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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 19.04.2021

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W.P.(C) 3403/2020 and C.M. 16264/2020

THE DELHI GOLF CLUB EMPLOYEES UNION Petitioner

Through: Ms. Sunita Bhardwaj, Mr. Bhaskar
Vali, Mr. Manu Abhishek
Bhardwaj and Mr. Pranav Singal,
Advocates

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vikrant N. Goyal, Advocate
for R-1, 2, 3 & 5
Mr. Jawahar Raja, ASC(C) with
Mr. Archit Krishna, Advocate for
R-4
Mr. Sandeep Sethi, Sr. Advocate
with Mr. Gourav M. Liberhan,
Advocate for R-6

AND

+

W.P.(C) 3941/2020 and C.M. 16266/2020

RAJ KUMAR AND ORS

..... Petitioners

Through: Ms. Sunita Bhardwaj, Mr. Bhaskar
Vali, Mr. Manu Abhishek
Bhardwaj and Mr. Pranav Singal,
Advocates

Versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Vikrant N. Goyal, Advocate
for R-1, 2, 3 & 5
Mr. Jawahar Raja, ASC(C) with
Mr. Archit Krishna, Adv. for R-4
Mr. Sandeep Sethi, Sr. Advocate
with Mr. Gourav M. Liberhan,
Advocate for R-6

AND

+ W.P. (C) 5440/2020 & C.M. 19612/2020 (for interim orders)

THE DELHI GOLF CLUB EMPLOYEES
UNION

...Petitioner

Through: Ms. Sunita Bhardwaj, Mr. Bhaskar
Vali, Mr. Manu Abhishek
Bhardwaj and Mr. Pranav Singal,
Advocates

versus

UNION OF INDIA AND ORS

... Respondents

Through: Mr. Jawahar Raja, ASC(C) with
Mr. Archit Krishna, Advocate for
R-1 to 6, 8 & 10
Mr. Vikrant N. Goyal, Advocate
for R-7
Mr. Sandeep Sethi, Sr. Advocate
with Mr. Gourav M. Liberhan,
Advocate for R-11- 13
Mr. Sanjeev Sharma, Mr. Suyash
Srivastava & Mr. Anirudh Krishan
Gandhi, Advocates for R-14

AND

+ W.P.(CRL.) 1222/2020 and Crl.M.A 10818/2020

THE DELHI GOLF CLUB EMPLOYEES
ASSOCIATION

.....Petitioner

Through: Ms. Sunita Bhardwaj, Mr. Bhaskar
Vali, Mr. Manu Abhishek
Bhardwaj and Mr. Pranav Singal,
Advocates

Versus

STATE (GOVT. OF NCT OF DELHI) AND
OTHERS

.....Respondents

Through: Mr. Jawahar Raja, ASC(C)
GNCTD with Mr. Archit Krishna,
Advocate
Mr. Sandeep Sethi, Sr. Advocate
with Mr. Gourav M. Liberhan,
Advocate for R-11-12
Mr. Sanjeev Sharma, Mr. Suyash
Srivastava and Mr. Anirudh
Krishan Gandhi, Advs. for R-13.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present petitions have been filed by the Petitioners seeking multifarious reliefs embracing several causes of action, including a challenge to the termination orders of the employees working in the Food and Beverages department of Delhi Golf Club (hereinafter referred to as

‘DGC’) and issuance of various directions to DGC, Government of India, Government of National Capital Territory of Delhi and other Authorities under different labour welfare legislations. The reliefs sought are set out in later part of the judgment.

2. At the outset, a preliminary objection was taken for and on behalf of DGC, the main contesting Respondent, questioning the maintainability of the petitions and thus, the parties were called upon to address arguments on maintainability. As maintainability is a common thread that runs in all the petitions and goes to the root of the matter, the objection is taken up and decided at the threshold, by a common judgment.

WP(C) 3403/2020

3. Petitioner is a Union of the Employees of DGC and petition has been filed on behalf of 59 members, who are permanent employees of the Food and Beverages Department of DGC, essentially seeking quashing of the decision of DGC terminating their services and a mandamus directing the Official Respondents to take action against DGC for removing the Petitioners from permanent employment during Pandemic Covid-19 as well as to direct DGC to permit them to join their permanent employment, amongst other reliefs as follows :-

*“1. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the respondent No.1,2,3,4 and 5 to take stern action against the Board of Management of ‘The Delhi Golf Club’ for taking away the right of livelihood for violating the fundamental right to livelihood of the members of the Petitioner ensured/enshrined under Article 21 of the Constitution of India of the members of the petitioner by illegally removing them from their permanent*

employment during the ongoing COVID-19 pandemic, that too without following due process.

2. Writ, order of direction in the nature of **CERTIORARI** or any other co-ordinate appropriate writ, order or direction thereby directing the respondent No.6 to quash and set aside the decision of removing the 59 employees/members of the Petitioner from permanent employment and issue a writ of **MANDAMUS** to protect the permanent employment of the members of the petitioner amid the Pandemic COVID-19 and to ensure that the members of the Petitioners are allowed to join their permanent employment amid COVID-19 in the Food & Beverages Department of the Delhi Gold Club as per ANNEXURE P-15 of the present Writ Petition giving name and designation (s) of 59 permanent employees/members of the Petitioner Union.

3. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 5 to ensure that the Food & Beverages Department of the Delhi Golf Club is not outsourced to any contractor/third party by the respondent No.6 amid Pandemic COVID-19.

4. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 5 to ensure that the Members of the Petitioner as detailed in ANNEXURE P-15 are not stopped from performing their duties during Pandemic COVID – 19 and further to ensure the continuity of the employment of the members of the Petitioner as detailed in ANNEXURE P-15 in view of the emergent situations arises due to the pandemic COVID-19.

5. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 and 2 to act upon the Order dated 29.03.2020 & 20.03.2020 bearing No. D.O. No. M-11011/08/2020/Media issued by the Respondent No.1 and 2 respectively prohibiting the illegal termination of the employees amid the Pandemic COVID-19 by the Respondent No.6 as the

Respondent No.6 is using the Government Charity of free land of Respondent No.5 (of Rs.55,779 Crores).

6. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1, 2, 3 and 4 to prosecute and take stern action against the Respondent No.6 i.e. Board of Management of 'The Delhi Golf Club' under Section 58 of the Disaster Management Act, 2005;*

7. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby ordering for the prosecution of the Board of Management of Respondent No.6 for willful non compliance of the Orders/directions and advisory issued by the Respondent No.1 to 4 during the outbreak of the pandemic COVID-19.*

8. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1, 2, 3, 4 and 5 to act upon the representations made by Petitioner from ANNEXURE P-10 to ANNEXURE P-14 of the present Writ petition.*

9. *Any other Writ, Order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction the Hon'ble Court may deem fit and proper may also be granted in the facts and circumstances of the present case and in the interest of Justice."*

W.P.(C) 3941/2020

4. This writ petition is filed by five Petitioners, who were appointed against permanent posts in DGC on the posts of Waiter, Assistant Waiter, Assistant Supervisor, Senior Supervisor, respectively in the Food and Beverages Department of DGC and were subsequently promoted. Petitioners seek a writ in the nature of mandamus to the Official Respondents to take stern action against the Board of Management of

DGC for allegedly taking away the right of livelihood of the Petitioners as well as for quashing the decision dated 29.05.2020, whereby the Petitioners were terminated from permanent employment, amongst other reliefs, which are as under:-

*“1. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1, 2, 3, 4 and 5 to take stern action against the Board of Management of ‘The Delhi Golf Club’ for taking away illegally the right of livelihood of the Petitioners ensured/enshrined under Article 21 of the Constitution of India of the members of the petitioner by illegally removing them from their permanent employment during the ongoing Pandemic COVID-19.*

*2. Writ, order or direction in the nature of **CERTIORARI** or any other co-ordinate appropriate writ, order or direction thereby directing the respondent No.6 to quash and set aside the decision dated 29.05.2020 **ANNEXURE P-28 & ANNEXURE P-29** of removing the Petitioners from permanent employment and issue a writ of **MANDAMUS** to protect the permanent employment of the petitioners amid the Pandemic COVID-19 and to ensure that the members of the Petitioners are allowed to join their permanent employment in the Food & Beverages Department of the Delhi Gold Club.*

*3. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 5 to ensure that the Food & Beverages Department of the Delhi Golf Club is not outsourced/privatized to any contractor/third party by the respondent No.6 at the cost of livelihood of the Petitioners.*

*4. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 5 to ensure that the*

Petitioners are not stopped from performing their duties during Pandemic COVID – 19 and further to ensure the continuity of the employment of the Petitioners in view of the emergent situations arises due to the pandemic COVID-19.

5. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 and 2 to act upon the Order dated 29.03.2020 & 20.03.2020 bearing No. D.O. No. M-11011/08/2020/Media issued by the Respondent No.1 and 2 respectively prohibiting the illegal termination of the employees amid the Pandemic COVID-19 by the Respondent No.6 as the Respondent No.6 is using the Government Charity of free land of Respondent No.5 (of Rs.55,779 Crores).*

6. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1, 2, 3 and 4 to prosecute and take stern action against the Respondent No.6 i.e. Board of Management of 'The Delhi Golf Club' under Section 58 of the Disaster Management Act, 2005;*

7. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby ordering for the prosecution of the Board of Management of Respondent No.6 for willful non compliance of the Orders/directions and advisory issued by the Respondent No.1 to 4 during the outbreak of the pandemic COVID-19.*

8. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1, 2, 3, 4 and 5 to act upon the representations made by Petitioners from ANNEXURE P-30 to ANNEXURE P-59 of the present Writ petition.*

9. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.6 not to act upon the*

advertisement i.e. ANNEXURE P-63 given in News Papers for privatization/outsourcing the Food & Beverages Department of the Delhi Golf Club.

