IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17863 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

==

SHAMBHAVI KUMARI
Versus
SABARMATI UNIVERSITY & 3 other(s)

==

Appearance:
HCLS COMMITTEE(4998) for the Petitioner(s) No. 1
MS.P J.JOSHI(3888) for the Petitioner(s) No. 1
MR MITUL SHELAT for the Respondent (s) No. 1

==

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

WEB COPY

Date : 05/08/2022
CAV JUDGMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

"a. to quash and set aside the order dated 12.08.2013 passed by the

Downloaded on : Sat Aug 06 20:06:38 IST 2022

respondent No.1 and issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus directing the respondents to reinstate the petitioner with full back wages and consequential benefits thereto with effect from 13.11.2013;

b. to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of mandamus directing the respondents to pay subsistence allowance during the pendency of this petition as interim relief to the petitioner;

c. to grant such other and further reliefs, as may be deemed to be just and proper."

THE HIGH COURT OF GUJARAT WEB COPY

2. Brief facts of the case are as under:

2.1 The petitioner joined the services with the respondent No.2-University as the Assistant Professor on 06.09.2011 in the pay scale of Rs. 15,000-39,100 with grade pay of Rs. 6,000/-. The petitioner was appointed initially for a period of one year on probation and after completion of the probation period; the petitioner was confirmed in service as the Assistant Professor w.e.f. 01.09.2012. The

Downloaded on : Sat Aug 06 20:06:38 IST 2022

basic salary of the petitioner was revised to Rs. 16,250/- with grade pay of Rs. 6,000/- p.m.

2.2 The respondent No.1 is a State Private University established by the Gujarat Private Universities Act, 2009.

2.3 It appears that by letter dated 12.08.2013 the petitioner was informed that her services were no longer required w.e.f. 13.11.2013 and accordingly, a three months' notice was given to the petitioner starting from 13.08.2013.

2.4 The petitioner therefore preferred an application before the Gujarat Affiliated Colleges Service Tribunal, Ahmedabad, challenging the communication dated 12.08.2013. The Tribunal, by order dated 18.11.2013, disposed of the Application No. 44 of 2013 on the ground that it has no jurisdiction to adjudicate the controversy as the petitioner No. 1 is a State Private University and the petitioner was

सत्यमेव जयते THE HIGH COURT OF GUJARAT WEB COPY

Downloaded on : Sat Aug 06 20:06:38 IST 2022

permitted to withdraw the application with a liberty to file an application before an appropriate forum. The petitioner thereafter preferred this petition with the aforesaid prayers.

2.5 In response to the notice issued by this Court, the respondents filed a detailed reply raising preliminary objection as regards maintainability of the petition on the ground that the respondent being private university is not amenable to invoke jurisdiction of this Court as it is not a State or an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

2.6 This Court by judgment and order dated 16.02.2016 rejected the petition after considering the reply filed by the respondents to the effect that the decision had to be taken to discontinue the service of the petitioner on account of administrative exigencies as explained in Para 8 of the affidavit-in-reply. It was also observed that at the relevant

Downloaded on : Sat Aug 06 20:06:38 IST 2022

point of time, the respondent-University was imparting education for B.A., B.Ed. and PhD programme and there was no other department where the petitioner could have been accommodated on being surplus.

2.7 The petitioner being aggrieved by the aforesaid oral order preferred Letters Patent Appeal No. 718 of 2017. The Division Bench by order dated 05.02.2018 remanded the matter for consideration of the question raised about maintainability of the writ petition by observing as under:

> "2. It is undisputed that in the above writ-petition, a specific question was raised by the respondent-University that writ petition qua the subject prayer was not maintainable and, therefore, judicial review under Article 226 was not permissible. Without adverting to the above question, in paragraph 7 learned Single Judge deemed it proper that on account of administrative exigency, which arose and explained by the University in paragraph 8 of the reply, decision was taken to discontinue the petitioner. No doubt the writ petition came to be rejected but the fact remains that question raised

Downloaded on : Sat Aug 06 20:06:38 IST 2022

> about maintainability of writ petition remained unanswered and we are not inclined to go into such a question in exercise of powers under Clause 15 of the Letters Patent and, accordingly, this appeal is disposed of with a request to learned Single Judge to decide such a question in accordance with law as early as possible. It is clarified that we have not gone into the merit of any of the contention.”

