

6th April, 2022
(D/L No.8)
(SKB)

W.P.A. 1377 of 2022

Pinaki Dhar
Versus
State of West Bengal and others

Mr. Satyam Mukherjee,
Ms. Sayani Ahmed
... for the petitioner.

Mr. Swapan Kumar Datta,
Mr. Tapas Kumar Mandal
... for the State.

Mr. Shuvro P. Lahiri,
Mr. Sunil Singhanian
... for respondent no.2.

Mr. Suranjan Das Gupta
... for respondent no.3.

The writ petitioner seeks cancellation of two letters dated 13th February, 2019 and 30th July, 2021 by which the writ petitioner was discharged from his duties by the Principal-in-Charge of the concerned Institute.

Learned counsel appearing for the respondent Institute has taken a point of maintainability of the writ petition which is being decided in this order.

The document shown on behalf of the Institute to support the contention that the writ petition is not maintainable is an Approval Process Handbook of AICTE which contains certain definitions. Under Article 32, a “Government aided Institution” has been defined as a Technical Institution that meets 50% or more of its

recurring expenditure out of the grant received from the Government or Government Organizations. A “Government Institution” has been defined as a Technical Institution established and/or fully maintained by the Government. A “Self-Financing Institution’ has been defined as an Institution started by a Trust/Society etc. and which does not receive grant or fund from the Central/State Government/UT for meeting its recurring expenditure. The fact that the respondent Institute falls within Article 51 of the AICTE definitions i.e. it is a “Self-Financing Institution” would also be evident from a list published by the AICTE on 25th June, 2021 which describes the Institute as “Private-Self Financing”. A further list of the West Bengal State Council of Technical & Vocational Education and Skill Development further describes the respondent Institute as “Self Financed”.

The State respondent has corroborated this fact in its affidavit-in-opposition by stating that the respondent Institute is a “private self financing technical Institution”. The affidavit further states that the Institute has its own rules and regulations for management of its affairs and has never received any grant or financial assistance from the State Government. The affidavit further states that the

Institute is a Private College and hence falls outside the ambit of the writ jurisdiction of this court.

The question is whether the Institute, in imparting technical education to students is discharging a public function and whether it falls within the writ jurisdiction of the court, as argued by learned counsel appearing for the petitioner.

The expanded reach of Article 226 of the Constitution of India has been recognised by the Supreme Court. The decisions lay emphasis on the nature of functions carried on by the entity concerned. The decisions also focus on the positive obligation imposed upon the authority read with public duty which would be a deciding factor on the question of maintainability. Several cases have, however, pointed out that the adjudication would necessarily have to be made on a case-to-case basis with regard to the particular facts of a case.

In *Ramakrishna Mission Versus Kago Kunya*; (2019)16 SCC 303, the Supreme Court, relying on *Federal Bank Ltd. Vs. Sagar Thomas*, [(2003)10 SCC 733] held that a mere violation of the conditions of service will not provide a valid basis for the exercise of the writ jurisdiction under Article 226, in a situation where the activity does not have the features of a public duty. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami*

Suvarna Jayanti Mahotsav Smarak Trust Vs. V. R. Rudani (1989)2 SCC 691, the Supreme Court stated that there are two exceptions to mandamus, first, where the rights are purely of a private character and second, where the management of the college is purely a private body with no public duty. In *Binny Limited Vs. V. Sadasivan* (2005)6 SCC 657, the Supreme Court noted that it could not perceive any public element in the termination of the employee by the appellant before it. The Supreme Court further held that a writ of mandamus can be issued against a private body which is not a State for judicial review only when a public law element is involved. In *K. K. Saksena Vs. International Commission on Irrigation and Drainage* (2015)4 SCC 670, the Supreme Court summarized the legal position by stating *inter alia* that the question must be decided on the facts of the individual case and whether State control over the body in question is pervasive in nature.

The above decisions, while expanding the contours of the writ jurisdiction of a High Court have excluded certain areas from the purview of Article 226. These would include instances where the private body is not discharging public functions or performance of contracts which are within the realm of private law or private bodies where the State does not have any presence or control.

The decisions relied on by learned counsel appearing for the petitioner are required to be seen in this context.

In *Janet Jeyapaul Vs. SRM University* (2015) 16 SCC 530, the Supreme Court noted that the concerned University was notified as a 'Deemed University' by the Central Government under Section 3 of the UGC Act, 1956. In *Ramesh Ahluwalia Vs. State of Punjab* (2012) 12 SCC 331, the Supreme Court reiterated the requirement that the private body must be performing public functions which are normally expected to be performed by the State authorities. In *Jayanti Mondal Vs. State of West Bengal* (2017) 2 CALLT 641 (HC) the fact of State control was noted by a learned Single Judge of this Court. A similar observation was made in *Santa Kanungo Vs. The Director of Public Instruction, Education Directorate and others* (2020) 1 SLR 749 wherein the learned Judge also dealt with the connotation of words "public duty" and distinguished *Ramesh Ahluwalia(supra)* by stating that imparting education to children is covered under Article 21A of the Constitution of India.

This court is unable to accept the contention advanced on behalf of the petitioner, namely that imparting of education would amount to a public function, for several reasons.

First, the documents disclosed by the parties clearly show that the Institute is a Private Self Financing Institution without any State control and without the benefit of any financial assistance from the State. The imparting of technical education cannot by itself transform a documented private entity to a public authority. If this were to be the case, each and every private school, college and institution which are neither established by or under a statute, would come within the ambit of Article 226. The decisions of the Supreme Court clearly point to the direction of the entities discharging public functions and duties akin to the sovereign functions discharged by the State. In essence, there must be a public element to the discharging of such functions having the potential of affecting a large number of persons. There must also be a sense of a positive obligation owed by such authority which in turn imbues it with the characteristics of a State or a statutory body.

In the present case, the dispute is essentially of a private nature. The Institute, being a private body, has discharged the petitioner on grounds, which would appear from the writ petition. The challenge arises out of a contract of employment between the petitioner and the Institute. Civil remedies are available to the petitioner for enforcing his rights. Article 21A of the

Constitution—right to education—cannot be pressed to service in the present case to bring the respondent Institute within the fold of Article 226. This court fails to see any public element in the challenge sought to be urged in the facts of the case.

In view of the above reasons, this court finds no merit in the contentions that the respondent Institute should be described as an authority, which would be amenable to the writ jurisdiction.

W.P.A.1377 of 2022 is accordingly dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)