*10. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.6 not to create any third party interest by privatization/outsourcing the Food & Beverages Department of the Delhi Golf Club at the cost of livelihood of the Petitioners.*

*11. Any other Writ, Order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction the Hon'ble Court may deem fit and proper may also be granted in the facts and circumstances of the present case and in the interest of Justice."*

W.P.(C) 5440/2020

5. Multiple directions are sought in the petition against Union of India, Special/Additional/Joint Labour Commissioners, Delhi Advisory Contract Labour Board and other concerned Departments including DGC to prohibit deployment of contract labour by DGC and to forward the application of the Petitioners under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 to the State Advisory Contract Labour Board for prohibition of deployment of contract labour in the Food and Beverages Department of DGC under Section 4 of the said Act. Directions are also sought to Respondent Nos. 7 and 8 to initiate action against the concerned Labour Commissioners for contravening their statutory duties and a direction to Respondent No.4 not to grant Principal Employer Registration Certificate to the Management of DGC and to

cancel the same, if already granted. The prayers in the writ petition are as follows :-

*“1. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 4 to get prohibited the deployment of the Contract Labour by forwarding the application of the Petitioner Under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 along with AGENDA NOTE to the Respondent No.6 i.e. the State Advisory Contract Labour Board for prohibition of deployment of contract labour/contractor in the Food & Beverages Department of the Delhi Golf Club under Section 4 of the Contract Labour (Regulation & Abolition) Act, 1970.*

*2. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.6 to take note of the Agenda for prohibition of deployment of contract labour/contract in the Food & Beverages Department of the Delhi Golf Club and NOTIFY the same in the OFFICIAL GAZZETTE prohibiting the deployment of the contract labour/contractor in the Food & Beverages Department of the Delhi Golf Club.*

*3. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.7 & 8 to take action against the Respondent No.1, 2, 3 & 4 for their illegal acts of contravening the statutory duty obligations cast upon them by virtue of various provisions of the Labour Welfare Legislation i.e. the Industrial Disputes Act, 1947; the Contract Labour (Regulation & Abolition) Act, 1970; the Factories Act, 1948 enacted by the Parliament of this Country for protection of the downtrodden/vulnerable labour class.*

*4. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.4 not to grant the principle*

employer registration certificate to the Respondent Management of the Delhi Golf Club i.e. Respondent No.11, 12, 13 herein with regard to the Food & Beverages Department of the Delhi Golf Club.

5. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.4 to revoke/cancel the registration of principle employer if already granted to the Respondent No.11, 12 & 13 i.e. the Management of the Delhi Golf Club with regard to the Food & Beverages Department of the Delhi Golf Club under Section 7 or any other section of the Contract Labour (Regulation & Abolition) Act, 1970.*

6. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 4 to revoke/cancel the Principle Employer Registration Certificate for House Keeping & Security Services having permanent & perennial nature of services obtained through misrepresentation in the year 2006 in view of the admitted fact that the management of the Delhi Golf Club has already surrendered the said Registration Certificate online on 3/7/2020 & 30/7/2020 itself.*

7. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.9 i.e. Food Safety & Standards Authority of India (FSSI) to ensure that the requisite Food Safety License for maintaining food standards and safety in the kitchen of the Food & Beverages Department of the Delhi Golf Club are procured as required under Food Safety & Standards Act, 2006.*

8. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.10 to take action against Respondent No.11, 12, 13, 14 & 15 for contravening various provisions of the Factories act more particularly for not*

obtaining requisite food processing license for Kitchen of the Food & Beverages Department of the Delhi Golf Club.

9. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.10 to ensure that the requisite License for food processing in the kitchen of the Food & Beverages Department of the Delhi Golf Club as required/mandatory under Section 2 (m) of the Factories Act, 1948.

10. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the Respondent No.1 to 4 to implement the Order dated 7/8/2020 passed by the Labour Officer, New Delhi District, in its letter & spirit.

11. Any other Writ, Order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction the Hon'ble Court may deem fit and proper may also be granted in the facts and circumstances of the present case and in the interest of Justice."

6. Mr. Sandeep Sethi, learned Senior Counsel arguing for DGC raised manifold grounds contesting the maintainability of the writ petitions, *inter alia* (a) DGC is a private club constituted by its members for their personal recreation and is neither a 'State' nor instrumentality of a State or 'other authority' under Article 12 of the Constitution of India (b) DGC is neither funded (directly or indirectly) nor owned or controlled by the Government (c) it is a private body constituted under the Companies Act governed by its Memorandum and Articles of Association; (d) it discharges no public duty and performs no public function; (e) DGC is a Company under Section 8 of the Companies Act, 2013 limited by

Guarantee; (f) it is an autonomous and private body run by its own Governing Board, namely, the General Committee comprising of a President, Captain, three nominees of the Government of India, immediate past Captain and twelve members elected as per Article 43 of the Articles of Association of DGC; (g) presence of 3 nominees in the Board, appointed by the Government, does not alter the status of DGC as a private body and Government has no financial or even administrative control over its functioning; (h) it is run solely for the use of its members or permitted persons, membership being restricted and facilities are not open to public at large and (j) funds are generated purely through membership fee, membership subscriptions and revenues earned from Golf.

7. Succinctly put the argument was that DGC is a private body, not performing public functions and is not financially or functionally or administratively controlled by the Government of India and merely having senior officials of the Government, as nominee Directors, appointed by Ministry of Urban Development, as part of the General Committee (Board), does not make DGC a State or its instrumentality or 'other authority' to bring it in the sweep of Article 12 of the Constitution. Accentuating on the role of the three nominee Directors, it was submitted that they are at par with other Directors in the Board in all respects and do not enjoy any extra or special powers. It was contended that reading of the petitions shows that Petitioners have been unable to make out a case that DGC is in any manner funded or controlled by Government of India or that its functions fall in the realm of public functions.

8. It was next submitted that no doubt DGC has been granted land measuring 179 acres by Government of India, through a registered lease deed, however, this is only a lessor-lessee relationship, governed by terms of the lease deed. Merely because the lease deed is executed by the Government as a lessor is not enough to bring DGC within the definition of State or public authority. Under the lease, the possession and user of the land subsists exclusively with DGC, to the exclusion of all others and statutory dues and taxes are paid in accordance with law.

9. In support of his arguments, Mr. Sethi relied on the judgment in Air Vice Marshall J.S. Kumar vs. Governing Council of Air Force Sports Complex and Anr., **2006 (86) DRJ 711 (DB)**, wherein the Division Bench of this Court held that a writ petition cannot lie against a private body not performing any public function and since Air Force Sports Complex was only providing recreation to serving and retired Air Force personnel and not performing a public function, it was not a State under Article 12 of the Constitution. Reliance was also placed on the judgment in the Praga Tools Corporation vs. C.A. Imanuel & Ors., **1969 (1) SCC 585**, where the Supreme Court held that a Company being a non-statutory body and incorporated under the Companies Act, was not performing a statutory or public duty and hence no mandamus would lie against a Company, for enforcement of any legal right by its workmen. For the same proposition, reliance was also placed on K.K. Saxena vs. International Commission on Irrigation & Drainage & Ors., **2015 (4) SCC 670** and Shri Sohan Lal vs. Union of India & Anr., **AIR 1957 SC 529**.

10. Mr. Sethi additionally contested the maintainability of the petitions on the ground that Petitioners have already approached the Conciliation Officer under the Industrial Disputes Act, 1947 (hereinafter referred to as '**I.D. Act**') and filed complaints alleging illegal removal of the Petitioners and raising other grievances and proceedings are pending. DGC had received notice and reply has been filed. Though, it was disputed that the employees are 'workman' under Section 2(s) of the I.D. Act, however, without prejudice to the said position, the argument was that once Petitioners have resorted to the dispute resolution mechanism, they are estopped from approaching this Court invoking its extraordinary jurisdiction and seeking prerogative writs under Article 226 of the Constitution. For the proposition that once an alternate remedy is available under the I.D. Act and other labour legislations, writ petition will not lie, reliance is placed by Mr. Sethi on the judgments in Chairman, Coal Authority of India & Anr. vs. Madan Prasad Sinha and Ors., (2000) 10 SCC 597; Transport and Dock Workers Union & Ors. vs. Mumbai Port Trust and Anr., (2011) 2 SCC 575 and a recent judgment of the Coordinate Bench of this Court in PTI Employees Union vs. PTI, W.P.(C) No.1596/2018 and W.P.(C) No.10605/2018.

11. Without prejudice to the objection to the maintainability of the petitions, Mr. Sethi contended that DGC, which is a private body, has taken a decision not to undertake in-house food and beverages services. The cost and expenses involved do not justify, at present, to undertake the services in-house as they are impacting the finances and resources. Accordingly, management decided to engage a specialized agency to provide the entire gamut of food and beverage services, with no exposure

or outgo to DGC. In fact, by handing over the operations and outsourcing them, DGC shall benefit in as much as the agency shall pay to cover the cost of infrastructure like space, air-conditioning and other incidental provisions. This is purely an economic and commercial decision as a matter of policy and is not open to judicial review under Article 226 of the Constitution of India.

12. It was pointed out that DGC is registered under the Shops and Establishments Act, 1954 and in accordance with Section 30 of the said Act, only one month's notice or salary in lieu thereof is payable while terminating the services of an employee and the said provision has been complied with. *Albeit* none of the provisions of the I.D. Act apply to DGC, however, retrenchment compensation to the tune of Rs.10,05,20,034.00 was paid to all the 59 employees on 28.05.2020 and a sum of Rs.73,36,865/- has been paid on 29.05.2020 to the 7 Executives.

13. *Per contra*, Ms. Sunita Bhardwaj, learned counsel for the Petitioners controverted the stand taken by DGC and urged that the writ petitions are maintainable as DGC is 'other authority' under Article 12 and alternatively, as it discharges public functions it is an 'authority' under Article 226, amenable to the jurisdiction of this Court. The term 'authority' used in Article 226, must receive a liberal meaning unlike the term 'authority' in Article 12. The words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and cover any other person or body performing public duty. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. Reliance was placed on the judgment of the Full

Bench of Allahabad High Court in Roychan Ibrahim vs. State of U.P. & Ors., AIR 2019 ALL 96, relevant paras of which as relied upon are as follows :-

“15. The power of the High Court to issue writ begins with a non-obstante clause. The power and jurisdiction of the High Court is much wider. The jurisdiction extends to enforcement against infringement of Part III rights, against ‘State’ and also against ‘any person or authority’ and ‘for any other purpose’. The limitation of action against the ‘State’ alone is not there under Article 226 of the Constitution. Thus, there is distinction between the powers to issue writs as between the Supreme Court and the High Court. The power to issue writ conferred upon the Supreme Court by Article 32 is for enforcement of Part III rights, but the power to issue writs as conferred under Article 226 upon the High Court is for enforcement of fundamental rights as against ‘State’ and non fundamental rights as against any ‘other person or authority’ or ‘for any other purpose’. Thus, is the distinction between writ jurisdiction of the Supreme Court and the High Court, that even where the Supreme Court declines a Article 32 writ petition on the ground that the offending party/authority is not ‘State’ yet the High Court can interfere and issue writ under Article 226 in appropriate cases.

16. The term ‘authority’ used in Article 226, must receive a liberal meaning unlike the term ‘authority’ in Article 12. 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.

17. The Supreme Court in *Anadi Mukta* upon examining the scope and ambit of the expression 'authority' used in Article 12 and in Article 226 of the Constitution was of the opinion that the expression "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 and determinative element is the nature of the duty imposed on the body. This is a striking departure from the English law.

