 states : "Mandamus lies to secure the performance of a public duty, in the performance of which the

applicant has a sufficient legal interest. The applicant must show that he has demanded performance of the duty and that performance has been refused by the authority obliged to discharge it. It is pre-eminently a discretionary remedy, and the Court will decline to award it if another legal remedy is equally beneficial, convenient and effective.

16. The duty to be performed must be of a public nature ..... To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. "It may be sufficient for the duty to have imposed by charter, common law, custom or even contract" Garner in his Administrative Law, Fourth Edition, at page 183 states thus :

> "This order is different in nature from prohibition and certiorari; it commands any person to whom it is directed to carry out a public duty imposed by law ... The duty which it is sought to enforce by order of mandamus must be of a public nature."

17. A writ of mandamus has been described thus in Corpus Juris Secundum, Vol. 55, page 15;

> "Mandamus has been broadly defined as a writ issuing from a court of competent jurisdiction, directed to a person, officer, corporation or inferior court commanding the performance of a particular duty which results from the official station of the one to whom it is directed or from operation of law, or as a writ commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. It is a proceeding to compel - one to perform some duty which the law imposes on him and the writ may prohibit the doing of a thing, as well as command it to be done."

18. In Sohan Lal v. Union of India it is observed as follows :

> "Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty."

19. In Praga Tools Corpn. v. C. V. Imanuel [1969-II L.L.J. 749], it is observed as follows :

> "Article 226 provides that every High Court shall have power to issue to any person or authority orders and writ including writs in the nature of habeas carpus, mandamus, etc. or any of them for the enforcement of any of the rights conferred by part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. .... Therefore, the condition precedent for the issue of mandamus is that there is one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or inferior Tribunal requiring him or them to do a particular thing

> therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body."

20. It is, therefore, clear that a writ of mandamus is an extraordinary remedy. It is in form a command directed to a person, corporation or an inferior Tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. So long as the duty that is sought to be a performed is in the nature of a public duty, it is not necessary that the person or the authority on which the duty is imposed should be a public official or an official body. It is further necessary that the person claiming a writ of mandamus must have a legal right to the performance of a legal duty by the one against whom the writ is sought.

21. It is on the above principles that the question whether a writ of mandamus as prayed for by the petitioners can be issued against the second respondent, Commissioner of Labour, has to be considered. For deciding this question, we shall assume without deciding that the management has failed to implement one or the other terms of the settlement dated 6-6-1981. Under S. 12 of the Act, the conciliation officer, is enjoined to hold conciliation proceedings in the prescribed manner is cases where there is an industrial dispute between the management and the workmen or an industrial dispute is apprehended. Section 12(2) casts a duty on the conciliation officer to investigate the dispute as early as possible and to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. In cases, where as a result of the conciliation proceedings, a settlement of the dispute or any of the matters in dispute is arrived at between the management and the workmen, the conciliation officer is bound in terms of sub-s. (3) or S. 12 to send a report to the State Government together with a memorandum of settlement signed by the parties to the dispute. The memorandum of settlement has to be entered into in accordance with Rule 25(2) of the Rules. Admittedly, in this case the settlement has been entered into by the management and the workmen under S. 12(3) of the Act in the presence of the Commissioner of Labour and in according with the provisions contained in Rule 25 of the rules. The Commissioner of Labour, while acting under S. 12(3) as conciliation officer, is not invested with the power to adjudicate an industrial dispute. All that he can do is to try to persuade the parties to come to a fair and amicable settlement. In other words, his duties are only administrative and are purely incidental to industrial adjudication. Section 18(3) of the Act provides that a settlement arrived at in the course of the conciliation proceedings under the Act shall be binding not only on all parties to the industrial dispute, but in the case of an employer on his heirs, successors or assigns in respect of the establishment to which the dispute relates and in the case of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates to the date of the dispute and all persons who subsequently become employed in that establishment or part. Section 19 provides that a settlement shall come into operation on such date or as agreed upon by the parties to the dispute. Where no date is agreed upon, it shall come into force on the date on which the memorandum of settlement is signed by the parties. The settlement shall be binding for such period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the period aforesaid, until expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party

