

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition No.23589 of 2017

ORDER :

In this Writ Petition the petitioner has challenged the action of the 4th respondent, which is Raja Mahendra College of Engineering, located in Cherlapatelguda, Ibrahimpatnam, Ranga Reddy District, in terminating petitioner's services without any reason or cause and also failing to pay the salaries on the ground that the College run by the 4th respondent was closed.

2. A preliminary issue therefore arises whether the 4th respondent, which is Raja Mahendra College of Engineering, located in Cherlapatel, Ibrahimpatnam, Ranga Reddy District is a "State" under Article 12 of the Constitution of India, and would fall within the term "*other authorities*" mentioned in Article 12.

3. The counsel for petitioner contended that the 4th respondent is being run as a Registered Society under the provisions of the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli; that it has as its aim and object imparting of education and its funding is by donations from public and grants from the State and Central Government as per its bye-laws; that since imparting of education is a public duty, even if it is not enjoined by any statute, a Writ Petition is maintainable against the 4th respondent since it is discharging public duty and would fall within the term "*other authority*" under Article 12 of the Constitution of India.

4. Reliance is placed on the judgments in **Ajay Hasia and others v. Khalid Mujib Sehravari and others**¹, **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others**², **Kapila Hingorani v. State of Bihar**³ and **Janet Jeyapaul Vs. SRM University and others**⁴.

5. In **Ajay Hasia** (1 supra), a Constitution Bench of the Supreme Court considered the validity of the admission made to the Regional Engineering College, Srinagar which is established and administered by a Society registered under the Jammu & Kashmir Registration of Societies Act, 1898. Inter alia it also considered the question whether the said Society is an “authority” within the meaning of Article 12 of the Constitution. It held:

*“9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the **International Airport Authority case**⁵ These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression “other authorities”, it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the **International Airport Authority case** (5 supra) as follows:*

“(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some

¹ 1981 (1) SCC 722

² 1989 (2) SCC 691

³ 2003 (6) SCC 1

⁴ (2015) 16 SCC 530

⁵ R.D. Shetty Vs. International Airport Authority of India... (1979) 3 SCC 489

indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case (5 supra) be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

6. It explained that it is not material whether a Corporation is created by a statute or under a statute and the test is whether it is an instrumentality or agency of the Government and not as to how it was created and the concept of instrumentality or agency of the Government is not limited to a Corporation created by a statute but is equally applicable to a Company or a Society. On the facts of that case, it held that the composition of this Society was such that it was dominated by representatives appointed by the Central Government and the Governments of Jammu & Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government; the monies required for running the college are provided entirely by the Central Government and the Government of Jammu & Kashmir; the Rules to

be made by the Society are also required to have the prior approval of the State and the Central Governments; and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. Since the control of the State and the Central Government is deep and pervasive and since no immovable property of the Society can be disposed of in any manner without the approval of the both the Governments, the Society is an instrumentality or agency of the State and Central Governments and it is an “authority” within the meaning of Article 12 of the Constitution of India.

7. In the instant case, no material is placed before this Court to show any deep and pervasive control of the activities of the 4th respondent-Society or funding of the 4th respondent by the State or the Central Governments except stating that it is bound to comply with the AICTE guidelines. Therefore this judgment cannot come to the aid of the petitioners.

8. In **Andi Mukta Sadguru Shree Muktajee** (2 supra), the Supreme Court considered a case relating to a public Trust which was running a Science college at Ahmedabad which was affiliated to the Gujarat University under the Gujarat University Act, 1949 and whose teachers were paid in the pay scales recommended by the University Grants Commission. Services of the academic staff were terminated and the said college was closed down due to a dispute with the University Area Teachers’ Association which demanded revision of pay scales. The teachers demanded arrears of salary, Provident Fund, Gratuity and closure compensation payable to them. The Trust contended that it is not a statutory body and not subject to the Writ jurisdiction of the High Court. The High Court rejected the said contention

and granted relief to the teachers. The Trust appealed to the Supreme Court. The Supreme Court noted that the Trust was managing the affiliated college to which public money is paid as Government aid; such public money plays a major role in the control, maintenance and working of educational institution; and aided institutions like Government institutions discharge public functions by way of imparting education to students and they are subject to the rules and regulations of the affiliating University and their activities are closely supervised by University authorities. Therefore it held that employment in such institutions is not devoid of any public character; so are the service conditions of the academic staff; and when the university takes a decision regarding their pay scales, it will be binding on the Management; and so the service conditions of the academic staff are not purely of a private character. Consequently, it held that mandamus cannot be refused to the aggrieved party. In that context, it observed that:

“20.The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.”