3. Learned advocate Ms. P.J.Joshi for the petitioner submitted that the writ petition is maintainable as the respondent No.1-University is a Private University established under the Gujarat Private Universities Act, 2009 and therefore, this Court has jurisdiction to decide the validity and correctness of the order passed by the respondent-University. It was submitted that the said Act aims to provide for establishment and incorporation of the private Universities in the State of Gujarat so as to provide for qualitative and industry relevant higher education and to regulate its function and for the matters connected therewith and incidental thereto, and therefore, it cannot be said that such

Downloaded on : Sat Aug 06 20:06:38 IST 2022

Universities are not performing public duty and the State Government has direct and pervasive control over the functioning of it. Reference was made to sections 31 to 35 of Chapter-VI of the said Act which stipulates that the Universities constituted under the said Act are bound to comply with all Rules, Regulations Norms etc. of the regulating bodies of the Government of India and provide all such facilities and assistance as may be required by such bodies.

3.1 Reliance was placed on the decision of the Hon'ble Supreme Court in case of **K. Krishnamacharyulu & Ors. v. Sri. Venkateswara Hindu College of Engineering & Anr.** reported in **AIR 1998 SC 295** wherein it is held that the private institutions cater to the needs of the educational opportunities and the teachers appointed in such institutions are entitled to seek enforcement of the order issued by preferring writ petition under Article 226 of the Constitution of India. It was therefore submitted that the

Downloaded on : Sat Aug 06 20:06:38 IST 2022

teachers of the private universities are to be treated as par with the teachers of the Government Universities and their services cannot be terminated without following the due process of law. It was submitted that the respondent No.1-University is a university of teacher education and is bound by the norms of the National Council for Teacher Education [NCTE] as well as the norms of the U.G.C.

3.2 Learned advocate Ms. Joshi further relied upon the decision ***Janet Jeyapaul vs. SRM University and ors.*** reported in ***(2015) 16 SCC 530*** to submit that the Hon'ble Supreme Court in the said case held that the writ petition is maintainable against the deemed university whose all functions and activities were governed by UGC Act,1956 alike other universities and it is an "authority" within the meaning of Article 12 of the Constitution of India. Reliance is placed on paras 29 and 30 of the said decision which read as under:

Downloaded on : Sat Aug 06 20:06:38 IST 2022

"29. Applying the aforesaid principle of law to the facts of the case in hand, we are of the considered view that the Division Bench of the High Court erred in holding that respondent No. 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution. In other words, it should have been held that respondent No.1 is subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.

22. This we say for the reasons that firstly, respondent No. 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to respondent No. 1, which inter alia provides for effective discharge of the public function - namely education for the benefit of public. Fifthly, once respondent No. 1 is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction

Downloaded on : Sat Aug 06 20:06:38 IST 2022

of High Court under Article 226 of the Constitution.”

3.3 On merits, learned advocate Ms. Joshi submitted that the action of the respondent-University in terminating the services of the petitioner suffers from mala fide and is in violation of principle of natural justice inasmuch as neither any show-cause notice was issued by the respondents before issuing the notice for termination of service of the petitioner nor any reason to terminate the service was disclosed to the petitioner at any point of time though the petitioner was confirmed after successful completion of probation period of one year.

3.4 It was submitted that the petitioner has right to know as to why her services were terminated inasmuch as respondent University has discharged the petitioner from services in an unfair manner. Learned advocate Ms. Joshi submitted that the petitioner ought to have been provided an opportunity of defending herself before discharging her

Downloaded on : Sat Aug 06 20:06:38 IST 2022

from service by the respondent-University.

4. Learned advocate Mr.Mitul Shelat appearing for the respondents submitted that respondent No.1 has since being re-named as Sabarmati University, an affidavit to that effect is filed and amendment is also granted by the Court.

