
(2014) 10 GAU CK 0012
In the Gauhati High Court
Case No : WP (C) No. 3428 of 2006

Kumud Pathak

APPELLANT

Vs

Numaligarh Refinery Limited (A Government of India Enterprise)

RESPONDENT

Date of Decision : 22-10-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 2 GLD 440 : (2014) 5 GLT 154

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R.C. Saikia, Advocate for the Appellant; S.N. Sarma, Sr. Adv., S.C. Keyal, ASGI and N. Deka, Advocate for the Respondent

Judgement

Biplab Kumar Sharma, J.—This writ petition is directed against the Annexure-12 order dated 26/05/2006 of the respondent No. 2 by which the petitioner has been removed from the services of Vivekananda Kendra - NRL Hospital. Incidentally, the petitioner has also challenged the Annexure-9 enquiry report dated 27/03/2006 based on which the aforesaid penalty has been imposed. The petitioner has also challenged the Annexure-14 advertisement published in the issue of the Assam Tribune dated 03/02/2006 by which the Vivekananda Kendra - NRL Hospital invited candidatures for the post of Associate Consultant (Surgery). In the writ petition, the petitioner, while referring to his Annexure-1 appointment order as Sr. Medical Officer, issued by the respondent No. 2 has stated that prior to such appointment, he was appointed as Doctor in the year 1998 under the State Government (Assam), pursuant to his selection conducted by the Assam Public Service Commission (APSC).

2. The services of the petitioner was confirmed by Annexure- 1A letter dated 23/04/2001 issued by the respondent No. 2. He was issued with the Annexure-2 show cause-cum-charge sheet by the respondent No. 2 with the charges relating to financial irregularities in the matter of raising of bills etc. He was also placed

under suspension pending drawal of departmental proceeding. The petitioner submitted his show cause reply to the charge sheet vide Annexure-3 dated 24/10/2005.

3. When the matter rested thus, a formal charge sheet was issued to the petitioner vide Annexure-4 memorandum dated 02/11/2005 levelling as many as 4 (four) charges relating to the alleged malpractice in respect of raising bills and claiming false TA claims. Along with the memorandum of charge sheet, a statement of imputation of misconduct in support of the articles of charges was also enclosed.

4. In response to the said formal charge sheet, the petitioner responded by submitting his written statement on 11/11/2005 denying the charges. Being not satisfied with the reply furnished by the petitioner, he was informed of the enquiry to be conducted vide Annexure-6 letter dated 16/11/2005. Thereafter, Enquiry Officer and Presenting Officer etc. were appointed and in due course the enquiry was conducted as per the procedure.

5. The impugned Annexure-9 enquiry report was submitted on 27/03/2006 holding that the charge No. 1, 2 and 3 stood proved. However, the charge No. 4 was held not proved and dropped from the purview of the enquiry. The petitioner was provided with the copy of the enquiry report asking him to make representation which he did vide Annexure-10 dated 05/04/2006. Thereafter, by the impugned order dated 26/05/2006, the disciplinary authority of the respondent No. Vivekananda Kendra - NRL Hospital imposed the penalty of removal from service. Thereafter the impugned advertisement was issued on 03/06/2006 (Annexure-14).

6. Throughout the writ petition, there is no whisper as to whether the Vivekananda Kendra - NRL Hospital i.e. the respondent is an authority within the meaning of Article 12 of the Constitution of India, although its actions have been challenged invoking writ jurisdiction.

7. In the counter affidavit filed by the respondent No. 1, it has been stated that the respondent No. 2 being the employer of the petitioner, the respondent No. 1, i.e. M/s. Numaligarh Refinery Ltd. has got nothing to do with the matter. It has been stated that the respondent No. 2 is a registered society. Referring to the hospital being run by the respondent No. 2, it has been stated that the respondent No. 1 has a hospital at Numaligarh for the purpose of rendering free treatment of its employees. Referring to the Annexure-A agreement dated 19/09/2002, the respondent No. 1 has stated in the affidavit that the Vivekananda Kendra is a registered society under the Societies Registration Act having its registered office at Chennai and Headquarter at Kanyakumari, Tamil Nadu. It has also been stated that as per the terms of the agreement, the Vivekananda Kendra has constituted a trust in the name of Vivekananda Kendra Medical and Research Foundation (VKM-RF). It is the said trust which runs the hospital for and on behalf of Vivekananda Kendra. It is the trust which employs

the requisite persons as per requirement and has the full authority and control over all appointments, promotions, discipline, termination, transfer, etc of its employees.

