

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

Judgment reserved on July 03 , 2015

Judgment delivered on July 17, 2015

+ **W.P.(C) 3075/2014 & CM No. 6445/2014**

DR. M.S. FRANK

..... Petitioner

Through: Mr.Sunil Mathews, Adv. with
Mr. Mohit K. Daraad and Ms.
Reeja Varghese, Advs.

versus

DELHI UNIVERSITY & ORS

..... Respondents

Through: Mr.Mohinder Jeet Singh
Rupal, Advocate with
Mr.Abhijeet Singh, Advocate
for R-1
Mr. A. Mariarputtam, Sr.
Adv. with Mr. K. Vijay
Kumar, Adv. for R-2 & 3
Mr. Romy Chacko, Advocate
for R-4

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The present petition has been filed by the petitioner challenging the report of the Inquiry Officer, in an Inquiry conducted pursuant to a charge-sheet issued to him on December 22, 2011, whereby the learned Enquiry Officer has proved certain charges against the petitioner and further penalties of (i) forfeiture with effect from January 08, 2014 of two increments of the petitioner's salary; (ii)

requirement to submit a bond of good behaviour, have been imposed on him vide order dated January 8, 2014.

2. It is the case of the petitioner that he has been working with the respondent No.2 college for the last 30 years. In April, 2009 he was appointed as a Superintendent of examinations to conduct the examination of the students. An allegation for harassing a physically challenged student of the college was also made against the petitioner by respondent No.4, who was at the relevant time officer on special duty, officiating as Principal of respondent No.2 college. The respondent No.4 had alleged that despite the medical certificates to the effect that the student needs to be provided an Air-condition Room due to his health condition and strict instructions from the Principal to help the students, the petitioner refused to provide him a seat in an Air-condition Room. According to the petitioner, he followed the rules in existence at that time i.e. only visually challenged students could be provided reliefs by the concerned college without any prior approval of the university, otherwise any other physically challenged candidate/student seeking relief was required to apply to the University, which would then be referred to the Chief Medical Officer WUS Health Centre, University of Delhi for medical assessment and due recommendation to the Controller of Examinations who then

would issue a letter to the College that due facilities be provided to the candidate. The petitioner's case is that on November 11, 2011 when agenda notes were circulated by the respondent No.4 to all the members of the governing body in respect of a meeting to be held on November 25, 2011, no mention was made of the alleged misconduct of the petitioner. On November 25, 2011 the meeting of respondent No.3 i.e. governing body took place wherein resolutions were passed finding prima facie misconduct against the petitioner and authorizing the respondent No.4 to initiate appropriate action as well as appointing him the disciplinary authority. On December 01, 2011 a show cause notice was issued to the petitioner alleging wrongdoing and calling upon the petitioner to submit reply by December 15, 2011. It appears that a representation signed by 44 teachers was submitted protesting the manner in which the governing body and the respondent No.4 brought up the case against the petitioner and how the petitioner was being targeted for other reasons. On December 12, 2011 the petitioner filed a writ petition being W.P.(C) 9037/2011 challenging the initiation of the disciplinary proceedings on various grounds of malice and violation of principles of natural justice. In the mean time the respondent No.4 on a consideration of the reply to the show cause notice and finding the same to be unsatisfactory issued a charge sheet

dated December 22, 2011 to the petitioner and also appointed an Inquiry Officer. The charge-sheet consisted of 7 articles of charge. It appears that there was no restraint order of this Court in W.P.(C) 9037/2011 against the respondent No.4 from holding the Inquiry proceedings. On February 21, 2013 the Inquiry proceedings against the petitioner were concluded. The W.P.(C) 9037/2011 was dismissed by the learned Single Judge, against which an LPA 862/2013 was filed by the petitioner, which is stated to be pending as on date.

3. According to the learned counsel for the petitioner, the Division Bench vide its order dated October 29, 2013 passed an order making any decision taken by the governing body shall be subject to the outcome of the aforementioned LPA. On November 27, 2013 a show cause notice was issued to the petitioner in relation to the Inquiry report. The petitioner vide his letter dated December 06, 2014 submitted his reply to the respondent No.3 governing body. He had also vide letter dated January 02, 2014 requested the members of the respondent No.3 for a personal hearing. On January 08, 2014 a decision was taken by the respondent No.3, the governing body of the respondent No.2, imposing the penalties as referred above. The petitioner vide his letter dated January 14, 2014 protested against the decision taken by the governing body on January 08, 2014 imposing

penalties as referred above. On February 20, 2014 the petitioner, in view of the penalty order, for giving a bond of good behaviour submitted the same at the office of the Chairman of respondent No.3 body without prejudice to his rights. The petitioner had also protested to the members of respondent No.3 body regarding the minutes of the meeting dated January 08, 2014 which he got access only in the second week of April, 2014.

