
(2000) 08 DEL CK 0083

In the Delhi High Court

Case No : CWP. No. 3654 of 1996 with CWP No's. 3862 of 1996, 4300 of 1997
4308 of 1997, 5125 of 1997 and 5129 of 1997, CWP. No. 3654 of 1996

S.C. Sharma and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2000) 08 DEL CK 0083

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. V.S. Sharma, Mr. V. Sharma, Mr. Vijay Hansaria, Mr. C. Harishankar and Ms. Jaya Tomar, for the Appellant; Mr. Rajiv Sawhney, Mr. S.K. Taneja, Ms. Bhavna Kohli, Mr. Rajesh Arya, Mr. Sunil Goel, Mr. Shridhar Y. Chitale, for the Respondent

Judgement

A.K. Sikri. J.

1. By this judgment, I propose to dispose of the batch of 6 writ petitions. The petitioners in all these writ petitions were the employees of Modi Rubber Limited which has been arrayed as one of the respondents. Their services having been terminated by Modi Rubber Limited, present writ petitions are filed. Apart from Modi Rubber Limited and its officers, Managing Director etc., UOI, Company Law Board and certain financial institutions are arrayed as respondents. The grievance of the petitioners in all these cases is that their termination from service summarily is in violation of principle of natural justice as well as Articles 14, 19(1)(g) and 21 of the Constitution of India. However before the validity of the termination order is tested, petitioners have to cross one hurdle. The respondents have taken the objection that these writ petitions filed by the petitioners are not maintainable on the ground that no writ lies against Modi Rubber Limited which is not a "State" or an "Instrumentality" or an "Agency" of the Government within the meaning of Article 12 of the Constitution of India. The arguments were accordingly heard on this aspect. This issue to be decided is

common to all these writ petitions and based on same set of facts. For sake of convenience, let us take notice of the facts as stated in CWP No. 3654 of 1996 entitled S.C. Sharma Vs. UOI & Ors.

2. Petitioner, S.C. Sharma was taken in the employment of Modi Industries Limited on 10.6.1972. His case is that he has been discharging his duties efficiently, diligently and honestly and in this way he worked for 24 years during which period he was granted promotions and sanctioned increments and special increments. However from 23.8.1996 company abruptly and without any cause or reason removed the daily attendance punch card of the petitioner. On 26.8.1996, petitioner made representation to Chief General Manager of respondent No. 9 requesting him to place his daily attendance punch card in its place to enable him to record his attendance. However instead of doing so, his services were terminated by order dated 26.8.1996 without giving any opportunity of hearing or assigning any reasons and petitioner has challenged this termination being mala fide, arbitrary and also in gross contravention of the law laid down by Supreme Court in various cases including in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . It may be mentioned that termination order dated 26.8.1996 states that services are terminated in terms of clause IV of appointment letter dated 12.9.1972 offering one month salary in lieu of notice. In the counter affidavit filed by respondents 8 to 10 & 12 i.e. Modi Rubber Limited and its officers, maintainability of the writ petition is challenged on various grounds. It is stated that respondent No. 8 is neither a public body nor discharging statutory functions. There is no violation of any legal or other right of the petitioner. Petitioner is seeking to enforce his contract of personal services which is not permissible. Respondent No. 8 is a public limited company and not a "State" or "Instrumentality" or an "Agency" of the State, and therefore, not amenable to the writ jurisdiction under Article 226 of the Constitution of India. It is stated that respondents 1 to 7 do not have any control in the management of affairs of the respondent No. 8 company. On merits, it is stated that the services of the petitioner have been terminated contractually, and in terms of contract of service by giving one month salary in lieu of notice period which according to respondent No. 8 was permissible in law. It is denied that the termination was arbitrary or mala fide. It is further stated that the petitioner cannot invoke the provisions of part III & IV of the Constitution including Articles 14, 19(1)(g) and 21 of the Constitution as respondent No. 8 is not a State, and Therefore, not subject to Constitutional limitation in relation to fundamental rights guaranteed by Part III and preamble and directive principles of state policies contained in Part IV of the Constitution. It is further stated that appropriate remedy for the petitioner is to file civil suit claiming damages that too if the termination is ultimately held to be illegal by the Civil Court. In the rejoinder filed by the petitioner, averments made in the counter affidavit of respondents 8 to 10 & 12 are disputed and it is stated that writ petition is maintainable. It is further stated that the financial institutions have control in the affairs of the company and these financial institutions namely

respondents 3 to 7 hold jointly more than 51 per cent paid up share capital and have joint majority of their nominees Directors on the Board of Directions of respondent No. 8. It is further stated that clause IV of the letter of appointment is against public policy, and Therefore, void and services of the petitioner could not be terminated by relying on such a clause.