to the settlement. Section 29 makes punishable a breach of a binding settlement or award by any person. The person responsible for the breach shall be punishable with imprisonment for a term which may extent to six months or with fine or with both. Where the breach is a continuing one, the person committing the breach shall be liable to a further fine which may extend to Rs. 200 for everyday during which the breach continues after the first conviction. The section further empowers the Court to direct that the whole or any part of the fine realised from the person committing the breach to be paid by way of compensation to any person who has been injured by the breach. Section 34 provides that no Court shall take cognizance of any offence punishable under the Act or of the abetment of any such offence same on complaint made by or under the authority of the appropriate Government. The offence shall be tried only by a court which is not inferior to that of a Presidency Magistrate or a Magistrate of the first class. Section 39(b) empowers the State Government to direct that any power exercisable by it under the act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified, be exercisable also by such officer or authority subordinate to the State Government as may be specified in a notification. In other words, it will be open to the State Government to delegate the power under S. 39 to any other person. Apart from the above provisions, there is nothing either in the Act or in the rules conferring a power upon the Commissioner of Labour to implement the settlement arrived at between the parties under S. 12(3) of the Act. If any of the parties to the settlement is aggrieved by the non-implementation of the terms of settlement by the other party, then the remedy of the aggrieved party would be to move the Government for sanction to prosecute the party in breach under S. 29 of the Act. Mr. N. G. R. Prasad has not been able to place his finger on any privation in the Act or the rules, under which, the Commissioner of Labour is under a statutory duty to seek the enforcement of a settlement entered into between the management and workmen under S. 12(3) of the Act. Further, in this case, the Commissioner of Labour has done all that he could do within the powers conferred on him under the provisions of the Act. On receipt of a representation from the petitioners that the management is not giving effect to the term of the memorandum of understanding, the Commissioner of Labour issued notice to the management. After hearing the management the Commissioner felt that there was real difficulty in interpreting clause (v) of the memorandum of understanding. In the circumstances, he sent a report to the Government recommending that the question of interpretation of clause (v) of the memorandum of understanding should be referred for adjudication by the Industrial Tribunal, Madras. The Government, in their turn, have taken the categoric stand that no final orders have been passed on the recommendation of the Commissioner of Labour for reference of the question of interpretation of clause (v) of the memorandum of understanding to the Industrial Tribunal for adjudication. They have only sent an interim reply to the Commissioner that in view of the fact there are several matters of difference between the management and the workmen the Commissioner of Labour should advise them to come to an amicable settlement. It is, therefore, clear that the second respondent, the Commissioner of Labour has done whatever is possible for him within the four corners of the Act. In the circumstances, no writ of mandamus can be issued to the Commissioner of Labour directing him to take all measures to see that the third respondent implements clause (v) of the memorandum of understanding annexed to the settlement dated 6-6-1981 or to prohibit the third respondent from laying-off the staff.

22. Mr. N. G. R. Prasad then argued even if we come to the conclusion that to writ of mandamus could issue against the management of the B & C Mills, according to the learned counsel, even though the specific prayer in these writ petitions is for the issue of a writ of mandamus to the Commissioner of Labour, it would be open to this Court to mould relief according to the exigencies of the situation. To substantiate his argument that a writ could issue against the management of the B & C Mills, the learned counsel advanced two contentions (1) B & C Mills would come within the category of "other authority" under Art, 12 of the Constitution of India. (2) Even if B & C Mills does not fall within the category of Art. 12 of the Constitution of India, it would be amenable to the writ jurisdiction of this Court under Art. 226 of the Constitution of India, as according to the learned counsel a writ under Art. 226 of the Constitution of India can be issued even against a private person including an incorporated company.

