

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 8 of 2023

Shri Shanti Bharat Noatia

S/o Kamalila Noatia,
resident of Noatia para Kalaban,
PO: Kalaban, Udaipur, District:
Gomati Tripura, PIN: 799125

---Petitioner(s)

Versus

1. Union of India

Represented by the Secretary,
Ministry of Electronics and Information Technology,
Government of India, Electronics Niketan, New Delhi.

2. CSC (Common Service Centre) e-Governance Services India Ltd. (to be represented by the Chief Executive officer), Ministry of Electronics and Information, Technology, Electronics, Niketan, 3rd Floor, MeitY, 6CGO Complex, Lodhi Road, New Delhi-110003.

3. The Chairman, CSC (Common Service Centre) e-Governance Services India Ltd., Ministry of Electronics and Information, Technology, Electronics, Niketan, 3rd Floor, MeitY, 6CGO Complex, Lodhi Road, New Delhi-110003.

4. The Chief Executive Officer (CEO), CSC (Common Service Centre) e-Governance Services India Ltd, Ministry of Electronics and Information, Technology, Electronics, Niketan, 3rd Floor, MeitY, 6CGO Complex, Lodhi Road, New Delhi-110003.

5. The Head of Operations, CSC, 2.0, CSC (Common Service Centre) e-Governance Services India Ltd., Ministry of Electronics and Information, Technology, Electronics, Niketan, 3rd Floor, MeitY, 6CGO Complex, Lodhi Road, New Delhi-110003.

6. Tripura State Head, CSC (Common Service Centre) e-Governance Services India Ltd., Ground Floor of Urban Development Department Building (UDD Bhavan), adjacent to Rabindra Satabarsiki Bhavan, Gurkhabasti, PO: Agartala, West Tripura: 799001. Agartala,

7. Mr. Yogesh Mishra, CSC (Common Service Centre) e-Governance Services India Ltd., Ground Floor of Urban Development Department Building (UDD Bhavan), adjacent to Rabindra Satabarsiki Bhavan, Gurkhabasti, PO: Agartala, West Tripura: 799001

---Respondent(s)

For Petitioner(s)	: Mr. Raju Datta, Advocate. Mr. K. Pandey, Advocate.
For Respondent(s)	: Mr. B. Majumder, Deputy SGI. Mr. B N. Majumder, Sr. Advocate. Mr. K. Deb, Advocate.
Date of hearing & date of delivery of judgment and order	: 20.09.2023.
Whether fit for reporting	: Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard Mr. Raju Datta, learned counsel for the petitioner. Also heard Mr. B. Majumder, learned counsel for the respondent No.1 and Mr. BN Majumder, learned senior counsel assisted by K. Deb, learned counsel for the respondents No.2 to 7.

[2] This is an application under Article 226 of the Constitution of India seeking following reliefs:

1. *Issue Rule upon the respondents to show cause as to why all records relating to the case of the petitioner should not be transmitted to this Hon'ble Court.*
2. *As to why Writ in the nature of certiorari should not be issued quashing the office order dated 02.11.2022 issued via email dated 02.11.2022 by the respondent No.7, e-Governance Services Ltd, whereunder the petitioner's contract as a consultant in the capacity of District Manager was terminated as per Clause 6 of the Contract Letter.*
3. *As to why writ in the nature of mandamus should not be issued directing the respondents to reinstate the petitioner to the post of the District Manager, West Tripura forthwith with parity in pay with similarly situated District Managers of other Districts.*
4. *In the interim be pleased to stay effect and operation of the office order dated 02.11.2022 issued via email dated 02.11.2022 by the respondent No.7 till disposal of the writ petition.*
5. *As to why such other order/orders should not be passed so as to give full relief to the petitioner and upon cases shown to make the Rule absolute.*

[3] It is the case of the petitioner that he was engaged to the post of District Manager under CSC 2.0 Scheme, under Gomati District by Memorandum dated 30.04.2016 on contractual basis. The petitioner continued working in the capacity of District Manager and again on 04.05.2022 his contractual engagement was renewed

w.e.f. 01.04.2022 to 31.03.2023 and his monthly remuneration was revised to Rs.36,746/- only per month from 01.04.2022. All the other terms and conditions of his contractual agreement as mentioned in his original contract letter remained unchanged.

[4] On 02.11.2022 the petitioner received a termination letter terminating his service with immediate effect and 15 days' fees in lieu of the Notice period and further asking him to hand over all documents and other properties belonging to the Company to his reporting Manager/Supervisor within 03.11.2022.