"The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. 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." (Para No. 82 at page 2208)

18. The words 'any other purpose' makes the jurisdiction of the High Court to issue writ more extensive than that of Supreme Court. 'Any other purpose' means a purpose for which any of the writs could, according to well established principles issue and not otherwise. In short the words means

‘enforcement of legal right’ and the performance of any legal duty. (Refer: State of Orissa v. Madangopal ungta, Fertilizer Corporation Kamgar Union v. Union of India; Calcutta Gas Corporation v. State of West Bengal)

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34. The issue as to whether a private body, though not ‘State’ within the meaning of Article 12 of the Constitution, would be amenable to the writ jurisdiction of the High Court under Article 226 was examined by the Constitution Bench in Zee Telefilm Ltd. The question that fell for consideration was whether Board of Control for Cricket in India (in short “BCCI”) falls within the definition of ‘State’. The ratio laid down in Andi Mukta was approved, but on the facts of the case, Supreme Court, by majority held that BCCI does not fall within the purview of the term ‘State’ but clarified that when a private body exercises public function even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Para 31, 32 and 33 of Zee Telefilm reads thus:

“31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy

under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.....”

35. The ratio decidendi of Zee Telefilms is clear that: (i) BCCI a private body is not ‘State’ within the meaning of Article 12; (ii) BCCI discharges public functions; (iii) an aggrieved party can seek public law remedy against the BCCI under Article 226 of the Constitution of India.”

14. It was argued that DGC has been established for the purpose of facilitating and promoting Golf, a sport and thus clearly subserves public purpose and for this reliance was placed on the judgment of the Supreme Court in Baljeet Singh vs. Delhi Golf Club & Ors., (1998) 4 SCC 524 and the relevant para, as relied, reads as follows :-

“8. Material has been placed before the Court to show the rates at which ground rent is collected when land is leased for sports purposes on long term basis. Considering the fact that it is one of the avowed purposes of the Government to encourage sports and if Government so desires, may grant leases of land not necessarily at market rate and at appropriate concessional rates and the same cannot be stated not to subserve the public purpose.”

15. To fortify the submission that DGC, even if it is not a State, is ‘other authority’ under Article 12 and any argument to the contrary by DGC is untenable in the eyes of law, reliance was placed on the judgment

of the Supreme Court in Board of Control for Cricket in India vs. Cricket Association of Bihar, (2015) 3 SCC 251 and support was also drawn from *ratio decidendi* of the judgment in Indian Olympic Association vs. Veeresh Malik, W.P.(C) 876/2007, wherein this Court held that the Indian Olympic Association is a Public Authority under Section 2(h) of the Right to Information Act, 2005, as follows :-

“Having regard to the pre-eminent position enjoyed by the IOA, as the sole representative of the IOC, as the regulator for affiliating national bodies in respect of all Olympic sports, armed with the power to impose sanctions against institutions – even individuals, the circumstance that it is funded for the limited purpose of air fare, and other such activities of sports persons, who travel for events, is not a material factor. The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports. The annual reports placed by it on the record also reveal that though the IOA is autonomous from the Central Government, in its affairs and management, it is not discharging any public functions. On the contrary, the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is “public authority” under the meaning of that expression under the Act.”

16. Reliance was also placed on the decision of the Central Information Commission in Amardeep Walia vs. Chandigarh Lawn

Tennis Association (File No.CIC/LS/C/2009/900377), wherein it was held as follows :-

“19. The germane of the above judgments is that for a private entity to qualify to be a public authority, substantive financing does not mean ‘majority’ financing. What is important is that the funding by the appropriate Government is achieving a “felt need of a section of the public or to secure larger societal goals.” The ratio of the above judgments, particularly of Delhi High Court, applies to the present case on all the fours. A huge property has been placed at the disposal of CLTA by FY 2008-2009. Concededly, CLTA fulfills the felt need of a section of the society by way of imparting training to the budding tennis players. It is, therefore, held that CLTA is a Public Authority.”

17. Judgment of the Division Bench of this Court in Delhi Sikh Gurudwara Management Committee & Ors. vs. Jathedar Kuldeep Singh Bhogal, in **LPA 606/2010**, was cited, wherein the Court held as follows :-

“9. Once we read the definition of “public authority” in section 2(h) of the RTI Act in the aforesaid manner, obvious conclusion would be that the appellant is a “public authority” as it constituted by the Act of Parliament. Undeniably, the appellant is a statutory body under Sikh Gurudwaras Act, 1971 (hereinafter referred to as the ‘DSG Act’). It is constituted under Section 3 of the DSG Act. It is not a body made under any law, but a body made by the aforesaid law. The learned Single Judge as rightly pointed out that there is a distinction between the use of the words “by any law made by Parliament” and “by or under the Constitution”. The Parliament has consciously not used the words “by or under” in sub clause (b) of Section 2(h). In other words, once the body is established or constituted by the law made by Parliament, it would be “public authority” under Section 2(h)(b) of the RTI Act.

10. We are in agreement of the aforesaid view. We, thus hold that once it is found that an authority or body or institution of self Government is established or constituted in any manner prescribed in clause (a) to (d) of Section 2(h) of the RTI Act, then there is no further requirement of such a body to be either owned or controlled or substantially financed by an appropriate Government.”

18. Order passed by Central Information Commission in Pradeep Bhanot vs. Chandigarh Club, Chandigarh (File No.CIC/LS/A/2010/001184) is cited, wherein it is held that Chandigarh Club is a Public Authority, based on somewhat similar facts, where the plot of land is leased to the Club, by the Chandigarh Administration.

19. It was next contended that DGC is directly under the control of the Central Government as the Ministry of Urban Development has leased land measuring 179 acres for promotion of Golf at a prime location on nominal ground rent. This apart, Ministry exercises direct control over the affairs and in the administration of DGC by nominating three serving IAS officers as Directors, with full voting rights and control in the Managing Committee. Ms. Bhardwaj submitted that DGC has taken an incorrect stand that it is a private entity with no control of the Government and places reliance on provisions of the lease deed, which was signed by the President of India as Lessor and DGC as the Lessee, more particularly Clause 21, which according to her, clearly evidences control of the Government in management and administration of DGC. According to her the said Clause casts a responsibility on DGC to inform the Ministry, from time to time, of the expiry of the terms of the members of the

Management Committee and other aspects relating thereto and also provides for regulating memberships of Government servants in the club.

20. Concisely and pithily put, the argument is that though DGC is not State under Article 12 of the Constitution of India, but it certainly falls under the expression 'other authority', as judicially interpreted, on account of the deep and pervasive administrative control of the Government of India, over its functioning. Alternatively, it performs 'public functions' and is an 'authority' under Article 226, which has a wider scope and ambit and thus this Court ought to exercise its extraordinary jurisdiction to redress the grievances raised by the Petitioners.

21. On merits, Ms. Bhardwaj contended that DGC has illegally terminated permanent services of the Petitioners, which is impermissible in law and that too amidst Pandemic Covid-19, without any disciplinary proceedings, without giving any opportunity of hearing and without prior permission of the appropriate Government to terminate, which is a mandate under Sections 25(N)(7) and Section 25(O)(6) of the I.D.Act. Petitioners have been dedicatedly serving the Club for the past 3-4 decades, with an unblemished and exemplary record of service. Impugned action of termination is in violation of the express directions in the Notification dated 29.03.2020, issued by the Central Government under Section 10(L) of the Disaster Management Act, 2005 and the letter and spirit behind it, which is to protect employees against wage reduction and termination etc. in the wake of Pandemic COVID-19.

22. It was argued that it is a settled law that termination of service without following due process of law is liable to be quashed, more

particularly, when it is in violation of the principles of natural justice. It is submitted that in Satwati Deswal vs. State of Haryana and Ors., **2010 (1) SCC 126**, the Supreme Court held that if an employee is terminated and there are violations of principles of natural justice in the procedure followed to terminate, then, despite the existence of an alternate remedy, Court can interfere under Article 226 of the Constitution.

23. In support of the argument that existence of an alternative efficacious remedy does not as matter of rule, bar a writ remedy, support is drawn from the judgment of the Supreme Court in Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., **(2003) 2 SCC 107**, para nos.7 and 8 of which are as follows :-

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been

allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

8. The appeals are allowed. The impugned judgment of the High Court is set aside. The Corporation's order dated 6-9-2000, terminating dealership of the appellants, is hereby quashed and set aside. No order as to the costs."

24. It is contended that the action of DGC in deploying contract labour in place of the Petitioners is in clear violation of provisions of Section 10 of Contract Labour (Abolition & Regulation) Act, 1970. Legislative intent underlying the enactment is to enable an aggrieved person to make an application to the concerned Authority to prohibit deployment of contract labour by a Notification. Petitioners are certainly 'aggrieved' as their permanent employment in the F&B Department has been abruptly terminated under the false pretext of closure and contemporaneously DGC has deployed contract labour, replacing them. Despite the complaints of the Petitioners no action is being taken by the concerned Authorities and a direction ought to be issued to them to enforce the statutory mandate.

25. Adverting to the provisions of I.D.Act, Ms. Bhardwaj, resolutely and forcefully argued that Respondent Nos. 1 to 5 have failed to carry out their statutory duties and obligations by not taking action against DGC, despite violation of several statutory provisions of the Act. Respondent Nos.1 to 5 are under statutory obligations to take action for violation of provisions of Section 25 (N) of the I.D.Act, terminating services of 66 Petitioners, without prior approval of the appropriate Government; violation of Section 25(O) of the I.D.Act, taking a false plea of closure of the F&B Department, without prior approval and operating the same

through a contractor; violation of Section 25(O)(6) of the I.D.Act by not allowing those employees who are deemed to be in employment in the absence of permission of closure, to work; violation of Section 25(U) and unfair labour practice by taking away the livelihood of the Petitioners at a time when there was a Pandemic and in the natural course, wage revision was due.

26. Responding to the submissions of Ms. Bhardwaj, learned Senior Counsel Mr. Sethi, eloquently articulated that there is no violation of the Notification dated 29.03.2020, issued under the Disaster Management Act, 2005, as the same stands withdrawn by the Government with effect from 18.05.2020, which fact has been concealed by the Petitioners. The Judgment of the Supreme Court in Ficus Pax Private Ltd. and Ors. vs. Union of India and Ors., **2020(4) SSC 810** is a complete answer to the Petitioners' contentions where the Court observed as follows :-

“37. It cannot be disputed that the lockdown measures enforced by the Government of India under the Disaster Management Act, 2005, had equally adverse effect on the employers as well as on employees. Various industries, establishments were not allowed to function during the said period and those allowed to function also could not function to their capacity. There can be no denial that lockdown measures which were enforced by the Government of India had serious consequences both on employers and employees. The period of Unlock having begun from 1-6-2020 and even prior to that some of the industries were permitted to function by the Government of India by different guidelines, most of the industries and establishments have reopened or are reopening, require the full workforce.