8. The affidavit further states that the petitioner was appointed by the respondent No. 2 and 3 i.e. the Vivekananda Kendra and the respondent No. 1 has got nothing to do with his appointment. Denying the plea of the petitioner that the salaries of the entire staff of Vivekananda Kendra - NRL Hospital and other allowances are paid by the respondent No. 1, it has been stated that the respondent No. 1 does not pay the salaries of Doctors or other staff of the hospital. Referring to the terms and conditions of the MOU, it is the stand of the respondent No. 1 that relationship between it and the Vivekananda Kendra is purely contractual and the Vivekananda Kendra has been given full powers to run and manage the hospital.

9. The petitioner has filed an affidavit-in-reply to the aforesaid counter affidavit of the respondent No. 1 in which it has been stated that the respondent No. 1 is a State and that the respondent No. 2 is also a State within the meaning of Article 12 of the Constitution of India. Referring to the Governing Body of the trust i.e. the governing body of the Vivekananda Kendra - NRL Hospital, it has been stated that there are members of the respondent No. 1 in the said body. The petitioner has also filed an additional affidavit on 15/05/2014 so as to place on record the Identity Card that was issued to him by the respondent No. 1. He has also placed reliance on an advertisement dated (sic) published in the Assam Tribune by the Vivekananda Kendra - NRL Hospital. Referring to these two documents, it is the case of the petitioner that there is deep and pervasive control of the respondent No. 1 over the respondent Nos. 2 and 3 and consequently the writ petition is maintainable.

10. The respondent No. 1 has filed an affidavit in reply to the said affidavit filed by the petitioner, in which it has been stated that the petitioner having been appointed by the respondent Nos. 2 and 3 of its own without any reference to the respondent No. 1, he is not its employee. As regards the Identity Card issued to the respondent No. 1 to the petitioner, it has been stated that the same was issued for easy access to the refinery campus including the refinery township as the security staff manning the refinery campus including the refinery township did not allow anyone to enter without such identity card. Referring to the similar identity cards issued to other employees of associates/contractors of Numaligarh Refinery Ltd., doing various official jobs, it has been contended that the identity card issued to the petitioner did not make him an employee of the respondent No. 1.

11. In the counter affidavit filed by the respondent Nos. 2 and 3, a preliminary objection has been raised regarding maintainability of the writ petition. It has been stated that the Vivekananda Kendra is not a State within the meaning of Article 12 of the Constitution of India. In this connection, paragraph 4 of the counter affidavit may be referred to, which is quoted below:--

"4. That before giving parawise reply to the averments made in the Writ Petition I begs to state that the Writ petition is not maintainable on the following grounds :

(a) That Vivekananda Kendra is a society registered under the Societies Registration Act (herein after referred to as "the Kendra") and having its registered office at Chennai in the State of Tamilnadu. The said Kendra has its own Rules & regulations for its functioning. The Kendra is running various organizations including school, Hospitals, Yuva Kendra etc. throughout the country. The Kendra manages its various activities from the donations paid by public in general. The said Kendra is not a "State" as defined under Article 12 of the Constitution of India. Neither the Central Government nor any of the State Government has any control or say in the functioning of the activities of the Kendra. Accordingly, the Kendra is not amenable under the Writ Jurisdiction and as such, the instant Writ Petition is not maintainable and is liable to be dismissed in limine.

(b) That the respondent No. 2 is running and managing the Hospital of Numaligarh Refinery Ltd. under agreement with the respondent No. 1. As per agreement, it is the responsibility of the respondents No. 2 and 3 to efficiently run and manage the hospital. It is specifically provided and agreed that the respondent No. 2 shall have full authority and control over all appointments, promotion, discipline, termination & transfer of all personnel employed in the hospital including the right to fix and determine the remuneration and other terms and conditions of its employees. Under the circumstances, the respondent No. 1 has no role to play in case of appointment and termination of employees of the Hospital. Since the respondent No. 2 is not a "state" within the meaning of Article 12 of the constitution of India, the writ petition is not maintainable against the answering respondents.

The deponent craves leave of this Hon"ble Court to produce and rely on the Constitution of the respondent No. 2 and Memorandum of Understanding entered with the respondent No. 1 for running the Hospital, if necessary at the time of hearing.

