

(2019) 05 GAU CK 0085

In the Gauhati High Court

Case No : Writ Appeal No. 329 Of 2018, Interlocutory Application (Civil) No. 3942, 86 Of 2019

Rajlakshmi Drugs

APPELLANT

Vs

Numaligarh Refinery Limited And 5 Ors

RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 32, 226

Citation : (2019) 05 GAU CK 0085

Hon'ble Judges : A. S. Bopanna, CJ; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : P Chakraborty, N Deka, M Choudhury, S C Keyal, N Dutta, A. Phukan, K. Khan, A.D. Choudhury, KN Choudhury, N. Deka, M. Gogoi, S.C. Keyal, B. Chakraborty,

Final Decision : Disposed Off

Judgement

A.S. Bopanna, CJ

1. The appellant in WA 329/2018 is assailing the order dated 10.10.2018 passed by the learned Single Judge in WP(C) 7214/2018. The learned Single Judge while holding that the writ petition is not maintainable as the respondent No.5 to the writ petition was not "an authority" to be construed either under Article 12 or Article 226 of the Constitution of India, has referred to the earlier order dated 17.7.2018 passed by the very same learned Single Judge in WP(C) 2801/2018. In the said writ petition in W.P.(C) No.2801/2018, the learned Single Judge had referred to the earlier decisions of this Court in the case of Kumud Pathak (Dr.) vs. Numaligarh Refinery Limited, reported in 2014 (5) GLT 154 and in the case of Rajeeb Bhattacharjee Vs. Numaligarh Refinery Limited and others, reported in 2015 (3) GLT 633. The said two decisions in the case of Dr. Kumud Pathak and Rajeeb Bhattacharjee have attained finality. The order dated 17.7.2018 passed in WP(C) 2801/2018 is, however, assailed in the accompanying Writ Appeal No.86/2019. It is in that light, since the common question relating to the

maintainability of the writ petition has arisen in both the cases, both these appeals are taken up, heard and considered together through this common judgment.

2. The brief facts are that the respondent No.1 which is a Central Government Public Sector undertaking engaged in refining of oil products, in order to run its hospital has entrusted the same to the respondent No.5, Vivekananda Kendra through an agreement. Thus, the respondent No.5 while managing the affairs of the hospital had floated a tender dated 27.6.2018 seeking response for setting up and operating a pharmacy/chemist shop in the premises of the hospital for supply of Medicines/Surgical Consumables/Implants/ Orthotic and Prosthetic Devices etc. The appellant among the others including the respondent No.6 had responded to the same. On finalization of the tender process, the work order dated 12.7.2018 was issued in favour of the respondent No.6. The said work order was assailed in WP(C) 7214/2018. In a similar context, the appellant in WA 86/2019 claims to be aggrieved by another tender notice dated 26.4.2018 which was issued for setting up a pharmacy/chemist shop. The said tender process was assailed by the appellant therein contending that the earlier period of 5 years had not expired and also that the terms of tender have been framed in such a manner which is detrimental to the interest of the small bidders. The said challenge was made in WP (C) 2801/2018. It is in that context, in both the said writ petitions the issue had arisen as to whether the Vivekananda Kendra which is managing the Numaligarh Refinery Limited Hospital be considered as "an authority" and in that circumstance, the learned Single Judge holding the writ petitions to be not maintainable, has disposed of the same. In that context, the merits of the rival contentions with regard to the validity or otherwise of the tender need not be adverted to at this stage since the same will arise only if the writ petition is held to be maintainable.

3. In the above background, the issue for consideration in these appeals is firstly, as to whether the Vivekananda Kendra could be construed as an authority under Article 12 or even otherwise should it be held amenable as an authority under Article 226 of the Constitution. Further consideration is also as to whether even in the absence of the same, the activities of the Vivekananda Kendra is to be considered as in the nature of discharging public function and in that circumstance, whether a writ petition would be maintainable.

