
(2002) 01 DEL CK 0052
In the Delhi High Court
Case No : CWP No. 5928 of 2000

Brahma Chellaney

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Citation : (2002) 3 AD 465 : (2002) 63 DRJ 792

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Kapil Sibal and Brijesh Kalappa, for the Appellant; R.K.P. Shankerdass Gopal Jain, K.D. Prasad and P. Nagesh, for the Respondent

Judgement

Vikramajit Sen, J.—The first question to be decide is whether Respondent No. 2 the Centre for Policy Research ("CPR" hereafter) is amenable to the writ jurisdiction of this Court. It needs to be stated that the UOI, as also the Indian Council of Social Service Research ("ICSSR" hereafter), has supported the Petitioner in his submission that a writ can issue in this matter. A plethora of precedents have been cited by Mr. Kapil Sibal, Learned Senior Counsel for the Petitioner and by Mr. R.K..P. Shankerdass, Learned Senior Counsel for Respondent No. 2. If each of them is to be individually discussed these judgments would become needlessly and avoidably prolix; especially since a Restatement of the law, with special relevance to the facts of this case, is readily available in the decision in U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors., . It would be most fruitful to reproduce the observations of the Hon"ble Supreme Court in extension , since an answer to the gravamen of the contention can be found therein:-

"The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction there under though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of

public duty and that writ is a public law remedy. In *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, it was submitted before the Constitution Bench that an award u/s 10-A of the Industrial Disputes Act, 1947 savours of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under (at p. 429 of AIR):

"The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose - even on for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to "the residence of such person". But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

Many rulings of the High Courts, pro and con, were cited before us to show that an award u/s 10-A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar, J. (as the then was) in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, which nail the argument against the existence of jurisdiction. The learned Judge clarified at p.640 (of SCR): (at Pp. 881-82 of AIR) Article 226 under which a writ of certiorari can be used in a appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of Courts or Tribunals. Under Article 226 (1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed u/s 10-A is not a tribunal under Article 136 in a proper case, a writ may lie against his award under Article 226"

In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, another Constitution Bench had to say as under (at Pp. 1423 and 1424 of AIR):

"It was, however, urged by the learned counsel for the company that the Life insurance Corporation was an instrumentality of the State and was, Therefore, debarred by Article 14 from acting arbitrarily. It was, Therefore, under an obligation to state to the Court its reasons for the resolution once a rule nisi was

issued to it. If it failed to disclose its reasons to the Court, the Court would presume that it had no valid reasons to give and its action was, Therefore, arbitrary. The learned counsel relied on the decisions of this Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, : Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, : Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . The learned Attorney General, on the other hand, contended that actions of the state or an instrumentality of the State which do not properly belong to the field of public law but belong to the field of private law are not liable to be subjected to judicial review. He relied on O' Reilly v. Mackman, 1982 (3) All ER 1124; Davy v. Spelthorne 1983 (3) All ER 278; I Congress del Partido, (1981) (2) All ER 1064; R. v. East. Berkshire Health Authority 1984 (3) All ER 425 and Radhakrishna Agarwal and Others Vs. State of Bihar and Others, . While we do find considerable force in the contention of the learned Attorney General it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see. We also desire to warn ourselves against readily referring to English cases on questions of Constitutional Law, Administrative law and public Law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the technical rules which have hampered the development of the English Law. In Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, a two Judge Bench of this Court was considering the question of "issue of a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the appellant-Trust and its Trustees to pay to the respondents their due salary and allowances etc. in accordance with the Rules framed by the University and to pay them compensation under certain Ordinance of the University". The High Court before which the issue was raised held in favor of the respondents. This Court noted that the essence of the attack on the maintainability of the writ petition under Article 226 by the appellant was that it being a Trust registered under the Bombay Public Trust Act was managing the college where the respondents were employed was not amenable to writ jurisdiction of the High Court. In other words, the contention was that Trust being a private institution against which no writ of mandamus could be issued. In support of the contention, the appellant referred two decision of this Court: Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, and Dipak Kumar Biswas Vs. Director of Public Instruction and Others, . This Court, however, distinguished those two decisions and said that the facts before it were different and that there was no plea for specific performance of contractual service by the respondents now in the case before it. Respondents were not seeking a declaration that they be continued in service and they were not asking for mandamus to put them back into the college. But that were claiming only the terminal benefits and arrears of salary payable to

them. The question thus was whether the Trust could be compelled to pay by writ of mandamus? The Court noted the observations of Subba Rao, J. in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, :

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly by used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised, it can issue writs in the nature of prerogative writs as understood in England: but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

The Court also noted the observation of this Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, as under (at Pp. 1309-1310 of AIR):

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statutes under or by which the society is constituted or governed and also to companies or corporations to carry out duties place on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibility. (Cf. Halsburi's Laws of England, 3rd Edn Vol. II p. 52 and onwards).

