
(2010) 03 DEL CK 0131
In the Delhi High Court
Case No : LPA No. 220 of 2002

Centre for Policy Research

APPELLANT

Vs

Brahma Chellaney and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 30(1), 32
Income Tax Act, 1961 — Section 10(23C)
Law Commission Act, 1965 — Section 3(1)
Supreme Court Act, 1981 — Section 31
University Grants Commission Act, 1956 — Section 22(1), 22(2), 23, 3

Citation : (2010) 5 ILR Delhi 87

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : R.K.P. Shankardas, P. Nagesh and Anand Mishra, in LPA No. 220 of 2002 and Amarjit Singh Bedi, in LPA No. 313 of 2002, for the Appellant; Akhil Sibal, Salim Inamdar, Aeshna Singh and Mihira Sood, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—Persons of eminence in their field are also not above personal prejudices and petty squabbles. The present litigation is a consequence of such an approach.

2. The Centre for Policy Research (for short "Centre"), appellant herein, was set up as a Society registered under the Societies Registration Act, 1860 with the objective of planning, promoting and providing for education and training in policy planning and management areas. The Memorandum of Association inter alia provides for holding seminars and conferences, conducting research, promoting education and development of personnel with the objective of maximization of the national resources. The Memorandum is widely worded and the Society was set up with the blessings of late Shri T.A. Pai, then a Union Minister with eminent people involved in it. Dr. V.A. Pai Panandiker, the appellant in LPA No. 313/2002 was a Member Secretary. Dr. Brahma Chellaney, respondent

No. 1 also came to be associated with this organization, who is also one of the eminent persons of his field. The Centre was granted lease of land by the Government of India at institutional rates to construct its campus building in 1978-79 after it was originally set up in 1972 and the new campus started functioning from March, 1980. Respondent No. 1 was appointed as a Research Professor on 23.6.1993 and a fresh letter of appointment was issued on 1.4.2000 increasing the remuneration with retrospective effect. The services of respondent No. 1 were, however, terminated on 16.8.2000 giving three (3) months' salary in lieu of such termination. Aggrieved by this action, respondent No. 1 filed WP (C) No. 5928/2000 in this Court along with an interlocutory application praying for interim stay. The learned single Judge in terms of order dated 15.11.2000 granted stay of termination. In the mean time, Dr. V.A. Pai Panandiker resigned on 2.9.2000 though the decision on that resignation was deferred by the Governing Body of the Centre. The Union of India preferred an appeal against the interlocutory order but the same was dismissed as withdrawn in view of the writ petition, which was pending. The writ petition came to be decided by the learned single Judge of this Court on 18.1.2002. The writ of respondent No. 1 was allowed with costs of Rs. 10,000.00 against Dr. V.A. Pai Panandiker.

3. The Centre preferred a Letters Patent Appeal which is before us and Dr. V.A. Pai Panandiker also filed an appeal on similar grounds, apart from raising the issue of imposition of costs personally on him. Along with the appeal an application for interim stay was also filed but the same was dismissed as not pressed.

4. The Centre decided to accept the decision of the learned single Judge insofar as the quashing of the termination of services of respondent No. 1 is concerned but constituted an Inquiry Committee to look into the conduct of respondent No. 1. On the basis of the recommendations of the Inquiry Committee action was sought to be taken against respondent No. 1 which was challenged by respondent No. 1 in WP (C) No. 4542/2002. The said writ is still pending and interim orders in favour of respondent No. 1 were granted.

5. The result of all this is that the impugned action of termination against respondent No. 1 which resulted in the orders of the learned single Judge which is now sought to be impugned in the present appeals does not stand and has been accepted by the appellant Centre. The appellant Centre is, however, aggrieved by certain conclusions drawn by the learned single Judge in respect of the nature of entity which the Centre is and that is the reason learned Counsel for the appellant refused to give up the appeal stating that though the original cause of action may have been extinguished, the appellant Centre has a right to agitate the appeal on the question of law decided by the impugned judgement. We may notice that an endeavour was made to work out an amicable solution but the same proved to be futile.

6. In the impugned judgement the learned single Judge has made certain observations about the Centre being a "state" within the meaning of the

expression "other authority" under Article 12 of the Constitution of India which raises certain doubts. Learned Counsel for respondent No. 1 fairly stated, and it was recorded in the order dated 27.8.2008 read with the order dated 18.11.2008 that he was not pressing that issue or the claim that the Centre is an authority covered within the ambit of Article 12 of the Constitution of India and could not support the observations in the impugned judgement in that behalf. It was, thus, agreed that to that extent the observations in the impugned judgement are unsustainable and are accordingly set aside.

