

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WPA No. 5633 of 2020
With
CAN 2 of 2022
Dr. Arup Kumar Bhaumik
Vs.
The State of West Bengal & Ors.

For the Petitioner	: Mr. Ranajit Chatterjee, Adv. Mr. Soumya Majumder, Adv. Mr. Aniruddha Mitra, Adv.
For the State	: Mr. Somnath Ganguly, Ld. A.G.P. Mr. Tapas Kumar Dey, Adv.
For the Respondent Nos. 5 & 6	: Mr. Jayanta Kumar Mitra, Sr. Adv. Mr. Ankit Sureka, Adv.
For the Respondent Nos. 7 & 8	: Mr. Saptangsu Basu, Sr. Adv. Ms. Saheli Sen, Adv. Mr. Rajib Mullick, Adv. Ms. Ayantika Saha, Adv.
Hearing Concluded on	: December 04, 2024
Judgment on	: January 06, 2025

DEBANGSU BASAK, J.:-

1. The present reference has arisen out of the judgment and order dated February 16, 2024 passed in WPA 5633 of 2020.

2. The issue that has fallen for consideration in this reference is

whether, the writ petition against RCC Institute of Information Technology, is maintainable or not? In deciding such issue we have

to decide as to whether RCC Institute of Information Technology is a State within the meaning of Article 12 of the Constitution of India or the service conditions of the writ petitioner was regulated by statutory provisions or the action complained of has public law elements involved or not.

3. Writ petitioner had filed a writ petition against the respondent herein claiming various reliefs with regard to his employment with the educational institution. In course of hearing of such writ petition, learned Single Judge by the judgment and order dated February 16, 2024 had noticed two earlier decisions of co-ordinate Benches namely, the judgment and order dated November 13, 2019 passed in ***WP No. 13874 (W) of 2016 (Dr. Gautam Pal vs. State of West Bengal and Ors.)*** and the judgment and order dated August 16, 2013 passed in ***WPA 547 of 2020 (RCCIIT Staff Association and Anr. vs. State of West Bengal and Anr.)*** with ***WPA 4925 of 2021 (Raja Sarkar vs. The State of West Bengal and Ors.)***. Learned Single Judge has observed that the views expressed in ***Dr. Gautam Pal (supra)*** and ***RCCIIT Staff Association and Anr. (supra)*** were incorrect in view of the law laid down by the Supreme Court in ***2023 Volume 4 Supreme Court Cases 498 (St. Mary's Education Society & Anr. Vs. Rajendra***

Prasad Bhargava & Ors.). Therefore the learned Single Judge has made the reference.

4. Learned advocate appearing for the writ petitioner has contended that, the educational institution is a unit of RCC Institute of Technology which is a Society registered under the Societies Registration Act, 1961. He has referred to the origin and establishment of the Society on September 7, 1999 and its functioning. He has pointed out that the society started functioning with the active collaboration of the Department of Higher Education, Government of West Bengal and Department of Information Technology of the Central Government. He has referred to the time line during which, the Society initially being under the Department of Higher Education, Government of West Bengal claimed to become an autonomous Society while its Board of Management was headed by the Director of Technical Education, Government of West Bengal. He has pointed out that the members of the Society are nominated by the Department of Higher Education, Government of West Bengal. He has contended that, the Memorandum of Association and Regulations of the Society were divided accordingly. He has pointed out that, the society was created on completion of the statutory formalities and under a notification issued by the Department of Higher Education, Government of West Bengal by an order of the

Governor. According to him, although the Society is not statutory, it definitely has statutory flavour.

5. Learned advocate appearing for the writ petitioner has contended that, the management of the organizing society of the institute was reconstituted on year-to-year basis by notifications of the Government of West Bengal. He has referred to the notifications dated August 13, 2015, September 23, 2016 and September 25, 2017 in this regard.

6. Learned advocate appearing for the writ petitioner has contended that, the organizing society of the educational institution described itself as autonomous society under the Department of Higher Education in its application submitted with the National Board of Accreditation. He has also contended that, State Government has declared the educational institute as State sponsored autonomous society attached to the Department of Higher Education as would appear from the writing dated May 25, 2006.

