

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 09th May, 2023

WRIT APPEAL No. 1619 of 2022

BETWEEN:-

LAURELS SCHOLL INTERNATIONAL THROUGH ITS AUTHORIZED REPRESENTATIVES MR. HUKUMCHAND PANCHAL S/O SHRI RAMESHWAR PANCHAL LAURELS SCHOOL INTERNATIONAL TALAVALI CHANDA, A.B. ROAD. MANGLIYA, DISTRICT INDORE (MADHYA PRADESH)

.....APPELLANT

(SHRI GAURAV CHHABRA, LEARNED COUNSEL FOR THE APPELLANT)

AND

UNION OF INDIA DEPARTMENT OF SCHOOL EDUCATION AND LITERACY MINISTRY OF EDUCATION THROUGH SECRETARY 124-C SHASTRI BHAWAN, NEW DELHI (DELHI)

VINEETA NAIR W/O PRADEEP NAIR, AGED 46 YEARS, 605 SIMRAN RESIDENCY, KANADIA ROAD, BENGALI SQUARE, INDORE (MADHYA PRADESH)

3. RENU SINGH W/O M.K. SINGH, AGED 54 YEARS, A-1-503 KAROL BAGH, BHAWRASLA, INDORE (MADHYA PRADESH)

4. MONICA KHANDELWAL W/O PRAKASH KHANDELWAL, AGED 50 YEARS, 153 ALOK NAGAR, KANADIA ROAD, INDORE (MADHYA PRADESH)

5. NEELU ANAND W/O ABHIJEET SINGH ANAND, AGED 52 YEARS, B-189, MIG DUPLEX, BEHIND CHL HOSPITAL, INDORE (MADHYA PRADESH)

6. RINITA JAIN W/O TAPAN JAIN, AGED 48 YEARS, EH-58, SCHEME NO. 54, VIJAY NAGAR, INDORE (MADHYA PRADESH)

7. VRUSHALI NIMGAOKAR W/O RISHIKESH NIMGAOKAR, AGED 45 YEARS, 203 ELITE TOWER, PARK ROAD INDORE (MADHYA PRADESH)

- SUDHA JHA W/O RAJESH JHA, AGED 52 YEARS, RH-4, CLASSIC
8. PURNIMA ESTATE, KHAJRANA RING ROAD, INDORE (MADHYA PRADESH)
9. JAISON JOYS S/O JOYS JOHN, AGED 31 YEARS, 202, NAVYA AVENUE APT., 13 PARICHARIKA NAGAR, INDORE (MADHYA PRADESH)
10. ASHIMA SHASTRI MODI W/O GOURAV MODI, AGED 34 YEARS, 188/C, KALANIBAGH, DEWAS (MADHYA PRADESH)
11. NAVIN LODWAL S/O ARJUN LODWAL, AGED 40 YEARS, 19-B, DR. AMBEDKAR NAGAR, INDORE (MADHYA PRADESH)
12. SONALI PANDIT W/O LATE SHRI ATUL PANDIT, AGED 50 YEARS, 251, MR-4, MAHALAXMI NAGAR, INDORE (MADHYA PRADESH)
13. SASHI DADHICH W/O BIJENDRA DADHICH, AGED 50 YEARS, 67, VYENKATESH NAGAR, INDORE (MADHYA PRADESH)
14. NISHA SHARMA W/O LATE SHRI SANJAY SHARMA, AGED 53 YEARS, H-9, MIG COLONY, INDORE (MADHYA PRADESH)
15. ARCHANA MUNDRA D/O SHRI RAMPRASADJI JOTLA, AGED 52 YEARS, 29/1, RACE COURSE ROAD, DR. R.S. BHANDARI MARG, INDORE (MADHYA PRADESH)
16. ROHIT BIWAL S/O SHRI RAMESH BIWAL, AGED 35 YEARS, 35-A/4, MAYUR NAGAR, INDORE (MADHYA PRADESH)
17. RAJVEER SINGH RATHORE S/O SHRI MADAN SINGH RATHORE, AGED 28 YEARS, 110-A, SWASTHYA NAGAR, INDORE (MADHYA PRADESH)
18. PRINCIPAL SECRETARY SCHOOL EDUCATION DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
19. COLLECTOR/ DISTRICT MAGISTRATE INDORE (MADHYA PRADESH)
20. COUNCIL FOR INDIAN SCHOOL CERTIFICATE EXAMINATIONS THROUGH ITS SECRETARY PRAGATI HOUSE, 3RD FLOOR, 47-48 NEHRU PLACE, NEW DELHI (DELHI) - 110019

