

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: October 24, 2013*
Judgment Pronounced on: December 02, 2013

+ **W.P.(C) 6185/2013**

RANI BHATIA Petitioner
Represented by: Ms.Nitya Ram Krishan, Advocate
with Ms.Amiy Shukla, Advocate

versus

ST.STEPHENS HOSPITAL SOCIETY & ORS. Respondents
Represented by: Mr.Rajeev Sharma, Advocate with
Mr.Sahil Bhalaik, Mr.Uddyam
Mukherjee and Mr.Jayendera,
Advocates for R-1 and R-2
Mr.Kushal Yadav, Advocate for
Ms.Sonia Arora, Advocate for R-3
Mr.A.P.Singh, Advocate with
Ms.Gurjinder Kaur, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. On September 17, 2013 *News X Channel* had put on the air a discussion/debate on the subject '*Profit over patients*'. It contained a dialogue between the anchor, the petitioner Dr.Rani Bhatia, Dr.Sudhir Joseph, the Director of St.Stephens Hospital, Dr.Puneet Bedi and Dr.Kaul. The precursor to the debate/discussion was services of the petitioner being terminated on September 04, 2013. The petitioner was issued an appointment letter on December 20, 2008 with retrospective effect from October 01, 2008 as a Senior Specialist in the Psychiatry Department of

St.Stephens Hospital. It was indicated to her that the employer-employee bond could be snapped by either party after giving one month notice or a month's salary in lieu thereof. The foundation of the instant writ petition, which lays a challenge to the letter dated September 04, 2013 terminating petitioner's service is malice, arbitrariness and an abuse of power by St.Stephens Hospital Society; stated to be a private body performing public functions. The substratum of the foundation is the dialogue put on the air by *News X Channel* between the anchor, Dr.Sudhir Joseph, the petitioner, Dr.Puneet Bedi and Dr.Kaul.

2. Conscious of the fact that St.Stephens Hospital Society is a private body not receiving any grant in aid or funds from the Government and the Government exercising no control whatsoever, much less a deep and pervasive control of the society, we had issued notice in the writ petition for the reason the transcript of what was put on the air was possibly suggestive of the fact that a private charitable institution, claiming to be rendering service to the needy and the poor in the form of either free or subsidised medical aid, was indulging in rank profiteering. We had in mind, when show cause notice was issued the law declared by the Supreme Court in the decision reported as AIR 1963 SC 1144 T.P.Davar Vs. Lodge Victoria No.363 SC Belgaum & Ors. to the effect that even in relation to private affairs of private bodies a judicial review was permissible on the limited application of principles of fair play deeply rooted in the minds of modern men and women; and no more, keeping in view what was observed by Lord Mortem in the decision reported as 1956 AC 104 Bonsor Vs. Musicians' Union : a domestic Tribunal is bound to act strictly according to its rules and is under an obligation to act honestly and in good faith and the observations of Maugham, J. pertaining to what would be bias and lack of good faith in the opinion reported as (1929) 1929-I Ch. 602 Maclean Vs. Workers' Union : lack of good faith can only mean in this connection the principles of fair

play so deeply rooted in the minds of modern English men that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation.

3. The transcript of the dialogue is now being reproduced by us. It reads as under:-

“Transcript of the CD where Dr.Sudhir Joseph gives his statement.

Anchor : *The Medical Profession’s biggest secret is out in the open. A leading and reputable charitable hospital, the St.Stephen’s hospital has landed itself in a massive row after its director sacked a doctor for allegedly not making enough money for the hospital. The doctor in question, a psychiatrist called Dr.Rani Bhatia had accused the director of St.Stephen’s Hospital of arbitrariness and vendetta. He director has hit back, justifying his decision, saying the doctor wasn’t making enough money for the charity.*

Dr.Sudhir Joseph : *I just said your salaries are twenty-four lakhs. Twenty-four lakhs, between three people. If twenty-four lakhs is your salary please make at least twenty, eighteen. So, I don’t have, you know, this burden on my back.*

Dr.Rani Bhatia – *My services have been terminated after working for nineteen long years of working for this hospital and I have been told by the director is that the reason for my termination is that my department is not making enough profit to pay for my salary.*

Anchor : *The sacked doctor has shot off a letter to the Hospital making some serious allegations. Number one, that there was no communication in writing that was issued to her indicating dissatisfaction with her work. Number two, the termination letter issued to Dr.Bhatia was vendetta for morally supporting Dr.Monica Thomas who questioned the Hospital’s way of functioning in a dignified manner. Number three, another consideration for termination, she says, was her participation in the signature campaign against the hospital’s decision to suspend the chief pharmacist in last November.*

Sacking raises some very serious questions. Does this case prove that doctors are under pressure to fleece patients to boost profits?