4.1 Learned advocate Mr. Shelat submitted that during the pendency of the petition, the petitioner has secured employment in J.G.College of Education as Full Time Faculty and thereafter, the petitioner discontinued her employment with the said University and was subsequently employed in the Central University of Bihar. It was also pointed out by learned advocate Mr. Shelat that the petitioner accepted a cheque of Rs. 41,789/- towards notice pay which has been credited to her account.

4.2 It was submitted that the respondent university is not a State within the meaning of Article 12 of the Constitution of India as it is a Private

Downloaded on : Sat Aug 06 20:06:38 IST 2022

University not receiving any aid from the State or Central Government and it functions only as autonomous academic institution.

4.3 In support of his above submissions reliance was placed on the decision of ***Mukesh Bhavarlal Bhandari and ors vs. Dr. Nagesh Bhandari and ors*** in Special Civil Application No. 4238 of 2020 of this Court wherein in similar facts, it was held by the Co-ordinate Bench of this Court that Indus University which is a private university is not a State or instrumentality of the State within the meaning of Article 12 of the Constitution of India.

4.4 Learned advocate Mr. Shelat submitted that discontinuation of the petitioner in the employment of the respondent-University does not constitute a public action by the public authority which is pre-requisite to invoke writ jurisdiction of this Court.

Downloaded on : Sat Aug 06 20:06:38 IST 2022

4.5 It was submitted that employment and service conditions of an employee would not fall in the category of public function or public duty and while terminating the services of the petitioner, respondent-University has not exercised any sovereign powers. It was pointed out that the respondents have acted in furtherance of contract between the respondent University and the petitioner and therefore, there is no element of public law to be adjudicated under Article 226 of the Constitution of India. In support of his submissions learned advocate Mr. Shelat relied upon the following decisions:

सत्यमेव जयते
THE HIGH COURT OF GUJARAT
WEB COPY

- Satimbla Sharma and others vs. St. Paul's Senior Secondary School reported in (20110 13 SCC 760;

- Sushmita Basu vs. Ballygunge Siksha Samity reported in(2006) 7 SCC 680;

- M/s. Radhakrishna Agarwal vs. State of Bihar and ors reported in(1977) 3 SCC 457;

Downloaded on : Sat Aug 06 20:06:38 IST 2022

- Trigunchan Thakur vs. State of Bihar and ors reported in(2019) 7 SCC 513;

- Indian Institute of Management vs. Ukakant Shrivastava and ors reported in 2002 (1) GLH 330.

4.6 Learned advocate Mr. Shelat submitted that in the matter of ***T.M.A. Pai foundation vs. State of Karnataka*** reported in **(2002) 8 SCC 481,** the Constitution Bench of the Hon'ble Supreme Court has held that the remedy available to the employees aggrieved is to approach the District Judge which has been designated as the Tribunal for redressal of the grievances of the employees and the institution.

4.7 It was therefore, submitted that the dispute raised by the petitioner is in the realm of private law and therefore, the remedy available to the petitioner is to raise private dispute and writ petition under Article 226 is not the remedy for adjudication of the private dispute.

Downloaded on : Sat Aug 06 20:06:38 IST 2022

4.8 On merits learned advocate Mr. Shelat submitted as under:

(1) The Calorx Institute of Education was to commence the B.A (innovative course) from the academic year 2012-13 onwards. The petitioner was offered appointment as Assistant Professor in Calorx Institute of Education by letter dated 06.09.2011 (Pg.11). The petitioner's appointment as Assistant Professor was confirmed with effect from 01.09.2012 vide letter dated 08.10.2012.

(2) The B.A (innovative course) did not receive the desired response. Against the intake of 100 students, only 5 students sought admission of which 2 left mid-stream. There were only three students in the same year. No student was admitted in the year 2013-14. In view of the above, internal review was undertaken and since one faculty member was found surplus, the petitioner being the junior most, it was decided to discontinue the services of the petitioner.

