

11.12.2023

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WPA 24697 of 2023

Rajdeep Banerjee
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Neogi
Ms. Soma Chakraborty
Ms. Ananya Neogi
Mr. Guddu Singh
... For the petitioner.

Mr. Lokenath Chatterjee
Mr. Sukanta Ghosh
Mr. Arghya Chatterjee
... For respondent nos. 6,6(a) to 6(f).

Ms. Suchishmita Ghosh
Mr. Abir Lal Ghosh
... For respondent no. 7.

Mr. Sandip Kundu
... For respondent nos. 10-17.

Mr. Alokesh Dalai
... For respondent nos. 8-9.

Ms. Nandini Mitra
... For respondent nos. 2, 2A, 3 and 4.

Mr. Bhaskar Prasad Vaisya, A.G.P.,
Mr. Ranjan Saha
... For the State.

The petitioner challenges an order of suspension dated May 23, 2023 issued by Director of Colleges, Calcutta Institute of Engineering and Management, respondent no. 6.

The petitioner holds the position of an Assistant Professor in the said institute.

A liberty was granted to the petitioner to file a supplementary affidavit to justify the amenability of

respondent no. 6 to the writ jurisdiction of this Court.

The affidavit filed by the petitioner discloses as follows:

“I submit that Calcutta Institute of Engineering and Management (herein after called the said institute) and the said institute has been established to impart education on engineering which is affiliated to Maulana Abul Kalam Azad University of Technology. Since the very purpose of the said institute is to impart education on engineering which is a public purpose, and application under Article 226 is very much maintainable.

It is humbly submitted that as per the principle laid down by the Hon’ble Apex Court if a society discharge several important public functions it makes it amenable to the writ jurisdiction of the Hon’ble High Court under Article 226 of the Constitution of India. The said institute is approved by All India Council for Technical Education, apex body for technical education under the Government of India. According to the Service Rule of the institute as per paragraph 2.7.1 “promotion in respect of members of academic faculty/staff would be guided in accordance with the guidelines issued by the AICTE”. Further in the Board of Governors of the institute a representative from DTE, Government of West Bengal, a representative of the respondent university and a nominee of the AICTE are required to be bound to

function within the guidelines of Government and/or Government bodies.”

The petitioner does not dispute that the college is a private body registered under West Bengal Society Registration Act, 1961. It does not receive any financial aid from the State nor there is any control of State in the management of the college. The college is affiliated with Maulana Abdul Kalam Azad University of Technology.

I am not satisfied with the explanation provided by the petitioner in his supplementary affidavit. The position of law has been clarified by a recent judgment of the Supreme Court reported at **(2023) 4 SCC 498 (St. Mary’s Education Society and another vs. Rajendra Prasad Bhargava and Others)**.

In **St. Mary’s** case, the Supreme Court has held that the mere fact that the relevant college in question is subject to regulatory control of the State, or even that the action impugned before the writ court is a regulatory control of the State, does not sufficiently by itself, amount to make proceedings amenable to writ jurisdiction. It is only if the action impugned before the writ court itself involves or has nexus with public duty/function/element, will writ jurisdiction be attracted.

The impugned suspension order in this writ petition does not involve any public duty or element.

Accordingly, **WPA 24697 of 2023** is dismissed as not maintainable before this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)