4. The respondent Nos.2 to 4 have filed a joint counter-affidavit. It is the case of respondent Nos.2 to 4 that they are neither a 'State' nor a 'Public Body' and the petition qua them is not maintainable. It is also their case that the petitioner has not pleaded any violation of the provisions of the Delhi University Statute. Though the petitioner has sought the compliance of the university regulations, the petitioner has not disclosed as to which regulation of the university is violated. It is also the case of the respondents 2 to 4 that the respondent No.2 college being a minority educational institution is entitled to take disciplinary action against any of its employees as part of its right to administer the educational institution under Article 30 of the Constitution. Hence no writ will lie against disciplinary action taken against the petitioner. On merits the respondents deny any violation of principle of natural justice. According to them, the report of the

Inquiry Officer was discussed at length by the governing body and the petitioner was given an opportunity to represent his case before the governing body. The members of the governing body taking a lenient view and conciliatory attitude tried to persuade the petitioner to express his regret at the improper conduct of which he was found guilty by the Inquiry Officer. They would state that the petitioner had taken a defiant attitude. Despite such a behaviour, the Chairman of the governing body had appealed to the other members against the harsher punishment that many felt should be imposed on the petitioner, given the gravity of his offence, and persuaded them to reduce the quantum of punishment. On merit they would support the conclusion arrived at by the Inquiry Officer against Article No.1. They would also state that the issue was never closed by the Chairperson in June, 2009. As the meeting was held under the aegis of the Church and as per the constitution of the College the supreme council has no role in the administrative functions of the college.

5. It is the case of the respondent Nos. 2 to 4 that during the pendency of the disciplinary proceedings, the petitioner continued to indulge in serious acts of indiscipline and misconduct. Therefore, a charge was added after the commencement of Inquiry since the petitioner committed offence on January 13, 2012 and therefore,

additional charge was filed vide letter dated January 13, 2012, which was after the issue of previous charge sheet dated December 22, 2011. The respondent Nos. 2 to 4 concedes to the fact that Inquiry Officer in his report has found the petitioner guilty of Article 1. It is also the stand that the second part of Article 2 of charge was also proved inasmuch the petitioner had used impertinent and intemperate language to the Principal. They also referred to the fact that the Inquiry Officer has proved Article 3 of charge using the filthy language for the Principal. They also state that second part of Article 4 of the charge has also been proved. In other words, it is their case that the petitioner is trying to mislead the Court with respect to the indictment by the Inquiry Officer.

6. In reply to para 19 of the writ petition, it is the stand of the respondent Nos. 2 to 4 that the report of the Inquiry Officer was discussed in detail at a meeting of the Governing Body on November 18, 2013. The report having been circulated in advance to facilitate the full and in-depth examination of the same by the Governing Body. The Governing Body accepting after due deliberation and consideration, the Inquiry report and its finding, resolved unanimously that a notice to show cause as to why the penalty of forfeiture of two increments and requiring the petitioner

to submit a bond of good behaviour for the remaining period of his service, be not imposed on him. They denied the fact that the petitioner was not given an opportunity to be heard. It is their case that purpose of hearing, was, that, the petitioner be given opportunity to point out any relevant aspect of plea not considered by the Inquiry Officer and also to hear his plea, if any, against the proposed quantum of punishment. The respondent Nos. 2 to 4 would support the outcome of the Inquiry Officer in his findings.

7. The petitioner has filed rejoinder to the counter affidavit, primarily, reiterating the submissions made by him in the writ petition.

8. Mr. Sunil Mathews, learned counsel appearing for the petitioner would in his oral submissions primarily raise three issues. The first one being violation of principles of natural justice and denial of petitioner's right to be heard. According to him, the Governing Body of the respondent No. 2 college, at its meeting held on November 18, 2013, had accepted the findings of the Inquiry Officer. He would state, before accepting the findings of the Inquiry Officer, no opportunity was given to the petitioner to make a representation against the findings in the Inquiry Report. He has drawn my attention to the show cause notice dated November 27,

2013 to highlight that the acceptance of the findings of the Inquiry Officer was conclusive inasmuch as the Governing Body had, by accepting the Inquiry Report, even decided the nature of penalty to be imposed on the petitioner. The reply dated December 6, 2013 of the petitioner and the hearing given to the petitioner on January 8, 2014 were only an empty formality. He would rely upon the judgment of Supreme Court in the cases reported as ***1993 (4) SCC 727 Managing Director, ECIL and Ors. Vs. B.Karunakar and Ors., 2009 (112) DRJ 391 (DB) Prof. Bidyug Chakraborty Vs. Delhi University and Ors.***

9. The second submission of Mr. Mathews, was the denial of the petitioner's right to legal representation. Mr.Mathews would also argue that the decision of the Governing Body is also illegal inasmuch the petitioner was denied the right to legal representation during the Inquiry proceedings. In that regard, he has drawn my attention to page 29 of the paper book, which is a part of the report of the Inquiry Officer, wherein, the Inquiry Officer dealt with the request of the petitioner to seek legal assistance. He would state that even though, the application was rejected by the learned Inquiry Officer as the college being not represented by the legal counsel, the petitioner cannot be permitted to be represented by a legal counsel,

the Inquiry Officer being a person of legal standing, he was entitled to legal representation in the Inquiry proceedings and denial of the same renders the proceedings unfair and illegal. He would rely upon the judgment of the Supreme Court in the case reported as **(2015) 5 SCC 549 Ramesh Chandra Vs. Delhi University and Ors.**

10. Learned counsel for the petitioner concedes that such an objection was not raised earlier before the authorities concerned, it is open to the petitioner to raise such a legal issue at this stage as it is well settled that question of law can be raised at any stage of the proceedings. He relied on the judgments of the Supreme Court reported as **1978 (3) SCC 280, Tarini Kamal Pandit and Ors. Vs. Prafulla Kumar Chatterjee** and **AIR 1965 SC 1325, Chitoori Subbanna Vs. Kuddappa Subbanna and Ors.** in this regard.