Downloaded on : Sat Aug 06 20:06:38 IST 2022

(3) Letter dated 12.08.2012 was issued informing the petitioner about the decision and that her services will be discontinued with effect from 13.11.2013. She was also given 3 months' notice pay. The payment was duly credited into the account of the petitioner

(4) Other employees who had been recruited have also since resigned with effect from June/July 2014. Even Professor Ratna Rao referred to by the Petitioner is no longer in service. The petitioner has also secured employment initially with J.G. Group of Colleges as full time faculty (Pg.57) and thereafter with the Central University of Bihar.

(5) It would thus be evident that the services of the petitioner were no longer required by the university. The termination of an employee as a result of her services being no longer required cannot be said to be either a dismissal or removal. It is within the competence of the University to take decisions regarding the staffing pattern of a constituent college within the

Downloaded on : Sat Aug 06 20:06:38 IST 2022

University and in reducing the staff employed having regard to the said decision. The Petitioner has no fundamental or legal right to insist in her being continued in employment despite there being no need. No fresh appointment has been made against the said post. For all purposes the post has been abolished/ discontinued.

4.9 In support of his submissions learned advocate Mr. Shelat relied upon the decision of Supreme Court **Avas Vikas Sansthan and anr vs. Avas Vikash Sansthan Engineers Association and ors** reported in **(2006) 4 SCC 132** wherein it is held as under:

> "59. It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a Government Servant has got to be recognized. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a Department which was abolished or

Downloaded on : Sat Aug 06 20:06:38 IST 2022

abandoned wholly or partially for want of funds, the Court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been dislodged."

5. Considering the rival submissions made by both the sides, it appears that the facts are not in dispute. The first question which arises for consideration is as to whether this petition is maintainable and petition filed by the petitioner with the aforesaid prayers can be entertained under Article 226 of the Constitution of India or not?

6. Similar question is decided by the Co-ordinate Bench in case of *Mukesh Bhavarlal Bhandari and ors vs. Dr. Nagesh Bhandari and ors* (supra) wherein, in the fact of the said case, order dated 11.06.2020 passed by the respondent No.2-Indus University terminating the service of the petitioner was challenged. With regard to the issue of maintainability of the petition under Article 226 of the Constitution of India, it was observed as under:

Downloaded on : Sat Aug 06 20:06:38 IST 2022

"8. Much has been said by the learned advocate for the petitioner taking me through the provisions of the Gujarat Private Universities Act, 2009, to submit that the entire process of holding an inquiry right from inception i.e. the issuance of a charge sheet is not in consonance with the provisions of the Gujarat Private Universities Act, 2009.

9. Mr.Anshin Desai, learned Senior Advocate, through his reply and written arguments has justified this proposition by pointing out various sections under the Act to submit that it was within the powers of the governing body to issue a show cause notice and take action of terminating the services of the petitioner. The question is, can this Court get into this controversy in the petition at the hands of the petitioner No.2. who in tandem with the petitioner No.1 has approached this court. My answer to the question is in negative.

10. There are more reasons than one apart from this. Perusal of the Gujarat Private Universities Act, 2009, would indicate that the Private Universities Act was enacted to provide for establishment and incorporation of private universities in the State of Gujarat. The emphasis on establishment of private universities was, as is evident from Section 3(7) that they shall not receive any grant in aid or other financial assistance from the State Government or the Central Government. Essentially, therefore, though the respondent No.2- University carries out what the petitioner would want to profess, public service or public

Downloaded on : Sat Aug 06 20:06:38 IST 2022

functions by advancing education, it is at the hands of the private university, and therefore, the dispute between the petitioner No.2 and that of the University would fall purely in the realm of private contract.