[5] Being aggrieved by the termination letter vide email dated 02.11.2022, the petitioner filed this writ petition.

[6] Mr. Raju Datta, learned counsel for the petitioner has submitted before this court that the termination of the petitioner is illegal and the same is liable to be set aside as the same has not been as per the terms of the contract dated 30.04.2016. Clause 6 which has been cited as the empowering clause for termination of contract does not contain any condition for termination. It is further contended by the counsel for the petitioner that no opportunity was given to the petitioner before terminating him from his services. He further contended that the petitioner may be reinstated to the services.

[7] Mr. B. Majumder, learned Deputy SGI appearing for the respondent No.1 contended before this court that respondent No.1 is a formal party and the main respondents dealing with the subject matter are respondents no.2 to 7. He further submits that the present writ petition is not maintainable and prayed for dismissing the same.

[8] Mr. B.N Majumder, learned senior counsel assisted by Mr. K. Deb, learned counsel appearing for the respondents no. 2 to 7 by way of placing the counter affidavit and other necessary documents has contended before this court that the writ petition is not maintainable as the subject matter falls beyond the preview of Article 12 of the Constitution of India. No relief can be granted under Article 226 of the Constitution of India as the services of the petitioner was treated as contractual basis. The respondents no. 2 to 7 are rendering their services to the Union of India, Ministry of Electronics and Information Technology, Government of India, Electronics, New Delhi under the capacity of contractual obligation.

[9] In reply, Mr. Raju Datta, learned counsel for the petitioner has contended before this court that the present writ petition is maintainable since the respondents no. 2 to 7 are the functionaries of the respondent No.1, Union of India. In course of his submission, Mr. Raju Datta, learned counsel for the petition has drawn the attention of this court to the Clause 6 of the memorandum dated 30.04.2016 which is signed by Chairman, (DM & Collector), Gomati District e-Governance Society which reads as under:

6. The consolidated remuneration is inclusive of all applicable taxes.

[10] Attention has also been drawn to the present termination email dated 02.11.2022. Counsel for the petitioner contended that referring to the clause 6 vide memorandum dated 30.04.2016 is of no relevance as such has been formulated without application of mind. The termination of the petitioner was a biased

one in nature, as the petitioner raised a query with regard to receiving less salary than the similarly situated employees and asking the respondents not to show any discrimination with his salary. This very transaction has resulted the termination of the petitioner from his services.

[11] Mr. Raju Datta, learned counsel for the petitioner, in order to support his case, has relied upon a judgment passed by the apex court in ***Mahotsav Smarak Trust and Others vs V.R. Rudani and Others*** reported in **(1989) 2 SCC 691**, the relevant portion of which has been extracted herein under:

14. But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus?

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "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 been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

[12] Reliance has also been placed on another judgment of the apex court in ***Hindustan Steel Works Construction Ltd vs. State of Kerala and Others*** reported in **(1997) 5 SCC 171**. Below are the relevant extracted paragraphs of the said judgment:

19. After giving our careful consideration to the facts of the case and the respective contention made by the learned

counsel for the parties, it appears to us that the appellant company cannot be held to be a department of the government. There may be deep and pervasive control of the Government over the appellant company and the appellant company, on such account may be an instrumentality or agency of the Central Government and as such a 'State' within the meaning of Article 12 of the Constitution. Even though the appellant company is an agency or instrumentality of the Central Government, it cannot be held to be a department or establishment of the government in all cases. Such instrumentality or agency has been held to be a third arm of the Government in *Ajay Hasia's case* but it should not be lost sight of that it was only in the context of enforcement of fundamental rights against the action of government and its instrumentalities or agencies it was held that such agencies were the third arm of the government and they cannot avoid constitutional obligation. There is no question of enforcing any fundamental right in the instant case. On the contrary, the question of protecting the welfare of the employees vis-a-vis the instrumentality or agency of the Central Government under the Welfare Funds Act is to be kept in mind for the purpose of deciding the rival contention of the parties. If clauses 2(c) and (e) of the Welfare Funds Act are taken into consideration, it will be quite apparent that the legislature has not intended to exclude the government company or the statutory corporations from the purview of the Welfare Funds Act. The decision in *C.V. Raman case*, in our view, is not an authority for the proposition that an instrumentality or agency of government is essentially a government department for all purpose and such instrumentality or agency will enjoy the same privilege and protection which any government or its establishment or department enjoys in relation to a statute. The establishment of a government only connotes in its plain meaning, an establishment directly run by the government and not through the agency or instrumentality of the Government. The Welfare Funds Act is essentially an act to protect the interest of and welfare of the labourers. Unless expressly the instrumentality or agency of the government is kept outside the purview of the said Act, it would not be proper to interpret the said Act in a wide amplitude by removing the corporate veil so as to exclude such instrumentality or agency from the purview of the said Act.