4. In that context, though we have elaborately heard Sri N Dutta, learned Senior counsel as well as Sri AD Choudhury, learned counsel for the appellants and Sri KN Choudhury, learned Senior counsel for the respondent Nos. 1 to 3 as also Sri SC Keyal, learned Assistant Solicitor General of India and perused the appeal papers, the consideration would be limited on the aspect as noticed above, in the background of the decisions of the Hon'ble Supreme Court relied on that aspect. In so far as the manner in which the Vivekananda Kendra is discharging its function, it is seen that the same is regulated in terms of the agreement as at Annexure-1 to WA 329/2018. From the same it is seen that the existence of full-

fledged hospital at Numaligarh Refinery Limited township at Golaghat district with the infrastructure and facilities is transferred as licensee for being run efficiently and to be managed by the Vivekananda Kendra. To oversee the nature of the facilities to be provided as agreed upon and for the purpose of management, it is agreed that the Vivekananda Kendra shall constitute a Governing Body consisting of 3 representatives of Kendra and 2 representatives of the company. The agreement further provides that an annual budget shall be prepared by the Vivekananda Kendra towards the expenditure so as to claim advance annual grants. The Vivekananda Kendra has the discretion with regard to the appointments, promotions, discipline, termination and transfer of personnel and also to fix their remunerations etc. All administrative matters are left to the jurisdiction of the Vivekananda Kendra subject, however, to the overall policy and directives of the Governing Body. Though all other aspects are provided for in the agreement, the manner in which the role of the Vivekananda Kendra has been understood amongst the parties, is articulated in covenant No.6 of the agreement, which reads as hereunder:

"All the assets relating to the hospital project including that land and building, equipments, infrastructures, facilities, licenses, permits and other tangible and intangible benefits attached to and derived out of the hospital shall solely and exclusively belong and to be owned by the Company and the Kendra shall during the currency of this agreement only have the license to use the same for the purpose of running the hospital and managing its operations and shall be accountable to any reckless or negligent handling by any person."

5. A perusal of the same would indicate that the Vivekananda Kendra is stated as the licensee for the purpose of running the hospital and managing its operations. If in that background, the position is noticed, it is clear that the Numaligarh Refinery Limited is running a refinery as its business and the hospital is being run by them as a welfare measure for its employees and also for the benefit of the general public as a corporate social responsibility. Though Numaligarh Refinery Limited is a public sector undertaking and as such answers the requirement of "any other authority" under Article 12 of the Constitution, the Vivekananda Kendra which is a licensee/managing agent under an agreement certainly would not qualify as an other authority. In that regard, the test referred to in the decision of *Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others*, (1981) 1 SCC 722 would be relevant. If the said aspect is kept in view, the decision rendered by the learned Single Judge of this Court in the case of *Kumud Pathak* (supra) and *Rajeeb Bhattacharjee* (supra) in so far as arriving at the conclusion that the Kendra is not an authority under Article 12 of the Constitution, is justified and to that extent, there is no error committed.

6. Having arrived at the above conclusion, what would further arise for consideration herein is as to whether the functions of the Vivekananda Kendra would qualify as public functions for entertaining a writ petition under Article 226 of the Constitution. In that background, in so far as the learned Single Judge in

the instant cases having arrived at the conclusion that the Vivekananda Kendra cannot be treated as "an authority" under Article 12 to entertain the writ petitions under all circumstances, is justified. Further, it is noticed that the learned Single Judge while considering the case which had arisen in WP(C) 2801/2018, has in addition to the reference made to the case of Kumud Pathak and Rajeeb Bhattacharjee (supra) has also taken note of the decision of the Hon'ble Supreme Court in the case of Zee Telefilms Limited Vs. Union of India, reported in (2005) 4 SCC 649 and in the case of BCCI Vs. Cricket Association of Bihar, reported in (2015) 3 SCC 251. Though having taken note, the learned Single Judge no doubt has abruptly concluded without examining as to whether the public functions test would apply to the Vivekananda Kendra against whom the relief is sought in the writ petition. Hence, it is limited to that aspect an examination is required herein so as to conclude whether the activities of the Vivekananda Kendra should be brought under the ambit of "public functions" in the manner it is to be understood.