38. As noted above, all industries/establishments are of different nature and of different capacity, including financial capacity. Some of the industries and establishments may bear the financial burden of payment of wages or substantial wages during the lockdown period to its workers and employees. Some of them may not be able to bear the entire burden. A balance has to be struck between these two competitive claims. The workers and employees although were ready to work but due to closure of industries could not work and suffered. For smooth running of industries with the participation of the workforce, it is essential that a via media be found out. The obligatory orders having been issued on 29-3-2020 which has been withdrawn w.e.f. 18-5-2020, in between there has been only 50 days during which period, the statutory obligation was imposed. Thus, the wages of workers and employees which were required to be paid as per the Order dated 29-3-2020 and other consequential notification was during these 50 days.

39. In most of the industries, factories and establishments, the workers are represented by trade unions or other employees associations. The State is also under obligation to ensure that there is smooth running of industrial establishment and the disputes between the employers and employees may be conciliated and sorted out.

40. It cannot be disputed that both industry and labourers need each other. No industry or establishment can survive without employees/labourers and vice versa. We are thus of the opinion that efforts should be made to sort out the differences and disputes between the workers and the employers regarding payment of wages of above 50 days and if any settlement or negotiation can be entered into between them without regard to the Order dated 29-3-2020, the said steps may restore congenial work atmosphere.

41. We thus direct the following interim measures which can be availed by all the private establishments, industries,

factories and workers trade unions/employees associations, etc. which may be facilitated by the State authorities:

41.1. The private establishments, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees' organisation and enter into a settlement with them and if they are unable to settle by themselves submit a request to the Labour Authorities concerned who are entrusted with the obligation under the different statute to conciliate the dispute between the parties who on receiving such request, may call the employees trade union/workers association/workers concerned to appear on a date for negotiation, conciliation and settlement. In the event a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the Order dated 29-3-2020 issued by the Government of India, Ministry of Home Affairs.

41.2. Those employers' establishments, industries, factories which were working during the lockdown period although not to their capacity can also take steps as indicated in Direction 41.1.

41.3. The private establishments, industries, factories shall permit the workers/employees to work in their establishment who are willing to work which may be without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days. The private establishments, factories who proceed to take steps as per Directions 41.1 and 41.2 shall publicise and communicate about their such steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.

41.4. The Central Government, all the States/UTs through their Ministry of Labour shall circulate and publicise this order for the benefit of all private establishments, employers, factories and workers/employees.

42. In event, any settlement is entered into between the employers and employees in the establishments which are before us, an affidavit giving details shall be filed by next date of hearing.”

27. DGC has not dispensed with the services of the Petitioners as a measure of punishment. Thus the procedure of holding a disciplinary inquiry or opportunity of hearing before imposing punishment and penalty was not required to be followed and the contention of the Petitioners to that extent is misconceived. Provisions of Shops and Establishments Act, 1954 which apply to DGC have been scrupulously complied with and Petitioners have been adequately compensated, in accordance with law.

28. In so far as the argument of the Petitioners that there are violations of provisions of the I.D.Act are concerned, Mr. Sethi pointed out that the provisions relied upon by the Petitioners being Sections 25(N), 25(O) and 25(U), fall under Chapter V-B of the I.D.Act and a bare reading of the said Chapter shows that the provisions are to apply to ‘Industrial Establishment’ which is defined under Section 25(L) as under :-

“25-L. Definitions. - For the purposes of this Chapter, -

a) 'industrial establishment' means -

i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); or
(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);
(b) notwithstanding anything contained in sub-clause (ii) of Clause (a) of Section 2, -
i) in relation to any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or
(ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of Section 2] established by or under any law made by Parliament, the Central Government shall be the appropriate Government.”

29. Therefore, the provisions of Chapter V-B only apply to factory, mining and plantation and DGC apparently falls in none of these categories. Petitioners are taking a self-contradictory stand in as much as, while on one hand it is alleged that there are violations of the provisions of the I.D.Act, on the other hand, instead of pursuing remedies under the said Act, Petitioners insist on invoking the jurisdiction of this Court.

30. Affidavit was filed on behalf of Respondent No.5 in W.P.(C) 3403/2020, wherein a categorical stand is taken by the Ministry of Housing and Urban Affairs that DGC is the lessee of land measuring 179 acres with effect from 08.11.1963 and the lease was extended from time to time. However, Ministry does not have any control over or role in the day-to-day functioning and administration of DGC. Affidavit has also been filed on behalf of Respondent No.4/Disaster Management Committee, Govt. of NCT of Delhi, stating that vide MHA Order dated 17.05.2020 the earlier order dated 29.03.2020 has been withdrawn and there exists no legal obligation on the part of an employer to refrain from

deduction of wages or termination w.e.f. 18.05.2020. Reliance is placed on para 27 of the judgment of the Supreme Court in Ficus Pax Private Ltd. and Ors. (supra). The Board of Management of DGC had submitted a notice of closure of F&B Section to the Department of Labour on 26.05.2020. The orders passed under the Disaster Management Act, 2005 were no longer in operation when the dispute arose and the answering Respondent has no jurisdiction over the dispute raised in the present petition.

31. In W.P.(C) No. 5440/2020, a short affidavit has been filed by the Government of NCT of Delhi in which it is stated that Petitioners filed complaints on 09.06.2020, 11.06.2020 and 02.07.2020 seeking prosecution against management of DGC for violation of provisions of I.D.Act and non-payment of wages for April and May, 2020, before the Joint Labour Commissioner. Notice was issued to the management of DGC and on 23.06.2020, both parties appeared and the management sought copies of the complaints for filing detailed reply. DGC filed its reply on 02.07.2020 and on an objection to jurisdiction of Labour Officer (District South), matter was transferred to New Delhi District for further proceedings. Thereafter, on 16.07.2020 hearing took place before the Labour Officer who prepared a detailed report and forwarded the same to the Joint Labour Commissioner. However, subsequently, matter was again placed before the Labour Officer and he attempted some settlement but no further proceedings could take place as it was informed that the matter is *sub-judice* before this Court.

32. Insofar as the issue of prohibition of deployment of contract labour is concerned, the stand in the affidavit is that the application has been

considered by the Joint Labour Commissioner and recommended for forwarding to the State Advisory Board for consideration as the Chairman of the Board is the final Authority. As and when the meeting of the Board is convened, the agenda item shall be placed before it for consideration. With respect to the application for grant of registration of establishment employing contract labour under Section 7 of the CLRA, filed by DGC, before the Registering Office, it is stated in the affidavit that previously a certificate was granted to DGC on 08.08.2006 and until the same is surrendered, no new certificate can be issued. Therefore, the application will be considered only once the said certificate is surrendered.

33. I have heard learned Senior Counsel for DGC and counsel for the Petitioners as well as counsels for the other Respondents in all the petitions.

34. In view of the preliminary objection raised by DGC, the foremost issue that arises for consideration is the maintainability of the present petitions before this Court under Article 226 of the Constitution of India.

35. Article 226 of the Constitution of India deals with powers of High Courts to issue writs, orders or directions to any person or authority and to enforce rights conferred by Part-III thereof and for any other purpose. It has been observed by the Supreme Court in several judgements that the expansive and extraordinary power of the High Court under Article 226 of Constitution is as wide as the amplitude of the language used therein, but at the same time Supreme Court and other Courts have been laying down the clear restraints and constraints on exercise of that power. In Air Vice Marshall J.S. Kumar (supra), the Division Bench held that the language of Article 226 cannot be interpreted and understood literally. If

literally interpreted, it will follow that the words ‘for any other purpose’ would mean that writ can be issued even for deciding private party disputes such as disputes relating to property, divorce, succession certificate etc. Similarly, if the words ‘to any person’ are literally interpreted, it would mean that writ can be issued to private persons. This, however, would not be correct interpretation in view of various pronouncements of the Supreme Court. A writ will ordinarily lie against the State or instrumentality of the State but may lie against a person or any other authority, if it performs public functions or discharges statutory or public duties. Relevant paras of the judgment are as under:-

“30. The language of Article 226 is no doubt very wide. It states that a writ can be issued “to any person or authority” and “for enforcement of any of the rights conferred by Part III and for any other purpose;” However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can even be issued to any private person or to settle even private disputes. If we interpret the word “for any other purpose” literally it will mean that a writ can be issued for any purpose whatsoever, e. g., for deciding private property disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words “to any person” literally it will mean that a writ can even be issued to private persons. However, this would not be the correct meaning in view of various decisions of the Supreme Court in which it was held that a writ will ordinarily lie only against the State or instrumentality of the State vide Chander Mohan Khanna v. National Counsel of Educational Research and Training (1991) 4 SCC 578, Tekraj Vasandhi v. Union of India, AIR 1988 SC 496, Federal Bank Ltd. v. Sagar Thomas

& Co. (2003) 10 SCC 733, General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrugan Nishad (2003) 8 SCC 639, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. (2002) 5 SCC 111). In Binny Ltd. v. Sadasivan, AIR 2005 SC 3202, the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. In our opinion the AFSC is not performing a public function nor discharging a public duty. Hence, no writ lies against it.

31. The correct interpretation of the aforesaid words in Article 226 is that a writ can ordinarily be issued to a person to whom writs were traditionally issued by British Courts on well established principles. Similarly, the words, “for any other purpose” have to be interpreted in the narrower sense to mean that a writ can ordinarily be issued for the purpose for which writs were traditionally issued by British Courts on well established principles. The British Courts did not ordinarily issue writs to private persons except a writ of habeas corpus.

32. No doubt the power to issue writs under Article 226 is wider than those of the British Courts vide Dwarka Nath v. Income Tax Officer, AIR 1966 SC 81, but in our opinion they are not so wide as to permit Judges to do anything they like in writ jurisdiction. There are well settled principles governing the exercise of jurisdiction under Article 226 as laid down in various decisions of the Supreme Court, and these principles have laid down several limitations to the exercise of such power. For instance, ordinarily a writ will not be issued to a private body except a writ of habeas corpus.”

36. In order to decide the strenuous challenge to the maintainability of the petitions, the first question that this Court is called upon to answer is whether DGC is a State or an instrumentality of the State or falls under ‘other authorities’ under Article 12 of the Constitution, so as to be

amenable to the writ jurisdiction of this Court under Article 226 of the Constitution. Article 12 of the Constitution is as follows:-

“12. Definition—In this Part, unless the context otherwise requires, —the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

37. Plain reading of Article 12 indicates that ‘State’ includes Government of India, Parliament of India, Government and Legislatures of the States and all local or ‘other authorities’. Petitioners did not dispute the position that DGC is not a State and thus this is not a conundrum that arises in the present case. The unequivocal contention of the Petitioners is that DGC comes in the sweep of ‘other authorities’ under the said Article. Literally seen, the scope of ‘other authorities’ is narrow under Article 12. However, the term has been given a broader interpretation and its scope has been expanded over a period of time through judicial interpretations. Article 12 in the Constitution was introduced in the Draft Constitution as Article 7. The reason why the Article was placed in a Chapter concerning Fundamental Rights is discernible from the Constituent Assembly Debate by Dr. Ambedkar and I may allude to the same as follows:-

“The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority — I shall presently explain what the word ‘authority’ means — upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central

Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even Village Panchayats and Taluk Boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted and I do not see anyone who cares for fundamental rights can object to such a universal obligation being imposed upon every authority created by law — then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as ‘the State’, as we have done in Article 7; or, to keep on repeating every time, ‘the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority’. It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words.”