11. Mr.Kavina, learned Senior Advocate, has relied on a decision in the case of Anadi Mukta (supra) and Binny Ltd (supra). However, I would rather fall back on the decision of the Supreme Court in the case of K.K.Saksena vs. International Commission of Irrigation & Drainage., reported in 2015 (4) SCC 672. It will be worthwhile to consider the analysis of Supreme Court while discussing the decisions on hand in the case of Anadi Mukta (supra), Binni Ltd (supra) and in the case of Zee Telefilms Ltd vs. Union of India., reported in 2005 (4) SCC 649. The relevant paras of the said decision read under:

> "31. We have given our thoughtful consideration to the arguments of learned counsel for the parties.
>
> 32. If the authority/body can be treated as a 'State' within the meaning of Article 12 of the Constitution of India, indubitably writ petition under Article 226 would be maintainable against such an authority/body for enforcement of fundamental and other rights. Article 12 appears in Part III of the Constitution, which pertains to 'Fundamental Rights'. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which

Downloaded on : Sat Aug 06 20:06:38 IST 2022

deals with powers of High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.

33. In this context, when we scan through the provisions of Article 12 of the Constitution, as per the definition contained therein, the 'State' includes the Government and Parliament of India and the Government and Legislature of each State as well as "all local or other authorities within the territory of India or under the control of the Government of India". It is in this context the question as to which body would qualify as 'other authority' has come up for consideration before this Court ever since, and the test/principles which are to be applied for ascertaining as to whether a particular body can be treated as 'other authority' or not have already been noted above. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be a 'State' under Article 12. Power is extended to issue

Downloaded on : Sat Aug 06 20:06:38 IST 2022

directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also 'for any other purpose'. Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject matter which can be dealt with under this Article is also wider in scope.

34. In this context, the first question which arises is as to what meaning is to be assigned to the expression 'any person or authority'. By catena of judgments rendered by this Court, it now stands well grounded that the term 'authority' used in Article 226 has to receive wider meaning than the same very term used in Article 12 of the Constitution. This was so held in Shri Anadi Mukta Sadguru (supra). In that case, dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained to payment of certain employment related benefits like basic pay etc. Matter was referred to the Chancellor of the Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award. Teachers filed the writ petition seeking mandamus and direction to the

Downloaded on : Sat Aug 06 20:06:38 IST 2022

trust to pay them their dues of salary, allowances, provident fund and gratuity in accordance therewith. It is in this context an issue arose as to whether writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private trust running an educational institution. The High Court held that the writ petition was maintainable and said view was upheld by this Court in the aforesaid judgment.

35. The discussion which is relevant for our purposes is contained in paras 14 to 19. However, we would like to reproduce paras 15, 17 and 20, which read as under:

> "15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting

Downloaded on : Sat Aug 06 20:06:38 IST 2022

education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See - The Evolving Indian Administrative Law by M.P. Jain (1983) p.266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super- added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

xx xx xx

17 There, however, the prerogative writ of mandamusmus (sic) confined only to public authorities to compel performance of public duty. The 'public authority' for them means every body which is created by statute - and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities;. But there is no such limitation for our High Courts to issue the writ 'in the nature of

Downloaded on : Sat Aug 06 20:06:38 IST 2022

mandamus'. Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

xx xx xx

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning like the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art.32. Article 226 confers power on the High Courts 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."

Downloaded on : Sat Aug 06 20:06:38 IST 2022

36. In para 15 of Aadi Mukta Sadguru case, the Court spelled out two exceptions to the writ of mandamus, viz. (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aiding institution, because of this reason, it discharges public function, like Government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating University are applicable to such an institution, being an aided institution. In such a situation, held the Court, the service conditions of academic staff were not purely of a private character as the staff had super-aided protection by University's decision creating a legal right and duty relationship between the staff and the management.

THE HIGH COURT OF GUJARAT WEB COPY

37. Further, the Court explained in para 19 that the term 'authority' used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 31, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term 'authority' appearing in Article 226 of the Constitution would

Downloaded on : Sat Aug 06 20:06:38 IST 2022

cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

38. In K. Krishnamacharyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr. [6], this Court again emphasized that

> "4.....where there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart education get an element of public interest in performance of their duties."

In such a situation, remedy provided under Article 226 would be available to the teachers. The aforesaid two cases pertain to educational institutions and the function of imparting education was treated as the performance of public duty, that too by those bodies where the aided institutions were discharging the said functions like Government institutions and the interest was created by the Government in such institutions to impart education.