(c) That the petitioner after his removal from service had collected all his dues and left the Hospital by vacating the official quarter and presently working in a Nursing Home at Nalbari. Besides this, the petitioner is engaged in private practice in the heart of the two of Nalbari having roaring practice."

12. As regards the plea of the petitioner that the respondents No. 2 and 3 persuaded the petitioner to resign from his earlier post so as to join the Vivekananda Kendra, while denying the same it has been stated that the petitioner on his own volition offered his candidature for the post of Medical Officer (General Surgery). As regards the enquiry that was conducted against the petitioner, it has been stated that due procedure was followed in conducting the same providing all required opportunities to the petitioner.

13. I have heard Mr. R.C. Saikia, learned counsel for the petitioner and have also heard Mr. S.N. Sarma learned senior counsel assisted by Mr. S.C. Keyal, learned counsel representing the respondent No. 2 and 3. I have also heard Mr. N. Deka, learned counsel representing respondent No. 1. I have also considered the entire materials on record.

14. At the very out-set, the learned counsel representing the respondents questioned the very maintainability of the writ petition. It was submitted that the Vivekananda Kendra being not an authority under Article 12 of the Constitution of India, the writ petition is not maintainable. Referring to the counter affidavit filed by the respondents, they argued that the Vivekananda Kendra is a registered society under the Societies Registration Act, having its registered office at Chennai in the State of Tamilnadu. They also argued that the said Kendra has its own rules and regulations for its functioning. The Kendra manages its various activities from the public donations. Referring to the agreement mentioned above, they submitted that the responsibility of the respondents No. 2 and 3 to run the hospital for which the respondent No. 1 has provided the accommodation.

15. Countering the above argument, the learned counsel for the petitioner submitted that the writ petition is maintainable on two counts, firstly, the Vivekananda Kendra itself is an authority under Article 12 of the Constitution of India and secondly it being under deep and pervasive control of the respondent No. 1, discharging public functions, the writ petition is very much maintainable. In this connection, Mr. saikia, learned counsel for the petitioner has placed reliance on two decisions reported in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . On the other hand, Mr. S.N. Sarma, learned senior counsel representing respondents No. 2 and 3 has placed reliance on a decision reported in Binny Ltd. and Another Vs. V. Sadasivan and Others, . Mr. N. Deka, learned counsel representing the respondent No. 1 has placed reliance on the decision reported in Nripendra Kumar Sarma Vs. Bongaigaon Refinery and Petrochemicals Ltd. and Others, .

16. Admittedly, the petitioner was appointed not by the respondent No. 1 but by the respondent No. 2 as will be evident from the Annexure-1 appointment order signed by the Secretary, Vivekananda Kendra, NRL Hospital. He was also confirmed in his service by the said authority. The enquiry was also conducted by the Vivekananda Kendra and not by the respondent No. 1. To establish that the Vivekananda Kendra is an authority within the meaning of Article 12 of the Constitution of India, the petitioner ought to have laid the basic foundation thereof in the writ petition. However, as noted above, there is not even a whisper in the writ petition that it is an authority within the meaning of the said Article. It is only after raising the issue relating to maintainability of the writ petition, the petitioner in his further affidavits has sought to establish that the Vivekananda Kendra is under deep and pervasive control of the respondent No. 1. It is not the

case of the petitioner that the Vivekananda Kendra being an instrumentality of the respondent No. 1, the petitioner became an employee of the respondent No. 1 and thus the said respondent being an authority under Article 12, the writ petition is maintainable.

17. It is in the above context, the learned counsel for the petitioner has referred to the decision in *Ajay Hasia (Supra)* in which it was held that the particular society registered under J & K Registration of Societies Act, 1898 and running a Regional Engineering College was State and thus the writ petition under Article 12 was maintainable, when it was alleged that there was violation of fundamental rights. In the said case, the amounts required for running the College was provided entirely by the Central Government and the Government of Jammu and Kashmir. Even for generating any other fund, the same was to be done only with the approval of the State and the Central Government. It was in such circumstances, it was held that the society was State. Same is not the case in hand. Nothing could be shown that the society is under any kind of control of the respondent No. 1 and that the entire fund is generated by the respondent No. 1.

18. In *Mahabir Auto Stores (Supra)*, it was held that Indian Oil Corporation is an organ or an instrumentality of the State and hence falls within the Article 12 of the Constitution of India. There is no quarrel with this proposition of law. The IOC is a statutory body incorporated under the Companies Act carrying on monopoly business in Lubricant etc. That was the case pertaining to fairness in action in the matter of awarding of contract. There is nothing to show that the petitioner was an employee of the respondent No. 1.