11. I may note here that during the course of the submissions, Mr. Mathews had submitted that after the Inquiry Officer had rejected the request of the petitioner for legal representation, he had engaged Ms. Nandita Narain, President of DUTA as his defence assistance who had effectively assisted/represented the petitioner in the Inquiry proceedings.

12. The third submission of Mr. Mathews was that the findings of the Inquiry Officer are patently erroneous inasmuch as the learned

Inquiry Officer has ignored the material documents and arrived at an erroneous findings that Article 1 of the charge stands proved. It is his submission that there exists no document on record to suggest that the concerned student faced a life threatening situation. The Inquiry Officer's finding in respect of the life threatening situation is based on an assumption bereft of any document to support the same. More importantly, the Inquiry Officer had overlooked the fact that the same student was attending classes at peak summer and taken previous examinations without any special facilities. He also states that the Inquiry Officer had overlooked the testimony of material witness Tasneem Suhrawady, who had taught the concerned student. He also states that the Inquiry Officer had completely overlooked the fact that the University had allowed the special facility to the concerned student as a 'special case', which proves, the position of the petitioner that the existing rules did not provide for the given situation, was correct. He would also contest that the language used by the petitioner was abusive or filthy.

13. On the other hand, Mr. A. Mariarputtam, learned Senior Counsel appearing for the respondent Nos. 2 and 3 would (as a last submission) challenge the maintainability of this writ petition against the respondent Nos. 2 to 4 on the ground that the college is a

minority educational institution and even though it receives aid, but still, it is not a 'State' within the meaning of Article 12 of the Constitution. In other words, it is a private institution. He would also state that the petitioner is an employee of the college. The appointing authority is Governing Body of the college. The fact that the college is affiliated to the Delhi University, would not make the petitioner either an employee of the University or make the appointment, a statutory one or service under the 'State'.

14. That apart, the issue relating to discipline of an employee is purely internal matter. There is no public law, public duty element involved. Alternatively, he would state that even if a view is taken that writ could be issued against the private body, the same would be confined to discharge of public duties/functions only and in the present case, there are no allegations of violation of statutory rules or regulation of the University. He relied upon the judgments of the Supreme Court in the case reported as *(2003) 10 SCC 733, Federal Bank Ltd. Vs. Sagar Thomas and Ors., 2005 (6) SC 657 Binny Limited and Anr. Vs. V. Sadasivan and Ors., (2010) 8 SCC 49 Sindhi Education Society and Anr. Vs. Chief Secretary, Govt. of NCT of Delhi and Ors., 2002 (8) SCC 481 TMA Pai Vs. State of Karnataka.*

15. He would also state that there is no violation of principles of natural justice as alleged by the petitioner, as before the imposition of the penalty, the petitioner was given a copy of the Inquiry Report and was also given a personal hearing. He would state, there was a sufficient compliance with the law and with the principles of natural justice. In the absence of any actual prejudice caused to the petitioner, punishment cannot be mechanically set aside. He would also state that initial consideration of the Inquiry Report by the Governing Body was only tentative. He has drawn my attention to the representation made by the petitioner on December 6, 2013 to contend that it was the understanding of the petitioner also that he was required to give a representation on the findings of the Inquiry Officer in his report and also the quantum of penalty to be imposed on him. He would state, in fact, the petitioner, without taking the plea of violation of principles of natural justice, had represented to the authorities on each of the findings given by the Inquiry Officer in his report and contested the said findings and also the quantum of punishment. If that be so, the plea of violation of principles of natural justice would not be available to the petitioner. According to him, the petitioner, in fact requested for a personal hearing vide his letter dated January 2, 2014, which was granted by Governing

Body in a meeting held on January 8, 2015. The purpose was to give to the petitioner an opportunity to point out any relevant aspect or plea not considered by the Inquiry Officer and also against the proposed penalty. He also relied upon the judgment of the Supreme Court in the case of *Managing Director, ECIL (supra)*, more specifically, para Nos. 30(v) and 31.

16. Insofar as the judgment of the Supreme Court in *Ramesh Chandra case (supra)*, as relied upon by the learned counsel for the petitioner is concerned, he states that no grievance or challenge has been made in the writ petition that the conduct of the Inquiry by the Inquiry Officer, who was a legal person/retired Judge, was in violation of principles of natural justice or that he had suffered prejudice for want of assistance of a lawyer. He had also stated that the case does not involve complicated facts or law and issues are simple and factual issues. He had highlighted the fact that learned counsel for the petitioner himself conceded that the assistance of Ms. Nandita Narain was effective, the grievance should be deemed to be waived/given up.

