

**BASAVRAJ
GURAPPA
PATIL**

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7251 OF 2021

Ambika Krishnadas Nair

..... Petitioner

Vs.

**The Board of Trustees Saifee
Hospital & Ors.**

..... Respondents

Mr. Ramesh Ramamurthy a/w Saikumar Ramamurthy, Kavita Anchan, Seema Sorte, Akhilesh Deshmukh and Karthik Pillai for the Petitioner

Mr. Yash C. P. Vyas for Respondent Nos.1 to 3

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : APRIL 27, 2023

P.C.

1. The Petitioner challenges the order passed by the Respondents terminating the services of the Petitioner.

2. The Petitioner was an employee of Respondent No.1. The Trust runs the Saifee Hospital. Mr. Ramamurthy, the learned Counsel for the Petitioner submits that during the time the Petitioner was terminated, the said hospital was a COVID dedicated hospital and was run under the directions of the Municipal Corporation / State Government.

3. The learned Counsel refers to the judgment of the apex court

in the case of *Ramakrishna Mission and Another Vs. Kago Kunya and Ors. (2019) 16 SCC 303* and submits that the writ under Article 226 of the Constitution of India would be maintainable against a private body discharging public duty or positive obligation of public nature and a person or a body under liability to discharge any function under any statute to compel it to perform such a statutory function. As the hospital, at the relevant time, was a dedicated COVID hospital, it was performing and discharging the function required under the Epidemic Diseases Act, 1897 and Disaster Management Act, 2005.

4. The learned Counsel for the Respondents relies on the same judgment and submits that it is a private hospital run by a Trust. Though the part of the hospital was dedicated COVID hospital, that was run and managed by the Trust only.

5. It is not disputed that the hospital, where the Petitioner was working is a private hospital run by a Trust. Paragraph 30 to 32 of the judgment in the case of *Kago Kunya and Ors. (supra)* read thus:

“30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

31. Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a

public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.

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."

It has been observed and held that in setting up the hospital, the Mission cannot be construed as having assumed a public hospital.

6. In light of the above, it would not be possible for us to entertain the Writ Petition.

7. The Petitioner is entitled to take up the proceedings before the

alternate forum, as may be permissible under the law. In that event all contentions of the parties are kept open.

8. The Petitioner may plead before the forum about the time lost in prosecuting the present petition.

9. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)