39. In G. Bassi Reddy v. International Crops Research Institute & Anr.[7], the Court was concerned with the nature of function performed by a research institute. The Court was to examine if the function performed by

Downloaded on : Sat Aug 06 20:06:38 IST 2022

such research institute would be public function or public duty. Answering the question in the negative in the said case, the Court made the following pertinent observations:

> "28...Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities."

THE HIGH COURT OF GUJARAT WEB COPY

Merely because the activity of the said research institute enures to the benefit of the Indian public, it cannot be a guiding factor to determine the character of the Institute and bring the same within the sweep of 'public function or public duty'. The Court pointed out:

> "28...In Praga Tools Corporation v. C.V. Imanual, AIR 1960 (sic -1969)

Downloaded on : Sat Aug 06 20:06:38 IST 2022

SC 1306, the Court construed Art. 226 to hold that the High Court could issue a writ of mandamus" to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

> "6...an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal v. Union of India, 1957 SCR 738)."

40. Somewhat more pointed and lucid discussion can be found in the case of Federal Bank Ltd. v. Sagar Thomas & Ors.[8], inasmuch as in that case the Court culled out the categories of body/ persons who would be amenable to writ jurisdiction of the High Court. This can be found in para 18 of the said judgment, specifying eight categories, as follows:

> "18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body;

Downloaded on : Sat Aug 06 20:06:38 IST 2022

> (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

41. In Binny Ltd. & Anr. v. V. Sadasivan & Ors. [9], the Court clarified that though writ can be issued against any private body or person, the scope of mandamus is limited to enforcement of public duty. It is the nature of duty performed by such person/body which is the determinative factor as the Court is to enforce the said duty and the identity of authority against whom the right is sought is not relevant. Such duty, the Court clarified, can either be statutory or even otherwise, but, there has to be public law element in the action of that body.

42. Reading of the categorization given in Federal Bank Ltd. (supra), one can find that three types of private bodies can still be amenable to writ jurisdiction under Article 226 of the Constitution, which are mentioned at serial numbers (vi) to (viii) in para 18 of the judgment extracted above.

43. What follows from a minute and careful reading of the aforesaid judgment of this Court is that if a

Downloaded on : Sat Aug 06 20:06:38 IST 2022

person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contracts or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

11.1 The Supreme Court has drawn a distinction by discussing Anadi Mukta (supra) and found that even if it is a private body running substantially on State funding and a private body discharging public function or positive application of a public nature, a writ under Article 226 of the Constitution of India would be maintainable. However, what needs to be seen is, the Court spelled out two exceptions, namely, if the rights are purely of a private character, no mandamus would lie, and if the management of the college is purely a

Downloaded on : Sat Aug 06 20:06:38 IST 2022

private body, a mandamus will not lie.

11.2 The Court in the facts of the case in K.K. Saksena (supra) further held that the body therein even in addition to not being a State within the meaning of Article 12, even if it carried out public functions it would not make it amenable to the writ jurisdiction of this Court. The Court held as under:

> "43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

Downloaded on : Sat Aug 06 20:06:38 IST 2022

11.3 Considering the facts of the present case, particularly when the present petitioner no.2 has tried to enforce a contract of service which is in the realm of a private contract and in addition thereto by making the Petitioner No.1 of the Trust dispute as Petitioner No.1, I am inclined to hold against the petitioner.

11.4 Even in the case of State of Gujarat vs. Meghji Pethraj Shah (supra), while considering the admission to medical colleges, the Hon'ble Supreme Court did hold that when the dispute arises in the realm of a private contract, a writ petition would not be maintainable.

xxxx

13. Having held that the petition is not maintainable being a remedy under the realm of a private contract in view of the decision of the Supreme Court in the case of K.K.Saksena (supra), the Court would therefore not go further in getting into the merits of the Inquiry Committee's Report. However, what is evident also from the amendment made to the petition is that just for the sake of amending the petition and the pleadings, the order of 11.06.2020 is annexed and a prayer is added. This finding may sound harsh to the petitioners but it has to be appreciated from the context when the petition was initially moved. I have, in my earlier part of the decision, deprecated the conduct of the petitioner no.2 in joining hands in tandem with the petitioner no.1 in filing the petition and trying to settle scores of a trust dispute. The casual and the cavalier

Downloaded on : Sat Aug 06 20:06:38 IST 2022

attitude of the petitioner in just amending the petition by only adding a prayer of quashing and setting aside the order of termination without really setting out the grounds on which and how termination was bad goes to the basic tenets of pleadings. No pleading as to how the order was bad have been substantially supported in the pleadings of the petition. Extensive submissions were made over a period of time by the learned Senior Advocate Mr. Kavina as to how the petitioner's termination was bad, that it was in violation of principles of natural justice, that it was malafide, that it was against the tenets of fair play, inasmuch as, what was relied upon was complaints made and statements taken behind the back of the petitioner. These submissions cannot form a foundation to support the petitioner who casually files a petition, amends it by only adding a prayer to challenge the order of termination, particularly when he thinks it fit to fight for his cause challenging the termination in company of a trustee as petitioner No.1 and brings in disputes inter-se of a trust in between. That also supports this Court's conclusion that it is essentially a dispute in the realm of a private contract in terms of the decision of K.K.Saksena (supra). I am of the view that considering the decisions of the Apex Court as above, if at all there is an alleged arbitrary action, the same may give cause for the aggrieved person to initiate civil action before the Civil Court but in the facts of the present case not a writ petition against a private educational institution governed by the Gujarat Private Universities Act, 2009.”

Downloaded on : Sat Aug 06 20:06:38 IST 2022

7. In the case of ***Indian Institute of Management vs. Ukakant Shrivastava and ors*** reported in ***2002 (1) GLH 330*,** it is held as under:

> "180. In the case before us, there is sufficient material on record and on the basis of the material on record, we have come to the conclusion that there is nothing to show that over all effective control rest with the government. To arrive at a conclusion, we have considered number of decisions of the Apex Court, the decisions delivered by the Division Benches of this Court and the material placed on record. We are of the view that IIMA cannot be said to be a State within the meaning of Article 12 of the Constitution.
>
> 181. Learned Single Judge held that the Institute performs public functions in the field of management education and research. In reality, according to learned Single Judge, IIMA is performing in the field of management education, training and research and is also involved in like such activities. The Institute, therefore, according to learned Single Judge is a State within the meaning of Article 12 of the Constitution. It is required to be stated that for the purpose of arriving at a conclusion that the Institute is a State or not, various

Downloaded on : Sat Aug 06 20:06:38 IST 2022

tests are laid down. We have considered the tests laid down by the Apex Court in the case of AJAY HASIA (supra) and we are not in agreement with the views expressed by the learned Single Judge that because the Institute is in the field of management education and research, it could be a State within meaning of Article 12 of the Constitution of India. One should not lose sight of the fact that in the modern concept of welfare State, independent institution, corporation and agency are generally subject to the State control. The State control does not render such bodies as State under Article 12. In the case of UNNIKRISHNAN (supra), the Apex Court has pointed out, after considering the various decisions rendered earlier in paragraph 76 that it is impossible to hold that a private educational Institute either by recognition or by affiliation to the University could ever be called a instrumentality of the State. We have considered the case of CHANDER MOHAN (supra) wherein the functions of the NCERT were examined and the Apex Court pointed out that it cannot be said to be a 'State'. A Division Bench of this Court, in the case of GSFC LTD (supra) and another Division Bench in the case of DR. C.A. SHAH (supra) considered earlier decisions and applying the tests laid down in the case of AJAY HASIA, in DR. C.A. SHAH's case, the Court pointed out that the decision of AJAY HASIA nowhere lays down that school run by a public trust is State or 'other authority' or 'instrumentality of State' as

Downloaded on : Sat Aug 06 20:06:38 IST 2022

envisaged under Article 12 of the Constitution.