7. However, the question which was sought to be agitated, and over which elaborate arguments have been addressed by learned Counsels for the parties is the amenability of the Centre to the writ jurisdiction of this Court under Article 226 of the Constitution of India under the category of "other authority".

8. The surprising part is that this matter has been sought to be agitated despite the factual matrix not existing and in that sense a legal opinion is being invited in a vacuum. This is the direct result of the insistence of the learned Counsel for the appellant that this question of law vis-a-vis the Centre needs to be adjudicated in its favour while on the other hand, learned Counsel for respondent No. 1 canvassed that the observations in the impugned judgement in that behalf are liable to stand. The judgements cited by learned Counsels for the parties are more or less the same but it is the conclusion sought to be derived in the factual matrix of the Constitution of the Centre and its upkeep over which there is divergence.

9. Learned Counsel for the appellant submitted that the issue is no more *res integra* in view of the observations of the Supreme Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, as a triple test has been laid down for invocation of remedy under Article 226 of the Constitution of India:

- a. The private body is discharging a public function.
- b. The decision sought to be corrected or enforced must be in discharge of a public function.
- c. The public duty imposed is not of a discretionary character. It has also been observed that the scope of mandamus is determined by the nature of duties to be enforced rather than the identity of the authority against whom it is sought.

10. Learned Counsel submitted that the aforesaid legal principle has emerged over a period of time and there are even earlier judgements which, in fact, adopted the same legal principle. In *G. Basi Reddy Vs. International Crops Research Instt. and Another*, it was observed that the public function or public duty should be similar to or closely related to those performable by the state in its sovereign capacity and thus it was observed that the primary activity of ICRI is to conduct research and training programme in the sphere of agriculture purely on a voluntary basis and such a service voluntary undertaken could not be said to be a public duty. In *Federal Bank Ltd. Vs. Sagar Thomas and Others*, a

writ under Article 226 of the Constitution of India was held to be maintainable against any person or authority performing public duty, owing positive obligation to the effected party. Thus, private companies carrying on business or commercial activity or banking in conformity with the Reserve Bank of India banking policy was held not sufficient to bring them within the ambit of discharge of any public function or public duty.

11. Learned Counsel also emphasized that the learned single Judge has been unnecessarily influenced by the factum of land being made available by the Government of India to the Centre as a criteria for bringing it within the domain of Article 226 of the Constitution of India even though in the Division Bench of this Court in *Air Vice Marshal J.S. Kumar v. Governing Council of Air Force Sports Complex and Anr.* 126 (2006) DLT 330 (DB) it was observed that merely because the Government had provided some land to the AFSC, it would not make the AFSC a state under Article 12 of the Constitution of India.

12. A reference was also made to *Rahul Mehra and Anr. v. Union of India* 114 (2004) DLT 322 (DB) in the context of the status of the Board of Control for Cricket in India. It was held that while BCCI may be amenable to writ jurisdiction but every action of the BCCI would not be subject to judicial review but only such of the actions which fall within the ambit of public law. A body, public or private, could not be categorized as amenable or not amenable to writ jurisdiction and their function test was the correct one to test maintainability.

13. Learned senior Counsel canvassed before us that in the impugned judgement the Centre has not been held as comparable to a regular educational institution to invite the ratio of *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , but the factum of land being allotted at concessional rates was deemed to be a factor to prevent the Centre from claiming immunity from judicial review under Article 226 of the Constitution of India.

14. We may observe at this stage insofar as the factual dispute is concerned, the learned single Judge opined that since the appointment of respondent No. 1 was made by the Governing Body, it was only a decision of the Governing Body which could terminate his services. It was found that there was lack of specific authorization on delegation of power to Dr. V.A. Pai Panandiker to take the decision of termination of services of respondent No. 1.

15. Learned Counsel also sought to specifically deal with the aspect of educational institutions since the stand of respondent No. 1 was that the Centre was intrinsically involved in the aspect of education and was enrolling students and granting certificates in respect of the same. It was submitted that the word "Education" should be understood in the sense of systematic instruction, schooling or training given to young in preparation for the work of life and connotes the whole course of scholastic instruction which a person has received as observed in *The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore*, . Similarly in *T.M.A. Pai Foundation and Others Vs. State*

of Karnataka and Others, it was observed in para 287 as under:

287. Education plays a cardinal role in transforming a society into a civilised nation. It accelerates the progress of the country in every sphere of national activity. No section of the citizens can be ignored or left behind because it would hamper the progress of the country as a whole. It is the duty of the State to do all it could, to educate every section of citizens who need a helping hand in marching ahead along with others.

16. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, the nature of educational institutions was dealt with as under:

21. Before we do so we should like to say that the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it may be accepted that a religious minority had the right to establish a university under Article 30(1). The position with respect to the establishment of Universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited any private individual or body from establishing a university and it was therefore open to a private individual or body to establish a university. There is a good deal in common between educational institutions which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguishes a university from any other educational institution is that a university grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a university which distinguishes it from the ordinary run of educational institutions. See *St. David's College, Lampeter v. Ministry of Education*. Thus in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established it must of necessity be granting degrees before it could be called a university. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognise those degrees. As a matter of fact as the law stood up to the time the Constitution came into force, the Government was not bound to recognise degrees of universities established by private individuals or bodies and generally speaking the Government only recognised degrees of universities established by it by law. No private individual or body could before 1950 insist that the degrees of any university established by him or it must be recognised by Government. Such recognition depended upon the will of government generally expressed through statute. The importance of the recognition of Government in matters of this kind cannot be minimised. This position continued even after the Constitution came into force. It is only in 1956 that by Sub-section (1) of Section 22 of the University Grants Commission Act, (3 of 1956) it was laid down that "the right to conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees". Sub-section (2) thereof

further provided that "save as provided in Sub-section (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree". Section 23 further prohibited the use of the word "university" by an educational institution unless it is established by law. It was only thereafter that no private individual or body could grant a degree in India. Therefore it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognised by Government.

17. Learned Counsel also referred to the definitions of "Research" since the Centre is primarily engaged in research works. The following three definitions were referred to for the said purpose:

From New Shorter Oxford Dictionary 1993

1. ...2. A search or investigation undertaken to discover facts or reach new conclusions by a critical study of a subject or by a course of scientific inquiry. 3. Systematic investigation into and study of materials, sources, etc., to establish facts, collate information, etc.; formal postgraduate study or investigation; surveying of opinions or background information relevant to a project etc.

From The World Bank Dictionary

1. Hunting for facts or truth about a subject; inquiry; investigation: The researches of men of science have done much to lessen disease. SYN: study. 2. Organized scientific investigation to solve problems, test hypothesis, or develop or invent new products; atomic research, cancer research.

From Wikipedia, the Free Encyclopedia on Internet

Research is defined as human activity based on intellectual application in the investigation of matter. The primary aim for applied research is discovering, interpreting, and the development of methods and systems for the advancement of human knowledge on a wide variety of scientific matters of our world and the universe. Research can use the scientific method, but need not do so.

18. Insofar as the factual matrix is concerned learned Counsel emphasized that the Centre is a registered Society which originally worked from a rented premises till it was made available a lease of land by the Government of India on which the Centre constructed the building. The plea advanced was that the Government had no role in its founding nor say either in the constitution of the Governing Body or election of its new members. There was no mention of Government control in its Memorandum and control of all operations vested with the Governing Body. The appointment of staff and fellows was by the Governing Body in its sole authority. The corpus is stated to be raised from variety of sources including collaborations, foreign foundations, multilateral agencies, etc. and the proportion of receipts for the Government projects is very small as compared to total receipts.

19. The grants received from ICSSR were stated to be not sufficient to cover the salaries of core faculty and staff and thus salaries were paid from the pool of resources.

20. An emphasis was laid on the fact that the Society has about 14 honorary faculty members with 21 paid faculty members and 19 supportive staff whose pay structure could be fixed by the Centre. The Centre voluntarily adopted certain pay scales for some of the faculties and staff members in terms of scales of UGC.

21. Learned Counsel for respondent No. 1, on the other hand, emphasized certain important factual aspects which according to him should weigh in making the Centre amenable to writ jurisdiction under Article 226 of the Constitution of India especially in respect of matters of employment of faculty. These are:

i. Notification dated 27.4.1977 of Ministry of Education & Social Welfare establishing the status of the Appellant as an educational institution.

ii. The Centre is included in Schedule to the Provident Fund Act, 1925 as a "Public Institution".

iii. The Centre is Government aided and certified educational institution and has signed agreements with Manipal Academy of Higher Education, a Deemed University, for providing Doctoral and Post Doctoral training to students.