3. Other respondents have also taken the stand that writ petition is not maintainable. However counter affidavit is filed on behalf of respondent No. 6 only namely Industrial Development Bank of India in support of this plea regarding maintainability of the writ petition.

4. I may state at the outset that writ petition can be disposed of by brief order, relying upon the judgment of single Bench which has been upheld by the Division Bench of this Court holding that writ petition against same very respondent namely Modi Rubber Limited is not maintainable and dismissing the same. Judgment of Single bench dated 9.2.1998 is in CWP No. 379/97 entitled V. Mahendru Vs. UOI & Ors. By the said judgment, Single Judge of this Court held that Modi Rubber Limited was not performing any public duties and it is only doing its business. Therefore, it cannot be said to be a public authority to writ jurisdiction. It was also a case where termination order dated 28.7.1997 issued in accordance with appointment letter by offering one month pay in lieu of notice was challenged. Writ petition was dismissed by the Single Judge and LPA No. 171/98 filed by those petitioners was also dismissed by the Division Bench vide order dated 28.4.1998 observing that Single Judge had rightly held that the writ petition was not maintainable. No doubt SLP against the aforesaid judgment of the Division Bench has been granted by the Supreme Court by order dated 11.5.1999 but Supreme Court has refused to grant any stay. Thus as on today, judgment of Division Bench upholding that of Single Judge still holds the field as per which writ petition against Modi Rubber Limited is not maintainable and following that judgment of the Division Bench it can safely be concluded that present writ petitions are not maintainable and accordingly warrant to be dismissed.

5. However on behalf of counsel for petitioners. It was vehemently argued that the aforesaid judgments of Single Bench as upheld by Division Bench did not appreciate the law correctly and they were in conflict with another Division Bench judgment of this Court in the case of Kuldeep Mehta Vs. & Ors, reported in 1993 (2) DL 196 and on that basis a fervent appeal was made to refer the matter to the Full Bench. However it would be pertinent to state that the judgment dated 9.2.1998 of the Single Judge has specifically noticed Kuldeep Mehta's judgment (supra) and thus when the Single Bench, and for that matter Division Bench held that writ petition was not maintainable against Modi Rubber Limited it was after considering the judgment in the case of Kuldeep Mehta. Thus it is not a case where the judgment in Kuldeep Mehta was not brought to the notice when it was decided by the Division Bench that writ petition Modi Rubber Limited is not maintainable. Moreover, Kuldeep Mehta's case (supra) was a case relating to some other

company whereas CWP No. 379/97 and LPA No. 171/98 decided the status of Modi Rubber Limited itself holding that writ petition was not maintainable against this company. In the present case, when this question comes up again where the status of the same company namely Modi Rubber Limited is to be decided, the judgment of Division Bench deciding this issue relating to Modi Rubber Limited itself is binding on me.

6. It was however vehemently argued by counsel for the petitioners that the judgment of Single Bench or for that of Division Bench while deciding the status of Modi Rubber Limited were delivered without addressing of arguments on the question as to amenability of Modi Rubber Limited to the jurisdiction of this Court under Article 226 of the Constitution of India. It was also sought to be argued that these decisions are per incuriam and bad in law, not binding and liable to be ignored. Without agreeing to this proposition, I may observe that even if the arguments which were advanced before me at length about the maintainability of the writ petitions, are taken into consideration, the result is the same, namely, the present writ petitions are not maintainable against Modi Rubber Limited. I propose to deal with these contentions elaborately lest petitioners contend that there is no consideration of the various submissions made by them in this behalf.

7. In order to rope in respondent No. 8 within the ambit of Article 226 of the Constitution of India, counsel appearing for the petitioners in these writ petitions argued that respondent No. 8 was amenable to writ jurisdiction of this Court in view of the following submissions:

1. Phraseology of Article 226 is wide enough and writ can be issued against "any person", the expression mentioned in Article 226 of the Constitution of India. It was submitted that there is nothing in Article 226 which shows or even suggests that the provision as to "any person" means a person which merely performs public functions or exercises sovereign function or is any authority including in appropriate case, any Government word "or" used in the provision makes it amply clear. If the expression "any person" in Article 226 is taken to mean a person exercising sovereign or public functions or governmental authority that interpretation would render the provision of "any person" surplusage and otiose and has to be rejected. Law is well settled that writ petition under Article 226 of the Constitution is maintainable against "any person" and "for any other purpose" so as to reach injustice wherever it is found and technicalities should not come in the way of granting relief thereunder. As such, writ petition is maintainable against respondent No. 8. It is well settled law that provisions of the statute are to be so construed to given effect to all the provisions and no provision is regarded as a surplusage or otiose and it is to be assumed that every provision in the enactment has a meaning and significance and is to be given effect to and cannot be constructed redundant. For this proposition reliance was placed on :