7. Learned advocate appearing for the writ petitioner has contended that, on the representation of the educational institution, the affiliating university namely, Maulana Abul Kalam Azad University and the Government of West Bengal, the educational institution is recognized as a Government aided college by Ministry of Human Resources, Government of India, Department of Higher

Education, Government of India, All India Council for Technical Education, National Board of Accreditation, and National Project Implementation Unit.

8. Learned advocate appearing for the writ petitioner has relied upon Regulation 2.17 of the AICTE Regulation and submitted that the organizing society is a Government institution as it was established and/or maintained by the Government. He has also pointed out that, the educational institution has to abide by the University Grants Commission norms as is evident from the undertaking given in this regard by the writing dated November 29, 2010 issued by the educational society.

9. Referring to the Memorandum of Association of the organizing society, learned advocate appearing for the writ petitioner has drawn the attention of the Court to the primary objective of the organizing society as mentioned in the Memorandum of Association. He has pointed out that the Memorandum of Association was framed by the Joint Director, Government of West Bengal under the direction of the Directorate of Higher Education, Government of West Bengal. He has contended that, the duty discharged by the organizing society is a public duty which is normally expected to be performed by the State/Statutory Authorities. Such duties are subject to various orders, rules, regulations, directions of statutory

bodies including affiliating university, AICTE, UGC, NBA, NBFU and SBFU. The educational institute has been established for the benefit of the public at large and profit making was never its primary concern.

10. Learned advocate appearing for the writ petitioner has contended that, Government of West Bengal is running the educational institution through the organizing society. The control of the Government over the administrative and financial affairs of the organizing society is deep and pervasive and not merely general or regulatory.

11. Referring to Clause 3(14) of the Memorandum of Association of the organizing society, learned advocate appearing for the writ petitioner has contended that, prior approval of the State Government is needed to act, vary or amend rules of the conduct of the institute. Clause 9 of such memorandum has empowered the State Government to make inspection or enquire into the matters connected with the society.

12. Learned advocate appearing for the writ petitioner has contended that, Regulations 4 and 9 of the Memorandum of Association of the organizing society requires all members including the Chairman to be nominated by the State Government. No member of this organizing society can be expelled/suspended without the

consent of the State Government. The Director of Technical Education, Government of West Bengal, one Joint Secretary/Deputy Secretary of the Department of Higher Education, the Registrar of the affiliating university and the principle/head of the Government College of Engineering and Leather Technology, Government of West Bengal, are ex-officio members of the society. He has pointed out that, Regulation 11 requires the recruitment rules to be approved by the State Government while Regulation 21 requires the educational institution to be governed by the regulation of the society. Regulation 12(v) of the society although has empowered the society to frame rules/regulations and alter/follow the same but the rules are not to be inconsistent with the rules of the State Government or Regulatory Authorities.

13. Learned advocate appearing for the writ petitioner has referred to the manner and mode of funding of the organizing society and the educational institution over a period of time. He has referred to the funds that were received by the educational institution from the Government over a period of time. As late as in 2023-2024 the educational institution has received a sum of Rs. 50 lakhs and will receive another Rs. 51 lakhs in 2024-2025 as per the budget estimates of the State Government.

14. Learned advocate appearing for the writ petitioner has contended that, the service rules of the teaching staff governing educational institutions are replica of the Service Rules of the State Governments employees. Teachers of the educational institutions are appointed by the governing body on the recommendation of the selection committee constituted with the nominees of the Government body, State Government and affiliating university. Promotions under Career Advancement Scheme are guided by the State Government Rules. The powers of the governing body are in conformity with the educational institution in respect of qualification and service condition of teaching/non-teaching staff cannot be inconsistent with those of the State Government, UGC, AICTE and the affiliating university.

15. Learned advocate appearing for the writ petitioner has contended that the Department of Higher Education in concurrence with the Finance Department of the State of West Bengal, issued orders with regard to pay scale, allowances and arrears payment of the staff. Government order in respect of approval of pay-scale and career advancement schemes for teachers has been implemented by the educational institution. The Board of Management in its meeting held on January 18, 2020 has stated that, the responsibility of the legal cases filed by the employees against the educational institution

would be taken by the State Government. He has pointed out that, the concerned letters relating to the resignations were placed with the Department of Higher Education.

16. Learned advocate appearing for the writ petitioner has relied upon **2002 Volume 5 Supreme Court Cases 111 (Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology)** and contended that, the fact scenario in the present case and therein are similar. The writ petition has to be held to be maintainable and the reference answered accordingly.

