

GAHC010212242023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5497/2023

M/S SURYA KANT SINGH AND ANR
PROPRIETORSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
DHEKIAJURI TINSUKIA P.O. P.S AND DIST. TINSUKIA ASSAM PIN 786125

2: SURYA KANTA SINGH
S/O LT. RAM NAGINA SINGH A R/O SAI BARI ROAD NEAR S D SERVICE
PETROL PUMP TINSUKIA P.O. P.S AND DIST. TINSUKIA ASSAM PIN 78612

VERSUS

DELHI PUBLIC SCHOOL AND ANR.
DULIAJAN, NEAR CITY BUS STAND P.O. AND P.S. DULIAJAN DIST.
DIBRUGARH ASSAM PIN 786602

2: THE PRINCIPAL
DELHI PUBLIC SCHOOL
DULIAJAN
NEAR CITY BUS STAND P.O. AND P.S. DULIAJAN DIST. DIBRUGARH
ASSAM PIN 786602 MOBILE NO. 910127219

Advocate for the Petitioner : MR. S NAG

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT [ORAL]

Date : 27-09-2023

Heard Mr. S. Nag, learned counsel for the petitioners and Mr. K. Kalita, learned counsel for the respondent nos. 1 & 2.

2. The present writ petition has been preferred under Article 226 of the Constitution of India in connection with a competitive bidding process initiated by a Notice Inviting Tender [NIT] vide Tender Reference no. DPS/BUS/003/2023 dated 10.03.2023 whereby the sealed tenders were invited from the bidders for the purpose of obtaining services of following description :-

Hiring of Transport Services of Ten [10] nos. brand new fully built diesel Non-AC School Buses of Make & Model : TATA STARBUS SKL 51+A+D LP810.52 / SML ISUZU 57 5100WB 52+D SCHOOL BUS / EICHER SKYLINE 2090 L SKL SCL [51+1+D] / ASHOK LEYLAND OYSTER SCHOOL BUS 4900WB 53+D [3x2 LAYOUT] with all standard fittings and accessories and having applicable emission norms, buses to be purchased and registered after issuance of Letter of Award [LoA], for a period of 8 [eight] years with provision of extension by another two [2] years [extension if required, subject to satisfactory performance, acceptable mechanical & physical condition of the buses and with a provision to release the buses at any time during the extended period at the same rates, terms and conditions], to be stationed at Duliajan [Assam] for operational needs of the Delhi Public School [DPS], Duliajan [Assam] for school duties, primarily for safe transportation of school going children mostly in and around Duliajan & in special occasions to other places of Assam or any other place as and when required.

3. In response to the NIT, 3 [three] bidders including the petitioner, had submitted their bids and according to the petitioner, the bid values quoted by the 3 [three] bidders, in descending order, were as under :-

	Name of Bidder	No. of Buses	Quoted Price
1.	Sri Sukumar Debnath	10	Rs. 16,22,88,000/-
2.	M/s Baruas Industries	10	Rs. 11,15,89,440/-
3.	Surya Kant Singh [the petitioner]	10	Rs. 10,87,48,800/-

4. The petitioner has contended that as the petitioner emerged as the lowest bidder, he

approached financial institutions for the purpose of obtaining financial facilities to execute the contract-work in terms of a Letter of Award [LoA] dated 10.05.2023. When the petitioner approached the respondent authorities on 09.09.2023 along with 10 nos. of brand new school buses with drivers and attendants-cum-handymen to place them at their services, the respondents had refused to accept the same and to deploy them.

5. It is the case of the petitioner that the respondents have informed him that they are not accepting the services sought to be extended by the petitioner for the time being in view of pendency of litigations in the forms of Commercial Court being Commercial Suit no. 02/2023 and Misc.[J] Case no. 74/2023, arising out of said Commercial Suit, before the Court of learned Civil Judge, Senior Division-cum-Commercial Court, Dibrugarh. The petitioner has also been informed that litigations in the forms of FAO/25/2023 and I.A.[Civil] no. 1520/2023 are also pending before the Gauhati High Court. The petitioner has been informed that one of the bidders viz. M/s Baruas Industries has instituted those litigations.