The Court then said *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, :

" 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 States. 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 owned 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."

And finally it said as under *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, :

"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."

In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], this Court speaking through a Bench of three-Judges said (at p. 469 of AIR SCW):

" The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writ provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose." The distinction between public law and private law remedy by judicial adjudication gradually marginalized and became obliterated. *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , this Court in paragraph 102 had pointed out that the difficulty will lie in demarcating the frontier between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character or the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately purposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M.C. Mehta and another Vs. Union*

of India and others, ."

A full Bench of the Andhra Pradesh High Court in *Sri Konaseema Co-operative Central Bank Ltd. Amalapuram v. N. Seetharama Raju*, AIR 1990 AP 171, was considering the question whether a writ petition lay against a cooperative society and if it does, in what circumstances. After examining various decisions and treatises on the subject it was stated that even if a society could not be characterised as a "State within the meaning of Article 12 even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person", or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the Statutory duty placed upon it, and the Court is to enforce such statutory public duty.

In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and, Therefore, the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under Clause (1) of Article 367 unless the context otherwise requires, the General Clause Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged the High Court will step in to protect him be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any

other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guide-lines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guide-lines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of Civil and criminal litigation. High Court does not act like a proverbial "bull in china shop" in the exercise of its jurisdiction under Article 226."

2. It is now to be considered whether Respondent No. 2 operates within the parameters set down by the Apex Court. In this context it has been contended by Mr. Sibal that CPR received 50% funding from the ICSSR and the expenses of the Academic Staff/Research Chain is met entirely from ICSSR funding. It is also emphasised that the pay scale of the Petitioner is that set down for Professors by the University Grants Commission and the retirement age is similarly set down at 62 years initially, and thereafter at 65 years. ICSSR has representation on the Board of CPR. By its letter dated 22.2.2000 the Government of India had approved a sum of Rs. 23.75 lakhs towards arrears of salary for the period 1.1.1996 to 31.3.2000 being the ICSSR/GOI share for the academic and non-academic employees of CPR. A perusal of this letter is indicative of the intimate participation, if not pervasive control, of the Government in the staff matters of CPR. Clause 13 of this letter mandates that the emoluments, structure, service conditions and scales of pay will not be modified without the prior government approval. The funding of CPR commenced in 1978 when prime land of New Delhi was allotted to CPR by the Government of India. Attention is drawn to the Annual Report 1080-81 where the CPR has asked for the State as well as Public Sector Undertakings to make financial contributions to it. It is also not in dispute that financial assistance was extended by Government of India in the form of a non-recurring grant for the construction of an additional floor of the Office Building. Much before the present dispute arose, the Government of India had issued a Certificate dated 27th April, 1977 to the following effect - "The Centre for Policy Research, New Delhi, a Society registered under the Societies Registration Act 1860 is on the Grant-in-aid list of the Indian Council of Social Service Research, a body set up by the Government of India to sponsor research in the field of Social Service. It is certified that the Centre for Policy research, New Delhi, is an educational institution." From the documents available on the record it would be fair to deduce that CPR has been the recipient of recurring as well as non-recurring governmental grants for a quarter-century. It was on the foundation of these facts that Mr. Sibal has contended that although CPR is not the "State", it is a "Public Authority" as contemplated in Act 12 and is accordingly amenable to the writ jurisdiction of this Court. Furthermore, it is his submission that the ratio in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., applies on all fours to the controversy in hand, since the CPR, being an

educational institution is fulfilling a public function and is continuing to receive grants-in-aid. If writs can properly issue even against private bodies and individuals for the performance of their duties to the public, it is all the more so where the body unarguably has its own "public personality".

3. The decision of the Apex Court in *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], was not cited before the Court in *U.P. State Co-operative Case* (supra) and has been heavily relied upon by Mr. R.K.P. Shankerdass, Learned Senior Counsel appearing for CPR. The composition of the National Council of Educational Research and Training (NCERT) has been held to be impervious to the extraordinary jurisdiction of this Court. It has been observed in the judgment as follows:-

"There are only general principles but not exhaustive tests to determine whether a body is an instrumentality or agency of the government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the government and those which are not. The powers, functions, finances and control of the government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case (see (i) *Sukhdev Singh v. Bhagtram Sardar Singh Raghuvanshi*, (ii) *R.D. Shetty v. International Airport Authority of India*, (iii) *Ajay Hasia v. Khalid Mujib Sehravardi* and (iv) *Som Prakash Rekhi v. Union of India*).