17. Learned advocate appearing for the writ petitioner has also relied upon **2013 Volume 8 Supreme Court Cases 345 (Balmer Lawrie & Company Ltd & Ors vs. Partha Sarathi Sen Roy)** and contended that, although in the facts of that case, the termination of the employee was at the sole discretion of the company and not subject to the Government approval nonetheless the institution was held to be amenable to writ jurisdiction.

18. Learned advocate appearing for the writ petitioner has drawn the attention of the Court to **2023 Volume 4 Supreme Court Cases 498 (St. Mary's Education Society & Anr. vs. Rabindra Prasad Bhargava)** and contended that, the institution involved was affiliated to the Central Board for Secondary Education which was also not a statutory body. He has drawn the attention of the Court to

the fact that ***St. Mary's Education Society & Anr. (supra)*** has been followed by the Division Bench in FMA 763 of 2022.

19. Learned advocate appearing for the writ petitioner has relied upon ***2023 Volume 2 Supreme Court Cases 703 (M.P. Power Management Company Limited Jabalpur vs. Sky Power Southeast Solar India Private Limited and Others)*** and contended that, the termination of services of the writ petitioner was by the Chairman of the Board of Governors which is an authority subordinate to the appointed authority.

20. Learned Senior Advocate appearing for the respondent Nos. 5 and 6 has submitted that, RCC Institute of Technology is a Society registered under the Societies Registration Act. Such Society has two colleges under it namely, RCC Institute of National Technology and RCC Institute of Information Technology (NON AICTE). He has contended that, the Society and the College do not fall under the definition of "State" within the meaning of Article 12 of the Constitution of India as there is neither deep and pervasive control nor is financial aid accorded by the State to the Society.

21. Learned Senior Advocate appearing for the respondent Nos. 5 and 6 has submitted that, even if the Board of Management of the Society is nominated by the State, then also it cannot be said that the State controls the day-to-day affairs of the Society. Decisions are

taken by voting amongst the Board Members and the State does not control any decision or the meetings.

22. Learned Senior Advocate appearing for the respondent Nos. 5 and 6 has submitted that, the Board of Management of the Society nominates Members of the Board of Governors of each college. Board of Governors of each college runs the day to day affairs of such college. Board of Governors take decision by voting amongst themselves. Neither the Board of Management nor the State has any control over the decision or meetings by the Board of Governors. Service related issues are decided by the Board of Governors without there being any interference by the State. Neither the teaching staff nor the employees of the college are selected through any service commission. Moreover, AICTE has recognized the college as a “private self-financed college”.

23. Referring to ***St. Mary’s Education Society & Anr. (supra)*** learned Senior Advocate appearing for the respondent Nos. 5 and 6 has submitted that the writ petition is essentially a private service matter of an individual with no public law element involved and no service rule having any statutory flavour being involved. The writ petition is not maintainable.

24. Learned Senior Advocate appearing for the respondent Nos. 5 and 6 has submitted that, even if a body may be discharging a

public function or performing a public duty all actions of such body is not amenable to judicial review under Article 226 of the Constitution of India.

25. Referring to the merits of the present case, learned Senior Advocate appearing for the respondent Nos. 5 and 6 has submitted that, the writ petition concerns non-confirmation of a probationer service. According to him, the dispute is purely of private nature between a probationer and a college. With the service conditions having no statutory flavour and the probationer having no monopoly status, the writ petition is not maintainable as there is no public law element involved.

26. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 had submitted that, the college is a self-financing engineering college which was previously established under a Society which was controlled by the State. He has pointed out that on and from April 21, 2005 the registered Society has been declared as an “autonomous society”. According to him, the governing body of the college is constituted by the Board of Management as per the guidelines of the AICTE. Therefore, according to him all documents relied upon by the writ petitioner prior to April 21, 2005 cannot be taken into consideration for the purpose of deciding the issue as to

whether the educational institution is a “State” within the meaning of Article 12 of the Constitution of India or not.

27. Referring to the meaning of the word “autonomous”, learned Senior Advocate appearing for the respondent Nos. 7 and 8 had submitted that, such word is defined in Section 4(b) of the Representation by People’s Act, 1951. He has referred to the meaning of the word “autonomous” as appearing in the Law Lexicon and Oxford Dictionary. He has pointed out that the State of West Bengal has described the Society as an “autonomous society”.

