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

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**Date of decision: 28 April, 2022**

+ **W.P.(C) 6701/2022**

**DR. RAHUL GARG**

..... Petitioner

Through: Mr. Shiv Mangal Sharma,  
Mr. Shashank Khurana, Ms. Shrinjan  
Khosla, Advs.

versus

**THE TRAINED NURSES ASSOCIATION  
OF INDIA & ORS.**

..... Respondents

Through: Mr. Romy Chacko, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**YASHWANT VARMA, J. (ORAL)**

**CM APPL. 20346/2022(for exemption)**

Allowed, subject to all just exceptions.

The application shall stand disposed of.

**W.P.(C) 6701/2022 & CM APPL. 20345/2022(Interim Relief)**

1. The petitioner who is a member of the Trained Nurses Association of India [“Association”] has petitioned this Court seeking the following reliefs: -

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“a) Quash and set aside the Minutes of the Meeting dated 12.03.2022-13.03.2022 to the extent that the elections are sought to be postponed by 2 more years;

b) Quash and set aside Circular No. TNAI/PRIM/CIRCULAR LETTER/2022/0911 dated 25.03.2022 and Notice dated 08.04.2022;

c) Issue of Writ of Mandamus directing the Respondents to conduct elections as scheduled in December 2022;”

The challenge in essence is to the postponement of elections for constituting the Managing Body of the Association.

2. A preliminary objection is taken by the Association to the maintainability of the writ petition with learned counsel for the respondent contending that the Association is neither State nor is it an authority which would be subject to the jurisdiction of the Court as conferred by Article 226 of the Constitution. It is submitted that the Association is a purely private body and that its functioning is governed by Byelaws which are non-statutory in character. According to learned counsel those Byelaws have no statutory flavor and consequently, the writ petition would not be maintainable. In support of the aforesaid submissions, learned counsel has also placed reliance on the judgment rendered by a Division bench of the Court in **S.D. Siddiqui vs. University of Delhi and Ors.**<sup>1</sup> It becomes pertinent to note that **S.D. Siddiqui** was dealing with the correctness of the view as expressed by a learned Judge of the Court holding that a writ petition against the Delhi University Teachers’ Association would be maintainable. While considering the challenge to that judgment in the

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<sup>1</sup> 2005 SCC OnLine Del. 1226

Letters Patent Appeal, the Division Bench after noticing the various judgments rendered by the Supreme Court in the context of Articles 12 and 226 of the Constitution held as follows: -

“16. The powers of the Supreme Court under Article 32 and High Court under Article 226 have been considered by the Supreme Court in a large number of decisions. In the case of **Shri Anadi Mukta Sadgiri S.M.V.S.J.M.S. Trust v. V.R. Rudani (1989) 2 SCC 691**, the Supreme Court considered the writ jurisdiction of the High Court exercisable under Article 226 of the Constitution of India. The following conclusion of Their Lordships are relevant: (vide paras 19 and 21)

19. 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 Court 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.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: “To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.” (Judicial Review of Administrative Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must

be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226....

17. While considering the maintainability of a writ petition filed under Article 32 of the Constitution of India against Board of Control for Cricket in India (BCCI), the Supreme Court in Writ Petition (C) No. 541/2004 [**Zee Telefilms Ltd. and Anr. v. Union of India and Ors.**] **2005 (1) Scale 666** considered the term "State" under Article 12 and also considered the scope of interference under Article 32 by the Supreme Court and under Article 226 by the High Court. The main question for consideration before the Supreme Court was whether the 'Board' (BCCI) fell within the definition of the 'State' as contemplated under Article 12 of the Constitution. It was the argument of the Board that it did not come under the term "other authorities", hence it is not a State for the purpose of Article 12. After considering the decision in **Sabhajit Tewary v. U.O.I. (1975) 1 SCC 485**, and **Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr. (1975) 3 SCR 619** the Court held: (para 16)

16. The distinction to be noticed between the two judgments referred to hereinabove namely Sukhdev Singh and Ors. and Sabhajit Tewary is that in the former the Court held that bodies which were creatures of the statutes having important State functions and where State had pervasive control of activities of those bodies would be State for the purpose of Article 12. While in Sabhajit Tewary's case the Court held a body which was registered under a statute and not performing important State functions and not functioning under the pervasive control of the Government would not be a State for the purpose of Article 12."