19. The Vivekananda Kendra has been running the hospital at Numaligarh as per the agreement with the respondent No. 1. It is clearly stipulated in the said agreement that the Kendra shall be bound by the over all control and monitoring of the hospital by the Governing Body. The Kendra shall run and manage the hospital and that all assets relating to the hospital including the land and building, equipments, infrastructure shall be made use of during the currency of the agreement only. In clause 7(4) of the agreement, it is clearly stipulated that for the purpose of managing and running the hospital, the Vivekananda Kendra shall select and employ competent personnel in consistent with the job requirements and according to accepted and standard norms of medical care. Clause 7(4) of the agreement provides that for the purpose of running and managing the hospital, the Kendra shall prepare its annual budget. Clause 7(1) clearly stipulates that the Vivekananda Kendra shall have full authority and control over all appointments, promotions, discipline, termination and transfer of all personnel employed in the hospital. Clause 8(b) provides that the respondent No. 1 shall not, save as otherwise provided in the agreement, interfere with the day to day administration or functioning of the hospital or any matter within the domain of the Vivekananda Kendra. Clause-12 makes it is the responsibility of the Kendra to ensure all personnel against all known risks associated with their

engagement.

20. From the above, it is apparent that there is no any deep and pervasive control of the respondent No. 1 over the respondent Nos. 2 and 3 so as to claim that the petitioner was an employee of the respondent No. 1. As noted above, the respondent No. 2 is a society run by a particular trust.

21. In Binny Ltd. (Supra) dealing with the question of maintainability of the writ petition, the Apex Court held as follows:--

"22. In Federal Bank Ltd. Vs. Sagar Thomas and Others, , 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 that the jurisdiction of the High Court under Article 226 could not have been invoked in that case."

22. In Nripendra Kumar Sarma (Supra) this Court held that the Delhi Public School Society was not amenable to writ jurisdiction. It was held that the society registered under the Societies Registration Act, although is engaged in the field of imparting education connected with public interest, writ will not lie against it in the extra ordinary jurisdiction of the Court, cannot be expected to embrace the action of all such bodies merely because they are engaged in the field of imparting education. Referring to the various decisions of the Apex Court, it was held thus:--

"15. Applying the parameters of the above law to the facts of the present case what this Court finds is that the Delhi Public School, Dhaligaon, was set up under an agreement dated 10.9.1996 executed by and between the respondent No. 1 and the Delhi Public School Society. By the said agreement the Delhi Public School Society agreed to grant a revocable licence to the Board of Management of the school to use the name "delhi Public School" and its logo for the purpose of the Delhi Public School, Dhaligaon. Under clause 5 of the agreement the Bongaigaon Refinery and Petrochemicals Ltd. ("the BRPL") agreed to provide a guarantee for payment to the Society maintenance charges of Rs. 3,00,000 (Rupees three lakhs) per annum with 10% escalation every year. Under clause 4

the said school was to be established, managed and run by a Board of Management consisting of nine members including the Chairman, Vice-Chairman and Pro-Vice-Chairman. While the Chairman of the Board of Management is to be the Chairman of the Society, the Vice-Chairman is to be nominated from amongst the members of the Society by the Chairman. The Pro-Vice-Chairman is to be nominated by the respondent No. 1 and is to exercise the powers of the Chairman and Vice-Chairman in their absence. Of the six remaining members of the Board, three are to be nominated by the Society and the other three by the respondent No. 1. Clause 5 of the agreement visualizes full autonomy to the Board of Management to run the affairs of the school including matters pertaining to appointment of Principal and members of the teaching and non-teaching staff. Under clause 6 of the agreement, the BRPL, i.e. the respondent No. 1 had agreed to provide all infrastructure in connection with the setting up of the school including land and buildings and other infrastructure like library, laboratories and provisions for sports and games, etc. including residential accommodation to the teaching and non-teaching staff. Under clause 6(j) of the agreement the deficit, if any, in the school budget which cannot be met by the school from its own resources to be funded by the BRPL. Under clause 8 of the agreement in question, children of employees of BRPL are to get first preference in the matter of admission to the school followed by children of employees of Government/public sector agencies connected with BRPL and thereafter as per policy of the Board of Management. Under clause 8 (e) of the agreement it is the Board of Management who is responsible for determination of salary payable to the teaching and non-teaching staff whereas under sub-clause (f) of clause 8 the BRPL would have a right of inspection of the school premises. Clause 8(h) contemplated that the school building, furniture, fixtures, fittings, library, laboratory materials, sport materials, etc. provided by the BRPL will be treated as having been given on nominal rent of Rupee one per annum to the school.