23. We shall first take up the question whether B & C Mills is a state within the meaning of Art. 12 of the constitution of India. In Sukhdev Singh v. Bhagatram [1975 - I L.L.J. 399] the Supreme Court held that the expression 'other authority' occuring in Art. 12 of the Constitution of India was wide enough to include Corporations created by states and functioning within the territory of India or under the control of Government of India. Mathew, J., approached the question on the basis that the concept of State has undergone drastic changes in recent year and that the State could no longer be conceived of simply as a coercive machinery wielding the thunderbolt of authority. The Learned Judge quoted Mac Iver on The modern State, page 183 which is to the following effect : "If we clearly grasp the character of the State as a social agent understanding it rationally as a form of service and not mystically as an ultimate power, we shall differ only in respect of the limits of its ability to render service". The learned Judge further observed that a State could only act through the instrumentally or the agency of natural or judicial persons and that, therefore, there was nothing strange in the notion of the State acting through a corporation and make it agency or instrumentality of the State. In this context, the learned Judge referred to the decision of the Supreme Court of the United States in Mc. Cullough v. Maryland [1889] 4 Whear 316), wherein it has been held that the congress has power to charter corporation as incidental to or in aid of Governmental functions. The learned Judge then referred to the public corporations established by Parliament in Great Britain which and become a third arm of the Government and also to the "enterprise publique in France." The learned Judge then posed the question whether an act of privately owned and managed agency receiving direct financial aid from the State could be characterised as State action. The learned Judge answered the question thus : "It may be stated generally that State financial aid alone does not render the institution receiving such aid a State agency. Financial aid plus some additional factor might lead to a different conclusion A mere finding of State control also is not determinative of the question since a State has considerable measure control under it police power over all type of business operations. It is not possible to assume that the panoply of law and authority of a State under which people carry on ordinary business, or their private affairs or own property, each enjoying equality in terms of legal capacity would be extraordinary assistance. A finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action." Another factor which might be considered is whether the operation is an important function. The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such

public importance and so closely related to governmental function as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion." It has taken English and American Courts many years to concede that the exercise on behalf of the State does not deprive such activity of its governmental character. But a great many anomalies in common law remain, in particular as regards the immunities and privileges of the Crown in such matters, immunity from the binding force of status, debt priority, freedom from taxes and other public charges. The recent English cases appear, at long last, to move towards the abandonment of the totally antiquated notions of proper functions of Government. In this connection, the learned Judge cited the decisions in Pfizer v. Ministry of Health [1964] I Ch. 614. In the victorian time the treatment of patients in hospitals would have been regarded as something quite foreign to the functions of government, but since then there has been a revolution in political thought and a totally different conception prevails today as to what is and what is notwithin the functions of Government." The learned Judge quoted the following observation of Douglas, J. In New Yark v. United States, [1945] 326 U.S. 572 : 'A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit, Cf. Helvering, v. Gerherdt, [1937] 304 U.S. 405. A State may deem it as essential to its economy that it owns and operates bridges, street lights or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or even dangerous extension of State activities may today be deemed indispensable. But as Mr. Justice White said in his dissent in South Caroline v. United States, [1905] 199 U.S. 437, any activity in which a State engages within the limits if its police power is a legitimate governmental activity." To quote the learned Judge again : "Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed, Government agencies. Activities which are too fundamental to the society are by definition too important not be considered as Government function."

24. The doctrine of agency formulated by Mathew, J. in Sukhdev v. Bhagatram, [1975 - I L.L.J. 399], has been adopted by the Supreme Court in the following decisions, viz., (1) R. D. Shetty v. International Airport Authority of India, [1979 - II L.L.J. 217], (2) Somprakash Rekhi v. Union of India, [1981 - I L.L.J. 79]; and (3) Ajay Hasia v. Khalid Mujib Sehravardi, [1981 - I L.L.J. 103]. In these case, the Supreme Court held that corporations statutory or incorporated, would fall within the meaning of Art. 12 of the Constitution of India provided they are agencies or instrumentalities of the Government. It is enough to refer to the following tests as summarised by Ajay Hasia v. Khalid Mujib Sehravardi, (supra) to find out whether a corporation is an agency or instrumentality of the Government :

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

(3) It may be 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 instrument tality.

(5) If the functions of the corporation are of public importance and closely related to Government 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 the inference of the corporation being an instrumentality or agency of Government."

It is equally necessary to refer to the following observations of Chinnappa Reddy, J. in Managing Director U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee 1980 (1) L.L.J. 221) relied upon by Mr. Prasad : "I find it very hard indeed to discover any distinction on principle between a person directly under the employment of the Government a person under the employment of an agency or instrumentality of the Governments or a Corporation set up under a statute or incorporated but wholly owned by the Government.