28. Referring to the various provisions of the All India Council for Technical Education Act, 1987, particularly Sections 2(g), 2(h) and 10 of the Act of 1987, as well as the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations 2020 dated February 4, 2020, he has submitted that, following such Act or Regulation does not make the educational institution a “State” within the meaning of Article 12 of the Constitution of India. He has contended that, the AICTE and the Rules and Regulations are applicable to all technical institutions engaged in imparting technical education. Adherence to the provisions of the Act of 1987 of the Regulations or Rules framed thereunder does not make the educational institution a “State” within the meaning of Article 12 of the Constitution of India.

29. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, the educational institution does not receive any recurring grant from the State Government. Consequently, the educational institution cannot be described as a Government aided institution. Moreover, University Grants Commission has recognized the educational institution as competent to teach up to the Master Degree.

30. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, the educational institution has been categorized as self-financing engineering and technical college by the Department of Higher Education, Government of West Bengal and as a private (self-financing) institute by the West Bengal Joint Entrance Examination Board. He has pointed out that, the burden of the entire remuneration of the college staff is met from the funds of the college.

31. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, Service Rules of the college are purely private contract between the college and its employees. It does not have any statutory flavour. Adherence to any Rules and Regulations does not make the Service Rules as imbued with any statutory flavour. No approval of the State Government or any statutory authorities is required in matters relating to the termination of

services of the employees of the college. Service condition of the Teaching Staff of the educational institute is not backed by any statutory provisions.

32. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, that ***Dr. Gautam Pal (supra)*** contains incorrect assessment of facts. Moreover an appeal directed against such judgment and order is pending being MAT 2002 of 2019.

33. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, although, there is no dispute over the proposition that since the educational institution is discharging a State function, a writ petition as against State is maintainable. However, all writ petitions are not maintainable, particularly of the nature as in the present case, as it relates to service conditions which do not have any statutory flavour. In this regard, he has relied upon ***St. Mary's Education Society & Anr. (supra)*** and particularly paragraphs 66 and 75 thereof. He has pointed out that ***Dr. Gautam Pal (supra)*** was rendered prior to ***St. Mary's Education Society & Anr. (supra)***.

34. Relying upon ***2024 SCC OnLine Cal 2923 (Pinaki Dhar vs. State of West Bengal and Other)*** learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, an institution affiliated with AICTE is not subject to writ jurisdiction so

far as it relates to its employees as AICTE has no direct or indirect control over the employees of an affiliated private institution.

35. Relying upon **1999 SCC OnLine All 1646 (Gajendra Kumar Sharma vs. The General Manager, the Bajpur Co-operative Sugar Factory Ltd. and Others)** learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, since the State does not have direct control over the educational institution the writ petition is not maintainable.

36. Relying upon **2006 Volume 11 Supreme Court Cases 634 (S. S Rana vs. Registrar, Coop. Societies and Another)** learned Senior Advocate appearing for the respondent Nos. 7 and 8 has contended that, merely because State recommends the appointment of the Chairman of the Society it does not mean that the Society or the educational institution under it are amenable to writ jurisdiction.

37. Learned Senior Advocate appearing for the respondent Nos. 7 and 8 has submitted that, since, the service contract between the educational institution and its employees are not governed and/or controlled by any statutory provisions/statutory force, and since the institution does not owe its existence to a statute, a Writ petition is not maintainable against it.

38. Although the merits of the rival contentions of the parties before us have not fallen for decision in this reference, nonetheless,

factual matrix involved needs adumbration to accumulate the issue embroiled herein.

39. Writ petitioner had been appointed as a member of the Educational Institution by a letter dated July 9, 2015. Writ petitioner had joined the Educational Institution on August 26, 2015 on probation. Probation period of the writ petitioner had been extended for a period of 6 months by a letter dated August 24, 2016. Writ petitioner had questioned such extension by a letter dated July 24, 2017. Chairman, Board of Governor of the Educational Institution had by a letter dated January 31, 2017 reserved the right to initiate appropriate proceedings as against the writ petitioner. Thereafter, by a letter dated February 2, 2017, services of the writ petitioner had been terminated. Writ petitioner had filed a writ petition challenging the notice of termination dated February 2, 2017. Such writ petition had been disposed of by an order dated February 1, 2019. An appeal and a cross objection had been preferred before the Division Bench which were disposed of by a judgment and order dated November 1, 2019.

