



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

% **Date of order: 4th September, 2023**

+ W.P.(C) 9852/2023, CM APPL. 45414/2023 & 45415/2023
 SHYAM SUNDER Petitioner
 Through: Mr. K.K.L. Gautam, Advocate.

versus

CRPF EMPLOYEES EDUCATIONAL SOCIETY, THROUGH ITS
 PRESIDENT CUM DIRECTOR GENERAL, CRPF & ORS.

..... Respondents
 Through: Mr. Siddharth Khatana, Sr. Panel
 Counsel.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India, praying as follows:

- “i. Issue appropriate writ/order in nature of certiorari/mandamus, or any other appropriate writ against the respondent(s) directing the respondents to relocate or adjust the remaining service of the petitioner somewhere else as in similar matter the Hon’ble court of judicature at madras held in W.P.(C) No. 4162 of 2005 dated 11.03.2011;*
- ii. Issue appropriate Writ order in nature of the Writ of mandamus directing the Respondents to protect the rights of the petitioner be relocating or adjust the remaining service of the petitioner before closing the institute, so that he may continue his livelihood.*
- iii. pass order(s) as this Hon’ble Court may deem fit and proper in the present case.”*



2. The relevant facts have been briefly recapitulated for the disposal of the present petition is reproduced herein:

- a) The respondent no. 1 i.e, CRPF Employees Educational Society (hereinafter 'respondent society'), was registered under Societies Registration Act XXI of 1860 with the aim to provide quality education to the wards of the Central Reserve Police Force (hereinafter "CRPF") personnel.
- b) The petitioner was appointed by the respondent society *vide* appointment letter dated 24th August 1993 as an instructor.
- c) The respondent society confirmed the employment of the petitioner upon completion of their probation period of one year.
- d) During the COVID-19 pandemic, the respondents held meetings which concluded with the motive *inter alia* to extract the rehabilitation/re-induction plan for the regular employees of the Respondent(s).
- e) Upon receiving information about the meetings conducted, individuals similarly placed as the petitioner, made a representation seeking clarification of the meetings held by the respondents and received termination letters shortly after.
- f) *Vide* letter dated 4th July 2022, the respondent society informed the principal of CRPF ITC Wazirabad, to shut down the said institute.



g) Aggrieved by the termination of the similarly situated persons, the petitioner is now in fear of losing his job, hence has preferred the present petition.

3. During the course of the arguments, learned counsel appearing on behalf of the respondent society argued that the present petition is not maintainable on the ground that respondent society is a private body, the employees are purely private/unaided and non-pensionable, therefore, not falling within the ambit of Article 12 of the Constitution of India by placing reliance on case titled *Ravi Khokhar v. Union of India and Ors.*, 2023 SCC OnLine Del 540.

4. It is submitted that the respondent institute receives no aid from the Centre/State Governments for the operation and functioning of the respondent institute and hence, the petitioner cannot be treated as Government Servants.

5. It is submitted that since the respondent institute was running into losses and that there was no improvement in the financial condition of the respondent institute even after a long time therefore the respondent society took the decision to close down the respondent institution. However, keeping in view, the length of the services discharged by some of their employees, the competent authority has decided to give those employees an opportunity to draw lump sum gratuity amount taking into account their service period upto 58 years i.e. till their superannuation age

6. It is therefore submitted that the present petition is not maintainable as the duties discharged by the respondents are not public duties and therefore the respondents do not fall under the ambit of Article 12 of the Constitution of India.



7. Learned counsel appearing on behalf of the petitioner appearing addressed the issue of maintainability by placing reliance on judgments such as *Marwari Balika Vidyalaya v. Asha Srivastava*, (2020) 14 SCC 449, *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 and *Binny Ltd. and Anr. v. V. Sadasivan*, Civil Appeal 1976 of 1998 dated 8th August 2005, to examine the power of the Court while entertaining a writ petition under Article 226 of the Constitution of India.

8. It is submitted that the respondent society is financed by the CRPF which falls within the definition of “State”, and any job opportunity provided by the respondent society should be considered to be a government job.

9. It is therefore submitted that the instant petition is maintainable as the respondent institute falls within the ambit of Article 12 of the Constitution of India.

10. Heard the learned counsel appearing on behalf of the parties and perused the record.

11. Before delving into the case on merits, this Court is of the opinion that the issue surrounding the maintainability of the petition needs to be addressed at the outset.

12. As per the material on record, it is evident that the petitioner is in fear of losing his job due to the sudden closure of the respondent institute and was aggrieved by the termination of the services of the similarly situated petitioners by the respondents. The respondent society has submitted that the instant petition is not maintainable as the respondent institute is a private



body, not possessing any public character, and therefore, not falling under the ambit of Article 12 of the Constitution of India.

13. At this juncture it becomes imperative to analyse the settled legal principles governing the scope of Article 12 of the Constitution of India with regards to the nature of bodies that may fall under it.

14. The Hon'ble Supreme Court, in the judgment of ***Chander Mohan Khanna v. National Council of Educational Research and Training, (1991) 4 SCC 578***, has determined the nature of the parties that may fall within the purview of Article 12 of the Constitution of India. The Hon'ble Court held as follows:

“3. Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression “State”. A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as “State” under Article 12. The State control, however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is “State”. If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as “State” within the meaning of Article 12 of the Constitution.”