38. While referring to the Assembly Debate, the Supreme Court in Zee Telefilms Ltd & Anr. v. Union of India & Ors., (2005) 4 SCC 649, observed as under:-

“10. From the above, it is seen that the intention of the Constitution-framers in incorporating this article was to treat such authority which has been created by law and which has got certain powers to make laws, to make rules and regulations to be included in the term “other authorities” as found presently in Article 12.”

39. Although till late 1960s, the view taken by the Courts was that even bodies like the Universities etc. were not ‘other authorities’ under Article 12. In Rajasthan State Electricity Board vs. Mohan Lal, (1967) 3

SCR 377, the Constitution Bench of the Supreme Court held that the expression is wide enough to include every statutory authority on which powers are conferred to carry out Government or quasi-Government functions and functioning within the territory of India or under the control of Government of India. The ethos of this judgment was followed a decade later when in Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421, another Constitution Bench of the Supreme Court ruled that bodies which are created by Statutes, would come within the expression ‘other authorities’ because of the nature of their activities despite their constitution being for commercial purposes. Accordingly, Corporations such as Life Insurance Corporation, Industrial Finance Corporation were brought within the purview of Article 12 and the reasoning to so hold is evident from the following observations in the judgment:-

“The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation. A State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. There is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State. With the advent of a welfare State the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. The distrust of Government by civil service was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable. The

public corporation, therefore, became a third arm of the Government. The employees of public corporation are not civil servants. Insofar as public corporations fulfil public tasks on behalf of Government, they are public authorities and as such, subject to control by Government. The public corporation being a creation of the State is subject to the constitutional limitation as the State itself. The governing power wherever located must be subject to the fundamental constitutional limitations. The ultimate question which is relevant for our purpose is whether the Corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public.”

40. The Supreme Court in Zee Telefilms Ltd. (supra), after noticing the observations of the Constitution Bench, as above, observed that because of the change in socio-economic policies of the Government, by a judicial interpretation, wider meaning was given to the expression ‘other authorities’ and this was primarily with a view to prevent the Government from by-passing its Constitutional obligations by creating Companies, Corporations, etc. to perform its duties.

41. In Sabhajit Tewary vs. Union of India, (1975) 1 SCC 485, the same Constitution Bench rejected the contention of the Petitioner therein that Council for Scientific and Industrial Research would be included in the term ‘other authority’, on the ground that it was registered under the Societies Registration Act and that it was neither performing a State function nor was under the pervasive control of the Government to be a State under Article 12.

42. Thereafter, in Ramana Dayaram Shetty vs. International Airport Authority of India, (1979) 3 SCC 489, a three Judges Bench of the Supreme Court laid down certain Guidelines for determining whether a

body falls within 'other authorities', while holding that the International Airport Authority, which was a creature of a Statute was instrumentality of the State. The Guidelines are as under:-

"(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

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor...whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(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.

(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."

43. In Ajay Hasia and Ors. vs. Khalid Mujib Sehravardi and Ors., (1981) 1 SCC 722, the above tests were accepted by the Constitution Bench of the Supreme Court for determining when a Corporation can be

said to be an instrumentality or agency of the Government. Relevant para is as under :-

“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 [(1979) 3 SCC 489] . 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 [(1979) 3 SCC 489] as follows:

xxx

xxx

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44. Since it was held in Ajay Hasia (supra) that even a Society registered under the Societies Registration Act could be an instrumentality of the State, a conflict arose with the earlier judgment in Sabhajit Tewary (supra). In Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Ors., (2002) 5 SCC 111, the Supreme Court noticed the conflict in the two judgments and the matter was referred to a larger Bench of Seven Judges. The Seven Judges Bench accepted the *ratio decidendi* in Ajay Hasia’s case (supra) and observed that the judgment in Sabhajit Tewary (supra) was on the facts of the case and cannot be considered as laying down any law. Relevant para from the judgment in Pradeep Kumar Biswas (supra) is as under :-

“40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. 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.”

45. In Zee Telefilms Ltd. (supra), the Supreme Court recapitulated the broad principles laid down in Pradeep Kumar Biswas (supra) in the following words:-

*“(1) Principles laid down in Ajay Hasia [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.
(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.
(3) Such control must be particular to the body in question and must be pervasive.
(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.”*

46. Having so recapitulated the broad parameters, the Supreme Court carved out certain facts with respect to Board of Control for Cricket in India (Board) in Zee Telefilms Ltd. (supra) as under:-

- 1. The Board is not created by a statute.*
 - 2. No part of the share capital of the Board is held by the Government.*
 - 3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.*
 - 4. The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.*
 - 5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.*
 - 6. The Board is not created by transfer of a government-owned corporation. It is an autonomous body.*
47. Applying the principles in Pradeep Kumar Biswas (supra) to these facts, the Supreme Court held as under:-

“24. To these facts if we apply the principles laid down by the seven-Judge Bench in Pradeep Kumar Biswas [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

25. Assuming for argument's sake that some of the functions do partake the nature of public duties or State actions, they being in a very limited area of the activities of the Board, would not fall within the parameters laid down by this Court

in Pradeep Kumar Biswas case [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] . Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions, even then, as per the judgment of this Court in Pradeep Kumar Biswas [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] , that by itself would not suffice for bringing the Board within the net of “other authorities” for the purpose of Article 12.

26. The learned counsel appearing for the petitioners, however, contended that there are certain facets of the activities of the Board which really did not come up for consideration in any one of the earlier cases including in Pradeep Kumar Biswas case [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] and those facts if considered would clearly go on to show that the Board is an instrumentality of the State. In support of this argument, he contended that in the present-day context cricket has become a profession and that cricketers have a fundamental right under Article 19(1)(g) to pursue their professional career as cricketers. It was also submitted that the Board controls the said rights of a citizen by its Rules and Regulations and since such a regulation can be done only by the State, the Board of necessity must be regarded as an instrumentality of the State. It was also pointed out that under its Memorandum of Association and the rules and regulations and due to its monopolistic control over the game of cricket, the Board has all-pervasive powers to control a person's cricketing career as it has the sole authority to decide on his membership and affiliation to any particular cricket association, which in turn would affect his right to play cricket at any level in India as well as abroad.

27. Assuming that these facts are correct the question then is, would it be sufficient to hold the Board to be a State for the purpose of Article 12?

28. There is no doubt that Article 19(1)(g) guarantees to all citizens the fundamental right to practise any profession or to

carry on any trade, occupation or business and that such a right can only be regulated by the State by virtue of Article 19(6). Hence, it follows as a logical corollary that any violation of this right will have to be claimed only against the State and unlike the rights under Articles 17 or 21, which can be claimed against non-State actors including individuals, the right under Article 19(1)(g) cannot be claimed against an individual or a non-State entity. Thus, to argue that every entity, which validly or invalidly arrogates to itself the right to regulate or for that matter even starts regulating the fundamental right of the citizen under Article 19(1)(g), is a State within the meaning of Article 12 is to put the cart before the horse. If such logic were to be applied, every employer who regulates the manner in which his employee works would also have to be treated as State. The prerequisite for invoking the enforcement of a fundamental right under Article 32 is that the violator of that right should be a State first. Therefore, if the argument of the learned counsel for the petitioner is to be accepted then the petitioner will have to first establish that the Board is a State under Article 12 and it is violating the fundamental rights of the petitioner. Unless this is done the petitioner cannot allege that the Board violates fundamental rights and is therefore State within Article 12. In this petition under Article 32 we have already held that the petitioner has failed to establish that the Board is State within the meaning of Article 12. Therefore assuming there is violation of any fundamental right by the Board that will not make the Board a "State" for the purpose of Article 12."

48. In Federal Bank Ltd. vs. Sagar Thomas & Co. (2003) 10 SCC 733, the question before the Supreme Court was, whether the bank, being a private bank, is a State or its instrumentality under Article 12 of the Constitution to be amenable to writ jurisdiction under Article 226. An employee of the Bank had challenged his dismissal order in a writ petition, which was entertained by the learned Single Judge, overruling

the objection of maintainability. Appeal before the Division Bench was dismissed. In the appeal filed by the Bank before the Supreme Court, eight categories of bodies/persons against whom writ may be maintainable were carved out by the Supreme Court and it was 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 (Government); (ii) an 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; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

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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 a 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 put 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 appellat Bank. The 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.”

49. Thus, what emerges is that ordinarily no writ shall lie against a private person except writ of Habeas Corpus or against a private body unless it is performing a public function or discharging public duty. In Binny Ltd. and Ors. (supra), the Supreme Court was dealing with a writ petition arising from a contract between an employer and an employee and the Supreme Court while analyzing the expression ‘public function’ held :-

“11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it

seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:

“A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides ‘public goods’ or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function.

As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."

19. In VST Industries Ltd. v. Workers' Union [(2001) 1 SCC 298 : 2001 SCC (L&S) 227] the very same question came up for consideration. The appellant Company was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, Rajendra Babu, J., (as he then was), held as follows: (SCC p. 305, para 7)

"7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and

the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarised the position with the following propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a 'public' or a 'private' body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) where there is a contract between the litigants.

In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication),

that regime, and not judicial review, will normally govern the dispute.”

23. The counsel for the respondent in Civil Appeal No. 1976 of 1998 and for the appellant in the civil appeal arising out of SLP (Civil) No. 6016 of 2002 strongly contended that irrespective of the nature of the body, the writ petition under Article 226 is maintainable provided such body is discharging a public function or statutory function and that the decision itself has the flavour of public law element and they relied on the decision of this Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [(1989) 2 SCC 691] . In this case, the appellant was a Trust running a science college affiliated to the Gujarat University under the Gujarat University Act, 1949. The teachers working in that college were paid in the pay scales recommended by the University Grants Commission and the college was an aided institution. There was some dispute between the University Teachers Association and the University regarding the fixation of their pay scales. Ultimately, the Chancellor passed an award and this award was accepted by the State Government as well as the University and the University directed to pay the teachers as per the award. The appellants refused to implement the award and the respondents filed a writ petition seeking a writ of mandamus and in the writ petition the appellants contended that the college managed by the Trust was not an “authority” coming within the purview of Article 12 of the Constitution and therefore the writ petition was not maintainable. This plea was rejected and this Court held that the writ of mandamus would lie against a private individual and the words “any person or authority” used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and 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.

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p. 682,

“1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.”

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

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. v. Bridge & Roof Co. (India) Ltd. [(1996) 6 SCC 22] and also in Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293]. 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.”