iv. The Centre is exempted from Income Tax u/s 10(23C)(vi) of the Income Tax Act, 1961 as an educational institution.

v. The Centre is recognized as a Scientific and Industrial Research Organization entitling it to administrative support from the Ministry of Science & Technology and to custom/excise duty exemptions from import of equipment, spares and consumables.

vi. The allotment of land to the Centre on account of its status as an educational institution.

vii. The applicability of ICSSR grant-in-aid rules on service matters and the rules superseding the power of the Governing Body to that extent.

viii. The use of recurring Government grant-in-aid for maintenance of permanent faculty while non-recurring grant-in-aid is used for infrastructural support.

ix. The Central Government and ICSSR have oversight authority over the Centre in terms of accounts, foreign funding and representation on the Governing Board.

x. The receipt of large funds from the Government of India, State Governments and Public Sector Undertakings and Government agencies.

xi. Income of the Centre from the work done on behalf of public bodies.

xii. The large amount of fund flow is apparent even for the financial year 2006-2007 where Rs. 1.58 crore was received from public sources ? recurring

Government grant-in-aid Rs. 69.00 lakh; profit from test & examination - Rs. 47.00 lakh; rent payment from National Knowledge Commission - Rs. 42.00 lakh in respect of part of premises of the Centre.

22. It may be noticed that respondent No. 1 has filed documents in support of each of the aforesaid aspects and thus submitted that these are not just stray allegations but substantiated by documentary proofs and if all these factors are taken into account there can be no doubt that the Centre is amenable to writ jurisdiction under Article 226 of the Constitution of India at least in respect of matters of employment of the faculty.

23. Learned Counsel also referred to some other judgements to canvas his case. In *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, while dealing with the issue of maintainability of writ petition under Article 226 of the Constitution of India against a private party it was observed that there was an element of public interest in respect of pay and allowances of employees of non-aided private educational institution because there is a right to education. The Supreme Court has held that where interest is created by Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education, get an element of public interest in the performance of their duties. This in turn requires regulation of conditions of service of those employees at par with Government employees.

24. In *N.K. Aggarwal Vs. Union of India (UOI) and Others*, was held to be amenable to writ jurisdiction under Article 226 of the Constitution of India as the scope of activities was no way limited to manufacture and production of fertilizers but clearly involved community development and farmer benefit. The issue of question of Article 226 of the Constitution of India being applicable was held not in any way dependent on Article 12 of the Constitution of India. Once again, in *V T.C. Sharma (Dr.) Vs. Lt. Governor and Others*,) the aspect of public duty while exercising jurisdiction under Article 226 of the Constitution of India was emphasized in the context of SCERT in the context of its employees seeking parity with NCERT. A Division Bench of Karnataka High Court in *Arun Narayan Vs. The State of Karnataka and Another*, took a similar view while dealing with the aspect of admission to a private medical college.

25. We may notice that there have been two recent judgements of the Division Benches of this Court where the question of amenability to writ jurisdiction under Article 226 of the Constitution of India has been dealt with. In *All India Lawyers Union (Delhi Unit) v. Government of NCT of Delhi and Ors.* 163 (2009) DLT 319 (DB) it was observed in para 46 as under:

Maintainability of Writ Petition

46. Article 226 of the Constitution of India states that every High Court has jurisdiction to issue appropriate writs to any person or authority for the enforcement of any fundamental right and for any other purpose. The

expressions "any person" and "for any other purpose" have been explained and elucidated upon by the Supreme Court. The words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing the public function. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Court held that the law relating to mandamus has made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". 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 the 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. It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. 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 also quote paragraphs 20 and 21 of the judgment:

20. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the Statutes even though they are not public officials or statutory body. It was observed (at 778); "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 or a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed 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 responsibilities. (See Halsbury's Laws of England (3rd Ed. Vol. II p. 52 and onwards)).

21. 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." (Judicial Review of administrative Act 4th Ed. p.540). 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 water-tight 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 whenever 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.

26. Thereafter a reference was made to the pronouncement of the Supreme Court in various matters as discussed aforesaid.

27. In Smt. Saroj Devi (Widow) Vs. Union of India (UOI) and Others, this very Bench had an occasion to deal with the question of amenability to writ jurisdiction under Article 226 of the Constitution of India in respect of allotment of a house under Army Welfare Housing Organisation, society registered under the Societies Registration Act, 1860. We are naturally of the same view and instead of embarking on a detailed discussion consider it appropriate to reproduce our observations made in the said judgement:

Whether the writ filed by the petitioner for redressal of her grievance is maintainable under Article 226 of the Constitution of India?