17. Mr. Romy Chacko, learned counsel, who appeared for the respondent No. 4, had on similar lines by relying upon the judgment of the Supreme Court in the case reported as *2002 (5) SCC 111*,

Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and Others contended that a body can be characterized as a ‘State’ within the meaning under Article 12 of the Constitution only if it is financially, functionally or administratively, controlled by the Government. According to him, the respondent No. 2-college is not financially, functionally or administratively controlled by the Government. According to him, in view of the judgment of the Supreme Court reported as ***1974 (1) SCC 717 Ahmedabad St. Xavier College’s case Vs. State of Gujarat and Anr.***, the University cannot nominate any representative to the Governing Body of a minority institution. The respondent college enjoys constitutional right to choose its Governing Body, right to choose its teachers, right to admit students and the right to use its properties and assets for the benefit of its own institution. He also relied upon the judgment of the Supreme Court in ***TMA Pai Foundation’s case (supra)*** to contend that the right to establish, administer an educational institution includes a right to constitute the Governing Body as well as right to appoint and take disciplinary action against the teachers. He would also state, merely because as a minority institution, it has compulsory affiliation under the Act, there is no provision in the University Act with over-riding powers precluding

the management from exercising its right to administer the college as a minority institution and adoption of certain statutory provisions by institution will not clothe the institution with the statutory character or appointment of a teacher statutory in nature. In other words, according to him, it is contractual. Further, he would state, a decision of the employer in a matter relating to misconduct of employee does not involve any element of public policy and such cases are purely governed by contract of employment entered into between the employees and the employer. He also relied upon the judgment of the Supreme Court in *Binny Ltd.'s case (supra)*. According to him, as held by the Supreme Court in *Sindhi Education Society's case (supra)* the services in a minority aided institution is not a service under the State. He would state, the petitioner not being a civil servant and the respondent Nos. 2 to 4 neither being the "State" nor a statutory body, the provisions of Article 311 of the Constitution would not be available. He also states that the reliance placed by the petitioner on the judgment of the learned Single of this Court in *Anu Saxena Vs. Jesus and Mary College and Ors., 2006 (92) DRJ 331* was appealed against and the Division Bench in its order dated May 14, 2013 in LPA 2024/2006 had clarified that the judgment of the Single Judge with regard to

the maintainability of the writ petition is not conclusive. He seeks the dismissal of the writ petition.

18. Having heard the learned counsel for the parties, the first and foremost question which needs to be decided by this Court is, whether, the writ petition, in view of the reliefs sought by the petitioner only against the respondent Nos. 2 and 3, is maintainable under Article 226 of the Constitution of India.

19. Learned counsel for the petitioner concedes to the fact that the respondent Nos. 2 and 3 are not “State” within the meaning of Article 12 of the Constitution of India. With regard to the judgment relied upon by the learned counsel for the respondents in the case of *Sindhi Education Society and Anr. (supra)* is concerned, the Supreme Court was dealing with a case of appellant which is a Society established under the Societies Registration Act running a school known as SES Bhabha Nebhraj Senior Secondary School at Lajpat Nagar, New Delhi. According to the Society, Sindhi language is one of the languages included in the 8th Schedule of the Constitution and the people speaking Sindhi language are scattered in various parts of the country. As Sindhi language is not spoken by the majority of the community in Delhi, therefore, Sindhi community in Delhi is and has been held to be a linguistic minority

by virtue of Article 30(1) of the Constitution, therefore, it has constitutional right to establish and administer educational institution of its choice. The grievance of the petitioner was that certain provisions of the Delhi School Education Act, 1973 infringes the minority character of the Society, particularly, in matters related to administration and management of school. The learned Single Judge of this Court held that the Society was a linguistic minority and the provisions of Delhi School Education Act, 1973 as specified in the judgment would not be applicable to the Society. For the purpose of this case, suffice to state that the Supreme Court in the said case had held that the service in an aided linguistic minority school cannot be construed as a service under the 'State' under Article 16 even with the aid of Article 12 of the Constitution. It had also held, merely receiving grant in aid, per se, would not make a linguistic minority school/institution 'State' within the meaning of Article 12 of the Constitution. The Supreme Court held that a minority institution may have its own procedure and method of admission as well as selection of students but it has to be fair and transparent method. The State has the power to make regulations, which are reasonable and do not infringe upon the basic character of the minority institution. The Supreme Court held, the

width of the rights and the limitations thereof, of even unaided institutions whether run by a majority or by a minority must confirm to the maintenance to the excellence and with a view to achieve the said goal, indisputably the regulations can be made by the State. The Court also held that right to administer does not amount to right to maladminister and the right is not free from regulations, which would include regulations regarding security of services of the teachers.