40. By a letter dated November 9, 2019, Chairman, Board of Management of the Educational Institution had appointed the writ petitioner on probation for a maximum period of 6 months 23 days

from his date of joining. Writ petitioner had resumed his service with effect from November 11, 2019.

41. The Board of Governors of the educational institution by a resolution dated May 29, 2020 had resolved to release the writ petitioner from his services with effect from June 2, 2020 since the Board of Governors were not satisfied with the service of the writ petitioner. Pursuant to such resolution, an order dated June 1, 2020 had been issued terminating the services of the writ petitioner. Writ petitioner had filed the present writ petition, inter alia, challenging the decision to terminate his services.

42. On the issue as to whether the Educational Institution or the Society managing it are an Authority or a State within the meaning of Article 12 of the Constitution of India or not the parties have cited various authorities.

43. ***Pradeep Kumar Biswas (supra)*** has dealt with the issue as to when a body can be said to fall within the scope of Article 12 of the Constitution of India. It has held that the test formulated in ***1981 Volume 1 Supreme Court Cases 722 (Ajay Hasia and Othes vs. Khalid Mujib Sheravardi and Others)*** are not rigid set of principles. It has observed that the question in each case would be whether on facts the body is financially, functionally and administratively dominated by or under the control of the

Government. Such control must be particular to that body and must be pervasive. If the answer is in the affirmative then the body is a “State”. However, mere regulatory control, whether statutory or otherwise is not sufficient. In the facts of that case, Council of Scientific and Industrial Research, although a registered society was held to be a “State” within the meaning of Article 12 of the Constitution of India.

44. *Balmer Lawrie & Company Ltd & Ors (supra)* has held that, it is difficult to provide an exhaustive definition of the term authorities which would fall within the ambit of Article 12 of the Constitution of India. It has also held that, the question in each case would be whether in light of the cumulative facts as established, the body concerned, is financially, functionally and administratively under the control of the Government or not. Such control must be particular to the body in question and not general in nature and it must also be deep and pervasive and not merely regulatory.

45. *St. Mary’s Education Society & Anr. (supra)* has considered the issue of maintainability of a writ petition against a private person or body. It has held that, if the impugned action before the writ court has no nexus with public law element even though the private body in question may be discharging public function, writ jurisdiction cannot be invoked in such a case. In the

facts of that case, a writ petition against a private unaided minority educational institution challenging termination order of an employee was held to be not maintainable as no public law element was involved in such action.

46. It would be apposite in the facts and circumstances of the present case to allude to paragraph 75 of **St. Mary's Education Society & Anr. (supra)** which is as follows :-

“75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the 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 a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the 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.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But

such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

47. M.P. Power Management Company Limited Jabalpur (supra) has enumerated what would constitute arbitrariness in an order or decision taken by the State. It has held that, if action/inaction of the State is prima facie arbitrary, writ petition would be maintainable even if the action of the State is in relation to a non-statutory contract.

48. Pinaki Dhar (supra) has decided whether Calcutta Institute of Technology is amenable to writ jurisdiction or not. It has noticed **St. Mary's Education Society & Anr. (supra)** amongst others. It has held that, writ petition against private unaided institute or private body is maintainable when it is discharging public function and duties akin to sovereign functions, as discharged by the State. However, writ petition for enforcement of private contract of service is not maintainable.

49. Gajendra Kumar Sharma (supra) has considered the deep and pervasive State control as laid down in **Ajay Hasia (supra)**. It has observed that, if restrictions or protections are provided in the

management of a corporation in the form of a statute by exercising certain control to a certain extent while leaving the entire decision making process outside the scope of control, then it would be difficult to assume that the State control is deep and pervasive.

50. S. S. Rana (*supra*) has held that, general regulations under a statute do not render activities of the body so regulated as subject to such control of the State as to bring it within the meaning of State under Article 12 of the Constitution of India.

51. Law Lexicon has explained the word “autonomous” as possessing self-government. It has also noted that autonomous power is akin to having indefinite powers which cannot be encroached upon by the Centre.