25. It is but apposite to refer to certain observations of Krishna Iyer, J. In Som Prakash Rekhi v. Union of India, [1981 I L.L.J. 79] (Bharat Petroleum case) "For purpose of the companies Act, 1956, a Government company has a distinct personality which cannot be confused with the State. Likewise a statutory Corporation constituted to carry on commercial or other activity is for many purposes a distinct juristic entity not drowned in the sea of State, although, in substance, its existence may be bu a projection of the State. What we wish to emphasise is that merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, we should not scan the real character of that entity; and if it is found to be a mere agent or surrogate of the State, in fact owned by the State in truth controlled by the State, and in effect an incarnation of the State constitutional lawyers must not blink of these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Art. 12 that any authority controlled by the Government of India is itself State. Law has many dimensions and fundamental facts must govern the applicability of fundamental rights in a given situation. Sometimes the test formulated is over-simplified by asking whether the corporation is formed by a statute or under statute. The true test is functional. Not how the legal person is born but why it is created. Nay more. Apart from discharging functions or doing business as the proxy of the State, wearing the corporate mask there must be an element of ability to effect legal relations by virtue of power vested in it by law.. The learned Judge after referring to certain passages in Sukhdev's case observed : There is nothing in these observations to confine the concept of State to statutory corporations. Nay, he tests are common to any agency or instrumentality the key factor being the brooding presence of the State behind the operations of the body, statutory or other. A study of Sukhdev's case yields the clear result that the respondent considerations for pronouncing an entity as State agency or

instrumentality are financial resources, of the State being the chief funding source, functional character being governmental in essence, plenary control residing in Government, prior history of the same activity having been carried on by Government and made over to the new body and some element of authority or command. Whether the legal person is a corporation created by a statute, as distinguished from ... under a statute, is not as important criterion although it may be an indicium. Applying the constellation of criteria collected by us from Airport Authority case, on a cumulative basis, to the given case, there is enough material to hold that the Bharat Petroleum Corporation is 'State' within the enlarged meaning of Art. 12 ".

26. It is in the light, of the above tests laid down by the Supreme Court we have to consider the question whether B & C Mills is an agency or instrumentality of the Government. The only ground on which the learned counsel sought to bring the B & C Mills within the meaning of other "authority" under Art. 12 of the Constitution of India is that the Government owned 40% of the shares and the statutory corporations like the Life Insurance Corporation of India have advance large amounts to the Company. From this fact alone we are not in a position to come to the conclusion that B and C is an authority within the meaning of Art. 12 of the Constitution of India. The learned counsel has not been able to convince us that B and C Mills is an instrumentality or agency of the Government and that it satisfies any of the test laid down by the Supreme court in the Airport Authority case and subsequent cases. There is absolutely no plenary control of the mills by the Government. The mill is not owned fully by the Government. The mills cannot affect legal relations by virtue of any power vested, in it by any law. We have, therefore, no hesitation in rejecting the contention of the learned counsel for the petitioners that B and C Mills must be held to be an instrumentality or agency of the Government and consequently "other authority" within the meaning of Art. 12 of the Constitution of India.

27. We shall now take up for consideration the argument of Mr. Prasad that B and C Mills would beamenable to the writ jurisdiction of this Court under Art. 226 of the Constitution of India, as according to the learned counsel a writ under Art. 226 of the Constitution of India can be issued even against a private person including an incorporated company. The scope of Art. 226 of the consideration of India came up for consideration before this Court as early as in 1950 in re-Gadea Nagabhushana Reddi and another (1LR 1950 Madras 1119). There, a writ of prohibition was asked for against the election sub-committee of the All India Congress Committee and other committees. Emphasis was laid on the words "to any person or authority" and "for the enforcement of any of the rights conferred by part III and for any other purpose", found in Art. 226 of the Constitution of India and it was urged before this court that a writ would lie against a private individual. It was further argued that Art. 226 was not confined to the issue of recognised writs like mandamus, prohibition or certiorari, but would include other writs, and orders and directions without and restriction whatsoever as to their scope. Rajamanner, C.J., observed as follows :

> "The application in question purports to be for the issue of a writ of prohibition. Ordinarily, this writ is available only against inferior courts and Tribunals and bodies entrusts by the law of the land with power to affect the rights of parties. No case has been brought to our notice in which this writ has issued to a private organisation however widespread and powerful it may be. Mr. Pattabbi Raman stated that the

> respondents against whom the writ was sought were officers of the Congress Party. We do not think that the Congress Party could be a very powerful, if not the most powerful, political party in the land and the members of the governments of the various States are persons belonging to that party. Nevertheless, in law, it cannot be a public body entrusted by the law of the land with powers and duties relating to the rights of the people."