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29. In view of the above discussion, we are clearly of the opinion that the DUTA is not a State or an instrumentality of the State under Article 12 of the Constitution of India and it does not also perform any public functions. It is a purely private body working for the welfare of teachers of the University and affiliated colleges. There is no deep or pervasive control of the State over it. There is no averment that it is largely financed by the State. Hence, in our opinion, no writ lies against DUTA."

3. Countering the objection as taken, learned counsel for the petitioner has drawn the attention of the Court to the constitution of the Association as well as the Rules and Regulations framed and adopted by it. On the basis of the aforesaid, it is submitted that the Association discharges a public function and performs public duties and would thus be amenable to the writ jurisdiction of the Court. Learned counsel for the petitioner sought to draw sustenance from the judgment rendered by a Full bench of the Allahabad High Court in **Roychan Abraham vs. State of U.P. and Ors.**<sup>2</sup> and more particularly to paragraph 34 of the report which is extracted hereinbelow: -

“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

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<sup>2</sup> 2019 SCC OnLine ALL 3935

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.....”

4. In the considered opinion of this Court, the preliminary objection as raised is liable to be upheld for the following reasons. From a perusal of the Constitution as well as the Byelaws adopted and framed by the Association, it is evident that the body is essentially established to espouse and protect the interests of nurses throughout the country. It affiliates various associations of nurses formed at the state level. Its functions as are mentioned in the Byelaws relate to it acting as a representative body for nurses and framing schemes for the protection of their interests and liaising with authorities to ameliorate the working conditions of nurses throughout the country.

5. It is however undisputed that the Association does not stand created by statute. Even the Byelaws have not been framed under an enactment to which the Association may owe its existence. The Byelaws essentially constitute a charter for the recognition of rights of affiliate members and for matters related therewith. It is thus essentially an organization which appears to have been formed to espouse and protect the interests of nurses who are its members.

6. It would be pertinent to note that in order to be amenable to the writ jurisdiction of the Court, it was incumbent upon the petitioner to establish that the Association was performing a public function or discharging a public duty. The expressions “public function” and “public duty” were succinctly explained by the Supreme Court in a recent decision rendered in **Ramakrishna Mission and Anr. vs. Kago Kunya and Ors.**<sup>3</sup> as under: -

“32 Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an ‘authority’ within the meaning of Article 226. State governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of state control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

33 It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting

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<sup>3</sup> (2019) 16 SCC 303

of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In *Federal Bank (supra)*, while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the court held thus:

“33. ...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 appellant 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...” (emphasis supplied)

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in *K K Saksena (supra)* this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.”

7. While learned counsel has also pressed into assistance the decision rendered by the Full Bench of the Allahabad High Court in **Roychan Abraham**, learned counsel has failed to appreciate the fact that in **Roychan Abraham**, the principal question which fell for consideration was whether private institutions imparting education perform a public duty and would thus be amenable to judicial review. Education undisputedly is a public function. The observations entered by the Allahabad High Court in **Roychan Abraham** are thus liable to be understood in that context.

8. Regard must also be had to the following principles where were laid down in **Roychan Abraham**:-

“38. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by statutory provisions or the employer had the status of ‘State’ within the expansive definition under Article 12 or it was found that the action complained of has public law element.”

9. Undisputedly, educational institutions do perform a public function. However, as was observed by the Allahabad High Court in **Roychan Abraham** itself, individual wrongs, or breaches of mutual contracts without having any public law element cannot be rectified by way of a petition under Article 226 of the Constitution. This aspect was also duly explained

by the Supreme Court in **Ramakrishna Mission** and it was observed that before an organization can be held to be discharging a public function it must be found that the function must be of a character that is closely related to functions which are discharged by the State in its sovereign capacity. If this inherent limitation were to be ignored, disputes relating to every private association would be liable to be recognised as being amenable to the constitutional jurisdiction of the Court conferred by Article 226 of the Constitution.

10. Tested on the aforesaid principles, it is manifest that the Association can neither be recognized as discharging any public function nor is it performing any public duty. The rights of parties who are members of the Association are governed solely by a charter which is private in character and stands imbued with no public law element. Regard must also be had to the fact that the subject of nursing care and the conditions of their service is essentially governed by the Indian Nursing Council Act, 1947. The Association under the statutory regimen which applies, has not been accorded a special statutory position. In view of the above, the preliminary objection is upheld.

11. The writ petition is consequently dismissed as being not maintainable under Article 226 of the Constitution. The Court however clarifies that the dismissal of the present writ petition on the ground of maintainability would not preclude the petitioner from adopting such other remedies as may be permissible in law.

12. Pending application also stands dismissed.

**YASHWANT VARMA, J.**

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