

(2014) 11 KL CK 0183
In the High Court Of Kerala
Case No : Writ Appeal No. 1647 of 2014

Bindu K.B.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 209, 226, 310, 311

Citation : (2015) 1 ILR 507 : (2014) 4 KHC 789 : (2015) LabIC 1027

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : R.T. Pradeep and Sreekanth S. Nair, Advocate for the Appellant; P.I. Davis, Senior Government Pleader and Madhu Radhakrishnan, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard learned counsel for the appellant as well as learned counsel appearing for the respondent. This writ appeal is filed against the judgment dated 09/10/2014 passed in Writ petition No. 22233 of 2014. The writ petition was filed by the appellant assailing the order of suspension as well as directing the employer to submit the explanation. An objection was raised by the respondent employer that the writ petition under Article 226 is not maintainable looking to the nature of entity of the respondent. It was submitted by respondents that the respondent is a purely private body registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955. It has neither any control of State Government nor it is funded by the State and the writ petition which raised service dispute is not maintainable. The preliminary objection was resisted by the appellant/petitioner.

2. Learned Single Judge, after considering the submission of both parties by elaborate judgment held that the writ petition under Article 226 is not maintainable, which judgment has been assailed by the appellant in this writ appeal.

3. Learned counsel for the appellant submits that the respondents are performing a public duty. He refers to the objectives of the foundation as contained in paragraph 3 of the Memorandum of Association. He further submits that a body which is performing public duty is amenable to writ jurisdiction and unless such public body is brought in the domain of Article 226, the employees shall be put to suffering and shall continue to be unhappy. In support of his submission, he relied on three judgments of this Court, which will be referred to hereinafter.

4. The Memorandum of Association of respondent has been brought on the record. The body respondent No. 2 is The Socio-Economic Unit Foundation, which is a society registered under the 1955 Act. The aim and objectives, which reliance is placed to the following effect:

"3. Aims and Objectives of the foundation

1. The objectives of the foundation will be to provide support in the planning, implementation and evaluation and/or directly plan and implement programmes/projects on Rural/Urban Development. Community participation and management, gender issues, innovation and promotion of Local/Appropriate technology and health promotion especially in the field of water supply, water conservation, sanitation, education, environment and other areas related to the improvement of quality of life of the people with special emphasis on women and children.

In this regard the Foundation will make an effort to:

3.1.1 Involve the community in the various aspects of the programme in order to facilitate sustainability in the development process.

3.1.2 Provide advisory and consultancy service to the Governmental and nongovernmental agencies, multilateral, bilateral and other International agencies on issues related to development.

3.1.3 Serve as a resource group in carrying out research & development, action/participatory research and related activities to promote human resource development.

3.1.4 Serve as a reference and documentation centre for information dissemination for planning and implementation of development programmes, with special reference to water, environment health and sanitation.

3.1.5 Prepare, print and publish books, periodicals, research papers and monographs in furtherance of the objectives of the foundation.

3.1.6 Involve and support the community/local self government (Panchayats) and/or grassroots level institutions/organisations to effectively implement/utilise and maintain water and sanitation facilities through community management and participation.

3.1.7 Collaborate with Government agencies, semi-government agencies, non-government agencies organisations and institutions abroad for strategy formulation, project appraisal, feasibility studies, monitoring and evaluation of development programmes within India and abroad.

3.1.8 Design and initiate production of training materials in the areas of community participation, development, health promotion and education, water, sanitation and environmental programmes for development of human resource and management skills.

3.1.9 Develop pragmatic methodologies in addressing emergency situations in hygiene promotion and education activities among children, other vulnerable groups and slum dwellers.

3.1.10 Design and organise training and orientation programmes for field staff and others involved in governmental, semi governmental and non-governmental organisations in relation to the objectives of the foundation.

3.1.11 To promote effective use of traditional media, folk art forms etc. as tools of mass communication to disseminate development message at grassroots level.

3.1.12 To facilitate/promote, income generating activities and development of skills for rehabilitation of various lesser privileged sections of the community and other vulnerable groups.

3.1.13 To Run appropriate Educational, training, and other institutions anywhere in the country in furtherance of the objectives of the Foundation.

3.1.14 To work as a nodal agency for development programmes in planning, implementation and evaluation with special emphasis to gender, water, health and environmental sanitation.