52. The present writ petition centres around a contract of employment that has been entered into by a Society registered under the West Bengal Societies Registration Act, 1961 and the writ petitioner. To answer the issue of maintainability we have to find out if

- i. the employer had the status of “State” within the expansive definition of Article 12,
- ii. the service conditions of the writ petitioner were regulated by statutory provisions,
- iii. the action complained of has public law element.

53. In the realm of service matters satisfaction of any of the three conditions enumerated in the paragraph above would have made a writ petition against the employer maintainable. We have drawn sustenance of such a view from paragraph 75.2 of **St. Mary's Education Society & Anr. (supra)** particularly the last sentence thereof.

54. On the issue of maintainability of the writ petition, it has been contended on behalf of the respondent Nos. 5 to 8 that the organizing Society was declared as an “autonomous society” on and from April 21, 2005. The mere fact that, the writ petitioner was an employee under a Society registered under the West Bengal Societies Registration Act, 1961 does not ipso facto make the writ petition not maintainable or the Society not to be within the expansive definition of “State” under Article 12 of the Constitution of India. In **Pradeep Kumar Biswas (supra)** Central Council of Scientific and Industrial Research although a registered society, has been held to be a “State” within the meaning of Article 12 of the Constitution of India. In the facts and circumstances of the present case, the questions that have to be answered are whether there is financial, functional and administrative control of the State on the Society and whether such control is deep and pervasive or not.

55. The educational institution namely RCC Institute of Technology was established on September 7, 1999. It was functioning with the active collaboration of the Department of Higher Education, Government of West Bengal and the Department of Information Technology, Union of India. Government of India transferred the lead role in the management of the educational institution to the Department of Higher Education, Government of West Bengal on September 1, 2003. For the period between December 4, 2003 till December 29, 2003, the educational institution was under the Department of Higher Education, Government of West Bengal. It was under an ad hoc committee headed by the Joint Director, Directorate of Technical Education, Government of West Bengal from the period of December 30, 2003 till April 21, 2005.

56. In view of such management of the educational institution concerned, it has been conceded at the bar that, the educational institution was falling within the expansive definition of State under Article 12 of the Constitution of India till April 20, 2005. Apart from such concession at the bar, materials on record have established the fact that the educational institution was falling within the definition of State under Article 12 of the Constitution of India.

57. The rival parties are at issue with regard to the status of the concerned educational institution on and from April 21, 2005 on which date it came under the management and control of a society registered under the West Bengal Societies Registration Act, 1961.

58. The educational institution came under the management and control of the concerned society with effect from April 21, 2005. The concerned society was established and registered under the provisions of the West Bengal Societies Registration Act, 1961. The society is governed by the provisions of the West Bengal Societies Regulation Act, 1961 and the West Bengal Society Registration Rules, 1963. There is a memorandum of association of the concerned society as also a regulation of the society.

59. The objects clause of the organizing society as appearing from the memorandum of association of society at Clause 3.14 allows the society to make, add, vary and amend rules for the conduct of the affairs of the society with the prior approval of the State Government.

60. Memorandum of association of the society in Clause 9 permits the State Government the right to cause an inspection to be made of the society, its buildings, laboratories, its examinations, teaching and other work conducted or done by the society and to cause an enquiry to be made if considered necessary, in respect of any matter connected with the society. Clause 9 of the memorandum

of association therefore permits the State Government to make an enquiry with regard to any of the affairs of the society at any point of time as it deems necessary.

61. The scheme of management put in place in respect of the society and the concerned educational institution appearing from the memorandum of association of the society and the regulation of the society is that, the educational institution is placed under the management and control of the society. The society is composed of members who constitute the Board of Management of the society. There would be a Chairman of such Board of Management. The management and affairs of the society vests in the Chairman. The Board of Management manages the educational institution under the society through the Managing Committee/Governing Body. Board of Management of the society frames the rules and regulations for the management and administration of the educational institution.

62. Regulation 4 of the organizing society regulates the membership of the society. It provides that the members of the Society will be nominated by the Department of Higher Education, Government of West Bengal. Only persons who are admitted as members according to the regulation of the society can be members of the society. The term of office of the Board of Management of the Organizing Society is prescribed to be for a period of 3 years under

regulation 6. The regulations of the Society contemplate both expulsion of members as well as filling of vacancies in the Board of Management in Regulations 8 and 9 respectively. Expulsion of members under the regulations of the Organizing Society is to be made with the consent of the Department of Higher Education, Government of West Bengal. Department of Higher Education, Government of West Bengal retains the right to fill up vacancies in the Board of Management occurring due to resignation, death or otherwise.