7. Learned senior counsel for the appellant while seeking to contend that an entity even if not considered as 'an authority' under Article 12 of the Constitution, such entity will still be amenable to writ jurisdiction under Article 226 of the constitution since a Writ could be issued to 'authority' or a 'person' who discharges 'public functions'. In support of such contention, learned senior counsel has placed reliance on the following decisions :

(i) The case of Andi Mukta Sadguri Shree Muktajee Vandas Swami Suvarna Jaanti Mahotsava Smarak Trust and others -Vs.- V.R. Rudani and others, (1989) 2 SCC 691, wherein it is held as under :-

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

(ii) The case of Binny Ltd. and another -Vs.- V. Sadasivan and others, (10050 6 SCC 657, wherein it is held as hereunder :

"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 (5th 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 "recognise 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". Non-governmental bodies such as these are just as capable of abusing their powers as is Government."

(iii) The case of Zee Telefilms Ltd. and another -Vs.- Union of India and others, (2005) 4 SCC 649, wherein it is held as hereunder :

"23. The facts established in this case show the following:

1. The Board is not created by a statute.
2. No part of the share capital of the Board is held by the Government.
3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.
4. The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.
5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.
6. The Board is not created by transfer of a government-owned corporation. It is an autonomous body.

.....

29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12? While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it, but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it, and that the Board is discharging these functions on its own as an autonomous body.

.....

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

32. This Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* has held: (SCC pp. 692-93)

"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'. The term 'authority' used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas* case hence there is force in the contention of Mr Venugopal that this petition under Article 32 of the Constitution is not maintainable."

(iv) The case of *Board of Control for Cricket in India -Vs.- Cricket Association of Bihar and others*, (2015) 3 SCC 251, wherein it is held as hereunder :

"32. Having said that this Court recognised the fact that the Board was discharging some duties like the selection of Indian Cricket Team, controlling the activities of the players which activities were akin to public duties or State functions so that if there is any breach of a constitutional or statutory obligation or the rights of other citizens, the aggrieved party shall be entitled to seek redress under the ordinary law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32. This Court observed: (Zee Telefilms Ltd. case, SCC p. 682, para 31)

"31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32."

(emphasis supplied)

33. The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not "State" within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the "nature of duties and functions" which BCCI performs. It is common ground that the respondent Board has a complete sway over the game of cricket in this country. It regulates and controls the game to the exclusion of all others. It formulates rules, regulations, norms and standards covering all aspects of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and supporting State associations. It frames pension schemes and incurs expenditure on coaches, trainers, etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board's monopoly in the field of cricket. On the contrary, the Government of India has allowed the Board to select the national team which is then recognised by all concerned and applauded by the entire nation including at times by the highest of the dignitaries when they win tournaments and bring laurels home.

Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government. Such is the passion for this game in this country that cricketers are seen as icons by youngsters, middle aged and the old alike. Any organisation or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity.

34. The functions of the Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law take over or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action.

35. Our answer to Question (i), therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be "State" under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India."

8. The learned senior counsel for the respondents No. 1 to 3, on the other hand, has relied on the decisions of the Hon'ble Supreme Court in the case of The Praga Tools Corporation -Vs.- Shri C.A. Imanuel and others, 1969 (1) SCC 585, wherein it is held that 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 the Statute and, in such circumstance, enforcement cannot be sought for issue of Mandamus. The decision in the case of Federal Bank Ltd. -Vs.- Sagar Thomas and others, (2003) 10 SCC 733, is relied upon, wherein while considering whether a Writ could be issued against a Bank merely because it is guided by banking policy of the Reserve Bank, in holding the writ petition to be not maintainable, the Hon'ble Supreme Court has observed as hereunder :-