3.1.15 Engage in activities that are incidental to or decisive for the smooth functioning, attainment and/or furtherance of the aims and objectives of the foundation.

3.1.16 To promote the use of information and communication technology, GIS, GPS, Remote sensing and other scientific development for the achievement of above given objectives of the Foundation.

3.1.17 To take up initiative in the areas of sustainable development, Non conventional Energy, natural resources management, organic training, food security and related areas.

3.1.18 Collaborate with Government and other national and international agencies in the country and abroad in preparing community to prevent and respond disasters and empower in proper disaster management activities."

5. It is further submitted that in the governing council, there are certain Government council ex officio. The name of the founding member of Society has been mentioned in para. 6 of the Memorandum of Association, which indicate

that all the founding members are private persons who have founded the society. The mere fact that in the governing body, the names of certain Government officers as ex officio has been mentioned does not change the nature and colour of the body from the private body. For an entity to be treated as State within the meaning of Article 12, the test has been laid down by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, which are extracted as below: (Paragraphs 7, 9, 11 and 12)

"7. While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of "State in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the Fundamental Rights enshrined in Part III of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the Fundamental Rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance to human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality - or agency of juridical persons to carry out its functions. In the early days when the government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient" management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public

enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controller is the State and accountability for its actions to the community and the Parliament is of the State." It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is "an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to override the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental Rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The Courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights. The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socio-economic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience

to the Fundamental Rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental Rights and not to override them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of redtapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail Road and Telephone- in short every economic activity - and thereby cheat the people of India out of the Fundamental Rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions. It will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow the Fundamental Rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post-Menaka Gandhi era. It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government," the Court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the Fundamental Rights as the Government.

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority*'s case as follows:

(1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government."

(2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected."

(4) "Existence of "deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government."

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, "State" within the meaning of the expression in Article 12.

11. We may point out that it is immaterial for this purpose whether the corporation is created by a Statute or under a Statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a Statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar Statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a Statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority in Article 12".

12. It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State": within the meaning of Article 12, it may not be elevated to the position of "State for the purpose of Articles 209, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Article 36, to Part IV, it does not extend to the other provisions of the

Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, , and other cases involving the applicability of Article 311 have no relevance to the issue before us."

6. There was no foundation in the writ petition that State has deep and pervasive control over the body, which is substantially funded by the Government. Thus there is no occasion to treat the body within the meaning of Article 12. The submissions which have been pressed by learned counsel for the appellant is that the body performs public function, which is reflected in paragraph 3, the objectives of foundation. It has been further submitted that certain funds have been given by State Government also to work in collaboration with local bodies. The submission is that a body which is performing a public duty is amenable to writ jurisdiction which has been laid down by the Apex Court in several decisions. Learned counsel for the appellant has first referred to the Apex Court judgment in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . In the said case, the maintainability of the writ petition against the private body was under consideration. The Trust which had filed the writ petition was affiliated under the Gujarat University, 1949. The Trust was also receiving aid from the Government. The issue raised was whether the writ petition was maintainable. The following was laid down by the Apex Court in the said judgment.

"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 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. Learned counsel for the appellant has placed reliance that the Apex Court had already held that mandamus can be issued to a body which is performing a public function."

7. Insofar as the judgment in the case of V.R. Rudani is concerned, the Apex Court was considering a private institution which was affiliated to the University and regulated by the rules and regulation of the University regarding affiliation and granting aid. In paragraph 15, it was mentioned that aided institutions like Government Institutions discharge public function by imparting education to students and they are subject to rules and regulation of the affiliating University and their activities are closely monitored. The employment in such institution is therefore is not devoid of any public character. The said observations were made in the conduct of the institution, which was affiliated and regulated by rules. The said judgment could in no manner help the appellant since the appellant is not regulated by any statutory provision. The service conditions of the employees of the appellant are not regulated by statutory condition and admittedly are regulated by non-statutory manual which has been filed as Ext. P6. The service condition being regulated by a manual, which clearly proves that there is no public element which employee being treated to be a public authority or governed by statutory rules.