.....RESPONDENTS

(SHRI HIMANSHU JOSHI, LEARNED ASSTT. SOLICITOR GENERAL FOR THE RESPONDENT NO.1/UNION OF INDIA)

(SHRI RISHI SHRIVASTAVA, LEARNED COUNSEL FOR THE RESPONDENTS NO. 2 TO 17))

(SHRI AAKASH SHARMA, LEARNED GOVT. ADVOCATE FOR THE RESPONDENT NO. 18 & 19)

Reserved on : 03.01.2023

Pronounced on : 09.05.2023

This appeal having been heard and reserved for orders coming on for pronouncement this day, Hon'ble Shri Justice S.A. DHARMADHIKARI pronounced the following

ORDER

Heard finally with the consent of both the parties.

The present writ appeal under Section 2(1) of the Madhya Pradesh Ucha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 has been filed assailing the order dated 28.10.2022 passed by the learned Single Judge in W.P. No. 11165/2021 whereby the learned Single Judge has rejected the preliminary objection with regard to maintainability of the writ petition against private unaided minority educational institution and held that the writ petition is maintainable against the private unaided institutions.

2. Brief facts of the case are that the appellant/respondent (respondent in writ petition) is a private unaided minority educational institution imparting education to students in Indore and does not receive any grant either directly or indirectly, from the Government. The appellant is affiliated to Council for the Indian School Certificate Examinations (for short 'CISCE' hereinafter) Thus, appellant is a private institution and is solely dependent on the fees which is received from the parents for day to day functioning including salary of its teaching and non-teaching staff.

3. The respondents herein had filed a writ petition bearing W.P. no. 11165/2021 challenging their termination. The respondents herein have prayed for the following reliefs in the writ petition:

“ Appropriate writ, Order or Direction may kindly

be issued that,

(1) *Retrospective termination of the petitioners be held as illegal and be set aside.*

(2) *Respondent No.5 be directed to make payment of full salary to the petitioners till date, including the payment of back wages alongwith interest of 12% p.a. thereon.*

(3) *Respondent No.3 be directed to initiate inquiry against respondent no. 5 for illegalities committed by Respondent no. 5.*

(4) *Respondent No. 4 be directed to cancel the affiliation of Respondent No.5.*

Any other relief that this Hon'ble Court may deem fit in the facts and circumstances of this case may kindly be passed in the interest of justice.”

4. During the pendency of petition, the present appellant (respondent no.5) filed preliminary objection with regard to maintainability of the writ petition on the ground that it is a settled principle of law that the relief as sought by the respondents in the writ petition under Article 226 of the Constitution of India cannot be granted by this Court, as the appellant is a private unaided minority institution. The respondent no.2 to 17 were appointed as teachers by the appellant purely on contractual basis governed by the service rules of the institution, therefore, the writ of mandamus cannot be issued against a private body, such as the appellant. The learned counsel for the appellant submitted that on the aforesaid grounds, the writ petition ought to have been dismissed by the

learned Single Judge.

5. Learned counsel further submitted that from the appointment order, it is clear that the respondent(s) no.2 to 17 were appointed purely on contract basis and thus the issue of termination was covered under the ambit of private law and as such no public element was involved. It is settled principle of law that private unaided minority institution such as appellant herein can be made amenable only when the action and inaction of such institution relates to public function performed by such institution whereas the issue under challenge in the said writ petition was arising out of completely private contract.

6. Learned counsel for the appellant relied upon the order passed in the case of **Apollo Tyres Ltd. Vs. C.P. Sebastian reported in (2009) 14 SCC 360** wherein it has been held that “ a contract of personal service includes all matters relating to the service of employee – confirmation, suspension, transfer, termination etc”. Thus, by no stretch of imagination, the learned Single Judge ought to have dismissed the writ petition filed against the present appellant.