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

difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution. (See (i) P.K. Ramachandra Iyer v. Union of India, (ii) Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly and (iii) Tekraj Vasandi @ K.L. Basandhi v. Union of India)."

4. It may appear to be difficult to compare CPR with regular educational institutions such as were under scrutiny in Unni Krishnan's case (supra); and it may be equally easy to compare CPR with NCERT. Accordingly, arguably the obvious conclusion appears to be to hold that the present writ petition should not be considered on grounds of its nonmaintainability. High Courts, however, have to swim with the apaxial current. In the decade that has passed since the NCERT decision was delivered, the Apex Court has veered towards extending the ambit of interference under Article 226, as would be perceivable in its decision in the U.P. State Co-operative Case (supra). The ratio in Sabhajit Tewary Vs. Union of India (UOI) and Others, and the reasoning in the Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, can be encapsulated in the query whether the activities of these Bodies were wholly related to governmental functions. This stand has been watered down in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, and then virtually marginalized in the U.P. State Co-operative's case, (supra). It seems to me that the fineness with which questions on the maintainability of writ petition are pondered upon is largely unnecessary if it is borne in mind that the Petitioner always has civil remedy, though it may not be efficacious, expeditious and/or cheap. It is not the Court while exercising extraordinary jurisdiction under Articles 226 is bestowing a relief which is otherwise beyond the reach of the Petitioner. The restraints and parameters of writ jurisdiction are jural in nature and origin, and Therefore ought not to impede the Court from interfering when the circumstances compel it to do so. The sanctity of the five writs had to be culled out from obscure and esoteric legal principles to counter the then prevailing theory of divine monarchical rights. In the present age this artificial and jural distinction has largely been obliterated by the ubiquitous prayer found in present day writ petitions, viz. for the passing of "orders" of the nature of a particular writ, thereby widening the horizons of the writs as they were originally comprehended.

5. It was argued by Mr. Shankerdass with meticulous minuteness that the ration which governmental funding bears with the income and expenditure of the CPR is appreciably less than that in the NCERT case and that this factor alone should be sufficient reason for the present petition to share the same fate at the NCERT petition. It is also possible that the CPR can function today without any grant-in-aid. However, it is difficult to ignore that the formation of the CPR was possible only through the Government's financial assistance, and its existing campus is a consequence of state largesse having been extended to it. Perhaps the role of the State in the establishment of the CPR has become blurred because it was almost contemporaneous with its Director, Dr. Panandiker, who Therefore considered its an his alter ego. In my view where valuable land is allotted to

bodies at a pittance, such bodies should not be heard to claim immunity from judicial review under Article 226 for fear of the logical consequence that the allotment of the land is bad as having extended a valuable gift to a private party. In *Ajay Jadeja v. Board of Cricket Control*, CM No. 7650/2001 in CWP 867/2001, Mukul Mudgal, J. and inter alias kept this very factor in mind whilst holding that the Board was amenable to the extraordinary jurisdiction of this Court. In this analysis, I am satisfied that the writ petition is maintainable, and that the NCERT decision must give way to the subsequent pronouncements of the Hon'ble Supreme Court.

6. It is next to be considered whether the termination of the Petitioner's services was legally effected.

7. The Petitioner was invited by the Director's letter dated 23.6.1993 to join the CPR as a "Research Professor" in a Grade which corresponds to Grade H established by the University Grants Commission. The terms included a clause of termination "on three months notice in writing on either side." The letter followed Resolution GBR 268 dated 20.11.1992 of the Governing Body (GB) of CPR. Therefore, the decision of appoint the Petitioner was taken by the Governing Body and not by the Director. This fact must be borne in mind since it has been contended on behalf of the Petitioner that Dr. Panandiker had no authority to terminate the Petitioner's services. The Director, Dr. Panandiker, who authored the above letter, is also the writer of the letter dated 16.8.2000 whereby the services of the Petitioner were sought to be terminated. This letter does not contain any statement that the action has been authorised by the GB of CPR. Since a strenuous assault on the authority and powers of Shri Panandiker to terminate the Petitioner's service has been laid, it would be necessary to reproduce Resolution GBR 306 passed on 14th March, 1995. It reads as follows:

"SUPERANNUATION" RESOLUTION No. GBR 306 passed at the 40th Governing Board meeting of the Centre for Policy Research held on 14th March 1995:

"SUPERANNUATION"

RESOLVED that the Director of the Centre for Policy be and is hereby approved to have the same status, pay and terms and conditions of service as of the Vice Chancellor of Delhi University and that the Director shall retire at the end of the month when he completes the 65th year of age.