20. Suffice to state, in view of the fact that there is no dispute that the respondent No.2 is not a 'State' within the meaning of Article 12 of the Constitution, the judgment in the case of *Sindhi Education Society & Anr. (supra)* has no applicability except that the judgment answers the submission of Mr. Chacko that being a minority institution, the respondent No.2 has right to appointment, which would include right to take disciplinary action. There is no dispute on that aspect, but with a rider that the same is subject to the safeguards stipulated by the Statute/Ordinance. The power is not unfettered.

21. The larger question which falls for consideration is whether the respondent Nos. 2 and 3 are discharging public duty/functions to make the petition under Article 226 of the Constitution,

maintainable.

22. First dealing with the judgments relied upon by the learned counsel for the respondent Nos. 2 to 4, in the case of ***Federal Bank Ltd. (supra)***, the facts are, that, the respondent no.1 Sagar Thomas was working as a Branch Manager in the appellant company. He was suspended on May 29, 1982, since a disciplinary enquiry was ordered into some charges against him for having exceeded his authority in grant of loans and advances to different parties. The inquiry officer found him guilty of the charges and ultimately punishment of dismissal was awarded to the respondent. The respondent no.1 challenged the order of his dismissal by filing a writ petition in the High Court. A preliminary objection about maintainability of writ petition seems to have been taken, in defence by the Federal Bank, saying that it is a private bank and not a State or its agency or instrumentality, within the meaning of Article 12 of the Constitution of India, hence a writ petition under Article 226 of the Constitution is not maintainable against it. The learned single Judge, however, found that the Federal Bank performs public duty and observed thus:

"As per statutes, the Reserve Bank and the Central Government exercise all pervading functional, fiduciary and managerial control over the banking industry.

Every banking company is duty bound to carry on banking business as per the banking policy under stringent control of the Reserve Bank in the interest of banking system or in the interest of monetary stability of sound economic growth, having due regard to the interest of the depositors. The activities carried on by the bank are vital to public interest and have potential to affect the socio- economic development and growth of the nation. Banking companies are therefore, public institutions, accepting deposits from public, financial assistance from the State through its agencies/instrumentalities, for the purpose of lending or investment, pursuing banking policy and engaged in matters of high public interest or performing public functions, ensuring monetary stability, sound economic growth, equitable allocation of various funds to efficient use, for the promotion and growth of economy and welfare of the State. The first respondent is, thus, performing a public duty and a positive obligation towards its employees and customers exists. Therefore, it is amenable to writ jurisdiction."

23. Aggrieved by the aforesaid judgment of the learned single Judge, the appellant preferred a writ appeal by referring to a decision of the Supreme Court in ***AIR 1962 SC 171 U.P.State Co-operative Land Development Bank Ltd. vs. Chandra Bhan Dubey & Ors.***, the Division Bench, observed that in an identical fact situation it was held that writ application would be maintainable, minor distinctions on facts, here and there, would not make the aforesaid decision inapplicable to scheduled banks. With such observations the appeal was dismissed directing that the learned

single Judge shall decide writ petition on merits. The Federal Bank approached the Supreme Court. The Supreme Court came to the following conclusion:

“33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed”.

24. Further, it is noted that the Supreme Court in ***Federal Bank Ltd's case (supra)*** in para 18 has held as under:

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii)

Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function”.

25. Insofar as the reliance placed by the learned counsel for the respondent Nos. 2 and 3 in the case of ***Binny Ltd. and Anr. (supra)***, it is noted that in that case the Supreme Court was concerned with the facts wherein the respondents (employees) were originally appointed in the appellant-company in various jobs such as Clerks, Machine Overlookers, Supervisors, etc. According to these respondents, from 1981 onwards, the appellant company started insisting on them to be designated as management staff with the object of avoiding payment of overtime wages. The respondents signed an agreement with the Management acceding to the request of the appellant company, but they continued to perform the same duties as before. The appellant company contended that there was incessant rain when the entire company premises was flooded with water and it caused serious damage to the plant and machinery and finished-stock and the appellant company stayed all the operations and informed the Commissioner of Labour. It is noted that, order of

termination was issued to the respondents invoking Clause 8 of the agreement dated March 12, 1991 entered into by the respondents with the appellant company. As per clause 8 of the agreement, the Management had a right to terminate the services without assigning any reason by just giving one month's notice or salary in lieu thereof. The respondents filed Writ petition challenging the Order of termination dated July 31, 1996 issued by the appellant company as void and illegal and violative of Section 23 of the Indian Contract Act. The respondents had also contended that the agreement entered into by the respondents with the appellant company was violative of Article 21 of the Constitution and the closure of the mill was against Section 25F and 25N of the Industrial Disputes Act, 1947, and they sought for a direction to reinstate them in service with continuity of service and all consequential benefits. The appellant-company contended that the Writ Petition was not maintainable as the appellant company was a private body; therefore, the question of granting the declaration sought would not arise. It was also contended that there was alternative efficacious remedy available to them and therefore, the discretionary jurisdiction under Article 226 of the Constitution of India should not be exercised. The appellant company also contended that the respondents were not