7. On the other hand, learned counsel for the respondents opposed the prayer and submitted that the application filed by the appellant was misconceived as appellant is an unaided private school, but it is very much imparting education which is the public function and the respondents are teachers, therefore, learned Single Judge has rightly come to the conclusion that they are amenable to the writ jurisdiction.

8. Heard, learned counsel for the parties and perused the record.

9. The Apex Court in the case of **Ramesh Ahluwalia Vs. State of Punjab and Others** reported in **(2012) 12 SCC 331** in para 11 to 14 has

held as under.

“11. On the other hand, Mr. S.S. Ray, learned counsel appearing on behalf of respondent Nos.2-4 submitted that no writ petition would be maintainable against the respondent - institution. In support of his submission, learned counsel has placed reliance in the case of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & Ors., (2002) 5 SCC 111, particularly making reference to paragraph 40 of the aforesaid judgment. Paragraph 40 of the aforesaid judgment is extracted hereunder:

40. “The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

12. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra), there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State Authorities.

13. In the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under :

“20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 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.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: “To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.” We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available “to reach injustice wherever it is found”. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.” The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgment in Unni Krishnan and Zee Telefilms Ltd.(supra), brought to our notice by the learned counsel for the Appellant Mr.Parikh.

14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent – institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions, i.e. providing education to children in their institutions throughout India.”

10. A similar opinion was enunciated by Full Bench of the Hon'ble Apex Court when it rendered its decision in the landmark case of **Bandhua Mukti Morcha Vs. Union of India, reported in (1984) 3 SCC**

161:

“15. We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.”

(Emphasis supplied)

11. A more recent view was reiterated by the Hon'ble Supreme Court in the case of K.K. Saxena Vs. International Commission on Irrigation & Drainage reported in (2015) 4 SCC 670:

“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), a 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 State under Article 12. Power is extended to issue 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.”

(Emphasis supplied)

12. An important caveat was appended by the Hon'ble Supreme Court

in **K.K. Saksena (supra)** whereby the Court had ruled that even if an authority was deemed to be a 'State' under Article 12 of the Constitution, the Constitutional Courts before issuing any writ, particularly that of mandamus, must satisfy that such impugned action of the authority concerned which is under challenge, forms a part of the public law as opposed to private law. The Hon'ble Supreme Court had held:

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

(Emphasis supplied)

13. Relying upon **K.K. Saksena (supra)**, the Hon'ble Supreme Court in the case of **Ramakrishna Mission Vs. Kago Kunya reported in (2019) 16 SCC 303** had held that:

“34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.”

(Emphasis supplied)

14. Therefore based on the principles outlined in **K.K. Saksena (supra)** as well as **Kago Kunya (supra)**, a thorough examination is required to fathom, if there is a character of public law involved in the present *lis* and if that is there and the petitioner has felt that he stands violated of his precious fundamental right or any legal right for that matter, then this is Court's bounden duty to inspect the propriety of the same. However, the hurdle which remains to be crossed is to examine if the said school, being an unaided school, is amenable to the writ jurisdiction under Article 226 of the Constitution of India.

15. The above aspect is now being evaluated as under:

To impart education is a State function, it is the obligation of the welfare State to ensure that children are imparted education, which is one of the directive principles of State Policy enshrined in Article 41 of the Constitution of India. The State can, however, delegate its functions to the private sector educational institutions and while doing so, the State has created its limbs as it was in the case of companies and corporation to discharge its constitutional obligation of imparting education at all levels from primary to higher education.

16. The Hon'ble Supreme Court in the case of **Unni Krishnan reported in AIR 1993 SC 2178** held that private educational institutions discharge public duties irrespective of the fact they receive aid or not. The absence of aid does not detract from the public nature of the duty. These institutions supplement the effort of the State in educating the people which is the principal duty cast upon the State under the constitutional scheme. Relevant excerpt is quoted below:

"83. The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from

Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."

17. The case of Unni Krishnan came to be partly overruled by the subsequent eleven Judge Bench in **T.M.A. Pai Foundation and others Vs. State of Karnataka and others reported in AIR 2003 SC 355**, however, the *ratio decidendi*, in so far educational institution discharging public function and it is the duty of the State to provide education to children from the age of six to fourteen years held to be fundamental right was affirmed.