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.”

9. Unlike in the above case, the 4th respondent is not shown to be receiving any aid from the Central or State Government.

10. Learned counsel for petitioners strongly placed reliance on the above passages and sought to contend that the 4th respondent Society/College is imparting education and thus performing a public duty and therefore even if no duty is imposed on it by a statute in regard to termination of employment of the petitioners and payment of salaries, Writ Petition would be maintainable.

11. There is no quarrel with the proposition that a mandamus cannot be denied on the ground that the duty to be enforced is not imposed by a statute.

12. In this regard reference may be made to the decision in **Zee Telefilms Vs. Union of India**⁶. In that case, the Supreme Court observed that though the Board of Control for Cricket in India (BCCI) is not a “State” for the purposes of Article 12, some of its activities like selection of an Indian Cricket team, controlling the activities of the players and others involved in the game of cricket would be akin to public duties or State functions. However, if there is any violation, an aggrieved party can seek remedy under the ordinary course of law or by way of a Writ Petition under Article 226 of the Constitution of India, though not under Article 32 of the Constitution. So the principle is that when a private body exercises its public functions, even if it is not a State, the aggrieved person can avail the remedy under Article 226 of the Constitution of India.

⁶ (2005) 4 SCC 649

13. But to say that every Society or Corporation imparting education is discharging a public duty and is amenable to Writ jurisdiction, in my humble opinion, is not correct. Engagement of staff or employees in every private unaided educational institution cannot be said to be a public function. It is a purely private arrangement made by the said institution to carry out its aims and objectives. Only where a public function breach is alleged, then a Writ Petition would lie and not otherwise. If contention of petitioners is accepted, it would open the flood gates and every dispute in every private unaided school/college between its management and academic staff would then brought before the High court in judicial review.

14. Coming to **Janet Jeyapaul** (4 supra) cited by counsel for petitioners, that was a case where the appellant's services as a lecturer in the Department of Bio Technology in the Faculty of Sciences and Humanity in the SRM University were terminated after giving a show cause notice and initiating disciplinary action stating that the termination notice should be treated as one month's notice. She filed Writ Petition in the High Court challenging the same. A Single Judge of the High Court allowed the same and quashed the termination notice and directed her reinstatement, but the Division Bench reversed his decision holding that the said University was not a State or 'other authority' within the meaning of Article 12 of the Constitution of India and hence it cannot be subjected to Writ jurisdiction of the High Court. The appellant then approached the Supreme Court. The Supreme Court held that since the said University was imparting higher education to students at large, it was discharging a "public function"; that it was notified as a Deemed University by the Central Government under Section 3 of the

University Grants Commission Act, and all provisions of the said Act are made applicable to it; therefore all its functions and activities are governed by the said Act like other Universities and so, it is an “authority” within the meaning of Article 12 of the Constitution of India.

15. In the present case, the 4th respondent-Society is not a Deemed University and the provisions of the University Grants Commission Act do not apply to it. Merely because imparting education is a public function, it cannot be said that engagement of employees for the said purpose is also a public function. It is purely a private arrangement made by the Society with the petitioners and so the rights claimed by the petitioners are purely of a private character and relief under Article 226 of the Constitution of India cannot be granted to them. A Division Bench of the Allahabad High Court in **Veer Pal Singh and others Vs. Gandhi Eye Hospital Trust, Alligarh and others**⁷ also took a similar view in regard to maintainability of a Writ Petition against the respondent in the said case which runs an Eye hospital when services of its employee were terminated and he approached the High Court.

16. In view of the above reasons, I hold that the Writ Petition against the 4th respondent-Society/College is not maintainable. Consequently, the Writ Petition is dismissed. No costs.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-07-2017

Ndr/Vsv

⁷ MANU/UP/1418/2017