6. The present writ petition has been preferred seeking *inter alia* setting aside and quashing of a Letter dated 13.09.2023 issued by the respondent no. 2, whereby, the petitioner has been informed by the respondents are to the effect that they not proceeding for the time being to execute the agreement papers for a contract with the petitioner.

7. The parties impleaded in the present writ petition as party-respondents are [1] Delhi Public School, Duliajan, near City Bus Stand, Post Office & Police Station – Duliajan, District – Dibrugarh, Assam, Pin – 786602; and [2] The Principal, Delhi Public School, Duliajan, near City Bus Stand, Post Office & Police Station Duliajan, District – Dibrugarh, Assam, Pin – 786602. The NIT dated 10.03.2023 has indicated that the Delhi Public School is under the aegis of the Delhi Public School Society, New Delhi.

8. As the petitioner by this writ petition has sought to invoke the extra-ordinary and discretionary writ jurisdiction of this Court under Article 226 of the Constitution of India, it is necessary to find out as to whether such jurisdiction is available to the petitioner to be invoked in a matter of this nature.

9. Article 226 of the Constitution of India, which deals with powers of the High Courts to issue certain writs *inter alia* stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for enforcement of any of the rights conferred by Part III of the Constitution of India and for any other purpose. If an authority/body is 'State' within the meaning of Article 12 of the Constitution of India, a writ petition under Article 226 of the Constitution of India is maintainable against such an authority/body for the aforesaid purposes. The definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. The provisions of Article 12 of the Constitution of India have provided that 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States as well as all local or other authorities within the territory of India or under the control of the Government of India. If an authority/body falling within the purview of 'other authority' as per Article 12 of the Constitution of India violates the fundamental rights of any person or citizen, a writ petition can be filed under Article 226 of the Constitution of India invoking the extra-ordinary jurisdiction of the High Court seeking appropriate direction, order or writ. Thus, under Article 226 of the Constitution of India the power of the High Court is not limited to the Government or authority which qualifies to be 'the State' under Article 12 of the Constitution of India but is extended for issuing directions, orders or writs 'to any person or authority' also. Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also 'for any other purpose'. Therefore, the power of the High Court takes within its sweep more authorities than stipulated in Article 12 of the Constitution of India and the subject-matter which can be dealt with under Article 226 of the Constitution of India is also wider in scope. The words 'any person or authority' used in Article 226 of the Constitution of India are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or authority/body performing public duty and it is the nature of duty imposed on the authority/body which is relevant. The guiding factor is the nature of duty imposed on such an authority/body, namely, public duty to make it covered under the ambit of Article 226 of the Constitution of India. The term 'authority' used in Article 226 of the Constitution of India has to receive wider meaning within the very term used in Article 12 of the Constitution of India.

9.1. If a person or authority is 'the State' within the meaning of Article 12 of the Constitution of India, admittedly a writ petition under Article 226 of the Constitution of India would lie against such a person or an authority. But even in such cases writ would not lie to enforce private law rights. It is the basic principle of judicial review of an action under the administrative law. The reason is private law is that part of the legal system which is part of common law that involves relationships between individuals, such as law of contract. Thus, even if a writ petition is maintainable against an authority, which is 'the State' under Article 12 of the Constitution of India, before issuing the writ, particularly writ of mandamus, the Court has to satisfy that the action of such an authority, which is challenged, is in the domain of public law as distinguished from private law. Ordinary private law remedies are not enforceable through extra-ordinary writ jurisdiction. More particularly, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. It is also settled that even if a person or an authority does not come within the sweep of Article 12 of the Constitution of India, but is performing public duty, a writ petition can lie and a writ of mandamus or appropriate writ can be issued. Such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.

9.2. The principle of judicial review *prima facie* governs the activities of bodies performing public functions. The only functions which are similar or closely related to those that are performed by the State in its sovereign capacity qualify as public functions or a public duty. A writ under Article 226 of the Constitution of India can lie against a person if it is a statutory body or performs a public function or discharges a public or statutory duty. It can be said that such functions which are similar to or closely related to those performable by the State in its sovereign capacity, can be defined as public functions or public duties. The scope of mandamus is limited to enforcement of public duty.