50. In G. Bassi Reddy vs. International Crops Research Institute, (2003) 4 SCC 225, the Supreme Court was examining the grievances raised by employees of International Crops Research Institute, who had filed a writ petition before the High Court of Karnataka on their services being terminated. Analysing the expressions, ‘public functions’ or ‘public duties’ the Supreme Court held that the terms are not easy to define, but reasonably speaking these would closely relate to functions akin to sovereign functions of the State and in that context observed that the primary activity of the Institute was to conduct Research and Training Programmes on voluntary basis and a voluntary service cannot be a public duty. Supreme Court relied upon the judgment in Praga Tools Corporation (supra), where the Supreme Court had construed Article 226

to hold that High Court could issue a writ to secure performance of a duty or a statutory duty but mandamus will not lie for an order of reinstatement to an office, which is essentially of a private character or to resolve private disputes. Relevant passage is as follows:-

“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 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.

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28. A writ under Article 226 can lie against a “person” if it is a statutory body or performs a public function or discharges a public or statutory duty (Praga Tools Corpn. v. C.A. Imanual [(1969) 1 SCC 585 : AIR 1969 SC 1306] , Shri Anadi Mukta Sadguru Trust v. V.R. Rudani [(1989) 2 SCC 691] SCC at p. 698 and VST Industries Ltd. v. Workers' Union [(2001) 1 SCC 298 : 2001 SCC (L&S) 227]). ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly

cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corpn. v. C.V. Imanual [(1969) 1 SCC 585 : AIR 1969 SC 1306] this Court construed Article 226 to hold that the High Court could issue a writ of mandamus “to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest”. The Court also held that: (SCC p. 589, para 6)

“[A]n application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal v. Union of India [AIR 1957 SC 529 : 1957 SCR 738] .)”

51. In Chander Mohan Khanna vs. NCERT, (1991) 4 SCC 578, the Supreme Court after examining the Memorandum of Association and the applicable Rules, concluded that NCERT was an autonomous body whose functions were not related to Government functions. In the said case, to some extent, funding was by the Government and proper utilization of the grants was monitored by the Government. It was set up as a Society with seven Government officers subscribing to the Memorandum of Association, with the object of assisting and advising Ministry of Education and Social Welfare, in field of education. The Supreme Court after examining all the salient features held that NCERT is not a State under Article 12.

52. In General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, Uttar Pradesh vs. Satrughan Nishad & Ors., (2003) 8 SCC 639, the Supreme Court had the occasion to consider the issue again in the context

of 'other authority' under Article 12. The Appellant was a cooperative society registered under the U.P. Cooperative Societies Act. Respondents had filed writ petitions before the High Court challenging the discontinuation of their long services, spanning over 5 to 12 years, without notice and retrenchment compensation. High Court overruled the objection of the Mill that writ was not maintainable as the Respondent/Mill was not an instrumentality of the State. Supreme Court held that the Mill was not a State, despite the fact that 50% Shares of the Society were held with the State Government and out of 15 members in the Management Committee, 5 were nominated by the State Government. Relevant paras are as under:-

“8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, bye-laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter-affidavit filed on behalf of the State and it was averred that majority of the shares were held by canegrowers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter-affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the

Mill. Therefore, even if it is taken to be admitted due to non-traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has nowhere been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self-generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of the bye-laws of the Mill would show that its membership is open to canegrowers, other societies, Gram Sabha, State Government etc. and under Bye-law 52, a Committee of Management consisting of fifteen members is constituted, out of whom, five members are required to be elected by the representatives of individual members, three out of the cooperative society and other institutions and two representatives of financial institutions besides five members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of the State Government in the Committee is only 1/3rd and the management of the Committee is dominated by 2/3rd non-government members. Under the bye-laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less a deep and pervasive one. The role of the Federation, which is the apex body and whose ex officio Chairman-cum-Managing Director is the Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by the Managing Director of the Federation on 22-11-1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State

had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of the Mill, as such the same being neither an instrumentality nor an agency of the Government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution.

9. Learned counsel appearing on behalf of the contesting respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. The learned counsel appearing on behalf of the appellant, on the other hand, submitted that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty. Reference in this connection may be made to the decisions of this Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani [(1989) 2 SCC 691] in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [(1997) 3 SCC 571 : 1997 SCC (L&S) 841] and VST Industries Ltd. v. Workers' Union [(2001) 1 SCC 298 : 2001 SCC (L&S) 227] the same principle has been reiterated. Further, in the case of VST Industries Ltd. [(2001) 1 SCC 298 : 2001 SCC (L&S) 227] it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the

same analogy, would not involve any public function. Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.”

53. At this stage, it would be useful to allude to the judgment of the Supreme Court in K.K. Saksena (supra). The issue before the Supreme Court was whether the High Court was right in holding that the writ petition filed against International Commission on Irrigation and Drainage (ICID) was not maintainable as it is not a State under Article 12 and nor were its actions amenable to judicial review under Article 226 of the Constitution. Relying on several earlier judgments of the Supreme Court on this aspect and examining elaborately the nature of functions of ICID as well as its constitution, bye-laws, etc., the Supreme Court observed as under :-

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged,

is in the domain of public law as distinguished from private law.

44. Within a couple of years of the framing of the Constitution, this Court remarked in Election Commission of India v. Saka Venkata Rao [Election Commission of India v. Saka Venkata Rao, AIR 1953 SC 210] that administrative law in India has been shaped in the English mould. Power to issue writ or any order of direction for “any other purpose” has been held to be included in Article 226 of the Constitution with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of the King's Bench in England. It is for this reason ordinary “private law remedies” are not enforceable through extraordinary writ jurisdiction, even though brought against public authorities (see Administrative Law, 8th Edn., H.W.R. Wade and C.F. Forsyth, p. 656). In a number of decisions, this Court has held that contractual and commercial obligations are enforceable only by ordinary action and not by judicial review.

45. On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in Federal Bank Ltd. [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] , 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.

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48. We are in agreement with the aforesaid analysis by the High Court and it answers all the arguments raised by the learned Senior Counsel appearing for the appellant. The learned counsel argued that once the society is registered in India it cannot be treated as international body. This argument is hardly of any relevance in determining the

character of ICID. The focus has to be on the function discharged by ICID, namely, whether it is discharging any public duties. Though much mileage was sought to be drawn from the function incorporated in the MoA of ICID, namely, to encourage progress in design, construction, maintenance and operation of large and small irrigation works and canals, etc. that by itself would not make it a public duty cast on ICID. We cannot lose sight of the fact that ICID is a private body which has no State funding. Further, no liability under any statute is cast upon ICID to discharge the aforesaid function. The High Court is right in its observation that even when object of ICID is to promote the development and application of certain aspects, the same are voluntarily undertaken and there is no obligation to discharge certain activities which are statutory or of public character.

49. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In Praga Tools Corpn. v. C.A. Imanul [(1969) 1 SCC 585] , as already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the employee concerned was seeking reinstatement to an office.”

54. On a finding that ICID was neither funded by the Government nor discharging any function under any Statute, the question posed and answered by the Supreme Court was :-

“46. In the present case, since ICID is not funded by the Government nor is it discharging any function under any statute, the only question is as to whether it is discharging public duty or positive obligation of public nature.

47. It is clear from the reading of the impugned judgment that the High Court was fully conscious of the principles laid down in the aforesaid judgments, cognizance whereof is duly taken by the High Court. Applying the test in the case at hand, namely, that of ICID, the High Court opined that it was not discharging any public function or public duty, which would make it amenable to the writ jurisdiction of the High Court under Article 226. The discussion of the High Court is contained in paras 34 to 36 and we reproduce the same for the purpose of our appreciation: (K.K. Saxena case [K.K. Saxena v. International Commission on Irrigation and Drainage, 2011 SCC OnLine Del 1894 : (2011) 180 DLT 204] , SCC OnLine Del)

“34. On a perusal of the preamble and the objects, it is clear as crystal that the respondent has been established as a scientific, technical, professional and voluntary non-governmental international organisation, dedicated to enhance the worldwide supply of food and fibre for all people by improving water and land management and the productivity of irrigated and drained lands so that there is appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. It is required to consider certain kind of objects which are basically a facilitation process. It cannot be said that the functions that are carried out by ICID are anyway similar to or closely related to those performable by the State in its sovereign capacity. It is fundamentally in the realm of collection of data, research, holding of seminars and organising studies, promotion of the development and systematic management of sustained irrigation and drainage systems, publication of newsletter, pamphlets and bulletins and its role extends beyond the territorial boundaries of India. The memberships extend to participating countries and sometimes, as

bye-law would reveal, ICID encourages the participation of interested national and non-member countries on certain conditions.

35. As has been held in Federal Bank Ltd. [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] solely because a private company carries on banking business, it cannot be said that it would be amenable to the writ jurisdiction. The Apex Court has opined that the provisions of the Banking Regulation Act and other statutes have the regulatory measure to play. The activities undertaken by the respondent Society, a non-governmental organisation, do not actually partake the nature of public duty or State actions. There is absence of public element as has been stated in V.R. Rudani [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] and Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841] It also does not discharge duties having a positive application of public nature. It carries on voluntary activities which many a non-governmental organisations perform. The said activities cannot be stated to be remotely connected with the activities of the State. On a scrutiny of the Constitution and bye-laws, it is difficult to hold that the respondent Society has obligation to discharge certain activities which are statutory or of public character. The concept of public duty cannot be construed in a vacuum. A private society, in certain cases, may be amenable to the writ jurisdiction if the writ court is satisfied that it is necessary to compel such society or association to enforce any statutory obligation or such obligations of public nature casting positive public obligation upon it.

36. As we perceive, the only object of ICID is for promoting the development and application of certain aspects, which have been voluntarily undertaken but the said activities cannot be said that ICID carries on public duties to make itself amenable to the writ jurisdiction under Article 226 of the Constitution.”

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53. In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no “public law rights” have accrued in favour of the appellant which are infringed. The service conditions of the appellant are not governed in the same manner as was the position in Andi Mukta Sadguru [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak trust v. V.R. Rudani, (1989) 2 SCC 691].”

55. In the same judgment the Supreme Court also held that even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review and only those decisions which have public element therein, can be judicially reviewed.

56. Public law is a term of art with definite legal consequences as observed in O'Reilly vs. Mackman, (1982) 3 WLR 604. In Dwarka Prasad Agarwal vs. B.D. Agarwal, (2003) 6 SCC 230, the Supreme Court held that the power of judicial review of the High Courts under Article 226 of the Constitution can be exercised only where the dispute involves a public law element as contradistinguished from a private law dispute. A. J. Harding in his book ‘Public Duties and Public Law’ defined the terms as follows:-

“1. There is, for certain purposes (particularly for the remedy of mandamus or its equivalent), a distinct body of public law.

2. Certain bodies are regarded under that law as being amenable to it.

3. Certain functions of these bodies are regarded under that law as prescribing as opposed to merely permitting certain conduct.