63. Regulation 11 prescribes the composition of the Board of Management of the Organizing Society. It prescribes that, the Board of Management shall consist of a Chairman, Vice-Chairman, Principal Secretary and Executive Members. Executive Members Council including office bearers must be a minimum of 7 with a maximum of 21. Department of Higher Education, Government of West Bengal retains the right to nominate the Chairman of the Board of Management. State Government retains the power to grant approval to the appointment of the Members/Director of the educational institute operating under the Society. It also prescribes that the Principal/Director shall be Member Secretary of the Society.

64. Regulation 12 of the regulation of the society defines the powers and functions of the Board of Management. Amongst these,

Regulation 12 permits the Board of Management to frame the Constitution and regulate the procedure of such committee/body and to delegate to them such powers which are in conformity with the regulating authorities like the State Governments/AICTE. It also permits framing such regulations for the management and administration of the institution set up by the society and alter and vary the same from time to time and make new rules and regulations provided that such rules and regulations shall in no case be inconsistent with the rules and regulations of the State Government and other regulatory authorities.

65. Regulation 21 of the regulations of the organizing society specifies that, the organization operating under the society will be governed according to the service rule, administrative rule, academic rule and financial rule of the society and that, while framing such rules care should be taken so that no financial liability past, present or future, whatsoever, will devolve upon the State with respect to the fixing of the terms and conditions, pay scale, retirement and all other financial benefits.

66. The scheme of management of the society and the concerned educational institution is such that, the State Government retains the power to appoint the members to the society. Tenure of membership to the society is for a period of 3 years. No person or

body other than the State Government is entitled to appoint a member of the society. Expulsion of a member from the society is also with the approval of the State. Therefore, members to the society can only be appointed by the State. Their continuation and expulsion is at the pleasure of the State. In any event, the period of membership is pegged at 3 years. Consequently, State Government can replace a member which in its perception is not adhering to its dictates. Membership in the society is at the pleasure of the State Government. In other words, a member even after being appointed is not permitted by the scheme of the memorandum and regulation of the society to act independently.

67. Board of Management of the society is composed of the members appointed by the State Government. The principal of the educational institution who becomes member secretary of the Board of Management by virtue of the regulations of the society may not be an appointee of the State Government. If such principal does not adhere to the direction of the State Government, he can be expelled from the Board of Management subject to the approval of the State Government.

68. Board of Management is in overall charge of the society. This will appear from Regulation 12 (xiv) amongst others. It mandates that the Chairman, Vice-Chairman and Secretary will act in

accordance with the decision of the Board of Management. It also mandates that in the event of any dispute between the Chairman, Vice-Chairman and the Secretary on one part and the Board of Management on the other, the decision of the Board will be final.

69. Under Regulation 12(iii) of the regulations of the society, Board of Management is required to set up a managing committee/governing body from amongst those of other persons nominated by required agencies for routine and day to day management and administration of any institution under the society subject to the ultimate supervision and control of the Board of Management. Appointment of members of such managing committee/governing body is to be for a period not exceeding 2 years. The Board of Management retains the right to frame the constitution and regulate the procedure of such managing committee/governing body and to delegate to them such power as the Board of Management may consider necessary.

70. Day to day affairs of the concerned educational institution may be conducted by the managing committee/governing body of such educational institution. Nonetheless, every decision of the managing committee/governing body is subject to the supervision and control of the Board of Management. Board of Management of the society as noted above is appointed by the State Government.

71. State Government therefore appoints the Board of Management which in turn constitutes the governing body/managing committee for the educational institution. State retains deep and pervasive control over every aspect of the educational institution through the Board of Management which the State gets to appoint. The control of the State, in the facts and circumstances of the present case, over both the society and the educational institution is deep and pervasive. Such control relates to function, finance and administration of the society as well as the educational institution under the society.

72. In the facts and circumstances of the present case, management, finance and administration of the society is controlled by the members of the Board of Management who are appointed by the State.