Dr.Puneet Bedi : *Well the primary problem is that the Government has almost completely washed off its hands on public health. To say that Public Health will be looked after by Private sector is to somehow understand that service to the poor will be provided. It is ridiculous. They follow all the principles that other corporates follow.*

Anchor : *Do hospital routinely fleece patients to boost profits:*

Dr.Kaul : *And I think that is an excellent area to open out for debate. The cost factor, the quality assurances, the direct or indirect pressure on the healthcare delivery personnel which is the doctors is to meet targets which can be financial by and large.*

Anchor : *Are you being made to undergo unnecessary tests so hospitals can boost their revenue:*

Seema Kaul : *Shocking admission by hospital administration. Fleece patients, earn money or lost the job. Dr.Rani Bhatia's dismissal exposes the ugly face of hospitals, minting money and hiding behind the cover of charity."*

4. It was the dialogue : *'I just said your salaries are twenty-four lakhs. Twenty-four lakhs, between three people. If twenty-four lakhs is your salary please make at least twenty, eighteen. So, I don't have, you know, this burden on my back'* spoken of by Dr.Sudhir Joseph, which troubled us for the reason it was suggestive of the fact that the hospital, under the banner of a public charitable hospital, wanted its doctors to ensure that they generate enough revenue (for not only the doctors to survive but even the management to make money).

5. Indeed, it would have required a consideration whether the principles of fair play deeply rooted in the minds of modern men and women were

violated if public charitable institutions would indulge in rank profiteering and go about terminating services of doctors and staff who were not generating enough revenue.

6. It was this limited aspect of the matter which was in our mind when we had called upon the respondents to respond to the writ petition.

7. The response would reveal, as would be confirmed by Sh.Abhay Batra from News X Channel who appeared in Court on October 03, 2010 that what was broadcasted on September 17, 2013 was an edited version of the discussion. As recorded in the order dated October 03, 2013 the policy of the company was not to retain original unedited tapes of the broadcast.

8. Thus, at the forefront, staring us in our eyes, is the fact that the foundation of the writ petition is based on an edited version of an interactive dialogue and indeed it would be unsafe to ascribe a meaning or a motive to the words or the thoughts of the speaker unless the full conversation is available.

9. Dr.Sudhir Joseph, the Director of St.Stephens Hospital, impleaded as respondent No.2, as per the counter affidavit filed by him, would explain the utterance with reference to the balance sheet of the hospital pertaining to the Psychiatry Department, where the petitioner works. He draws attention to the fact that apart from the petitioner, two other doctors work in the Psychiatry Department and received wages from the hospital. As of the year 2012-13 the total expenditure in the Psychiatry Department was ₹24,27,036/- out of which salary received by the petitioner was ₹15,49,618/-. The previous year i.e. 2011-12 out of total expenditure of ₹22,84,662/-, salary received by the petitioner was ₹15,06,130/-.

10. These figures are not in dispute.

11. According to Dr.Sudhir Joseph he was simply highlighting the imbalance in the expenditure in the form of more than 60% of the total budget allocated to the Psychiatry Department was being utilized towards

salary of the petitioner alone. As per the counter affidavit filed the management took the decision to do away with the services of a high salary receiving employee in the interest of the poor patients. The counter affidavit filed would highlight that in the year 2012-13 the hospital gave free medical care to the extent of ₹9.79 crores. Detailed in Annexure C to the counter affidavit is the tabulated information of patients who were given free medical treatment up to ₹10 lakhs.

12. Detailed pleadings have been made to show the public charitable character of St. Stephens Hospital. Reliance has been placed upon the balance sheet to show free and subsidised medical aid given to a large number of patients.

13. We are of the opinion that the issue of maintainability of the writ petition needs to be decided first, for if the writ petition is not maintainable, we have to relegate the parties to a civil forum i.e. a civil court for adjudication of the dispute.

14. On the issue of maintainability of the writ petition learned counsel for the petitioner relied upon a decision reported as (2012) 12 SCC 331 Ramesh Ahluwalia Vs. State of Punjab & Ors. to highlight that a body performing public functions would be amenable to the writ jurisdiction of this Court. Learned counsel for the petitioner referred to paragraph 13 of the decision to highlight that mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found.

15. The decision relied upon is distinguishable on facts. Right enforced by Ramesh Ahluwalia flowed under bye-law 47 of the Central Board of Secondary Education Affiliation Bye-Laws. A statutory Tribunal called Punjab School Education Tribunal was constituted to inter-alia decide disputes pertaining to disciplinary actions. The bye-laws prescribed the manner to take disciplinary action. It is trite that rights even flowing under statutory bye-laws can be enforced under writ jurisdiction.