4. These prescriptions are public duties.”

57. Keeping in view the principles enunciated by the Supreme Court in the above mentioned judgments, in order to decide whether DGC is amenable to a writ jurisdiction under Article 226 of the Constitution, it would be necessary to cull out the facts that emerge in the present case:-

- i. DGC is a company under Section 8 of the Companies Act, 2013.
- ii. DGC is not a creature of a Statute.
- iii. Government does not exercise financial or administrative control over DGC, save and except, that three of its nominee Directors in the General Committee are appointed by the Government of India, but they have no extra or special powers compared to the other Directors on the Board.
- iv. It is a private club constituted by its members, with restricted membership, and governed by its own Memorandum and Articles of Association.
- v. Funds are provided by membership subscriptions, membership fee and revenue earned from golf.
- vi. It provides recreation to its members in terms of playing golf and ancillary facilities.

vii. The land on which the Club is run is leased by the Government of India.

58. At this stage I may note that almost identical issues on somewhat identical facts came before a Division Bench of this Court in Air Vice Marshall J.S. Kumar (supra) pertaining to the Air Force Sports Complex and the observations of the Division Bench, in my view, squarely cover the present case, both on law and facts and are as under:-

“14. In our opinion, the writ petition should have been dismissed on the short ground that it has been filed against a private body not performing any public functions, and ordinarily no writ lies against a private body except a writ of Habeas Corpus.

15. In our opinion the AFSC cannot be regarded as ‘State’ under Article 12 of the Constitution. As mentioned in the Counter affidavit, it runs in accordance with its own rules & bye-laws laid down by its Governing Council. Its funds are generated through monthly subscription and grants from the Welfare Funds and no funds are sanctioned from the Ministry of Defence to it.

16. Mr. Chetan Sharma, learned counsel for the appellant submitted that the AFSC should be regarded State under Article 12 of the Constitution, since its golf club is run on Government allotted land, the liquor served in the AFSC is subsidized by the Government and the Members of the Governing body are Air Force officials. In our opinion, these factors would not make the AFSC ‘State’ under Article 12 of the Constitution.

17. In our opinion, the respondent is neither performing any public function nor is it discharging any public duty. It is only providing some recreation to Air Force personnel, both serving and retired. This, in our opinion, would not make it ‘State’ under Article 12 of the Constitution. Merely because

the Government has provided some land to the AFSC, would also not make the AFSC 'State' under Article 12 of the Constitution. The Government can give some facilities or benefits even to private bodies, but that, in our opinion, would not make that body 'State' under Article 12 of the Constitution. In the present case, the Government may have granted some facilities like land, subsidized liquor, etc. for providing recreation facilities to the Defence personnel, both serving and retired, but that is only as a kind of benefit or facility.

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19. Learned counsel for the appellant relies on the decision of the Supreme Court in Zee Telefilms Ltd & Anr. v. Union of India & Ors. reported in (2005) 4 SCC 649. In our opinion that decision is clearly distinguishable. In paragraph 31 of the said decision, the Supreme Court observed that the Board (BCCI) does discharge some duties like the selection of the Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State function, and hence a writ petition under Article 226 of the Constitution may lie against the BCCI.

20. In the present case, the petitioner/appellant does not discharge any such duty of selecting a national team for any game. Hence, in our opinion, the decision in Zee Telefilms Ltd. & Anr. v. Union of India & Ors. (supra) has no application to the facts of the present case.

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53. Applying the above principles, which have been laid down by the Supreme Court in various decisions (referred to above) to test whether a body is State under Article 12 of the Constitution or not we are of the opinion that the AFSC is clearly not State under Article 12 of the Constitution. There is no deep and pervasive control of the Government over the AFSC. The funds are provided by private contributions. No

doubt the Governing body consists of Air Force officers but that, in our opinion, would not make it State under Article 12 of the Constitution. Government Officers may get together and form a club for their recreation but that club will be a private club and will not become State under Article 12 of the Constitution. The AFSC is clearly a private body run by its own Governing Council, which is autonomous, and is not under Government control. Merely because the Government is providing some benefits and facilities like land for the golf course or a concession in liquor would not make it State under Article 12 of the Constitution.

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58. As regards the meaning of the expression 'public function' or 'public duties', that has been explained by the Supreme Court in G. Bassi Reddy's case (Supra), where it has been held that public function is a function akin to the sovereign functions of the State. In our opinion, providing recreation for Air Force Officers, serving or retired, can certainly not be called sovereign functions of the State. No doubt providing entertainment or sports may be conducive to one's mind or health, but in our opinion, this is not a sovereign function of the State.

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60. The AFSC, in our opinion, is a private body only providing recreation to Air Force Officers, and it is not discharging any public function or public duty.

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61. In view of the above, we are of the opinion, that it is not necessary to go into the question whether the membership of the appellant was rightly or wrongly terminated, as in either case, no writ petition will lie against it under Article 226 of the Constitution. If the appellant is so advised, he can

file a suit against the respondent, and if he does so the same will be decided in accordance with law.”

59. From a reading of the aforesaid judgment, in my view, the reasons that weighed with the Court to conclude that Air Force Sports Complex is not amenable to writ jurisdiction can be culled out as under :-

- (a) It runs in accordance with its own Rules and byelaws laid down by its Governing Council;
- (b) Funds are generated through monthly subscription and grants from various welfare funds;
- (c) No funds sanctioned from the Ministry of Defence;
- (d) The Institute is not performing any public function or discharging any public duty;
- (e) Only providing recreation to Air Force personnel;
- (f) Mere grant of some facilities by the Government, such as land, subsidized liquor etc. towards recreation is only a benefit and no more; and
- (g) No deep and pervasive control of the Government and it is only a private body.

60. When these reasons are placed on the canvas in the background and facts of the present case, as carved out above, are compared, the inescapable and inexorable conclusion is that DGC cannot be brought under the purview of Article 12, as it is neither a State nor its instrumentality nor ‘other authority’. As stated categorically in the counter-affidavit by DGC, it is governed by its own Memorandum and Articles of Association and its management and other affairs are regulated by the General Committee. There is no funding from the

Government and nor does the Government have any administrative dominance or control over the affairs of DGC. The funds are generated through membership and subscription fee and revenue earned from golf and thus there is no financial control of the Government. While it is not disputed that the General Committee has three nominee members appointed by the Ministry of Urban Development, but as stated by DGC in the counter-affidavit, these Directors do not enjoy any extra or dominant powers compared to the other Directors. There is nothing brought on record by the Petitioners which shows any control of the Government over the affairs of DGC, leave alone deep and pervasive control. In so far as the contention of the Petitioners with respect to the land leased to DGC by the Government i.e. the Ministry of Urban Development at a nominal ground rent for promotion of Golf is concerned, suffice would it be to note that mere execution of a lease deed by the Government with respect to the land is not enough to confer the status of a State or instrumentality of the State or a public authority. As rightly argued by Mr. Sethi, the lease is governed by the terms of the lease deed executed between two parties as lessor and lessee, with rights and obligations flowing from and governed by the terms and conditions therein. In fact, a similar contention was rejected by the Division Bench in Air Vice Marshall J.S. Kumar (supra) and the relevant paras have already been quoted in the earlier part of the judgment.

61. At this stage, I may also take note of an affidavit filed on behalf of the Ministry of Housing and Urban Affairs wherein it is categorically stated that the lease of land in possession of DGC was executed in 1963 and was renewed from time to time, however, the Ministry does not have

any control or any role in the day-to-day functioning of DGC and nor does it exercise any administrative control. Thus, examining on the anvil of the principles enunciated in the various judgements, referred to above, this Court cannot agree with the contention of the Petitioners that DGC falls under 'other authority' as envisaged under Article 12 of the Constitution of India and the question is answered against the Petitioners.

62. No doubt Courts have held that writs may lie against a private body but a caveat has been astutely lodged that only if it performs public functions, it would be amenable to writ jurisdiction. This was the dicta and ethos of the judgement of the Constitution Bench in Unni Krishnan J.P. & Ors. vs. State of A.P. & Ors., (1993) 4 SCC 111. Taking the benchmarks and yardsticks laid down by the Supreme Court, the next question whether DGC is performing 'public function' or 'public duty', in my opinion, can only be answered against the Petitioners. It is uncontrovertibly obvious that DGC is providing recreational facility of golf to its members or permitted members and this cannot be termed as a function akin to sovereign functions of the State. Division Bench in Air Vice Marshall J.S. Kumar (supra), relying on various judgements of the Supreme Court including Praga Tools Corporation (supra), addressing a similar issue held that the Air Force Sports Complex is a private body which provides recreation to Air Force Officers, serving or retired and it cannot be said that it is carrying out sovereign functions of the State.

63. In General Manager, Kisan Sahkari Chini Mills (supra), as noted above, the Supreme Court had an occasion to consider the expression 'other authority'. It was held that the form in which the body is constituted i.e. Society or Company etc. is not decisive and the real status

with respect to the control of the Government is to be looked into and there cannot be a hard and fast formula. In the said case the ratio of the nominees of the State Government in the Management Committee was one-third and the State Government held 50% shares in the Mill, which was an untraversed position. However, the Supreme Court held that the Mill was not an Authority or State or its instrumentality under Article 12 of the Constitution, as none of the indicia existed to categorize it so and the factors that led the Supreme Court to reach this conclusion, discernable from reading of the judgment were; (a) Mill operated on self generated finances; (b) bye-laws of the Mill reflected that its membership was open to canegrowers, other societies, Gram Sabha, State Government etc.; (c) State Government could not issue any direction to the Mill nor determine its policy as the Mill is an autonomous body; (d) role of the Federation, which is the apex body whose ex-officio CMD is the Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh; is only advisory. Significantly, the second contention raised by the Respondents was that even if the Mill is not an Authority under Article 12, the writ can be entertained as mandamus can be issued under Article 226 against any person or authority which would include a private person or body. Supreme Court, referred to the decision in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust vs. V.R. Rudani, (1989) 2 SCC 691, in which the Court had examined the distinction between an authority and a person and concluded that only when the authority or the person performs a public function or discharges a public duty that Article 226 can be invoked. Supreme Court also relied on its earlier decisions in K.

Krishnamacharyulu vs. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 and VST Industries Ltd. vs. Workers' Union, (2001) 1 SCC 298, where the same principle was reaffirmed. Having examined the facts of the case before it, the Supreme Court held that as the Mill was engaged in manufacture and sale of sugar, it is not performing any public function and analogy was drawn from the judgment in VST Industries Ltd. (supra), where the Court had held that manufacture and sale of cigarettes by private persons will not involve any public function. On this analogy, I may safely hold that DGC only provides recreational facility in the nature of a sport activity restricted to its members and permissive users and it would be too far-fetched to term it as a public function akin to a sovereign function of State, which is the touchstone from which the expression has to take its colour. Thus, without any hesitation and equivocation, this Court holds that DGC is neither 'other authority' under Article 12 of the Constitution of India nor it performs public function or discharges public duty, to be amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

64. Since this Court is not entertaining the writ petitions on ground of maintainability, challenge to the alleged illegal termination of the services of the Petitioners is not being adjudicated. Thus, at this stage no directions can be issued to the official Respondents for taking action against DGC for discontinuing the services, as sought by the Petitioners.