[Ref : Md. Jamal Uddin vs. The State of Assam and others; 2022 [6] GLT 423]

10. It has been held as a settled proposition of law in *Shalini Shyam Shetty and another vs.*

Rajendra Shankar Patil, reported in [2010] 8 SCC 329 that a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either the Government or instrumentalities or agencies of a State within the meaning of Article 12. Private individuals or private entities cannot be equated with the State or instrumentalities or agencies of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with State can be respondents in a writ petition. Under the phraseology of Article 226 of the Constitution of India, the High Court can issue writ to any person, but the person against whom the writ will be issued must have some statutory or public duty to perform.

11. The learned counsel for the petitioners has referred to the decisions of the Hon'ble Supreme Court of India in [1] **B.S. Minhas vs. Indian Statistical Institute and others**, reported in [1983] 4 SCC 582; [2] **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others**, reported in [1989] 2 SCC 691; and [3] **K.K. Saaksena vs. International Commission on Irrigation and Drainage and others**, reported in [2015] 4 SCC 670. In **B.S. Minhas** [supra] the respondent Indian Statistical Institute is a society although is a society registered under the Societies Registration Act, 1860, is governed by the Indian Statistical Institute Act, 1959 and its control completely vests in the Union of India. Thus, the Indian Statistical Institute is a statutory body and the Government of India exercises full control over it. In **Andi Mukta Sadguru** [supra], the appellant trust was managing the affiliated college to which public money was paid as Government aid and the said public money was paid as Government aid played a major role in the control, maintenance and working of educational institutions and it was found that the affiliated college was subject to the rules and regulations of the affiliating University and their activities were closely supervised by the University authorities and it was found to be discharging public function by way of imparting education to students. In **K.K. Saaksena** [Supra], the Hon'ble Supreme Court of India has dealt with the aspect when an authority/body can be treated as a part of the State within the meaning of Article 12 of the Constitution of India. It has been held therein that even if a person or authority does not come within the sweep of Article 12 of the Constitution of India but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. It has, however, been made clear that such a private body should either run

substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.

12. This Court in **Nripendra Kumar Sarma vs. Bongaigaon Refinery Petrochemicals Limited and others**, reported in 2008 [4] GLT 951, has held that Delhi Public School Society, a society registered under the Societies Registration Act, 1860 although is engaged in the field of imparting education connected with public interest, no writ lies against it as the extraordinary jurisdiction of the High Court cannot be expected to embrace the action of all such bodies merely because they are engaged in the field of imparting education. The decision in **Andi Mukta Sadguru** [supra] has been considered in **Nripendra Kumar Sarma** [supra] in coming to the conclusion that Delhi Public School Society is not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

13. From the NIT as well as other documents appended to the writ petition, it is evident that the respondent no. 1 i.e. Delhi Public School runs under the aegis of the Delhi Public School Society, New Delhi. It is, thus, evident that the respondents are neither State nor agencies or instrumentalities of the State, to be amenable under Article 226 of the Constitution of India. The respondents are neither extended arm of the Government nor statutory authorities. The respondent no. 1, the Constitution of India is only a society registered under the provisions of the Societies Registration Act, 1860. The petitioner has not been able to show that the State has any financial involvement in the running of the affairs of Delhi Public School Society nor exercises any pervasive control. The invitation of tender by the NIT dated 10.03.2023, which is the genesis of the present litigation, cannot, by any stretch, be termed as an activity in the domain of public law and it clearly falls in the realm of private law. As a corollary, there does not arise any question of issuance of any writ in the nature of certiorari qua the Letter dated 13.09.2023 as this Court does not issue any writ to a private entity to enter into any contract, which falls in the domain of private law.

14. Thus, the decisions referred to by the learned counsel for the parties, the petitioners are not found applicable to the case in hand. In the above view of the matter, this Court has

found that the present writ petition under 226 of the Constitution of India wherein the petitioner has sought a writ in the nature of mandamus and or certiorari is not maintainable and the same is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant