

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

% **Date of decision: 18.11.2019.**

+ **W.P.(C) 2061/2018**

JOGESH BATRA

..... Petitioner

Through Mr. S.K. Tandon and Mr. R.V Naik,
Advocates.

versus

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF

DELHI & ORS.

..... Respondents

Through Mr. Sumeet Kaur and Ms. Ragini
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

Heard on the question of maintainability of the writ petition.

2. The petitioner is aggrieved of termination of his service by the respondent - Young Women's Christian Association of Delhi in short, YWCA, communicated to him vide letter dated 03.08.2017, forming part of the paper book as annexure P-3.

3. At the very institution of the writ petition, the question of its maintainability was raised. In view of the submission made by the ld.

counsel for the petitioner that YWCA has been asked by the government department to run hostels in the buildings, which were owned by the government and that, YWCA was discharging public functions, the notice of the petition was issued.

4. Since the question of maintainability of the writ petition is remaining under consideration, the ld. counsel for the parties have been heard on the limited question of the maintainability of the writ petition.

5. In the submissions of the ld. counsel for the petitioner, YWCA, a society, was released grant-in-aid for various projects by the Department of Women and Child Development, Govt. of NCT of Delhi and that the grants so released by the Govt. of NCT of Delhi were subject to audit. Also, in his submissions, such grants-in-aid *inter alia* were for running shelter homes at Jahangirpuri and Sarai Rohilla for destitute pregnant and lactating women and therefore, the grant-in-aid was to perform the public functions. In his submissions therefore, when YWCA was receiving the grants-in-aid from the Govt. of NCT of Delhi and was discharging public functions, it is to be construed as an agency of the State and therefore, the writ petition was maintainable. Though, during the course of hearing, the ld. counsel for the petitioner did not submit that YWCA was asked by the government departments to run hostels in the buildings which were owned by the government, the Court takes note of such submission made at the inception of the proceedings. In support of the submissions made, ld. counsel for the petitioner places reliance upon (i) *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others vs. V.R.*

Rudani and Others (1989 2 SCC 691) and, (ii) *Zee Telefilms Ltd. and Another vs. Union of India and Others* (2005) 4 SCC 649.

6. It is nowhere the case of the petitioners that the State was responsible to meet the expenditure of the YWCA to meet the objective(s) for which it was constituted. As for any grant, assuming monetary, we may for a moment advert to the dictionary meaning of word 'grant'. As per the Black Law's Dictionary, "grant" is defined as "to bestow or to confer upon someone other than the person or entity which makes the grant". The Oxford dictionary defines "grant" as "a sum of money given by a government or other organization for a particular purpose; legal conveyance or formal conferment". Grant-in-aid, as the expression by itself suggests, more so, when in the given case is stated to have been provided project to project basis, cannot be construed to be funding to YWCA by the State Govt. for running of its affairs for which, the said society was constituted, and, bring it within the ambit of a State as enshrined under Article 12 of the Constitution.

7. In ***Chander Mohan Khanna v. NCERT*** (1991) 4 SCC 578, the Supreme Court held as:

"Having regard to the object, functions, activities, source of funds of NCERT, freedom of application of its income and property towards the promotion of its objectives and implementation of programs, confinement of Government control only to proper utilization of the grant, and largely being an autonomous body, the institution does not satisfy the requirement of "State" under Article 12 of the Constitution."

8. The Supreme Court in '*Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors.* (2002) 5 SCC 511 also observed, as follows:

"The tests laid down in Ajay Hasia's case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing of the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the Court."

9. In (2013) 8 SCC 345 *Balmer Lawrie & Company Limited & Ors. vs. Partha Sarathi Sen Roy & Ors.*, the Supreme Court taking note of the ratio of its judgment in Zee Telefilm's case (supra) has equally observed as under:

"In order to meet the requirements of law with respect to being a State, the concerned company must be under the deep and pervasive control of the government. The dictionary meaning of 'pervasive' is 'that which pervades/tends to pervade in such a way, so as to be, or become, prevalent or dominant', 'Extensive or far reaching, spreading through every part of something.' In the expression pervasive control, the term 'control' is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or restraint from action. The word 'regulate', would

mean to control or adjust by rule, or to subject to governing principles."

10. In *Zee Telefilm's* case (supra) relied upon by the ld. counsel for the petitioner, though, the Supreme Court observed that when a private body exercises its public functions even if it is not the State, the aggrieved person has a remedy not only under the ordinary law but also by way of a writ petition under Article 226, the observations so made by the Supreme Court do not come in the aid of the petitioner in the instant case. There cannot be any dispute about the proposition of law observed to by the Supreme Court. It is however to be noted that in the given case, it is nowhere the case of the petitioner that YWCA was incorporated or was chosen to perform the duties of the State/Union or was legally authorized by the State/Union to perform its duties. In *Zee Telefilm's* case itself, the Supreme Court has observed as under:

" While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self- arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such

action of the body would make it an instrumentality of the State."

11. In the given case, the only contention raised on behalf of the petitioner is that YWCA has received some grant-in-aid to perform the public functions from the Govt. of NCT of Delhi i.e. run some shelter homes or hostels in the buildings owned by the government. It is nowhere the case of the petitioner that YWCA was either under pervasive control of the govt. of NCT of Delhi or the said govt. had any authority to govern its affairs. It is also not the case of the petitioner that YWCA was beings substantially funded by the state be it the Govt. of NCT of Delhi or the Central Government. In the given facts and circumstances, any such grant-in-aid either by way of some funds or paraphernalia provided to YWCA by the Govt. of NCT of Delhi on any project to project basis will not bring YWCA within the ambit of a State as enshrined under Article 12 of the Constitution.

12. For the foregoing reasons, the writ petition is dismissed, being not maintainable.

NOVEMBER 18, 2019

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A.K. CHAWLA, J.