8. Second judgment which has been referred to is judgment of Apex Court in Binny Ltd. and Another Vs. V. Sadasivan and Others, In the said case, the Apex Court had occasion to elaborately consider the concept of public function which are performed by private body also. The Apex Court elaborately considered the said issue with reference to the judgment of V.R. Rudhani's case. References have been made to paragraphs 23 and 24 which are extracted below:

"23. The counsel for the respondent in Civil Appeal No. 1976 of 1998 and for the appellant in the civil appeal arising out of SLP (Civil) No. 6016 of 2002 strongly contended that irrespective of the nature of the body, the writ petition under Article 226 is maintainable provided such body is discharging a public function or statutory function and that the decision itself has the flavour of public law element and they relied on the decision of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, . In this case, the appellant was a Trust running a science college affiliated to the Gujarat University under the Gujarat University Act, 1949. The teachers working in that college were paid in the pay scales recommended by the University Grants Commission and the college was an aided institution. There was some dispute between the University Teachers Association and the University regarding the fixation of their pay scales. Ultimately, the Chancellor passed an award and this award was accepted by the State Government as well as the University and the University directed to pay the teachers as per the award. The appellants refused to implement the award and the respondents filed a writ petition seeking a writ of mandamus and in the writ petition the appellants contended that the college managed by the Trust was not an "authority" coming within the purview of Article 12 of the Constitution and therefore the writ petition was not maintainable. This plea was rejected and this Court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined

only to statutory authorities and instrumentalities of the State and 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.

24. The above decision cannot be applied to the facts of this case. It is important to note that the college was an aided institution and imparting education to students. These facts are specifically stated in para 15 of the judgment. It was in this background that this Court held that there was a public law element in the matter involved therein and that the college authorities were bound to pay salary and allowances to the teachers. The said case did not emanate from a contract of employment between the workers and the private body. For that reason, *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, cannot be applied to the facts of the present case."

9. The said judgment clearly laid down that what is relevant in the judgment is the nature of duty imposed on the body. A private body which is not interested with any public duty or function, cannot be treated to be performing public duty, for which public law remedy is not available. In paragraph 29, 31 and 32 the Apex Court has examined the concept of public functions and discharge of said functions by a private body. It has clearly laid down that the duties cast on the public body either statutory or otherwise and further exercise of any jurisdiction in contractual matters cannot be termed as discharge of public function where the relations of employer- employee are governed by contract of employment entered between the two. There is no public element involved, nor it can be forced by a mandamus.

10. Learned counsel for the petitioner/appellant has placed much reliance on *Ramesh Ahluwalia Vs. State of Punjab and Others*, . The said case was a case where the institution, one DAV Public school was affiliated to Central Board of Secondary Education and was governed by Central Board of Secondary Education bye-laws. Action was taken, which was challenged before the High Court. It was held by High Court that the writ petition was not maintainable, which judgment was questioned.

11. The Apex Court relying on the judgment of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , *Virsa Singh Vs. State of Punjab and others*, and *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, on the ground that the managing committee of this school is running educational institutions through out India and performs very important public function. In the said context the following was laid down in paragraphs 13 and 14:

"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: (V.R. Rudani case, SCC pp. 700-701, paras 20 & 22)

"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.

xxxx xxxx xxxx

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 judgments in Unni Krishnan and Zee Telefilms Ltd. 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."

The basic Judgment relied on by the Apex Court was in V.R. Rudani's case. As

noted above, the Rudani's case was a case where the employees were regulated by a statutory conditions of service and in Ramesh Aluvalia's case, the Court was concerned with an institution which was running a chain of educational institutions imparting education. There are two reasons for which the said judgment is not helpful to the appellant. Firstly, the said judgment was rendered in case of an institution which was imparting education, and affiliated to Central Board of Secondary Education. And secondly, the learned Single Judge in his judgment has stated that the said judgment did not consider the earlier judgment of the Apex Court in Binny Ltd. and Another Vs. V. Sadasivan and Others, . There is distinction between the public function of purely contractual character and private body which is performing the public function. The contract of employment and any breach of contract of employment follows a purely private character in which public function is not available. Hence we do not see any error in the judgment of learned Single Judge, in which reliance has been placed on the judgment of Binny Ltd. and Another Vs. V. Sadasivan and Others, . in preference to Ramesh Aluvalia's case. Learned Single Judge has elaborately considered the issue and we are of the view that the learned Single Judge has rightly come to the conclusion that the writ petition is not maintainable. We see no reason to interfere in the judgment. The writ appeal is dismissed.

We observe that we are not entering into the facts and submission of the appellant on merits and we affirm the judgment of learned Single Judge to the effect that the writ petition is not maintainable.