FURTHER RESOLVED that in supersession of the Governing Board's Resolution No. GBR 90, the age of superannuation of the Academic and Administrative Staff of the CPR be and is hereby approved be as under:

i. The Academic Staff i.e. all Faculty Members shall retire from the service of the Centre on completing the age 65 years. Such retirement shall be effective from the last dated of the month in which he or she attains the age of 65 years. The Centre may, however, appoint academic staff beyond 65 years up to 70 years on research projects etc.

ii. Administrative Staff and other personnel shall retire from the service of the Centre on completing the age of 60 years. Such retirement shall be effective from the last date of the month in which he or she attains the age of 60 years. However, the CPR may extend the term of appointment of administrative staff beyond 60 years on contractual basis whenever necessary in the interest of the institution.

FURTHER RESOLVED that the current Resolution be and is hereby approved to be brought into force w.e.f. 1 January, 1995."

(Underlining Added)

8. Even the Rules of the CPR envisage that the appointment of the President shall be made by the Governing Body (Rule 18) and Dr. Panandiker had Therefore become functus officio on the midnight of 31st March/1st April, 2002. Before considering the arguments put forward on behalf of the CPR of Respondent No. 2, it is significant that despite the specific observation of this Court on 1.11.2000, an affidavit of any member of the Board duly authorised for the purpose has not been filed. Madan B. Lokur, J. had rightly thought this appropriate for the reason that allegations had been leveled against the Deponent, namely, Dr. Panandiker (Respondent No. 5). In addition to this reason since there is a hot dispute on whether Dr. Panandiker can represent the CPR, the failure of compliance with the said Order is fatal. There is no material on record to show that the response/Reply/Counter purportedly filed on behalf of CPR has the sanction and/or the approval of its GB. Dr. Panandiker beyond making a perfunctory statement that he is competent to file the affidavit, has failed altogether to elucidate how and in what manner he is competent to represent the CPR. Significantly, he has failed even to state that he is competent and authorised to swear the affidavit on behalf of the CPR. The Constitution of the CPR does not repose this representative capacity in Dr. Panandiker is accordingly held that the Courts affidavit purportedly filed on behalf of Respondent No. 2, namely the CPR, is the response of Dr. Panandiker only. In fact, one Board Member (Respondent No. 13) has gone so far as to depose in this petition that Board Minutes have been falsified by Dr. Panandiker. Moreover, the Indian Council of Social Science Research (ICSSR), which is arrayed as Respondent No. 3, has fully supported the Petitioner's case. It should Therefore be assumed that the CPR and its Board Members have nothing adverse to state against the Petitioner. This situation cannot be ignored. Added to it is the fact that the Union of India has unequivocally supported the case of the Petitioner.

9. Mr. Shankerdass has contended that Dr. Panandiker has acted within his authority in terminating the Petitioner's services. Rule 12 of the Constitution of CPR states that the general superintendence, direction and the control of its affairs and funds shall be vested in the Board. Rule 13(i)(e) specifically mentions that the Board shall determine the duties and conduct, salaries and allowances and other conditions of service of the officers and other employees of the CPR. By virtue of Rule 14(ii) all the powers can be delegated by the Board, but no

Resolution has been shown by Dr. Panandiker reposing these powers in him. Thus even if it is overlooked that neither the Board nor any of its Members other than Dr. Panandiker has opposed the petition, Dr. Panandiker as the Director or a Board Member of the CPR has no authority to individually take such an important decision as dismissing the Petitioner from his employment with the CPR.

10. It has also been contended by Mr. Shankerdass that the GB Resolution 306 dated 14.3.1995 prescribing that Dr. Panandiker would retire at the end of the month in which he attains the age of 65 years would have no application to him because of previous decisions of the Board. The argument demonstrates that Dr. Panandiker considers himself above and beyond the Board. This cannot be countenanced in law. Reliance on his behalf on Rule 5(1) is wholly specious as this Rule deals with the membership of the Society, and not of the Governing Body, or even of any person functioning as the Director/President. This is in fact the genesis of the parting of the ways between Dr. Panandiker and the Petitioner, as is evident from the Petitioner's representations to the Members of the Governing Body. It is not an uncommon occurrence for employees/ Functionaries of a Society to consider themselves omnipotent, where members of the Board of Governors of the Society are not involved with its affairs on a full-time basis, and for valuable remuneration.