182. In view of the evidence placed on record and the various decision, in our opinion, it is not correct to say that IIMA is performing public function in the field of management education, training and research and is also involved in like such activities, and, therefore, it is a State within the meaning of Article 12 of the Constitution of India. However, we would like to clarify here that if IIMA acts in breach of Article 14 of the Constitution of India in connection with admission of students in the Institute etc., the Court may invoke its jurisdiction under Article 226 and grant relief to the students, not because it is a State under Article 12, but because granting admission to students involve public duty and calls for fairplay and violation thereof would tantamount to breach of Article 14 of Constitution of India. In the case of UNNIKRISHNAN (supra), the Apex Court pointed out this distinction in paragraph 77 and has held that what is discharged by an educational institution is a public duty, that requires to act fairly and in such a case, it will be subject to Article 14. In our opinion, therefore, the decision in the case of KMA MEMON does not lay down a correct law.

183. In view of the facts and circumstances of the case, the

Downloaded on : Sat Aug 06 20:06:38 IST 2022

appeal is required to be allowed, and is hereby allowed. The judgment and order passed by the learned Single Judge on 29th September 1993 in Special Civil Application No. 77 of 1993 is hereby quashed and set aside. No order as to costs."

8. In case of ***Trigunchan Thakur vs. State of Bihar and ors*** reported in **(2019) 7 SCC 513,** it is held as under:

"5. Being aggrieved, the appellant has filed L.P.A. NO.670 of 1999 before Division Bench of the High Court. The Division Bench vide impugned order dated 21.01.2008 dismissed the L.P.A. filed by the appellant and affirmed the order passed by learned Single Judge. In the impugned order, the Division Bench of the High Court has also placed reliance on Chandra Nath Thakur v. The Bihar Sanskrit Shiksha Board & Ors., 1999 (1) PLJR 529 and held that a teacher of a privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management Committee. The Division Bench also pointed out that the consent order passed by the High Court in C.W.J.C. NO.10698 of 1994 cannot confer jurisdiction on this Court and does not make the Managing Committee "State" within the meaning of Article 12 of the Constitution of India.

Downloaded on : Sat Aug 06 20:06:38 IST 2022

> (6) Having considered the submissions of learned counsel for the parties and the materials on record, we do not find any ground to take a different view. In the result, the appeal is dismissed. No costs."

9. The reliance placed on behalf of the petitioner on the decision of the Hon'ble Supreme Court in case of _Janet Jeyapaul vs. SRM University and ors_ (supra) would not be applicable as in the fact of the present case, termination of the petitioner is an issue to be decided in the realm of private contract, as the petitioner has remedy under the Civil Law in view of the decision of the Supreme Court in case of _K.K.Saxena vs. International Commission of Irrigation and Drainage_ reported in _2015 (4) SCC 670_ referred to and relied upon by the Co-ordinate bench in case of _Mukesh Bhavarlal Bhandari and ors vs. Dr. Nagesh Bhandari and ors_ (supra). It is, therefore, not necessary to go into the merits of the case with regard to the issue of show-cause notice for providing an opportunity of hearing resulting into breach of principle of natural justice and whether the action of the respondent-University is unfair or not because all such disputes essentially are in the realm of

THE HIGH COURT OF GUJARAT WEB COPY

Downloaded on : Sat Aug 06 20:06:38 IST 2022

private contract and therefore, if at all there is an alleged arbitrary action on the part of the respondent, the same would give cause to the petitioner to initiate civil action before the Civil Court but in the facts of the present case, the writ petition against the private educational institution governed by the Gujarat Private Universities Act, 2009 would not be maintainable.

10. In view of the above conspectus of law, the petition is not entertained as the same would not be maintainable in the facts of the case and petitioner is entitled to take legal remedy by way of an appropriate proceeding before the appropriate forum under the Civil Law for redressal of the grievances raised in this petition.

11. The petition is accordingly dismissed with no order as to costs. Rule is discharged.

(BHARGAV D. KARIA, J)

JYOTI V. JANI

Downloaded on : Sat Aug 06 20:06:38 IST 2022