In this view, the learned Judges dismissed the writ petition as not maintainable. This decision has been followed by various High Courts in India. In In re Thippaswami Rajamanner, C.J. speaking for the Court observed thus :

> "Art. 226 should not be construed so as to replace the ordinary remedies available to the litigant under the general law of the land. Directions in the nature of a writ of mandamus should not issue under this Article except to a public or a quasi public body or officer which is under an obligation, statutory or otherwise, to do for refrain from doing anything which is likely to interfere with the rights persons."

Again, Rajamannar, C.J., had occasion to deal with the scope of Art. 226, particularly with reference to the issue of a writ of mandamus in I.T. Corporation v. State of Madras. .

28. The learned Chief Justice spoke thus :

> "It was next contended by Mr. Sankara Aiyar that the language of Art. 226 of the Constitution was wide enough to apply to cases which would not fall within the scope of a prerogative right of mandamus as understood in England. He even went to the length of saying that Art. 226 would apply to disputes between private persons. Stress was laid on the words 'any person' and for any other purpose." We do not agree. It is undoubtedly true that the extent of the power conferred on the High Courts under Art. 226 is much larger than they ever possessed before. But we have no hesitation in holding that it is not an unlimited power. In our opinion the words 'to any person' means to any person to whom according to well-established principles writs like those mentioned in the articles would lie" : any words 'any other purpose' must be read in the context in antichesis to the words 'for the enforcement of any the rights conferred by part III.,' Obviously, writs like : "Habeas Corpus", madamus and certiorari could be issued not only for the enforcement of other legal rights, subject, however, to conditions well-established. To give an instance, the writ of prohibition has always been understood as a writ which could issue only to a judicial or quasi-judicial Tribunal or an inferior court, Surely it cannot be said that now under Art. 226 a writ in the nature of prohibition could issue even to a private person prohibiting him from doing some Act which is likely to injure an applicant.

29. The learned Chief Justice referred to the following observation of Mitter. J. in Carisbad Mineral Water Manufacturing Co. Ltd., v. H. M. Jagtiani .

> "At fight it would appear that the language used in Art. 226 imposes no limits whatsoever as to the category of persons to whom, and the purpose for which, orders or writ including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorar or any of them may be issued by the High Court. But once the origin and history of the high prerogative writs are remembered, it is clear that the powers given to a High Court under Art. 226 are to be exercised in accordance with the principles which governed the said writs. The power of the High Court to issue such writ 'to any person' can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person of any of the rights conferred by part III is clear enough from the language used. But the words 'and any other purpose' must mean 'for any other purpose' for which any of the writs mentioned would, according to well-established principles issue."

30. The learned Chief Justice has also referred to the following observations of the Full Bench of the Allahabad High Court in India Sugar Mills Association v. Secretary to Government, Uttar Pradesh Labour Department :

> "We feel that the time has come when we may point out that Art. 226 of the Constitution was not intended to provide an alternative method of redress to the normal process of a decision in an action brought in the usual courts established by law."

31. Regarding the circumstances in high a writ of mandamus could be issued the learned Chief Justice has held thus :

> "A writ of mandamus cannot be granted for enforcement of contractual obligations, for which there is remedy by an action at law in the ordinary course. The writ is only granted to compel the performance of duties of a public nature. It will not accordingly issue for a private purpose, that is no say, for the enforcement of a mere private right."