11. It cannot also be ignored that Dr. Panandiker had introduced some members onto the Board at a time which was intrinsically critical to the dispute raging between him and the Petitioner. In this analysis, it is clear that the appointment of the Petitioner could only have been ended by a decision of the Governing Body, especially since it was pursuant to the decision of the Governing Body, that he was invited to the Faculty of the C.P.R. It was only possible for the Director/ President, to take this decision if he had been specifically empowered/authorised to do by the Governing Body. In the circumstances of the case, Dr. Panandiker could not have exercised the powers of the Director/President, assuming that he could do so independent of the Governing Body after his attaining the age of sixty five years, effective from 1st April, 2000. The contention that there is no embargo in the CPR paying the salary of Dr. Panandiker from funds/income generated from its own enterprise and endeavors, not being Government grants etc., cannot empower him to continue as the President/Director of the CPR. Arguably it may have been permissible for CPR, on a specific decision of its Governing Body to have engaged Dr. Panandiker in some capacity, but not as the Director/President, since this would have militated against the terms of the sundry Government grants, the payment of arrears of pay etc.

12. It would be appropriate to take up the reliance, on behalf of Dr. Panandiker, on the following decision of the Hon'ble Supreme Court viz. (i) Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, (ii) Dipak Kumar Biswas Vs. Director of Public Instruction and Others, , (iii) Integrated Rural Development Agency Vs. Ram Pyare Pandey, and (iv) Hari Krishan Sharma Vs. Municipal Corporation of Delhi, which is a decision of the Full

Bench of this Court. The leading case indubitably is that of the Vasih Degree College (supra). In it, it has been validly held that even if the services of a person have been illegally/wrongfully put to an end, "a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions -- (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute." It should be kept in perspective that the court did not conceive of a blanket ban on Court interference, and observe, in conclusion, that "in view of the special and peculiar circumstances of this case, we feel it will not be a proper exercise of discretion to grant a decree for declaration and injunction in favor of the respondent." Where, however, as in the case in hand, the purported termination has been taken by a person with no authority, the impugned decision being non est, the Court should interfere and grant relief which it inherently possesses. The situation would be appreciably different if the Governing Body had taken the decision, or had specifically authorised/delegated Dr. Panandiker in that regard. In that event, it may not have been jurally discreet for the Court to explore and venture into a determination of vexed and debatable questions of whether the Petitioner had a tenure appointment up to the age of 62 years, which could therefore not be ended before the Petitioner had superannuated, or that the action was prompted by malafides. These questions would be correctly considered if an action in damages is filed. Mr. Shankerdass has not shown any decision of the Governing Body of the CPR validating the termination of the Petitioner's services. It is of no avail that the Governing Body deferred a decision on the imbroglio prevailing in the CPR owing to the continuance of Dr. Panandiker's functioning as the President, post March 2000.

13. In these circumstances, the impugned letter dated 16.8.2000 issued by Respondent No. 5 is void ab initio and cannot be given effect to. The Petitioner shall continue in the employment of Respondent No. 2 in accordance with the terms of his appointment. It is further held that the Counter Affidavit ostensibly filed on behalf of Respondent No. 2 is not representative of Respondent No. 2 and shall be read as the response/opposition of Respondent No. 5 only, and further that there is a non-traverse to the petition on behalf of Respondent No. 2. Since Dr. Panandiker has admittedly demitted office as President of the CPR, no order in respect of his functioning in this capacity arises for consideration.

14. The Petitioner has also challenged the legal propriety of the election of respondents 14-18 to the Governing Body of the CPR. Their candidature was proposed by Respondent No. 5 and they were "elected" at the Governing Body Meeting held on 13.9.2000 for the period ending on 2.11.2002. From a perusal of

the Minutes it would appear that they were already present at the commencement of the Meeting and in a sense participated in or ensured their own election. The mere fact that their names may have been proposed/initiated by Dr. Panandiker, even if it was for his own oblique and personal motives, would not render them unsuitable for membership of the Governing Body. The alleged invalidity of the Circular Resolution in August-September 2000 does not propel me into exercising the discretion vested by Article 226 of the Constitution. I accordingly decline to interfere in their election.

15. I do not propose to deal with every aspect of the arguments raised by Counsel for the parties. These arguments are ably condensed by them in their respective Written Submissions, which are made a part of these records. Each argument shall be assumed to have been considered in this judgment.

16. The Writ Petition is disposed of in these terms. Respondent No. 5 shall pay costs to the Petitioner, quantified at Rs. 10,000/-.