The aspect of maintainability of the writ petition under Article 226 of the Constitution of India has to be considered with reference to the said Article which reads as under:

226. Power of High Courts to issue certain writs (1) Notwithstanding anything in Article 32, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government, within those territories directions, order or writs, including (writs the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

We have unfortunately not had the benefit of reference to any case law by both the learned Counsel for the parties. It is, however, necessary to examine the legal position in this behalf in order to appreciate the factual matrix.

In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the difference in the meaning of the word "authority" as used under Article 226 of the Constitution of India and under Article 12 of the Constitution of India has been brought out. It was observed that a writ petition under Article 226 of the Constitution of India

would be maintainable even against a private body as it would fall within the definition of "any person or authority" performing a public duty and owing a positive obligation to the affected party. Such a duty on the person or authority need not be imposed by Statute so long as it is doing a public function having a public character. In the facts of the case, the writ petition had been filed under Article 226 of the Constitution of India by the retrenched teachers of a public aided college (a public trust) affiliated to the University seeking a writ of mandamus for compelling the college management to pay them terminal benefits and arrears of salary due. Such a petition was held to be maintainable. The maintainability of the writ petition was challenged on the ground that the respondent-entity was a registered trust under the Bombay Trust Act and thus not amenable to the writ jurisdiction of the High Court. A distinction was made between enforcing the service contract and claiming terminal benefits and arrears of salary. It would be useful to reproduce the following observations:

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 can not be refused to the aggrieved party.

16. The Law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(c) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and commissions with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act 1981. It combined all the former remedies into one proceeding called Judicial Review.

Lord Denning explains the scope of this "judicial review":

At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The Statute is phrased in flexible terms, It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are-and who are not- public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing.

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them mean every body which is created by statute and whose powers and duties are defined by statute. So Government Departments local authorities, police authorities and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226 writs can be issued to a "any person or authority". It can be issued "for the enforcement of any or the fundamental rights and for any other purpose".

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 parson 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.

21....

22....

14....

15. It was observed that the scope of mandamus is determined by the nature of the duty to be enforced rather than the identity of the authority against whom it is sought though the courts always retain the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It was held that a body is performing a public function when it seeks to achieve some collective benefit for the public or a section thereof and is accepted by the public or a section thereof as having authority to do so. Bodies, therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest though there cannot be any general definition of "public authority" or "public function" and the facts of each case would decide the point. Once again it would be useful to extract the relevant paragraphs:

10. The Writ of Mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the sovereign to subordinates. In England, in early times, it was made generally available through the Court of King's Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporation which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the Administrative Law (Ninth Edition) by Sir William Wade and Christopher Forsyth, (Oxford University Press) at page 621, the following opinion is expressed:

A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and

injunction, which accordingly are the remedies employed in such cases.

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the

way in which it can be exerted". Nongovernmental bodies such as these are just as capable of abusing their powers as is government.

12. In *Regina v. Panel on Take-over and Merges*, Ex parte Datafin Plc. and Anr. (1987) 1 QBD 815, a question arose whether the Panel of Take-over and Mergers had acted in concert with other parties in breach of the City Code on Take-over and Mergers. The panel dismissed the complaint of the applicants. Though the Panel on Take-over and Mergers was purely a private body, the Court of Appeal held that the supervisory jurisdiction of the High Court was adaptable and could be extended to any body which performed or operated as an integral part of a system which performed public law duties, which was supported by public law sanctions and which was under an obligation to act judicially, but whose source of power was not simply the consent of those over whom it exercised that power; that although the panel purported to be part of a system of self-regulation and to derive its powers solely from the consent of those whom its decisions affected, it was in fact operating as an integral part of a governmental framework for the regulation of financial activity in the City of London, was supported by a periphery of statutory powers and penalties, and was under a duty in exercising what amounted to public powers to act judicially; that, therefore, the court had jurisdiction to review the panel's decision to dismiss the applicants' complaint; but that since, on the facts, there were no grounds for interfering with the panel's decision, the court would decline to intervene.

13. Lloyd L.J., agreeing with the opinion expressed by Sir John Donaldson M.R. held:

I do not agree that the source of the power is the sole test whether a body is subject to judicial review, nor do I so read Lord Diplock's speech. Of course the source of the power will often, perhaps usually, be decisive. If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If at the end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review.

