

(2002) 08 DEL CK 0109

In the Delhi High Court

Case No : CM No's. 7180/96, 8156/97, 9843 of 2000 and CW No. 3574 of 1996

Mrs. Ayesha Siddiqua Abbasi

APPELLANT

Vs

Ghalib Institute and Another

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 226(1A), 32, 367
General Clauses Act, 1897 — Section 2(42)
Industrial Disputes Act, 1947 — Section 10A

Citation : (2002) 08 DEL CK 0109

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : N.A. Siddiqui, for the Appellant; Anees Ahmad, for the Respondent

Judgement

Vikramajit Sen, J.—The question which has to be resolved at the present stage is whether this Writ Petition is maintainable. The admitted facts are that while no funds or grants are presently received by the respondent namely Ghalib Institute, from the Government of India, its income is generated from the letting out of its auditorium, and of two floors to a Bank. Additional income is also received from the public library that is run by the Respondent and from donations received from time to time. Admittedly, the rent was received from a gratuitous transfer from the Government of India and the building was also raised from donations received from the public. The Respondent was registered as a society under the Societies Registration Act, 1860 in 1969 and was thereafter converted into a public Trust in July, 1971.

2. Earlier Paragraph 4 of the Writ Petition had been focused upon in the Order dated March 8, 2001 which is reproduced for ready reference.

"Learned Counsel for Respondent No. 1 has drawn attention to paragraph 4 of the Writ Petition which reads as follows:

"That the Respondent No. 2 Union of India, Ministry of Cultural Affairs has been

vested with the power of protecting and safeguarding the interest of our country, so it has got supervisory powers, on all cultural institutions."

The contention of Learned Counsel for the Petitioner is that although Respondent No. 1 is a Public Trust, it was inaugurated by the Prime Minister of India. It is further contended that since there is an automatic protection of the services of the Petitioner, her fundamental rights have been violated and, Therefore, a Writ Petition under Article 226, of the Constitution of India in respect of even a Public Trust receiving no funds from the Government would be maintainable.

He further states that there are no averments to the effect that Respondent No. 2 or any other Governmental Body or Authority has made financial contribution to Respondent No. 1. The Petition as it is presently laid leaves little room for doubt that the Writ Petition is not maintainable. Learned Counsel for the Petition has submitted that a challenge to the virus of Rule 56 of the Service Rules of Respondent No. 1 has been made. This would not clothe this Court with jurisdiction to adjudicate upon these disputes."

3. Learned Counsel for the Petition has cited a host of decisions which I do not intend to deal with individually, since the point at issue has been extensively argued in two previous writ petitions. I shall only reproduce the observations from my previous decision in *M.L. Sondhi v. Union of India and Ors.*, III 2002 AD (Del) 872, since they are apposite to the present discussion:

"A similar objection as to the maintainability of a writ petition challenging the dismissal of a Research Professor from the Centre for Policy Research had arisen in C.W.P. 5928/2000 entitled *Brahma Chellaney v. Union of India and Ors.*, decided on 18th January, 2002. The ICSSR was also a Respondent therein. The precedents mentioned by both sides had substantially also been cited in that writ petition. I had observed that if each of these precedents were to be discussed that judgment would become needlessly and avoidably prolix, especially since the Restatement of the law is readily available in terms of the decision of the Apex Court in *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors.*, . In these circumstances it would be most fruitful to reproduce the observation of the Hon'ble Supreme Court in extension ,since an answer to the gravamen of this contention can be found therein:-

"The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction there under though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, it was submitted before the Constitution Bench that an award u/s 10-A of the Industrial Disputes Act, 1947 savors of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under (at p. 429 of AIR):

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

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

"It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, Therefore, debarred by Article 14 from acting arbitrarily. It was, Therefore, under an obligation to state to the Court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the Court, the Court would presume that it had no valid reasons to give and its action was, Therefore, arbitrary. The learned counsel relied on the decisions of this Court in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, .* The learned Attorney General, on the other hand, contended that actions of the State or an instrumentality of the State which do not properly belong to the field of public law but belong to the field of private law are not liable to be subjected to judicial review. He relied on *O'Reilly v. Mackman* 1982 (3) AER 1124; *Davy v. Spelthorne* 1983 (3) AER 278; *I Congreso del Partido* (1981)(2) AER 1064; *R. v. East. Berkshire Health Authority* 1984 (3) AER 425 and *Radhakrishna Agarwal and Others Vs. State of Bihar and Others, .* While we do find considerable force in the contention of the learned Attorney General it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see. We also desire to warn ourselves against readily referring to English cases on questions of Constitutional Law, Administrative Law and Public Law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and

uninhibited as we are by the technical rules which have hampered the development of the English Law. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, a two Judge Bench of this Court was considering the question of "issue of a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the appellant-Trust and its Trustees to pay to the respondents their due salary and allowances etc. in accordance with the Rules framed by the University and to pay them compensation under certain Ordinance of the University". The High Court before which the issue was raised held in favor of the respondents. This Court noted that the essence of the attack on the maintainability of the writ petition under Article 226 by the appellant was that it being a Trust registered under the Bombay Public Trust Act was managing the college where the respondents were employed was not amenable to writ jurisdiction of the High Court. In other words, the contention was that Trust being a private institution against which no writ of mandamus could be issued. In support of the contention, the appellant referred two decisions of this Court *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, and *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, . This Court, however, distinguished those two decisions and said that the facts before it were different and that there was no plea for specific performance of contractual service by the respondents now in the case before it. Respondents were not seeking a declaration that they be continued in service and they were not asking for mandamus to put them back into the college. But they were claiming only the terminal benefits and arrears of salary payable to them. The question thus was whether the Trust could be compelled to pay by writ of mandamus? The Court noted the observations of Subba Rao, J. in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, as under (at Pp. 84 and 85 of AIR):

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly by used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England: but the scope of those writs also is widened by the use of the expression "nature", for the said expression doe snot equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the

purpose of the article itself."