73. None of the Board of members have any independent existence and owe their membership in the society to the pleasure of the State. Board of Management of the society has the power to appoint the governing body/managing committee of the educational institution. Such members in turn owe their existence to the members of the Board of Management. Board of Management has the power to regulate the affairs of the governing body/managing committee of the educational institution. Governing body/managing

committee of the educational institution in turn looks after the day to day affairs of the educational institution. This chain of command put in place through the memorandum of association and regulation of the society has the effect of vesting the ultimate control of every affair both of the society as well as the educational institution under it with the State. The society and the educational institution under the society are alter ego of the State.

74. On the aspect of finance it is claimed on behalf of the respondents that, neither the society nor the educational institution is supported by the State financially. Past conduct of the State with regard to the society prior to April 21, 2005 according to the respondents in the reference are of no consequence.

75. The land on which the educational institution is operating from was given by the State. Initial set up and every financial assistance for running the educational institution was given by the State. A portion of the financial support was from the Central Government. The society which is claimed to be an autonomous society registered on April 21, 2005 under the West Bengal Societies Registration Act, 1971 inherited all of such benefits.

76. Subsequent to April 21, 2005, there are correspondence galore which establish that, the society had claimed itself to be government aided and obtained benefits from the Central

Government and authorities on such representation. The Article 12 authorities had treated the educational institution of the society as government aided.

77. In response to a query raised under the Right to Information Act, 2005, State Project Facilitation Unit, West Bengal by a writing dated April 18, 2012 stated that the educational institution is classified as a Government aided institute. AICTE by a writing dated March 19, 2013 acknowledged the educational institution as Government aided. While granting approval to the educational institution, AICTE by a writing dated June 4, 2014 treated the educational institution as Government aided. It continued to do so in 2019. Website of Ministry of Human Resource Development classified the educational institution as Government aided. National Board of Accreditation by a writing dated May 27, 2016 classified the educational institution as Government aided. National Project Implementation Unit of the Central Government treated the educational institution as Government project in 2016. State Project Facilitation Units under the Higher Education Department of the State of West Bengal treated the educational institution as Government aided in its meeting held on August 13, 2013. Appellate Authority under the Right to Information Act, 2005 held the educational institution to fall within the definition of Public

Authority under the Act of 2005. It required such public authority to designate both Special Public Information Officer (SPIO) and Appellate Authority in terms of Section 5 (1) and 19(1) of the Right to Information Act, 2005.

78. The educational institution applied to the State as a Government aided college for grants and the same was granted as will appear from a writing dated July 7, 2015. In the Board of Management of the society meeting held on January 18, 2020 it was decided that the issue of Right to Information Act, 2005 shall be referred to the Legal Cell, Higher Education Department, Government of West Bengal, for directions. Such meeting also discussed the proposal of the society submitted with the Higher Education Department seeking necessary financial support to develop a building.

79. An inference on the basis of the facts adumbrated above that, the society as well as the concerned educational institution are within the expansive definition of Article 12 of the Constitution of India is permissible. There is a deep and pervasive control over the functioning, finance and administration of the society as also of the educational institution by the State. Significantly, the learned Single Judge in the judgment and order dated February 16, 2024 observed in paragraph 21 as follows :-

“21..... In the present case, the functional or administrative control of the “State” is not in issue”

80. We should note the conduct of the society and the educational institution with regard to the issue of maintainability that they have raised in the writ petition. The present writ petition is subsequent to an earlier round of litigation between the writ petitioner on one part and the society and the educational institution on the other part, amongst others. The present round of litigation is in continuation of the earlier round and it revolves around the treatment of the writ petitioner as the Principal of the educational institution as well as the decision of the society and the educational institution with regard to his service as a Principal. In the earlier round of litigation which was a writ petition, both before the learned Single Judge as also before the Division Bench none of the respondents had raised the issue of maintainability of the writ petition. Issue of maintainability of the writ petition could have been raised but was not raised by the respondent.

81. For the purpose of answering the present reference, since one of the conditions enumerated in paragraph 47 herein, stands satisfied, we are not minded to discuss the other two conditions noted therein.

82. In such circumstances, the reference is answered by holding that, the present writ petition is maintainable as against RCC Institute of Information Technology.

83. Reference is disposed of accordingly

[DEBANGSU BASAK, J.]

84. I agree.

[MD. SHABBAR RASHIDI, J.]

Later:-

Since we decided the reference only, prayer for stay made on behalf of the appearing parties is considered and rejected.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]