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

9. Having taken note of the decisions, as referred to by the respective learned senior counsel, it is seen that the decision in the case of Zee Telefilms Ltd. and another (supra) is rendered by a Constitution Bench of the Hon'ble Supreme Court, wherein the entire issue with reference to the earlier decisions of the Hon'ble Supreme Court, including the decisions cited herein, has been examined and the law has been enunciated. In that view, instead of advertng to each of the decisions noticed above, a perusal of the judgment passed in Zee Telefilms Ltd. and another (supra), would indicate that while examining the facts involved in a particular case, if the conclusion is that the action complained of and the relief claimed is against an entity which does not answer the requirements so as to consider such entity as 'an authority' under Article 12 of the Constitution, the enforcement of the right, if any, cannot be claimed by filing a petition under Article 32 before the Hon'ble Supreme Court. However, if such authority or person is discharging 'public function' despite not qualifying as 'an authority', in such event, the person aggrieved can seek remedy under the ordinary course of law or by way of writ petition under Article 226 of the Constitution since it is held that the scope under Article 226 of the Constitution is much wider. To that extent, there can be no cavil.

10. If the said position of law is kept in perspective, the question would be as to whether in the case on hand, the function of the Vivekananda Kendra could be considered as a 'public function' in the manner as explained by the Hon'ble Supreme Court in the case of Zee Telefilms Ltd. and another and Board of Control for Cricket in India (supra) so as to make it amenable to writ jurisdiction. The learned senior counsel for the appellant while seeking to contend that the Hospital being run by the Respondent No.1 through Respondent No.5-Vivekananda Kendra is carrying out a 'public function' contends that apart from the medical facilities being made available to the employees of Respondent No.1, the facility is also open to the general public. The entire operation of Respondent No.5 -Vivekananda Kendra is guided by the Governing Body which also consists of the representatives of Respondent No.1 Company who also provides the funds. The rejoinder dated 29.4.2019 filed by the appellant is adverted to with reference to Annexures- A-1 and A-2, produced therewith, to indicate that the minutes of the meeting dated 25.4.2018 of the Governing Body has decided with regard to the availability of medicines to treat road traffic accident related emergency cases and the targeted patients registration is approximately 60,000 per annum. Through the Annual Report of Respondent No.1, reference is made to the health care which is provided by the Company on recognizing the lack of quality primary health care infrastructure in rural areas and there being no access to basic medicines and health care facilities. In that light, learned senior counsel for the appellant contends that the provision of health care to general public is discharged as a 'public function' and, in such circumstance, when the Vivekananda Kendra has invited tenders for setting up a Pharmacy/Chemist Shop, any grievance with regard to the same can be raised in a writ petition.

11. The learned senior counsel for the respondent Nos. 1 to 3 would contend that

providing health care is not the main activity for which Respondent No.1 has been established. The hospital with medical facility is established as a welfare measure for its employees and in that view due to availability of the infrastructure, in order to discharge the corporate social responsibility, steps are also taken to provide medical treatment to the general public and, that by itself, would not indicate that such activity is in discharge of 'public function'. It is contended that the Hon'ble Supreme Court in the very case of Zee Telefilms Ltd. and another (supra) has held that merely because a non-governmental body exercises some public duty, that by itself would not be sufficient. It is contended that in order to construe any particular act as a 'public function' and to bring it under the scope of Article 226, such function should be performed as a statutory duty and, in that background, there should be a right available to seek enforcement by issue of Mandamus under the extra-ordinary jurisdiction as otherwise the remedy under the ordinary course of law can be availed. The learned senior counsel has, in that light, distinguished the circumstance under which the BCCI is held to be amenable to writ jurisdiction.