[13] Mr. Raju Datta, learned counsel for the petitioner has also placed his reliance on another judgment of the apex court in ***Gridco Limited And Another vs Sadananda Doloi And Others*** reported in **(2011) 15 SCC 16**, the relevant part of the judgment has been extracted herein below:

38. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim

no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

[14] Heard both sides.

[15] It is necessary to test the case on the point of maintainability of the writ petition and it is to be seen, if any relief can be granted as sought for by the petition under Article 226 of the Constitution of India.

[16] To deal with the case, it is pertinent to extract Article 12 of the Constitution of India, Section 395 of the Companies Act, 2013, which are as under:

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

Section 395. Annual reports where one or more State Governments are members of companies.-(1) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be-

(a) prepared within the time specified in sub-section(1) of Section 394 and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

(2) The provisions of this section and Section 394 shall, so far as may be, apply to a government company in liquidation as they apply to any other government company.

Corresponding Law: Ss.619-A(3)&(4) of Act 1 of 1956.

Section 395 enforced w.e.f. 1-4-2014.

[17] On bare perusal of the company master data, placed by the counsel for the respondents No.2 to 7, it is evident that the respondent No.2 is Non-Government company. It is the case of the respondents that the Directors are non-governmental employees.

[18] It is also revealed from the record that the memorandum dated 30.04.2016 appointing the petitioner on purely contractual basis is for a period of 1 (one) year, further extendable subject to satisfactory performance maximum limit of 4(four) years as per performance evaluation. The said memorandum is issued by the Chairman, (DM & Collector) Gomati District e-Governance Society.

[19] Assuming that the petitioner is entitled for service for the extended period for four years, his service would come to an end on 30.04.2020. It is pertinent to note here that the petitioner has not made Chairman, (DM & Collector) Gomati District e-Governance Society a respondent in the present case. The petitioner is relying on his renewal of contractual engagement w.e.f. 01.04.2022 to 31.03.2023 by the letter dated 04.05.2022.

The relevant portion of which has been extracted herein under:

Your performance for the period from 1st April, 2021 to 31st March, 2022 as a Consultant in the capacity of District Manager, West Tripura District, Tripura has been evaluated and found to be satisfactory. Accordingly, your Contractual engagement is hereby renewed with effect from 1st April,

2022 to 31st March, 2023 and your monthly remuneration has been revised with effect from 1st April, 2022.

[20] This court is of the view that the petitioner cannot substantiate his case relying on the letter dated 04.05.2022. There seems to be no first employment letter placed on record for engaging the services of the petitioner with the respondents. The said conditions as laid down in the letter dated 04.05.2022 are not sufficient for supporting the case of the petitioner.

[21] It is seen from the letter dated 18.12.2017 as placed by the respondent No.2 to 7 that the petitioner was engaged by way of this contract agreement. The clause 6, which is referred to in the termination of the petitioner, is as under:

6. The contract is terminable by the company or by you by giving 15 days' notice in writing or 15 days' fees in lieu of notice on either side. This engagement is purely on contractual and temporary basis against assigned project. In case the project is abandoned or discontinued, due to any reason prior to expiry of the contractual period, this contract shall be terminated by serving you 15 (fifteen) day's notice.

[22] A bare perusal of the Clause 6 clearly indicates that the service of the petitioner was purely on contractual basis and based on that he was terminated from his service. It is also evident from the record that the "clause 6" vide memorandum dated 30.04.2016 and "clause 6" vide letter of engagement dated 18.12.2017 are not identical. The "clause 6" vide letter of engagement dated 18.12.2017 has also been not placed by the counsel for the petitioner.

[23] Admittedly, the petitioner has failed to establish before this court that the respondents No. 2 to 7 are Government Bodies/Public Functionaries. According to respondents No. 2 to 7, CSC (Common Service Centre) e-Governance Service India Limited

is a non-government company registered under Companies Act, 2013 which is evident from Registrar of Companies, Delhi and it is rendering services to the Union of India on contract basis for limited period. In terms thereof, the respondents No.2 to 7 obtained the services of the petitioner on contract basis.

[24] Hence, it cannot be said that the respondents No.2 to 7 are Government Functionaries and the petitioner cannot claim that his legitimate right for providing him a job security has been infringed.

[25] In view of the above, this court has no hesitation to say that the writ petition, being devoid of merit, stands dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

JUDGE

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