32. The question that came up for consideration before a Bench of this Court in United India Fire and General Insurance Co. Ltd. v. A. A. Nathan, [1980 - I L.L.J. 369], was whether the United India Fire and General Insurance Co. Ltd., was amenable to the Jurisdiction of this Court under Art. 226 of the Constitution of India. Ismail, C.J., speaking for the Bench held that the United India Fire and General Insurance Co. Ltd., is not an "authority" within the meaning of Art. 12 of the Constitution of India. The learned Chief Justice then, noticing the fact that the terms of Art. 226 of the Constitution of India is wider, proceeded to consider whether the United India Fire and General Insurance Co. Ltd., would be amenable to the jurisdiction of Art. 226 of the Constitution of India. The learned Chief Justice observed as follows :

> "This Arts (226) uses the expression any person or authority, including in appropriate cases any Government. Decided cases have held that the authority must

> be of a public character, because the Article is not intended to replace the ordinary or general remedy available to a citizen to approach a civil Court by instituting a suit. Hence with reference to Art. 226 the only consideration will be whether the appellant-company can be said to be a public authority or not. Having regard to what we have pointed out above, with regard to the rights, privileges and duties of the company, in the light of the provisions contained in Central Act 57 of 1972, we have no hesitation whatever in holding that the company will come within the scope of Art. 226 of the Constitution of India and will, therefore, be a enable to the writ jurisdiction of the High Court."

33. From the above, the principle that emerges is that the scope and amplitude of Art. 226 need for fall under the category of "other authority" within the meaning of Art. 12 of the Constitution. The persons referred to in Art. 226 must be a person to whom in a writ will lie according to the well established principles depending upon the nature of the writ sought for. As pointed out by Rajamannar, C.J. - in L.I. Corporation v. State of Madras , and by Ismail C.J. in A. A. Nathan, [1980 - I L.L.J. 369) to hold that "person", referred in Art. 226 of the Constitution, would include company, irrespective of the question whether any on of the writs referred to in Art. 226 would lie against them according to the establishment principles would mean that S. 9 of the Civil Procedure Code would be supplanted by Art. 226 and it would be open to every citizen to approach the High Court under Art. 226 of the Constitution for the redressal of his grievance.

34. The learned counsel for the petitioners heavily learned on the decision of the Chowdhary, J. of the Andhra Pradesh High Court in T. Gattaih v. Commissioner of Labour, [1981 II L.L.J. 54]. The judgment of the learned Judge cannot be understood in the sence that the learned Judge has held that in all cases a writ would lie against a private individual or an incorporated company On the other hand, the learned Judge has observed in Paragraph 20 that in appropriate cases a writ under Art. 226 of the Constitution would issue even against a private person. A perusal of the entire judgment would show that mandamus would issue against a private individual or an incorporated company provided the private individual or the company is enjoined law to perform a duty of a public nature. If the learned Judge has meant that a writ could be issued against a private person or an incorporated company even for the purpose of enforcing a contractual right or any other private right without reference to the question whether the writ that is sough for would lie against that private individual or company under the established principles, then we must confess, with great respect to the learned Judge; that we are unable to subscribe to that view and we see no justification for holding that the "person" referred to in Art. 226 would take in every private individual with respect to every private act or a mission of his.

35. On the facts of this case, we are of the view that B & C Mills is not amenable to the jurisdiction of this Court under Art. 226 of the Constitution of India of the issue of a merit of mandamus. We have already referred to the circumstances in which and the persons against whom, a writ of mandamus could be issued only for the performance of an act which is in the nature of a public duty. We are not persuaded to accept the argument of Mr. Prasad that there is a public duty cast on the B & C Mills to fulfill the terms of the settlement entered into by it with the workmen under S. 12(3) of the Act. The implementation of the settlement entered into by the B & C Mills with its workmen cannot be called

a duty which is in the nature of a public duty. The obligation arising under the settlement is purely contractual and a writ of mandamus cannot issue for the enforcement of a contractual right. It is not necessary to cite any precedent so far as this proposition is concerned. The two L.I.C. cases cited by the learned counsel viz, M. M. Pathak v. Union of India, [1979 - I L.L.J. 406] and L.I.C. v. D. J. Bahadur [1981 - I L.L.J. 1], are of no assistance to him as in those cases writ of mandamus were issued to the Life Insurance Corporation of India as it was an authority a within the meaning of Art. 12 of the Constitution of India and, therefore, amenable to the writ jurisdiction. The other decisions cited by the learned counsel, also do not apply to the facts of this case. Hence, we reject this argument also of Mr. Prasad.

36. In the result, the writ petitions are dismissed. However, there will be no order as to costs.