16. Applying the tests that has been culled out by the long process of judicial evolution, as noticed above, it is clear in the present case that apart from the initial guarantee of maintenance charges of Rs. 3,00,000 (Rupees three lakhs) per annum with yearly escalation at the rate of 10%, the school is expected to generate its income, though any deficit, in the last resort, is to be met by the BRPL. Where the agreement between the parties contemplated the school to be a self-income generating body and the resources of the BRPL are to be used only as a cushion in the event of deficit/loss, it cannot be said that financial assistance offered by the BRPL is to be extent of the entire expenditure of the school. However, the entire infrastructure of the school being made available by the BRPL, perhaps, it will not be incorrect to say that the capital expenditure of the school has been incurred by the BRPL. What would however, be significant to the note is the absence of any effective control, much less deep and pervasive control of the BRPL, over the management of the school. In this regard, the agreement in question clearly conveys the impression that such management is vested in a Board which is to take its own independent decisions in all matters

commencing from admissions to appointments as well as in the running and maintenance of academic curriculum and standards. In the aforesaid vital area there is hardly any control exercised by the BRPL over the school in question.

17. This will bring the court to a consideration of the question of exercise of functions and duties of public nature by the school, on which much reliance has been placed on behalf of the petitioner. What has to be emphasized, in this regard, is that the court's attention is the entry of a large body of persons and agencies in the field of spreading of education and the additional fact that in many such cases spreading of education is primarily private commercial ventures. The aforesaid observation of the Court certainly has nothing to do with the affairs of the Society involved in the present case. What is ought to be emphasized is that spreading of education, though undoubtedly connected with public interest, is an activity where there is a large number of private players. Obviously, the extraordinary jurisdiction of this Court cannot be expected to embrace the action of all such bodies merely because they are engaged in the field of imparting education.

18. From the above discussion it transpires that the crucial tests laid down in *Ajay Hasia (Supra)* as explained in *Pradeep Kumar Biswas (supra)* to determine whether a body can be understood to be an authority under Article 12 or a body amenable to the expansive jurisdiction of the High Court are not attracted in the present case involving the Delhi Public School Society. Though some monetary assistance with a cushion, the event of losses, is guaranteed by the BRPL, the school in question is run and managed by the Society which body is expected to and must be generating its own income. Besides there is no effective control much less deep and pervasive control of the BRPL over the conduct of the affairs of the school. For reasons already discussed the school in question cannot also be understood to be engaged in performance of functions and duties of public nature. Consequently, the Court is of the view that in the present case the preliminary objection raised by the respondents that the writ petition is not maintainable must prevail. As the writ petition is being held to be not maintainable no question of entering into the merits of the claim of the petitioner will arise."

23. In a recent decision of the Apex Court reported in *National Aluminium Company Ltd. and Others Vs. Ananta Kishore Rout and Others*, , it has been held that for determining the employer-employee relationship, the financial and other aid given, or some element of control or even protection of service tenure is not enough. In this case, the employees of the School established by the appellant NALCO for benefit of wards of its employees were held to be not the employees of NALCO. As in the instant case, in the said case also, some of the officials of NALCO are nominated to the Managing Committee of the School. However, as has been held the same is not enough to make employees of the schools, the employees of NALCO. Narrating the respective cases of both the parties as follows, it has been held that the finding of the High Court that the real control

and supervision over the employees and even over the Schools was that of NALCO, is not sustainable.

"13. From these facts, narrated above, one can easily find out as to what are the respective cases of both the parties. The employees of both schools filed the writ petitions to lay the claim that they are the employees of the NALCO on the ground that real control and supervision of the schools, including the staff is that of NALCO which has the final say in all vital matters. It was their argument that though the appointments are made by the Managing Committees of the schools, it is on the recommendation of the Selection Committee of which the authorities of NALCO are the members. Further, since inception of the school, an officer in the rank of General Manager of NALCO has been functioning as the President of the Managing Committee, and an officer in the rank of Chief Manager/DGM (Personal Admn.), and the DGM (Finance) are the other two members. That apart, the building furniture/fittings and all necessary paraphernalia for running of the schools is provided by and is the responsibility of NALCO. Even the finances are provided by NALCO the financial budget is approved by the Board of Director of the NALCO. NALCO even fixes the tuition fee. No transaction of the schools can be made without the approval of DGM (Finance), NALCO which includes the expenditure with regard to the salary component, provident fund, medical reimbursement, leave travel concession, festival advance, increments, etc. Teaching and non-teaching staff of the schools are allotted with residential quarters by the NALCO. It was thus argued that NALCO plays a decisive role in the matter of appointment of the employees as well as in the management of the schools.