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

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

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

"The term "authority" used in Article 226 in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental, rights. The words "any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the 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 owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

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

"Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law. Professor, De Smith states; To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. "We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be early available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, Therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

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

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

In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and, Therefore, the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate case any Government. Under Clause (1) of Article 367 unless the context otherwise

requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not, Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged the High Court will step in to protect him be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guide-lines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guide-lines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial "bull in china shop" in the exercise of its jurisdiction under Article 226."

In the previous decisions the approach adopted in *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, was also relied upon. The ratio of this judgment however, is that a society, registered under the Societies Registration Act may be treated as "State" "if either the governmental business is undertaken by the Society or what is expected to be the public obligation of the State is undertaken to be performed as a part of the Society's function. In *Vasandi's* case (*supra*) it was found on facts that the Institute of Constitutional and Parliamentary Studies did not discharge such functions.

4. Significantly, the Constitution Bench of the Apex Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, has observed that "the term "authority" used in Article 226 of the Constitution must receive a liberal meaning, unlike in Article 12 of the Constitution, since the latter was relevant only for the purpose of enforcement of Fundamental Rights. The words "any person or authority" used in Article 226 of the Constitution was held not to be confined only to statutory authorities and instrumentalities of the State but to all persons or bodies performing a public duty. It was held that educational institutions discharge public duties irrespective of their receiving aid from the State. As has been expressed by the Hon'ble Supreme Court itself, "spectacular advances" have been made in the law pertaining to the writ jurisdiction of the Court and, Therefore, referring back to cases of comparative antiquity should be adjured. It prolongs hearings, needlessly lengthens judgments and thereby

delays the dispensation of justice."

5. A Similar controversy had also been generated in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . The facts are strikingly similar to those that have been presented in this petition. The services of an employee was terminated on the basis of terms contained in the Contract of employment. This termination was challenged by way of writ petition substantially on the ground that the afore-mentioned terms were unconscionable, arbitrary and contrary to the principles of natural justice which are implicit in Article 14 of the Constitution of India. In this backdrop, it was observed, inter alias that the writ petition was the remedy which was more efficacious than a civil suit and was hence maintainable especially since the unconscionable contract was between an individual and the State, and the latter was in a superior bargaining position. The Hon"ble Supreme Court had encouraged a forward approach, in tune with the changed ideas and ideologies of society after considering all the aspects of dispute. The Hon"ble Supreme Court had modified the terms of service in the Contract. This is in essence the relief that the Petitioner seeks in the present case. Whether a similar result will ensue, will have to await a final determination of this writ petition.

6. Reliance of Learned Counsel for the Petitioner on (sic) L. Chandra Kumar Vs. Union of India and others, is misplaced as it had no application to the issues at hand. The question which had arisen was the correctness of the previous decision in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, , in which it had been held that the extraordinary powers of the High Court under Article 226 and 227 of the Constitution of India would not be available to challenge a judgment of the Administrative Tribunals Act. The Bench of seven learned Judges held that "the power of judicial review over legislative action vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, Constituting part of its basic structure. Ordinarily, Therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded."

7. Learned Counsel for the Petitioner has also relied on Prabhudayal Birari Vs. M.P. Rajya Nagrik Aapurti Nigam Ltd., , Uptron India Limited Vs. Shammi Bhan and Another, and Wasim Beg Vs. State of Uttar Pradesh and Others, in support of his contention that Rule 56 deserves to be struck down. Since this question goes to the merits of the Petition, it would not be proper to make any observation thereon.

8. In the present case what must be kept in focus is the fact that the creation of Ghalib Institute was from state largesse as contemplated in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . While it need not presently be receiving any more funding from the Government of India, its income is preponderantly received from revenues generated from the land gratuitously transferred to it by the Government. The building that was

constructed was also funded from generous donations by the public, and now administered through a public trust. The Respondent No.1, therefore has a public character. When its filed of operation and its objects are taken into consideration, it will become amply clear that they pertain to the public domain; donations were obviously given because of the objects of the Society/Trust and not to it for doing whatever was considered fit. Mirza Ghalib is a national literary figure, greatly admired by numerous followers. Had the dissemination of Ghalib's works not being the central if not the only object of the respondent it would not have received the land on which it operates from Late Mrs. Indira Gandhi, and donations for its buildings from the public. On both aspects, Therefore, it has a public function to fulfill.

9. At this juncture, to dismiss the petition at the threshold would be wholly inappropriate. Accordingly, I am satisfied that the present writ petition is maintainable and that a definitive answer must be left to the final judgment.

10. The case be now listed as per roster, after obtaining appropriate orders from the Hon"ble the Chief justice on 4th September, 2002.