65. Petitioners have relied on an order of the Information Commission wherein Chandigarh Golf Club has been held to be a Public Authority. It was pointed out by learned Senior Counsel for DGC that the said order has been stayed by the High Court of Punjab and Haryana in WP(C)

No.21967/2012 and similar orders *qua* DGC have been stayed by this Court in W.P.(C) 6768/2013 and the petitions are pending. Thus, reliance on the said orders cannot be placed by the Petitioners at this stage, quite apart from the fact that a ‘public authority’ under the Right to Information Act, 2005, has a different connotation in law, from an Authority under Article 12 of the Constitution. In this context, I may refer to and quote from a judgment of a Coordinate Bench of this Court in **W.P. (C) 4596/2007** entitled ‘IFCI Limited vs. Ravinder Balwani’, decided on 17th August 2010, which is as under:-

*“18. At this juncture, this Court would like to deal with the submission of the learned counsel for the Petitioner that the test for determining whether a body is a “public authority” for the purposes of the RTI Act is no different from the test for determining whether a body is an “authority” for the purposes of Article 12 of the Constitution. Given the fact that there is a specific definition of what constitutes a “public authority” for the purposes of the RTI Act, there is no warrant for incorporating the tests evolved by the Supreme Court in **Pradeep Kumar Biswas** for the purposes of Article 12 of the Constitution. While it is possible that an authority within the meaning of Article 12 of the Constitution is likely to be a “public authority” under the RTI Act, the converse need not be necessarily true. Given the purpose and object of the RTI Act the only consideration is whether the body in question answers the description of a “public authority” under Section 2 (h) of the RTI Act. There is no need to turn to the Constitution for this purpose, particularly when there is a specific statutory provision for that purpose. Even for the purposes of Section 2(h)(d) (i) or (ii) RTI Act for determining if the body is “owned”, “controlled” or “substantially financed” directly or indirectly by the appropriate government the Article 12 tests, which talk of*

deep and pervasive” control or “dominance”, are not helpful.”

66. The judgment in Satwati Deswal (supra), relied upon by the Petitioners, is also of no avail as this was a service matter pertaining to termination of the Petitioner by the Manager of the School and dealt with an employment with the State of Haryana, which was amenable to writ jurisdiction as a State under Article 12. In Roychan Abraham (supra), the issue was with regard to a private educational Institution and the Allahabad High Court held that private Institutions imparting education to students perform a ‘public duty’, which at the cost of repetition is quite apart from the activities undertaken by DGC.

67. Much emphasis was placed by learned counsel for the Petitioners on the judgment in Board of Control for Cricket in India (supra), wherein the Supreme Court has held that functions of the Board were public functions, no matter discharged by a Society registered under the Societies Registration Act, 1860 and is amenable to the writ jurisdiction. In order to analyze this argument, I may only refer to the judgment in the said case and the circumstances in which the Supreme Court came to the above conclusion. The Supreme Court first considered the judgment in Zee Telefilms Ltd. (supra), where, by a majority, the Supreme Court had held that BCCI was not State within the meaning of Article 12 of the Constitution, based on its creation, share capital, financial control of the Government and its autonomy. Having said that, the Supreme Court had examined whether the Board was discharging public duties in the nature of State functions. The contention that the Board was discharging public

duties in the nature of State functions was rejected by the Supreme Court and it was held as under:-

“29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12? 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. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it, but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India

under the guidelines framed by it, and that the Board is discharging these functions on its own as an autonomous body.

68. Having so observed, the Supreme Court found that as a matter of fact the Board was discharging some duties like selection of the Indian cricket team, controlling the activities of the players, which activities were akin to public duties and in case of any breach of statutory obligations or rights of citizens, the aggrieved party could seek redress by a writ petition under Article 226 of the Constitution and in that context held as under:-

“31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.”

69. The Supreme Court thereafter in Board of Control for Cricket in India (supra) observed that the majority view in Zee Telefilms Ltd. (supra) was that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even though it is not a State under Article 12.

Analyzing the rationale, the Supreme Court in Board of Control for Cricket in India (supra) delved in detail into the functions of the Board, which is reflected from para 33 of the judgment and on the basis of the functions performed by the Board, came to a conclusion that BCCI was performing public functions and, therefore, answerable in judicial review of State action. Para 33 is as under:-

“33. The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not “State” within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the “nature of duties and functions” which BCCI performs. It is common ground that the respondent Board has a complete sway over the game of cricket in this country. It regulates and controls the game to the exclusion of all others. It formulates rules, regulations, norms and standards covering all aspects of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and supporting State associations. It frames pension schemes and incurs expenditure on coaches, trainers, etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board's monopoly in the field of cricket. On the contrary, the Government of India has allowed the Board to select the national team which is then recognised by all concerned and applauded by the entire nation including at

times by the highest of the dignitaries when they win tournaments and bring laurels home. Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government. Such is the passion for this game in this country that cricketers are seen as icons by youngsters, middle aged and the old alike. Any organisation or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity.”

70. In stark contrast to the functions carried out by the BCCI, in my view, the functions carried out by DGC cannot even remotely be termed as public functions. Providing recreation as a Club to its restricted members cannot be compared to the functions of the BCCI on any pedestal. The said judgment, therefore, does not help the Petitioners.

71. Since this Court has held that writ petitions are not maintainable as no writ would lie against a private body not performing public functions, it would be unnecessary to decide the other issues raised by the parties including the existence or otherwise of an alternate remedy. It is left open to the Petitioners to resort to appropriate remedies available to them in accordance with law for ventilating the grievances raised in the present petitions. It is made clear that this Court has not expressed any opinion on the merits of the issues raised.

72. Before parting with these petitions, I may, however, take note of the fact that in W.P.(C) 5440/2020, Respondents / Government of NCT of Delhi has filed a short affidavit stating therein that the application made by the Petitioners for prohibition of deployment of contract labour in the

departments of DGC was forwarded to the Joint Labour Commissioner (District South) who has recommended forwarding the application to consider the matter to the State Advisory Board. The Chairman of the Board is the final approving authority and as and when the meeting of the Board is convened the agenda items shall be placed before it. This Court is sanguine and confident that the needful shall be done as expeditiously as possible by the concerned authorities, in accordance with law.

73. The writ petitions are accordingly dismissed, along with all pending applications.

W.P. (Crl.) No.1222/2020

74. The present writ petition has been filed seeking the following reliefs:-

1. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the respondent No.1, 2, 3 & 4 to immediately initiate & sent prosecution to the concerned Ld. Metropolitan Magistrate against the Respondent no.11 & 12 for contravention of Section 25 Q; Section 25 R; Section 25 T; Section 25 U; Section 25 N; Section 25 FFA; Section 25 H; Section 30 A, Section 31 A; Section 32 & Section 33 of the Industrial Disputes Act, 1947.*
2. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the respondent No.7 & 8 to take immediate action/launch prosecution against the Respondent no.1 to 4 for their collusion & connivance with the Respondent No.11 & 12 and to submit report before the concerned Metropolitan Magistrate for taking cognizance of the*

offences committed by the Respondent No.1 to 4 in open contravention of Section 25 Q; Section 25 R; Section 25 T; Section 25 U; Section 25 N; Section 25 FFA; Section 25 H; Section 30 A, Section 31 A; Section 32 & Section 33 of the Industrial Disputes Act, 1947.

3. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the respondent No.10 to immediately initiate & sent prosecution to the concerned Ld. Metropolitan Magistrate against the Respondent No.11, 12, 13 & 14 for contravention of Section 2 (m) of the Factories Act, 1948 for not obtaining license for food processing in the Kitchen of the Food Beverages Department of the Delhi Golf Club.*
4. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the respondent No.6 to immediately initiate & sent prosecution to the concerned Ld. Metropolitan Magistrate against the Respondent No.11, 12, 13 & 14 under Section 58 for contravention of Section 10 of the Disaster Management Act, 2005.*
5. *Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction thereby directing the respondent No.6 to immediately initiate & sent prosecution under Section 23; Section 24 & Section 25 of the of the Contract Labour (Regulation & Abolition) Act, 1970 to the concerned Ld. Metropolitan Magistrate against the Respondent no.11, 12, 13 & 14 for contravention of Section 9 of the Contract Labour (Regulation & Abolition) Act, 1970.*
6. *Any other Writ, Order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction the Hon'ble Court may deem fit and proper may*

also be granted in the facts and circumstances of the present case and in the interest of Justice.”

75. As is evident from the reliefs sought, Petitioners seek prosecution of the office bearers of DGC, alleging violation of the various provisions of the Industrial Disputes Act, 1947, Factories Act, 1948, Disaster Management Act, 2005 and Contract Labour (Regulation & Abolition) Act, 1970. In my view, the reliefs sought cannot be granted by this Court as it is the prerogative of the State Government to initiate prosecution, depending on the facts and circumstances of each case before it. A writ of mandamus cannot be issued for directing prosecution or institution of legal proceedings to any party and there is a complete mechanism available to the Petitioners under the relevant statutes for the said purpose. In Nagpur Glass Works Ltd., Nagpur & Anr. vs State of Madhya Pradesh, Nagpur & Ors., 1954 SCC OnLine MP 74, a petition was filed under Article 226 of the Constitution praying for a writ of mandamus to the State of Madhya Pradesh seeking prosecution under the Minimum Wages Act. The Supreme Court held that a writ of mandamus cannot lie to compel a person to institute legal proceedings. Paras 19 to 21 being relevant are quoted hereunder:-

“19. In these circumstances the question naturally arises whether this Court should exercise its special powers to issue a ‘writ’ of ‘mandamus’ calling upon the Government to enforce the provisions of the Act at the instance of the petitioners. The enforcement in the instant case must take the shape of a prosecution under the provisions of the Act, as aforesaid. Does a ‘mandamus’ issue for such a purpose?”

20. *It has been contended on behalf of the petitioner that this 'writ' is of right and that this Court cannot refuse to issue it. This argument cannot be accepted in view of the following statement of the law in Halsbury's Laws of England, Hailsham Edition, Volume IX, paragraph 1270, pp. 744-746:*

"The grant of a writ of mandamus is, as a general rule, a matter for the discretion of the Court. It is not a writ of right and it is not issued as a matter of course and, on the other hand, the writ may be refused, not only upon the merits, but also by reason of the special circumstances of the case."

21. *It has also been stated in the last portion of paragraph 1270 quoted above that a writ of mandamus will not lie to compel a person to institute legal proceedings."*

76. In view of the above, no directions can be issued in the present petition and the same is accordingly dismissed along with all pending applications.

APRIL 19, 2021

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JYOTI SINGH, J