18. The Hon'ble Supreme Court again got an opportunity to examine the issue as to whether private institution imparting education in higher studies to students is discharging 'public function' and whether, Deemed University notified by the Central Government under Section 3 of the University Grants Commission Act, 1956 which, *inter alia*, provides for effective discharge of public function, namely, education for the benefit of public is an authority within the meaning of Article 12 of the Constitution then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under Article 226 of the Constitution. The Court in the case of **Janet Jayapaul Vs. SRM University & Others reported in (2015) 16 SCC 530** held that the institution engaged in/and imparting higher studies to students is discharging 'public function' by imparting education. Relevant excerpt is quoted below:

"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 of High Court under Article 226 of the Constitution."

19. Further, the eleven Judge Bench in **T.M.A. Pai (supra)** while considering the relationship between the management and the employees/teachers of private technical and higher education though being contractual in nature but, in the case of educational institutions, the Court was of the opinion that requiring a teacher or a staff to go to civil court for the purposes of seeking redress is not in the interest of education. The Court held that: (Extract of Para 50)

"In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs."

20. If further this aspect is analyzed the Parliament of India, in its wisdom, passed the 86th Amendment Act in 2002 which introduced Article 21A into Part-III of the Constitution of India and enshrined the right to education as a fundamental right for all children. In furtherance of giving effect to such fundamental right, the Parliament passed the Right to Education Act, 2009 (hereinafter referred to as 'Act of 2009') which has

been in effect from April 1, 2010 onwards. Section 2(n) of the Act of 2009, defines “School” in the following terms (Relevant extract) is reproduced below:

“(n) — school means any recognized school imparting elementary education and includes—

(i)

(ii)

(iii)

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”

21. Clause (n) to sub-section (2) of Section 38 of the Act of 2009 provides the appropriate Governments (as defined under section 2(a) of Act of 2009) with the power to make subsidiary Rules with regard to such grievance redressal mechanism and in pursuance of the powers conferred under Section 38 of the Act of 2009, the State of Madhya Pradesh had framed the Rules in the name of Right of children to Free and compulsory Education Rules, 2011 (hereinafter referred to as 'Rules of 2011') and under rule 16(8) of the Rules of 2011 there is a Grievance Redressal Mechanism, which casts responsibility on the school to develop such mechanism and if there is no such mechanism developed by the school a patent manifestation of the violation of rights of an employee under the Act of 2009 read with the Rules of 2011 would be apparent, which makes it a fit case for judicial review under Article 226 of the Constitution of India.

22. Therefore, the organic inference that follows is that since the said school which is run by appellant, being an unaided school, by virtue of the Section 2(n) of the Act of 2009, coupled with Rules of 2011 had come to discharge a public duty as was cast upon it by the said statutes. Such a

public duty stands obligatory, in our opinion, in terms of both Article 21A of the Constitution of India as well as the Act of 2009 and Rules of 2011 which gave effect to the fundamental right in unequivocal terms.

23. Therefore, we are of the opinion, that the quoted provisions of the Act of 2009 read with quoted provisions of the Rules of 2011, indeed regulates the contract of service of the respondents, and this thereby falls within the exception as stated in **K.K. Sakesna (supra) and Kago Kunya (supra)**.

24. Considering the aforesaid judgments of the Apex Court as also the fact that the appellant is a private unaided institution imparting education to students which is otherwise a primary function of the State and is performing function/public duty and accordingly it is amenable to writ jurisdiction under Article 226 of the Constitution of India. Further since action under challenge falls in the domain of public law, the appellant has been discharging a public duty under the prescription of a statute and subsidiary rules made thereunder i.e the Act of 2009, rules framed under the Act of 2009 by the State of Madhya Pradesh named as The Right of children to Free and Compulsory Education Rules, 2011, for denial any rights of his rights in connection with public duty imposed on such body, public law remedy can be enforced and as the service conditions of the respondents have direct nexus of the discharge of a public duty, their case would be covered under the exception clause, therefore amenable under Article 226 of the Constitution of India.

25. This Court fully agrees with the findings given by the learned Single Judge. There is no error apparent on the face of record to interfere with the findings of learned Single Judge.

26. Accordingly, writ appeal being bereft of merits and substance is hereby dismissed. No order as to cost.

(S. A. DHARMADHIKARI)

JUDGE

09.05.2023

(PRAKASH CHANDRA GUPTA)

JUDGE

09.05.2023

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