14. On the other hand, the case of the NALCO was that Managing Committees are the societies registered under Societies Registration Act having independent legal status; it is these MCs which are not only the appointing authorities but disciplinary authorities with all controlling power over these employees and therefore NALCO cannot be treated as the employer of the staff of the schools.

21. We have considered the aforesaid submissions with reference to the record of this case. No doubt, the school is established by NALCO. NALCO is also providing necessary infrastructure. It has also given adequate financial support inasmuch as deficit, after meeting the expenses from the tuition fee and other incomes received by the schools, is met by NALCO. NALCO has also placed staff quarters at the disposal of the schools which are allotted to the employees of the schools. Employees of the school are also accorded some other benefits like recreation club facilities etc. However, the poser is as to whether these features are sufficient to make the staff of the schools as employees of NALCO.

23. It has been established from the documents on record that both the schools have their own independent Managing Committees. These Managing Committees are registered under the Societies Registration Act. It is these Managing Committees who not only recruit teaching and other staff and appoint them, but all other decisions in respect of their service conditions are also taken by the

Managing Committees. These range from pay fixation, seniority, grant of leave, promotion, disciplinary action, retirement, termination etc. In fact, even Service Rules, 1995 have been framed which contain the provisions; delineating all necessary service conditions. Various documents are produced to show that appointment letters are issued by the Managing Committees, disciplinary action is taken by the Managing Committees, pay fixation and promotion orders are passed by the Managing Committees and even orders of superannuation and termination of the staff are issued by the Managing Committees. It, thus, becomes clear that day to day control over the staff is that of the Managing Committees. These Managing Committees are having statutory status as they are registered under the Societies Registration Act. Therefore, Mr. Venugopal is not right in his submission that Managing Committees do not have their own independent legal entities.

26. In the present case, as pointed out above, the day to day supervision and control vests with the Managing Committee, from the appointment till cessation/termination. The exercise which is undertaken by the High Court is in the nature of piercing the veil and commenting that real control vests with NALCO. Though we would come to this aspect a little later, it is necessary to point out at this stage that whether the arrangement/contract is sham or camouflage is a disputed question of fact. In the present case writ petitions were filed and it is not a case where industrial disputes were raised by these employees.

30. No doubt, there may be some element of control of NALCO because of the reason that its officials are nominated to the Managing Committees of the schools. Such provisions are made to ensure that schools runs smoothly and properly by the society. It also becomes necessary to ensure that the money is appropriately spent. However, this kind of "remote control" would not make NALCO as the employer of these workers. This only shows that since NALCO is shouldering and meeting the financial deficits, it wants to ensure that money is spent for rightful purposes."

24. From the above narration of facts and the laws holding the field, it cannot be held that the petitioner, although, was appointed by the respondent No. 2 became an employee of the respondent No. 1 on the basis of the projection made in the writ petition and the subsequent affidavits filed by him. Merely because, in the Governing Body of the Society there is representative of the respondent No. 1 and it has provided the infrastructure along with its hospital by way of accommodation to run the hospital by the respondent No. 2 and 3, it cannot be said that the petitioner became an employee of the respondent No. 1.

25. The petitioner has also failed to establish that the respondent No. 2 is an authority within the meaning of Article 12 of the Constitution of India. Nothing could be shown that it is run entirely with the aid of the Central or State Government. Even if some grants are provided to it for its charitable works of running the hospital, the same by itself cannot make it an authority under Article 12 of the Constitution of India. The appointment and termination of the service

of the petitioner by the respondents No. 2 and 3 is purely a private affair. This being the position, I am of the considered opinion that the writ petition is not maintainable. However, it will always be open for the petitioner to pursue such other legal remedy as may be available in law.

26. Writ petition is dismissed being not maintainable with the above liberty granted to the petitioner. There shall be no order as to costs.