12. In the light of the above, a consideration of the fact situation herein would disclose that Respondent No.1, though a public sector undertaking, is engaged in refinery and is not a hospital industry. The impugned tender notification is not floated by Respondent No.1, but by Respondent No.5-Vivekananda Kendra. The Respondent No.5-Vivekananda Kendra is a Society registered under the Societies Registration Act and it has an independent identity and existence. The Respondent No.1 has entrusted its hospital to be managed by Respondent No.5-Vivekananda Kendra. Though the Hospital established by Respondent No.1 provides treatment to the general public and also has taken up medical healthcare as a social responsibility, when such function has been assigned to Respondent No.5-Vivekananda Kendra under the terms of the agreement by transferring its infrastructure as a licensee, the same is not in the nature of assignment of activity of Respondent No.1 to Respondent No.5-Vivekananda Kendra. To put the matter in perspective and understand the concept of public function, it is clear that providing health care to the citizens is the function of the government. It is no doubt true that the government in order to discharge its functions may establish a statutory Corporation or such other authority with the object to provide for public health. In such circumstance, if Respondent No.1 though established as a Company was established with the duty to provide for the health care of the general public and, in that circumstance, in the course of running its hospital, if certain activities were assigned to an entity like that of Respondent No.5-Vivekananda Kendra, certainly in such circumstance, the activity performed by any other entity for and on behalf of the Respondent no.1 could have been construed as a 'public function' as there was a duty to provide for the public health care. On the other hand, as already noticed, the very purpose for which the Respondent No.1 is set up is entirely different and the activity of health care is only a welfare measure and, that too, when it is being provided under the management of Respondent No.5-Vivekananda Kendra. The

Respondent No.5-Vivekananda Kendra in furtherance thereof has issued the tender notification to set up a Pharmacy/Chemist Shop and, in the said process, if a grievance has arisen to any party, this Court would not be justified in entertaining a writ petition to examine that aspect by construing the affairs of the Hospital run by the respondents in discharge of 'public function'.

13. Though a repeated and detail reference is made by the learned senior counsel for the appellant to the decision in the case of Zee Telefilms Ltd. and another (supra), it is seen from the very extracted portion of the judgment taken note hereinabove that the entire aspect relating to the Cricket including the selection of the team to represent the country was being performed by the BCCI. It is in that light, the Hon'ble Supreme Court has held that it is discharging a 'public function'. From the example we have stated above relating to the activity of Respondent No.1 and that it is not a Company set up to provide for health care on behalf of the State will answer the situation since it could be seen the reason for which in the case of Zee Telefilms Ltd. and another (supra), the Hon'ble Supreme Court has held that the BCCI is performing a public function is that there is no authority other than BCCI which is handling the affairs of cricket. In a normal circumstance, in respect of several other sports activities, all decisions relating to sports activities including the selection of the team to represent the State or the Nation would be taken by the Department or body created under the Government unless such activities are regulated by a Board over which there would be some supervision and control by the Government. In such circumstance, in matters relating to Cricket, since the entire control is with the BCCI, the Hon'ble Supreme Court has held that it is discharging 'public function' and, has, accordingly, held the BCCI to be amenable to writ jurisdiction under Article 226 though it is not 'an authority' under Article 12 of the Constitution. In fact, in the case of Board of Control for Cricket in India (supra), it is noted that the Board has complete say over the game of cricket in this country. It regulates and controls the game to the exclusion of all others and also formulates rules, regulations, norms and standard covering all aspects of the game. It is further held therein that all these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware, but supportive of the activities of the Board.

14. Therefore, in that circumstance, we are of the considered opinion that the activity in the case at hand cannot be construed as a 'public function' even if the decisions referred to by the learned counsel for the appellant is kept in perspective which is rendered entirely in the context as noticed above and the same will not be of assistance in the present case. In that view, the decisions rendered by the learned Single judge including the orders dated 10.10.2018 and 17.07.2018 assailed in these two appeals do not call for interference.

15. The appeals accordingly being devoid of merit are dismissed. In view of disposal of the appeals, the application in I.A.(Civil) No. 3942/2018 is disposed of as infructuous.