14. In that decision, they approved the observations made by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* (1985) A.C. 374, 409 wherein it was held:

...for a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law

itself, i.e., that part of the common law that is given by lawyers the label of "the prerogative." Where this is the source of decision-making power, the power is confined to executive officers of central as distinct from local government and in constitutional practice is generally exercised by those holding ministerial rank.

15. It is also pertinent to refer to Sir John Donaldson M.R. in that Take-Over Panel case:

In all the reports it is possible to find enumerations of factors giving rise to the jurisdiction, essential or as being exclusive of other factors. Possibly the only essential elements are what can be described as a public element, which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction.

16. The above guidelines and principles applied by English courts cannot be fully applied to Indian conditions when exercising jurisdiction under Article 226 or 32 of the Constitution. As already stated, the power of the High Courts under Article 226 is very wide and these powers have to be exercised by applying the constitutional provisions and judicial guidelines and violation, if any, of the fundamental rights guaranteed in Part III of the Constitution. In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the courts had been reluctant to exercise the powers of judicial review and whenever the powers were exercised as against private employers, it was solely done based on public law element involved therein.

17. This view was expressly stated by this Court in various decisions and one of the earliest decisions is *The Praga Tools Corporation v. Shri C.A. Imanuel and Ors.* In this case, the appellant company was a company incorporated under the Indian Companies Act and at the material time the Union Government and the Government of Andhra Pradesh held 56 per cent and 32 per cent of its shares respectively. Respondent workmen filed a writ petition under Article 226 in the High Court of Andhra Pradesh challenging the validity of an agreement entered into between the employees and the company, seeking a writ of mandamus or an order or direction restraining the appellant from implementing the said agreement. The appellant raised objection as to the maintainability of the writ petition. The learned Single Judge dismissed the petition. The Division Bench held that the petition was not maintainable against the company. However, it granted a declaration in favour of three workmen, the validity of which was challenged before this Court. This Court held at pages 589-590 as under:

...that the applicant for a mandamus should have a legal and specific right to enforce the performance of those duties. Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or any inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. 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 statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities [Cf. Halsbury's Laws of England (3rd Ed.), Vol. II p 52 and onwards].

The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company.

18. It was also observed that when the High Court had held that the writ petition was not maintainable, no relief of a declaration as to invalidity of an impugned agreement between the company and its employees could be granted and that the High Court committed an error in granting such a declaration.

19. In *VST Industries Limited v. VST Industries Workers' Union and Anr.* (2001) 1 SCC 298, the very same question came up for consideration. The appellant-company was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, Rajendra Babu, J., (as he then was), held as follows:

7. In *de Smith, Woolf and Jowell's Judicial Review of Administrative Action*, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law, e.g., the activities by private bodies may be governed by the standards of public when its decisions are subject to duties conferred by statute or when by virtue of the function it is performing or possible its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarized the position with the following propositions:

(1) The test of a whether a body is performing a public function, and is hence

amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2) The principles of judicial review *prima facie* govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

20. Applying the above principles, this Court held that the High Court rightly held that it had no jurisdiction.

21. Another decision on the same subject is *General Manager, Kisan Sahkar Chini Mills Limited, Sultanpur, UP v. Satrughan Nishad and Ors.* The appellant was a cooperative society and was engaged in the manufacture of sugar. The respondents were the workers of the appellant and they filed various writ petitions contending that they had to be treated as permanent workmen. The appellant challenged the maintainability of those writ petitions and applying the principles enunciated in *VST Industries*" case (*supra*), it was held by this Court that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function.

22. In *Federal Bank Limited v. Sagar Thomas and Ors.* the respondent was working as a Branch Manager of the appellant Bank. He was suspended and there was a disciplinary enquiry wherein he was found guilty and dismissed from service. The respondent challenged his dismissal by filing a writ petition. The learned Single Judge held that the Federal Bank was performing a public duty and as such it fell within the definition of "other authorities" under Article 12 of the Constitution. The appellant bank preferred an appeal, but the same was dismissed and the decision of the Division Bench was challenged before this Court. This Court observed that a private company carrying on business as a scheduled bank cannot be termed as carrying on statutory or public duty and it

was therefore held that any business or commercial activity, whether it may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money which do have an impact on the economy of the country in general, cannot be classified as one falling in the category of those discharging duties or functions of a public nature. It was held that the jurisdiction of the High Court under Article 226 could not have been invoked in that case.

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England 3rd ed. Vol. 30, page-682,

a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit.

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or Government authorities at all levels is increasingly employing contractual techniques to achieve its regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce the contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably.