entitled to seek a Writ of Mandamus as the appellant was a private company and the decision of the appellant company to terminate the services of the respondents is not liable to be the subject matter of judicial review. According to the appellant company, they were neither 'public authorities' nor their action involved public law element, for which remedy of Writ of Mandamus was available. The Writ Petition was considered by the Division Bench of the Madras High Court. The Court held that Clause 8 of the agreement entered into between the respondents 2 to 36 and the appellant was void and unenforceable against the respondents as being violative of Section 23 of the Indian Contract Act. The High Court ultimately held that in the proceedings under Article 226, the respondents herein would not be entitled to get the relief of reinstatement and back wages and the court granted only a declaratory relief to the effect that the termination order was illegal and the respondents had to work out an appropriate remedy before the appropriate forum. Two appeals were filed before the Supreme Court by *M/s Binny Ltd and Anr.* CA 1976/1998 and the second one by an employee against *CIBA Speciality Chemical (I) Ltd & Ors* CA 4839/2005.

26. It was contended before the Supreme Court in CA 4839/2005 that even if the decision making authority is a private body and not

the authority coming within the purview of Article 12 of the Constitution, on wider issue, the jurisdiction of the High Court under Article 226 of the Constitution can be invoked to set aside an illegal act and to protect the Fundamental Rights of the aggrieved party. The learned counsel representing the company submitted that the appellant has been rightly discharged from the services of the company. Wherein in CA 1976/1998, the contention was, the decision of the High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution was incorrect and the Court should not have interfered in the decision of a Private Limited Company and that the powers under Article 226 cannot be invoked against a Private Authority who is discharging its functions on the basis of the Contract enforced into between the employer and the employee. The Supreme Court, after considering its earlier decisions including the ***Federal Bank Ltd. 's case (supra)***, was of the following view:

“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. vs. Bridge & Roof Co. (1996) 6 SCC 22 and also in Kerala State Electricity Board vs. Kurien E. Kalathil (2000) 6 SCC 295. 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.

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties”.

27. From the above, it is clear that a writ of mandamus can be issued against the private body which is not a ‘State’ under Article 12 of the Constitution, and such body is amenable to the jurisdiction under Article 226 of the Constitution if there exists a public law element. The Supreme Court in the facts of that case has held that there was no public law element in the termination of the agreement by the appellant.

28. I may note here, in both the judgments of ***Federal Bank Ltd***

(supra) and *M/s Binny Ltd (supra)*, the Supreme Court referred to its earlier judgment in **1989 (2) SCC 691 Shri Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R.Rudani and Ors.**, wherein it has been held that the college in question which was managed by the Trust under the Public Trust Act, was amenable to the writ jurisdiction and direction was issued to the institution to make the payment of arrears and salary and other benefits to the employees. Para 17 of the judgment reads as under:

“17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean everybody which is created by statute--and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

Further, it was observed as under:

"...Public Money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by

way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

29. In a recent judgment reported as **2015 (4) SCC 670** ***K.K.Saxena Vs. International Commission on Irrigation and Drainage and Ors.***, the Supreme Court while considering a similar issue, in a case where the appellant K.K.Saxena who was appointed to the post of Secretary, International Commission on Irrigation and Drainage (ICID) in the year 1997, was terminated in the year 1999 on the ground that the services were no longer required by the ICID. He received cheques of Rs.77,388/- and Rs.98,141.50/- towards three months' basic pay in lieu of notice and the dues towards contributory provident fund respectively. After receiving these cheques, the appellant requested for revocation of the order of termination, which was followed by reminders dated September 02, 1999 and October 16, 1999. As he did not receive any response to

the aforesaid requests, he approached the High Court by filing writ petition under Article 226 of the Constitution of India alleging that the termination of his services by the ICID as an act of arbitrariness and unreasonableness and, thus, violative of Article 14 of the Constitution. The appellant also specifically took the plea that ICID is a 'State' within the meaning of Article 12 of the Constitution of India and further it is involved in performing public duty. It was averred that ICID is under the control of Government and the criteria and test set out for determining whether a corporation or society is a 'State' or 'other authority' under Article 12 of the Constitution of India is satisfied inasmuch as ICID was established by the Central Government by giving a grant of Rs.15,000/- in 1950; that there are instances when the Government officers had come on deputation to the society; that the Central Government has been paying the subscription for administrative and other functions of ICID and, hence, the financial control rests with the Government; that the staffing pattern of the ICID is in accordance and with the line of the Government; that ICID has monopoly status since it is the only society established by the Government of India to bring together information on irrigation from India and outside; that the Government provides to it irrigation related information generated

in the country and uses public cost and also uses information pulled by it for Government irrigation works; and that the President or Vice President in-charge of the central office of the society is a Government officer and the officer of the Central Government is ex-officio Secretary General, though he does not draw salary from ICID. Additional plea was taken that in any case writ petition under Article 226 of the Constitution of India was maintainable even if ICID does not qualify to be a 'State' within the purview of Article 12 of the Constitution inasmuch as the term 'other authority' appearing in Article 226 was of much wider connotation and it would embrace within itself those authorities which discharge public functions or public duty of great magnitude. The appellant pleaded that going by the functions which ICID is discharging, it is apparent that these are public functions and, therefore, writ petition under Article 226 of the Constitution of India could be filed against it. The Supreme Court discussed and referred to various judgments wherein, a particular organization has been held to be a 'State' within the meaning of Article 12 of the Constitution. That apart, the Supreme Court had also referred to its judgment in ***Shri Anandi Mukta Sadguru's case (supra)***, wherein, in paras 14, 16 & 19, it has held as 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?

