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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25.04.2019

Pronounced on: 15.05.2019

+ W.P.(C) 981/2019 & CM APPL. 4407/2019 & 6592/2019

SANJAYA BAHREL

..... Petitioner

Through

Mr.R.S. Suri, Sr. Adv. with
Mr.Akshay Kapoor, Mr.Varun
Khanna & Ms.Kriti Chopra, Advs.
with petitioner in person.

versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr.Anurag Ahluwalia, CGSC with
Mr.Sidhant Kumar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

CM APPL. 4407/2019 (Exemption)

1. Allowed, subject to all just exceptions.
2. This application is, accordingly, disposed of.

W.P.(C) No. 981/2019

3. Vide the present petition, the petitioner seeks direction thereby declaring the process of inquiry and the disciplinary proceedings against the petitioner and consequently memorandum dated 31.08.2006 alleging

misconduct and placing the petitioner on suspension without pay as null and void.

4. Further seeks direction thereby declaring the waving the immunity of the petitioner as null and void. Further seeks direction thereby declaring the summary dismissal by respondent no.2 as null and void.

5. The brief facts of the case are that the petitioner was appointed on 09.08.1995 for the post of Senior Procurement Manager, in Purchase and Transport Service for a short term appointment for 5 months. In accordance with the Government of India (GOI) policy, the petitioner applied for clearances and the approval for the said job. The permission was given to the petitioner by Ministry of Defence (Finance) and Ministry of External Affairs. However, in December, 2005, the petitioner came to know from media reports that he is being investigated for allegedly favouring Indian companies using “*questionable technicalities*” leading to award of certain contracts to various companies. On 15.12.2005, the petitioner sent an email to the Under Secretary-General, Office of Internal Oversight Services (OIOS) and requested for the copy of the Audit reports and further requested for urgent meetings. Despite such an affirmative action on part of the petitioner, no reply was received from the office of Under Secretary-

General. On 16.01.2006, the petitioner was placed on “*Special leave with full pay*” vide the decision, the Chef de Cabinet Memorandum. On 26.01.2006, the petitioner met the Under Secretary-General, Department Of Management (DM) in the presence of Assistant Secretary-General, Office of Human Resource Management (OHRM), of respondent No. 2 United Nations Organization (UNO) where he was handed over the Memorandum dated 16.01.2006 and a Memorandum dated 26.01.2006 along with an incomplete copy of the Audit report and was asked to give his comments by 01.02.2006. On 27.01.2006, the petitioner requested for complete copy of the Audit Report and the case files that were required to reply to the Audit report. On 30.01.2006, the petitioner received an e-mail from Special Assistant to the Under Secretary-General OIOS declining the request of documents to the petitioner. In the month of January, 2006, the respondent No. 2 formed the Procurement Task Force (PTF) to address all procurement matters referred to the OIOS. 06.02.2006, the petitioner had a meeting with Mr. Burnham who handed over only partial copy of the draft Audit report (AP 2005/600/20) permitting the petitioner only to read the same but refused to give a copy to the petitioner. On 11.02.2006, the petitioner wrote a letter to the respondent no. 3 stating that due process and fairness were not being

followed in his case. However, on 24.03.2006, the petitioner vide his e-mail gave a comprehensive reply to the letter dated 10.03.2006 and sought clarification with regard certain aspects. On 31.03.2006, the official in her e-mail clarified the queries of the petitioner and assured that the letter will still be considered and replied even if the petitioner does not want it to be considered as a Review. On 05.04.2006, the petitioner requested that his appeal be considered as it is. On 31.08.2006, the Division for Organizational Development, OHRM, United Nations on the basis of the PTF report, charged the petitioner with misconduct and suspended from duty without pay for 3 months. The petitioner was also asked to file written statement or any explanation he might wish to give. In the month of September, 2006, the petitioner requested the officials of respondent No. 2 on various occasions for supply of relevant documents stated to be attached with the report dated 31.08.2006. The petitioner indicted on 06.10.2006 before the US Federal Court. On 17.10.2006, the petitioner filed his reply to report dated 31.08.2006. The immunity of the petitioner was waived on the request of United States Attorney on 01.11.2006 without waiting for the completion of due process under Staff regulation and the petitioner was arrested by the FBI. On 02.11.2006, the petitioner was granted bail.

6. On 29.11.2006, the suspension of the petitioner was extended for 3 months without pay. On 12.12.2006, the counsel of the petitioner wrote a letter dated 12.12.2006 to Under Secretary – General, DM of respondent no. 2 regarding failure of the Procurement Task Force and respondent no.2 to respect both substantive and procedural due process and made request for review of the decision dated 31.08.2006. But the said request was never considered. However, the Acting Under Secretary-General, Department of Management of respondent no. 2 vide his letter dated 21.12.2006 summarily dismissed the same.

7. Thereafter, on 21.05.2007, the trial of the petitioner commenced before the US Federal Court and the said court convicted the petitioner in the trial and sentenced 97 months of imprisonment and 2 years of mandatory probation and further held imposition of restitution in amount of USD 846067.63 in outside legal fees incurred by the respondent no. 2 and USD 86098.36 of the petitioner's salary was to be refunded. Being aggrieved the petitioner filed an appeal on 23.12.2008 against the order of the Federal Court. The Second Circuit Court dismissed the appeal of the petitioner on 26.10.2011. Thereafter, again being aggrieved, the petitioner filed a review petition before En Bane challenging the order of the Second Circuit Court.

However, the same was dismissed in the month of February, 2012. Thereafter, on 26.06.2013, the petitioner filed a petition under Title 28 Section 2255 of the United States Code before the US Federal Court to vacate, set aside or correct sentence. But the petitioner was only released on 24.05.2014 after serving a sentence and on 28.05.2014, the petitioner was deported to India.

8. Thereafter on 20.11.2016, the petitioner filed writ petition against the aforementioned order before the Hon'ble Supreme Court of United States and the same was dismissed on 30.05.2017. On 15.11.2018, the petitioner wrote a letter, to Ministry of External Affairs, New Delhi, seeking grant of permission to initiate legal action against respondent nos.2 and 3, under section 86 of Civil Procedure Code, 1908. In its reply dated 02.01.2019, the aforesaid Ministry stated that the consent of Government of India is not required to initiate a legal suit against the respondent no. 2 as it is not a foreign state and is only an Internal Organization. However, respondent no.2 and its officials enjoy immunity under the United Nations (Privileges and Immunities) Act, 1947 (hereinafter referred to as '*Act 1947*').

9. Since this court raises the issue of maintainability of the present writ petition vide order dated 12.04.2019, Mr.R.S. Suri, learned senior counsel

appearing on behalf of the petitioner submitted that respondent nos.2 and 3 are enjoying immunity under Section 2 of Article II of Schedule of Act, 1947 which is reproduced below:

“Article II: Property, Funds and Assets

Section 2: The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from the every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

10. Chapter XIV Article 96 of the Charter of the United Nations states that:

Chapter XIV: International Court of Justice

Article 96:

a. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

b. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

11. Learned senior counsel submits that as per the above provision, the General Assembly or the Security Council can request the International Court of Justice {ICJ} to give advisory opinion on any legal question.

Alternatively, any member state can approach the ICJ directly. Thus, in both cases of approaching the General Assembly and/or the ICJ, it is only respondent no.1 that can act on behalf of its citizens. The petitioner on his own cannot invoke the powers of ICJ.

12. He further submits that in the present case, respondent no.1 is referring to Section 2 of Article II of the Schedule of Act, 1947 to claim immunity for respondents nos.2 and 3, but so far as the petitioner is concerned, his rights under Section 18 (a) Article V of the Schedule of Act, 1947 were violated by these very respondents. Respondent no.1, if so directed by this Court, could resolve this issue with the respondent no.2 as per Section 30 of Article VIII of the Schedule of the Act, 1947. Section 18(a) Article V and Section 30 of Article VIII of the Schedule of the Act, 1947 are reproduced herein below:

“Section 18 (a) Article V-

Article V: Officials

Section 18: Officials of the United Nations shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

Section 30 of Article VIII-

Article VIII: Settlement of Disputes

Section 30: All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties. ”

13. In view of above, learned senior counsel further submits that this court has jurisdiction to issue any directions as it deems fit in ensuring that the wrongs done by respondents nos. 2 and 3 are corrected, and if required, through respondent no. 1's mediation.

14. Learned senior counsel further submitted that respondentn.2 came into existence on 24.10.1945 after signing of the UN Charter on 26.06.1945 by its Member States. The Government of India by ratifying the UN Charter and legislation through the Act No. 46 of 1947 i.e. the United Nations (Privileges and Immunities) Act, 1947 has given respondent no. 2 a statutory character. But the respondent nos. 2 and 3 have not only violated its own Staff Rules (ST/SGB/2002/1) which is annexed herewith as Annexure P-28 but have also blatantly violated Section 18(a) of Article V of the Schedule of the Act, 1947. The respondent nos.2 and 3 by their acts and omissions

have violated the fundamental rights guaranteed to the petitioner under the Constitution of India and also the objectives of the respondent no. 2 as envisaged in the Charter of the United Nations.

15. To strengthen his argument, learned senior counsel for the petitioner has relied upon the case of *Harbhajan Singh Dhalla vs. Union of India: (1986) 4 SCC 678; Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors.: (2002) 5 SCC 111; Binny Ltd. & Anr. vs. V.Sadasivan & Ors.: (2005) 6 SCC 657; Board of Control for Cricket in India vs. Cricket Association of Bihar & Ors.: (2015) 3 SCC 251; & Oss Nokalva Inc. Vs. European Space Agency: 617 Fed Reporter 3d Series 756 3rd Circuit 2010.*

16. Learned senior counsel further submits that the immunity granted to the respondent no.2 and its officials under the Act, 1947, can only be triggered if any legal recourse has been taken against them by any person which does not have any direct connection/relation to the respondent no.2, whereas in the present case, the petitioner was an employee of the respondent no. 2. Hence, there can be no question of the requirement of waiving of immunity by respondent no. 3 for the present Writ petition.

17. He further submits that the petitioner is not seeking any relief for

which the respondent no. 2 has to invoke the immunity granted to it under the Act, 1947. Rather the petitioner is seeking to invoke the writ jurisdiction of this Court for the purpose of non-adherence of the due process (Rule 110.4 of the Staff rules (ST/SGB/2002/1) which the respondent nos.2 and 3 were bound to follow in order to ensure free and fair disciplinary process of the petitioner who was a serving officer with respondent no.2. The said respondent no.2 itself has not followed due process of law in proceedings against the petitioner. Therefore, Section 2 of Article II of the Schedule of the Act, 1947 which gives blanket immunity to respondent no.2 to waive its immunity is something which makes respondent no.2 a judge in its own cause and, therefore, against the basic tenets of justice delivery system. After all, no immunity is or can be infallible or absolute under all circumstances.

18. He further argued that the latin maxim *Ubi jus ibi remedium* which means that if there is a right, then there must necessarily be a remedy attached to it and it is a settled law that no one should be left remediless. The petitioner has exhausted all his remedies and has made all possible efforts to invoke the prescribed provisions for appeal on due process. Therefore, the present petition is maintainable before this court.

19. On the other hand, Mr. Anurag Ahluwalia, learned standing counsel (Central Government) appearing on behalf of respondent no.1 submits that as per Section 2, UNO (respondent No.2) has immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity which is reproduced as under:

“SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.”

20. He further submits that a similar issue came before this Court in Civil Writ Petition No. 4312/1998 titled as ***M/s. Hindustan Engineering & General Mazdoor Union (Regd) & Ors. Vs. Union of India & Ors.: ILR (2000) II Delhi 353***, whereby this court has held as under:-

“17. There is no force in the arguments advanced by the petitioners. One has to bear in mind that respondent No.2 is a United Nations Organisation. It is a conglomerate of 61 members countries. By no stretch of imagination an organisation of United Nations which is an international body be treated as "instrumentality" and or an "agency" of the Government. As per the agreement entered between the respondent No.2 and the Govt. of India, respondent No.2 has its seat to New Delhi. As per Section 10 of the said agreement the respondent No.2 enjoys "immunity from every form of legal process", unless expressly waived. Immunity has not been waived by respondent No.2. As per Section 9 of the said agreement the

Government of India agreed to extend and apply to respondent No.2 the Convention on Privileges and Immunities of the Specialise Agencies of the United Nations. The statute of respondent No.2 has also been recognised. Article 13 of the Statute also provides for immunity from every form of legal process unless expressly waived. To co-operate with the host state in administration of justice is within the discretion of respondent No.2 as per Article 13 of its statute. That vide gazette notification the Government of India has made applicable the United Nations (Privileges and Immunities) Act, 1947 to respondent No.2. The above stated Act was legislated by Government of India to give effect to the Convention of the Privileges and Immunities of the United Nations. Section 3 of the United Nations (Privileges and Immunities) Act, 1947 as applicable provides that respondent No.2 shall also enjoy privileges and immunities as set out in the schedule i.e. in the Convention of Privileges and Immunities. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13th February 1946. The said Article 2 provides for "immunity from every form of legal process". The said convention has been made part of the aforesaid act as its schedule. In these circumstances, the judgment of the Supreme Court in the case of Col. His Highness Raja Sir Harinder Singh Barar Bans Bahadur Vs . The Commissioner of Income Tax, Punjab & Ors. MANU/SC/0242/1971 : [1972]83ITR197(SC) cited by the counsel for respondent No. 2 becomes relevant. This is what Supreme Court observed in the aforesaid case.

"In International Law the head of State represents the state as such and not an individual representing his own rights. In that capacity he enjoys certain extra territorial privileges in other states which are friendly and in peace, known as the receiving state with the State he represents.....There are yet other immunities in relation to applicability of the Municipal Laws, the

Immunity from which are either recognised by the common law and which courts will not enforce as in England or as are dealt with by those laws themselves by affording the necessary exemption. There are yet other which may be regulated by treaties or International covenants".

19. The immunity granted is all comprehensive and applicability of any national laws are subject to the waiver of the immunity by respondent No.2. As respondent No.2 has not waived the said immunity, the clause relating to observance of national laws will be of no help to the petitioners. If the contention of the petitioner is accepted, the effect of that would be to make the provision relating to immunity as redundant. Once this is the position in law, other arguments advanced by the petitioners which are founded on the premise that respondent No. 2 is under an obligation to obey the laws of this country, also lose their force. The judgment of Supreme Court in the case of Harbhajan Singh Dhalla Vs . UOI MANU/SC/0007/1986 : [1987]1SCR114 also has no application. A perusal of the judgment would show that the Supreme Court was interpreting the provisions of Sections 86 & 87 of the Code of Civil Procedure and it enumerated the principles/guidelines which should be kept in mind while granting or refusing to grant sanction to sue foreign States. This judgment obviously has no application on the facts of the present case where we are concerned the maintainability of the writ petition and have to examine whether body like respondent No. 2 is instrumentality and or agency of the State."

21. In addition to above, the similar issue came in the case of **G. Bassi Reddy Vs. International Crops Research Institute & Anr.:** (2003) 4 SCC 22, whereby the Hon'ble Supreme Court has held as under:-

“25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. v. State of W.B.; MANU/SC/0063/1962 : AIR1962SC1044]. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a State or authority within the meaning of Article 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. MANU/SC/0330/2002 : [2002]3SCR100 in which we said:

"The question in each case would be- whether in the light of the cumulative facts as established the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State".

26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfil any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by not is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.”

22. Accordingly, Mr.Ahulwalia submits that in view of the settled

proposition of law, the UNO is not the State under Article 12 of the Constitution of India and is not amenable to the jurisdiction of this country. Thus, the present petition is not maintainable.

23. I have heard learned counsel for the parties and perused the material available on record.

24. Under section 3 of the Act No.46 of 1947, Power to confer certain privileges and immunities on other international organizations and their representatives and officers are as under:

“Where in pursuance of any international agreement, convention or other instrument it is necessary to accord to any international organization and its representatives and officers privileges and immunities in India similar to those contained in the provisions set out in the Schedule, the Central Government may, by notification 2 in the Official Gazette, declare that the provisions set out in the Schedule shall, subject to such modifications, if any, as it may consider necessary or expedient for giving effect to the said agreement, convention or other instrument, apply mutatis mutandis to the international organization specified in the notification and its representatives and officers, and thereupon the said provisions shall apply accordingly and, notwithstanding anything to the contrary contained in any other law, shall in such application have the force of law in India.”*

25. As per the Schedule of the Act 1947 adopted by the General Assembly of the United Nations on 13.02.1946 is as under:

“Whereas Article 104 of the Charter of the United

Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and fulfilment of its purposes and

Whereas Article 105 of the Charter of the United Nations provided that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for independent exercise of their functions in connection with the Organization:

Consequently the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.”

26. As per section 2 of Article II, the United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

27. The case of ***Harbhajan Singh Dhalla (supra)*** is not applicable in view of paras 15 & 19 of ***M/s Hindustan Engineering & General Mazdoor Union (Regd.) & Ors. (supra)*** whereby this court has held as under:

“15. Even in case of applicability of Section 86 CPC in the matter of grant of consent for institution of suit as against Embassy of a Foreign State Supreme Court in the

case of Harbhajan Singh Dhalla Vs. UOI reported in AIR 1987 SC 9 held that dispute between Indian Citizen/National and such Embassy is to be resolved in accordance with law of this country (refer to para No. 8- page 11 of the judgment/report) and that the foreign State is liable to be sued in India (refer to para No. 19- para 14 of the judgment/report) in view of the nature of the dispute. Their lordship held that relationship between two countries would be better served and the image of foreign state be better established if citizen grievance are judicially investigated. This would also be consonance with human rights (para 14 para 19 of the report). Further Supreme Court in the aforesaid case was pleased to observe that the interpretation of the provisions of Code of Civil Procedure (provisions of section 86 imposing requirement of consent of Central government) must be in consonance with the basis principles of the Indian Constitution. It was submitted that the writ petition seeks forestalling of violation of fundamental rights of the petitioners keeping in view that the respondent Nos. 2 & 3 are guilty of violation of Sections 7, 9 and 12 of the Contract Labour (Regulation & Abolition) Act. Respondent No. 2 is not registered under Contract Labour (Regulation & Abolition) Act. Respondent No. 3 was not licensed contractor. The Violations of Contract Labour (Regulation & Abolition) Act are dealt in Secretary, Haryana Electricity Board Vs. Suresh & Ors., Jt 1999(2) SC 435- which judgment is considered by Bombay High Court in O.O.C.J. Writ petition No. 1027 of 1997 decided on 13.8.99 in Kachare Vahatuk Shramik Sangh Vs. Bombay Municipal Corporation(2000 LLR page 4) and also by Division Bench of Patna High Court in the case of Employers in Relation to Management of Sudamath Colliery of M/s Bharat Cooking Coal Ltd. Vs. the Presiding Officer, Central government, Industrial Tribunal (2000 LLR 100). The Supreme Court and both the High Courts are pleased to hold that contract system can be said to be genuine

only if it is carries on in compliance with the provisions of 1970 Act. Anything contrary thereto would lead to presumption that the purported contract system was merely a device and sham and introduction of a middleman for the purpose of defeating the rights of workers (2000 LLR page 17 para 37 of the report). The Punjab and Haryana High Court in 1988 Lab. I Cases 730 para No. 14 page 733- Gujarat High Court 61 FLR 253-359 to 261- Madras High Court 1985 (1) LLJ 492 and Kerala High Court 1986 (2) SLR 454 have held that contract labour will be direct employee of the principal employer if there is non-compliance with any of the provisions of Sections 7, 9 and 12 of the Contract Labour (Regulation & Abolition) Act, 1970.”

28. Further, the case relied upon by the petitioner of **Pradeep Kumar Biswas** (*supra*) is also not applicable because the said case has been dealt with by the Hon'ble Supreme Court in **G. Bassi Reddy vs. International Crops Research Institute and Anr.**: (2003) 4 SCC 225 in paras 25 & 26 which are reproduced as under:

“25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. AIR at pp. 1047-48]. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a “State” or authority within the meaning of Article 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology SCC at p.

134, para 40 in which we said:

“The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfil any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by nor is it accountable to the Government. The Indian Government’s financial contribution to ICRISAT’s administration is limited to 3 out of 15 members. It cannot therefore be said the ICRISAT is a State or other authority as defined in Article 12 of the Constitution.”

29. Accordingly, held that the High Court was right in its conclusion that the writ petition of the appellant therein was not maintainable against ICRISAT.

30. As referred above, the immunity granted is all comprehensive and applicability of any national laws are subject to the waiver of the immunity by respondent no.2. As respondent no. 2 has not waived the said immunity, the clause relating to observance of national laws will be of no help to the petitioner herein. Once this is the position in law, other arguments advanced

by the petitioner which are founded on the premise that respondent no.2 is under an obligation to obey the laws of this country, also lose their force. Accordingly, held that the judgment of Hon'ble Supreme Court in the case of *Harbhajan Singh Dhalla (supra)* also has no application.

31. It is held in case of *G. Bassi Reddy (supra)* that a writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed. The claim as made by the petitioner would not be maintainable against respondent no.2 unless the said respondent is a State or other authority within the meaning of Article 12 of the Constitution of India. Accordingly, other judgments relied upon by the petitioner are also not applicable in the present case.

32. In view of above discussion and the opinion of the Hon'ble Supreme Court in *M/s. Hindustan Engineering & General Mazdoor Union (Regd) & Ors. (supra)*; *G. Bassi Reddy (supra)*, I am of the considered opinion that United Nations is not a State under Article 12 of the Constitution of India and is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

33. Thus the present petition is not maintainable and is, accordingly, dismissed with no order as to costs.

CM APPL. No.6592/2019

In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

**MAY 15, 2019
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