32. Applying these principles, it can very well be said that a writ of mandamus

can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.

28. We adopted the triple test criteria as laid down in Binny Limited and Anr. case (supra) to come to our conclusion and in our considered view the same course of action has to be followed in the present case. The law in this behalf is well settled yet elaborate submissions were made by learned Counsels, once again, reiterating those, citing the same very pronouncements.

29. Respondent No. 1 was undoubtedly appointed in pursuance to the letters of appointment as a Research Professor. DA, HRA, CCA, Transport Allowance were admissible as per the Central Government Ruls enforced from time to time. Termination of appointment is by the three calendar months notice or pay in lieu thereof. Respondent No. 1 was required to undertake Policy Research in pursuance to objective and programmes of the CPR.

30. The factual aspects emphasized by respondent No. 1 with supporting documents are very crucial to determine the public element in the functioning of the Centre. This is in the context of the triple condition laid down in Binny Limited and Anr. case (supra) as also the observations made in K. Krishnamacharyulu and Ors. case (supra). No doubt learned Counsel for the appellant sought to emphasize the research element of the work done at the Centre but it cannot be lost sight of that the Centre is carrying on regular higher education work in terms of an Agreement with Manipal Academy of Higher Education, a Deemed University, for providing Doctoral and Post Doctoral training to students. The Centre has obtained exemptions under the Income Tax Act claiming the status as an educational institution. The Government notifications have included the Centre as public institution in the Provident Fund Act and for obtaining support of Ministry of Science & Technology, the Centre has been recognized as a Scientific & Industrial Research Organisation. The allotment of land by itself could not have conferred the Centre with the public element function but this factor cannot be obliterated from the factors which are to be taken into account for determining the question of the public element of the function.

31. It is not even disputed that ICSSR Grant Rules apply to the Centre. Funds are being received by the Centre. The excuse given is that the funds themselves are not sufficient to pay the salary bills. In our view, this is no answer. This is specifically so in view of what has been explained by learned Counsel for respondent No. 1 while referring to the financial figures for the year 2006-2007 showing large part of recurring Government aid and the funds received from testing and examination work. We may also note that on the land made available at concessional rate structure has been built and part of the premises has been

let out to the National Knowledge Commission from which rent of Rs. 42.00 lakh was received for the year in question. Thus, the land is not only being put to use for activities of the Centre but the land obtained on concessional rates is being utilized for a part of the structure to be rented out to earn income towards the activities of the Centre. It cannot be said that the Government has no role to play in the functioning of the Centre.

32. Respondent No. 1 may be governed by his terms & conditions of appointment, however, whether an organization like the Centre which carries on educational activity can absolve itself from judicial scrutiny under Article 226 of the Constitution of India while dealing with the violation of its norms in such termination is the moot point. We find that the answer to this is clearly in the negative.

33. The documents filed on record show that the communications have been issued from the Ministry of Human Resource, Government of India to ICSSR for pay revision of employees of research institutes/regional centres supported by ICSSR and the enhancement of aid for them in which the Centre is at serial No. 1. Such revision of scales as per the communication inter alia dated 22.2.2000 shows that it has to be in accordance with the State Government notifications and where posts have been created, upgraded only after obtaining Government of India/ICSSR approvals. The pay scales and allowances of the academic and non-academic employees are to be in conformity with the UGC scales. The service conditions of employees especially relating to hours of work, payment of OTA, medical allowances, etc. are also to be identical to the State/Central Government employees. There has to be no alteration/modification in the emolument structure and service conditions without prior approval of the Government. To fully appreciate this aspect we are quoting the relevant extract of that letter, which is as under:

The approval of the Government is subject to the following conditions:

1. Revision of scales will be either in accordance with the concerned State Gov. notification or the provision of Ministry of Finance (Deptt. Of Expenditure) OM No. F.7934)E.III-A97 dated the 2nd December, 1997. The revised scales of pay as incorporated in part "A" of the First Schedule to the CCS (RP) Rules, 1997 will only be admissible in the case of non-teaching employees and UGC pay scales in the case of faculty posts. In cases where no equivalence of pay scales is established either with the State or Central Govt. pay scales, the scales, recruitment qualification etc. will correspond to Central Gov. employees. Payment of the arrears will be regulated in accordance with Para 3 of the above said OM.

2. The revised scales would be admissible to those employees who opt for these in accordance with the Rules. Deduction on account of PF & CPF, as the case may be, will be made on the basis of the revised pay w.e.f the date the employees opt to the elect the revised pay scales.