15. Further, the Hon'ble Supreme Court in the judgment of ***Chander Mohan Khanna (Supra)***, has held that the scope of Article 12 shouldn't be



expanded to such an extent that every autonomous body falls under its ambit. A mere connection to the government would not make the body in question to be comprised as a 'State' under Article 12. Financial contribution as well as the State control is not determinative of whether the said body would fall under Article 12 of the Constitution of India.

16. Similarly, the Hon'ble Supreme Court while bearing in mind the above stated principle, extensively discussed if an authority or society would fall under the purview Article 12 in the matter of ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111***. It held that in order to determine if an authority or society would fall under the purview of Article 12, it would be pertinent to examine the power of the government over the body and even then, analyse if the said power is inescapable.

17. On perusal of the aforementioned judgments and submissions, it now becomes pertinent to examine whether the present petition is maintainable in view of the claim that the duty discharged by the respondent institute is private in its nature.

18. During the course of the arguments, the learned counsel appearing on behalf of the respondent had relied on a judgment passed by the Hon'ble Supreme Court in the case titled as ***Ravi Khokhar v. Union of India and Ors (Supra)***, in order to establish that the respondents do not discharge any public function, hence, making it a private body. Relevant paragraphs of the said judgment are reproduced as under:

"33. The petitioner in W.P.(C) 15835/2022 is employed with CRPF ITI which is under the CRPF Employees Education Society. We have perused the copy of appointment letter issued to the petitioner which clearly mentions that he shall be entitled to



the allowances and benefits as allowed by this Society from time to time. Meaning thereby, petitioner is not an employee of Central Government and his service shall run on the terms and conditions stipulated by the Society...

36. *In the aforesaid view of the matter, we draw the conclusion that the Societies under which petitioners are employed are self-funded societies, which are formed and running for the benefit of those employees of Air Force who are its members. The petitioners have not placed any document on record to establish that these Societies are financially run by the Central Government. Even though petitioners have claimed that deduction of amount of their contribution to the Society is permitted by the Ministry of Finance and also that the land to run the Society is allocated by the Government, we find that purpose to provide aid in the form of sanction and land to the Society is to enable it to function smoothly to the benefit of its members. However, this does not establish that these functionaries are being run by Air Force or the Central Government. These societies are running only to the benefit of its members and their functioning does not in any way affect the Air Force. These Societies are not financially, functionally and administratively dominated by or under the control of Central Government. Such control must be particular to the body in question and must be pervasive in order to establish it to fall within the ambit of 'State' as mentioned in Article 12 of the Constitution of India.*

37. *We accordingly conclude and hold that the petitioners have not been able to establish before this Court that the competent authority, against which relief is sought, fall within the ambit of 'State' as stipulated in Article 12 of the Constitution of India."*

19. It now becomes pertinent to examine whether the duties discharged by the respondents are public or private in nature. As mentioned in the aforesaid paragraphs, it becomes evident that the respondent institute was established in the year of 1999 under the umbrella of the respondent society as a welfare measure with the motive to inculcate digital literacy to the



CRPF wards for their betterment. The project was a part of welfare measure taken by the CRPF for their employees.

19. Bearing in mind the aforesaid, it becomes crystal clear that the respondent society is discharging a private duty, as the benefits of the same are being availed by the families and members of the CRPF and not the community at large. A useful guide to determine whether an organisation/institution/body is discharging a private or public function can be the overall benefit of the community. In the event that the benefits of an organisation are being availed by the public at large the organisation/institution/body will fall under the ambit of Article 12 of the Constitution of India.

20. Consequently, involvement of the 'State' in any organization/institution / body is also an important determinant of the public or private functions discharged by them. In the event that the body is under state regulations, it goes beyond the narrow barriers of the private duty which is being discharged by the concerned body..

21. The maintainability of a writ petition against a body discharging private functions has been analysed at length by different Courts. It is a settled legal principle that a writ petition against a body constituting private character would not be maintainable however, a writ can lie against a "person", provided, it discharges a public function or performs a "public statutory duty". Even though defining the term public function can be rather intricate, it would be equitable to equate the functions with that of the State in a sovereign capacity.

22. A petition under Article 226 of the Constitution of India is maintainable against a body discharging duties or functions which are



public in nature. The public duty may be statutory or otherwise, and if it is otherwise, it must be demonstrated that the entity or person is obligated to the public in accordance with public law. Similar to this, it must be proven that the organisation or individual sought to accomplish the same goal for the benefit of the whole public or a specific segment of it, and the public must recognise their right to do so in order to determine the discharge of a public role.

23. In view of the aforesaid discussions, this Court is of the view that the functions discharged by the respondents, do not constitute public functions and hence, do not fall under the ambit of Article 12 of the Constitution of India. The contention that the society has been constituted in lieu of the CRPF is not sufficient to establish a direct nexus with the government or the fact that the duties discharged by it are similar to that of the State in a sovereign capacity.

24. The Division Bench of this Court in case titled ***Ravi Khokhar (Supra)***, observed that the respondent institute has been established by the respondent society for the welfare of the past/present members of the CRPF and their families. The respondent institute is not funded or controlled by the Central Government in any manner. Since the respondents stand to be a funded independently, they do not fall within the ambit of Article 12 of the Constitution of India.

25. In the view of the above discussions of facts and law, the instant petition is not maintainable as the respondents do not fall under the category of “State” and within the ambit of Article 12 of the Constitution of India, since the functions performed by it do not constitute public functions and no



interference could be established from the government in terms of financial control and public benefit.

26. Based on the aforementioned discussions, this writ petition is accordingly dismissed.

27. Pending applications, if any, also stand dismissed.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 4, 2023

pa/ds/db

Click here to check corrigendum, if any