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16. The Law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omission with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":

"At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The Statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to 'have regard to' it. So the previous law as to who are--and who are not--public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing."

19. The scope of this article has been explained by Subba Rao., in Dwarkanath v. Income Tax Officer, [1965] 3 SCR 536 at (540-41):

"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

30. The Supreme Court has summed up the ratio in the case of ***Shri Anandi Mukta Sadguru (supra)*** in para 32 of **K.K. Saxena's** case (Supra) as under:

*“32. In para 14, the Court spelled out two exceptions to the writ of mandamus, viz. (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body “with no public duty”, mandamus will not lie. The Court clarified that since the Trust in the said case was an aiding institution, because of this reason, it discharges public function, like Government institution, by way of imparting education to students, more particularly when rules and Regulations of the affiliating University are applicable to such an institution, being an aided institution. **In such a situation, held the Court, the service conditions of academic staff were not purely of a private character as the staff had super-aided protection by University’s decision creating a legal right and duty relationship between the staff and the management.** Further, the Court explained in para 19 that the term ‘authority’ used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights Under Article 31, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term ‘authority’ appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.*

31. The Supreme Court also referred to its judgment in the case of **K. Krishnamacharyulu and Ors vs. Sri Venketaswara Hindu**

College of Engineering and Anr 1997 (3) SCC 571 wherein the Supreme Court has held that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of a citizen the teacher who imparts education get an element of public interest in performance of his duties. In such a situation, remedy provided under Article 226 would be available to the teachers.

32. The Supreme Court in *K. K. Saxena's* case (supra) has summed up that the two cases, it had referred to pertains to education institution and the functions of imparting education was treated as the performance of public duty that too by those bodies where the aided institutions were discharging the said functions like Government institution and the interest was created by the Government in such institution to impart education.

33. The Supreme Court in *K.K. Saxena's* case has also referred to, its judgments as relied upon by learned senior counsel for respondent Nos. 2 to 4 in the case of *Federal Bank Ltd. (supra)* and *Binny Ltd and Anr (supra)*. And in para 40, the Supreme Court had noted that in *Federal Bank Ltd. (supra)*, it was also held, 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. The Supreme Court in that case has held that ICID the respondent does not discharge any public function/duty and the impugned action does not involve public law element.

34. In the case in hand, it is not in dispute that the UGC is providing 95% of approved expenditure by way of grant to the respondent No.2 college. Even assuming the grant would not make the respondent Nos. 2, 'State' within the meaning of Article 12 being a minority institution but there can't be any dispute that the respondent Nos. 2 is imparting education to the students akin to a public function like a Government institution, in terms of the Rules & Regulations framed by the Delhi University under Delhi University Act, which also governs the service conditions of the academic staff, like the petitioner herein and such service conditions have statutory character as opposed to a private character. The ratio of the judgments of the Supreme Court in *Shri Anandi Mukta Sadguru (supra)* and in the case of *K. Krishnamacharyulu and Ors (supra)* would make the respondent Nos. 2 discharging public functions and duties.

35. That apart, I note that even though, the petitioner has sought

compliance of the University Regulations but has not disclosed which regulation has been violated. I note, from the Ordinances framed under Delhi University Act, Ordinance XII relates to college appointed teachers. Clause 3(A) (1) thereof, stipulates that subject to the provisions of clauses 6, 7 and 8 of the Agreement of Service, a person appointed permanently as a Principal of College or Institution or as a Teacher therein, shall be entitled to be in the service of that college or institution until he/she completes the age of 62. The annexure-II of Ordinance XII, which relates to form of Agreement of Service for college teachers, inter-alia, stipulates as under:-

“5. The Governing Body shall be entitled summarily to determine the engagement of the teacher for misconduct, but save as aforesaid, shall only be entitled to determine the engagement after giving three months’ notice in writing or payment of three months’ salary in lieu of notice and for good cause.

6. The Governing Body shall not determine the engagement of the teacher whether summarily or otherwise without informing him in writing of the grounds on which they propose to take action and giving him a reasonable opportunity of stating his case in writing, and before coming to a final decision shall duly consider the teacher’s statement and if he so desires give him a personal hearing.”