16. On the subject of a private body engaged in discharging public functions, the misconception that with respect to all actions taken by the body a writ would be maintainable was dispelled by the Supreme Court in the decision reported as (2005) 6 SCC 657 Binny Ltd. & Anr. Vs. V.Sadasivan & Ors..

17. Discussing public law element pertaining to private bodies, noting its decisions reported as (1986) 3 SCC 156 Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly and AIR 1966 SC 81 Dwarka Nath Vs. ITO as also the opinion in the *Administrative Law* (9th Edition) by Sir William Wade, in paragraph 11 the Supreme Court observed as under:-

“11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.”

18. Thereafter noting the decision reported as (1987) 1 ALL ER 564 R. Vs. Panel on Take-overs and Mergers, ex p-Datafin Plc. and the decision

reported as (1984) 3 ALL ER 935 Council of Civil Service Unions Vs. Minister for the Civil Service AC, in paragraph 16, the Supreme Court observed:-

“16. The above guidelines and principles applied by English courts cannot be fully applied to Indian conditions when exercising jurisdiction under Article 226 or 32 of the Constitution. As already stated, the power of the High Courts under Article 226 is very wide and these powers have to be exercised by applying the constitutional provisions and judicial guidelines and violation, if any, of the fundamental rights guaranteed in Part III of the Constitution. In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the courts had been reluctant to exercise the powers of judicial review and whenever the powers were exercised as against private employers, it was solely done based on public law element involved therein.”

19. Thereafter noting extracts from De Smith, Woolf and Jowell’s Judicial Review of Administrative Action, 5th Edn. and the decisions reported as (2001) 1 SCC 298 VST Industries Ltd. Vs. Workers’ Union, 2003 (8) SCC 639 G.M. Kisan Sehkari Cheeni Mills Ltd. Vs. Satrugan Nishad and 2003 (10) SCC 733 Federal Bank Ltd. Vs. Sagar Thomas, in paras 26, 27, 29 and 31, the Supreme Court observed as under:-

“26. It is important to understand the real dicta laid down in the background of the facts involved therein. The appellant was a public sector undertaking and in that view of the matter it was held that the contract of employment and the service rules which gave absolute and arbitrary power to terminate the service of the employees were illegal. It may be also noticed that the termination clause was referred to in the context of the contract read as a whole and no enquiry was contemplated under the rules even in the case of allegation of misconduct and it was held to be violative of the principles of natural justice. It was also held to be violative of Section 23 of the Contract Act as it was opposed to public policy to terminate the services of

the employee without conducting an enquiry even on the ground of misconduct. The public policy principles can be applied to the employment in public sector undertaking in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labor activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of private sector. The service rules and regulations which are applicable to govt. employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner. Therefore, the decision rendered by this Court in Central Inland case is of no assistance to the respondents in Civil Appeal No. 1976 of 1988 or to the appellants in the civil appeal arising out of SLP(Civil) No. 6016 of 2002.

27. In the second case also, namely, the Delhi Transport Corporation v. DTC Mazdoor Congress and Ors., the appellant was a public sector undertaking and the main controversy was about the term "other authorities" under Article 12 of the Constitution. Both in Central Inland and DTC cases, the decision of the public sector undertaking was under challenge and the question raised was whether the principles of natural justice and fairness are to be applied. It was held that this Court has got jurisdiction to consider this question by invoking the principles of judicial review. But it would be noticed that in both the cases, it was a public sector undertaking coming within the purview of "other authorities" under Article 12 of the Constitution.

x x x

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in

view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action.

x x x

31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in State of U.P. v. Bridge & Roof Co. and also in Kerala State Electricity Board v. Kurien E. Kalathil. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.”

20. Thus, for the purposes of maintainability of a writ petition the law could be stated that : (i) The private body must be cast with a public duty. (ii) The decision sought to be corrected is a decision taken in discharge of that public duty. (iii) The public duty should be owned to the petitioner. (iv) No writ would lie to enforce a private contract. (v) No mandamus can be issued to reinstate an employee in private employment.

21. Not finding the facts of the case to be warranting any consideration on the limited application of principles of fair play deeply rooted in the minds of modern men and women for the reason the edited version of a discussion cannot be treated as the basis of either a motive or ascribing meaning to the words spoken of, we hold that the writ petition is not maintainable on the principles of law declared in Binny's case (supra).

22. Making it clear that we have not expressed any opinion on the merits of the controversy and the facts noted are limited to a discussion on the maintainability of the writ petition, we dismiss the writ petition but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

DECEMBER 02, 2013
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