3. Revision of pay scales would be admissible in respect of such posts which have

been created/upgraded only after obtaining Govt. of India's approval/ICSSR.

4. The pay scales and allowances (DA, HRA, CCA) of academic and non-academic employees of the Research Institutes and identical to those of the UGC in respect of the faculty and State/Central Govt. employees in respect of non-academic employees prior to the revision. The revised pay scales will not be extended to any category of employees where the pre-revised pay scales are not identical to UGC pay scales in respect of the faculty and State/Central Govt. employees in respect of non-academic posts. Such cases, if any, will be referred by the ICSSR to this Department.

5. The service conditions of the employees of the Institutes/Regional Centres specially those relating to hours of work, payment of OTA, medical allowances, etc. should also be identical to those of State/Central Govt. employees.

6. The pay scales and allowances of the academic posts, qualifications recruitment rules etc. should be as per the UGC norms or State Universities Norms.

7. The revised pay scales will not be extended in respect of the employees who are enjoying the scales of pay not approved by the Government/ICSSR but have resulted from any personal promotion or Career Growth Scheme if any. Such cases will be referred to this Department by the ICSSR separately.

8. ICSSR will bear 90% of the total expenditure on account of revised pay scales in respect of the institutes which are receiving 100% grant and 45% where the funding is on 50:50 basis between the Central Government/State Govt. 10% additionality will be met by the Institute through savings under various heads.

9. The ICSSR will ensure that the medical facilities to the staff are in line with the CS (MA) Rules.

10. Merit Promotion Scheme, if exists, should be discontinued before extension of revised pay scales.

11. All cases where there is any variation in the pattern of emoluments structure and conditions of service will be referred to Department of Secondary Education and Higher Education for consideration/approval separately and will not be extended revised pay scales without prior approval of this Department.

12. Special Audit of the Institutes will be carried out by CAG for implementation of pay revision to ensure that everything was done in conformity with UGC/Govt. Guidelines and the audit report will be submitted to the Government through ICSSR.

13. The research institutes shall not alter/modify the emolument structure and service conditions, scales of pay of the post without the prior approval of the government.

While releasing the grants to respective institutions, ICSSR shall furnish to the

Govt. of India the schedule of pay scales (pre-revision and post-revision), number of posts, designations, recruitment qualifications, etc.

34. There are, in fact, numerous such documents on record seeking approval of ICSSR in respect of matters of employment and the extraction is by way of an illustration as we have no doubt in our mind that matters relating to employment and the terms & conditions thereof are governed by directions of the Government of India and ICSSR which in turn governs the Centre.

35. Since the inception itself Mr. T.A. Pai had written to the then Finance Minister on 20.3.1976 while requesting for aid in the following terms:

...The Centre is supported by State Governments and public sector undertakings and through research grants from appropriate official agencies. As a person who has always encouraged systematic studies of policy nature, you will no doubt appreciate the kind of work done by the CPR and the need to encourage such efforts so that the Government and the people could weigh the various policy options.

The reason why I am writing this letter to you is that we are now engaged in building a small corpus for the CPR. Towards this purpose, especially to enable the Centre to meet its capital expenditure etc., I am making you this request for an ad hoc nonrecurring grant of rupees five lakhs only. I have no doubt you will appreciate that this is but a small and one time grant with no recurring liabilities to the Government of India. I trust you will be kind enough to sanction this amount and instruct the appropriate agency for its release.

36. Even in respect of construction of building and renovation thereof non-recurring grant was sought. It, thus, hardly lies in the mouth of the representatives of the Centre to claim exclusion from the Court's scrutiny while exercising jurisdiction under Article 226 of the Constitution of India.

37. We are, thus, unequivocally of the view that in matters of service conditions including of appointment and termination and grievances arising therefrom the scrutiny under Article 226 of the Constitution of India cannot be excluded having a public element and thus the learned single Judge was right in coming to the conclusion that the matter could be examined under Article 226 of the Constitution of India.

38. We also find that having found that the action of respondent No. 5, Dr. V.A. Pai Panandiker left much to be desired, the imposition of personal costs on him can hardly be said to be erroneous or calling for interference. We may, however, note that even these costs have not been paid though no stay was granted in that behalf.

39. The appeals are, thus, meritless except to the extent of what we have observed insofar as the aspect of Article 12 of the Constitution of India examined in the impugned judgement.

40. The appeals are accordingly dismissed with costs of Rs. 10,000.00 each.