36. A perusal of the aforesaid provisions, it is clear that a decision on the misconduct shall necessarily be after giving a

reasonable opportunity to the teacher of stating his case in writing and before coming to a final decision shall duly consider the teachers' statement and if he so desire give him a personal hearing. In other words, when the engagement of a teacher is determined, it has to be through a process of fairness but not before considering the teachers' statement and a personal hearing. That apart, in a given case, an inquiry may lead to dismissal of a teacher, which results in a pre-mature termination of the appointment before the age of 62 years contrary to the mandate in the Ordinance. Further, any penalty would affect the promotion of a teacher and the benefits and privileges, a teacher is entitled to under the Statutes/Ordinances. Surely, the conduct of disciplinary proceedings by the respondent Nos. 2 and 3 has a public law element and the petition seeking the reliefs against the action of respondent Nos. 2 and 3, is maintainable under Article 226 of the Constitution. The judgments in the case of *Federal Bank Ltd. (Supra)* and *M/s Binny Ltd (Supra)* have no applicability to the facts of the case.

37. Insofar as the submission made by the learned counsel for the petitioner that he has been denied the right of legal representation is concerned, suffice to state, the learned counsel for the petitioner having conceded that he had an effective assistance from Ms.

Nandita Narain, this Court is of the view, no prejudice has been caused to the petitioner. Further, no facts have been pleaded as were there before the Supreme Court in ***Ramesh Chandra's*** case (supra) to show that the Inquiry Officer was biased. This plea on behalf of the petitioner is liable to be rejected.

38. Insofar as the third and last submission, that the petitioner has been denied reasonable opportunity by accepting the report of the Inquiry Officer and determining the penalty to be imposed on the petitioner before calling upon him to represent against the same is concerned, the same is clear from the show-cause notice dated November 27, 2013 issued by the respondents, which reads as under:-

*“To
Dr. M.S. Frank,
Dept. Of Chemistry,
St. Stephen's College, Delhi 110007*

*Subject: Show cause notice in pursuance of the
decision of the Governing Body of St. Stephen's College.
Dr. Dr. Frank,*

I give below an excerpt from the approved draft Minutes of the Emergent Meeting of the Governing Body of St. Stephen's College held on 18 November 2013 at which the Report of the Inquiry conducted by Justice S.K. Mahajan was discussed.

3 (a) 16. The Governing Body accepting after due deliberation and consideration, the Inquiry Report and its findings, resolved unanimously that a notice to

show cause as to why a penalty of forfeiture of two increments and requiring the indicted employee to submit a bond for good behaviour for the remaining period of his service be not imposed on him, giving a period of ten days to respond.

Copy of the Inquiry Report be also furnished.

The aforesaid minute is self-explanatory. You are required to comply within ten days (10 days) of receiving this notice.

A copy of the Inquiry Report, submitted by the IO and accepted by the GB, is enclosed”.

39. A perusal of the same, would reveal that the governing body had accepted the Inquiry Report and its findings and thereupon resolved unanimously to issue a show-cause to the petitioner on the penalty of forfeiture of two increments and submission of bond for good behaviour. There is no manner of doubt that the inquiry report and its findings having been accepted, the show-cause notice was only on penalty to be imposed on him. The governing body was required to seek a representation on the inquiry report including its findings before accepting the same. Even the proposal of penalty could not have been without seeking a reply of the petitioner on the enquiry report and its findings. Even if a reply has been given by the petitioner to the show-cause, both on findings and the penalty, the same would not cure the defect of the governing body accepting the inquiry report and its findings. The show-cause notice also, does not state that the acceptance of the inquiry report and its findings, so

also the penalty on which show-cause notice was issued, was a tentative and provisional one. The respondents were required to only give a copy of the Inquiry Report to the petitioner and sought his views on the same and take action, pursuant thereto. In this regard, I note for benefit, the law laid down by the Supreme Court in **1997 (7) SCC 739 Yogi Nath D. Bagde vs. State of Maharashtra** wherein the Supreme Court has held that a delinquent employee has a right of hearing not only during the inquiry proceedings conducted by the Inquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority. The Supreme Court was of the view that so long as the final decision is not taken, in the matter, the inquiry shall be deemed to be pending. Mere submission of the findings to the disciplinary authority does not bring about closure of the inquiry proceedings. The inquiry proceedings would come to an end only when findings have been considered by disciplinary authority and the charges are held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That be so, the right to be heard would be available to the delinquent up to the final stage. The disciplinary authority did not give an opportunity of hearing to the appellant before taking a final decision in the

matter relating to the findings on the charges even before deciding on the quantum of punishment. That, having not been done, this Court is of the view that the penalty order dated January 8, 2014 based on an illegal show-cause notice, the order of penalty dated January 8, 2014 needs to be set aside. I order accordingly. That would not preclude the governing body to issue a fresh show-cause notice seeking the views of the petitioner on the findings of the enquiry report and conclusion arrived by him on the charges framed against the petitioner and on receipt of the reply, proceed thereafter in accordance with law. Before that, the petitioner would be entitled to the benefits which have been denied to him in view of the penalty order dated January 8, 2014. The aforesaid process of giving a show-cause notice and then passing an order, shall be completed within a period of two months from today. The petition is allowed to the extent stated above.

40. No Costs.

CM No. 6445/2014

In view of the order passed in the writ petition, the present application is dismissed.

**(V.KAMESWAR RAO)
JUDGE**

JULY 17, 2015/akb