1. T. Gattiah Vs. Commissioner of Labour reported in 1981 Lab IC 942; 2. Rajendra Prasad Yadav and Others Vs. State of M.P. and Others, Sirajul Haq Khan

and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, Maxwell on the interpretation of Statutes, 12th Edn. (at p. 36): 5. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

It was further submitted that the provision "for any other purpose" in Article 226 does not talk of any limitation or restrictions as to remedies under the public law only. This provision is plain and explicit and that remedies under private or even equitable remedies can be granted and there is no embargo in that regard. As held by this Court in Kuldip Mehta's case. 1993 (2). Delhi lawyer (Para 24), Article, 226 does not make any difference between public functions and private functions.

2) Respondent No. 8 was "State" within the meaning of Article 12 of the Constitution of India, and Therefore, amenable to writ jurisdiction. It was submitted that respondents 3 to 7 and Industrial Credit & Investment Corporation of India were all public financial institutions u/s 4A of the Companies Act and notification issued under subsection (2) thereof. They are admittedly instrumentalities of the State. These respondents/public undertakings had their nominee Directors in respondent No. 8 company. Through these instrumentalities, UOI i.e. respondent No. 1 had at the material times the overwhelming majority of their six nominees out of 9 Directors on the Board of Directors of respondent No. 8 company. Therefore control, management and administration of respondent No. 8 company in fact vested with these instrumentalities of respondent No. 1 and they exercised deep and pervasive control in the affairs of respondent No. 8. It was necessary to lift this corporate veil which would reveal such deep and pervasive control and make respondent No. 8 also State and/or instrumentality and an agency of the State under Article 12 of the Constitution of India. In support of this plea, reliance amongst others, was placed on the judgment, of Supreme Court in the case of Francis John Vs. Director of Education reported in 1989 Suppl. SCC 598. It was also submitted that the Government which represents the executive authority of the State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons to carry out its functions and besides civil services, the public corporations are, Therefore, the third arm of the Government. Reliance was also placed on the following judgments:

1. 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, : 2 Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, : 3. Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others,

Elaborating the aforesaid submissions, learned counsel for the petitioners further submitted that deep and pervasive control would also be inferred from Memorandum of Articles & Association of the respondent No. 8. By virtue of its Memorandum and Articles of Association registered u/s 33 of the Companies Act, 1956 and in terms of the certificate of incorporation No. 3392 of 1971 issued by

the Registrar of Companies, UP, Kanpur. Respondent No. 8 is the public company limited by shares and not private company as defined under clause (iv) of subsection (1) of Section 3 of the Act. Respondent No. 8 is managed by its Memorandum and Articles of Association but subject to the provisions. In the Act as contemplated u/s 9 thereof, general laws of the land in force and in conformity with social and economic justice to, its employees enshrined in the Preamble and Article 51A(J) of the Constitution. Respondent No. 8 cannot be run arbitrarily at the whims, fancies, sweet will and pleasure of its Managing Directors i.e. Respondents No. 10 and 11 as their family/private concern. It is to be controlled and governed by the Board of Directors u/s 291 of the Companies Act and the Regulations as may be made by its members in the general meetings. The main objects of respondent No. 8 in terms of its Memorandum of Association are, inter alia, to manufacture, sell and export all types of automobile tyres and inner tubes "for any type of vehicle for heavy light and passenger transport, cars, trucks, buses, jeeps, agricultural tractors, vans motorcycles, scooters, bicycles, rickshaws, trolleys of all kinds, industrial tyres, animal drawn vehicles, heavy duty tyres used in earth moving equipment (bulldozers etc.) aero planes. The activities thus carried out by respondent No. 8 are for public good and of vital and high public and national importance and it is the third largest company in the country for manufacturing of the above said types of automobile tyres and tubes. The business activities and functions of respondent No. 8 are of the nature of public functions being carried on by respondent No. 1 such as through Bharat Petroleum Corporation of India Ltd., Indian Oil Corporation of India Ltd., Hindustan Steel Ltd., its instrumentalities held to be the "State" within the meaning of Article 12 of the constitution in the cases, Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, respectively.

3) It was further/submitted that even if it is presumed that respondent No. 8 was not the "State" still it was subject to fundamental constitutional limitations. The submission was that respondent No. 8 by virtue of carrying on the manufacturing and selling in the domestic and foreign markets the automobile tyres and tubes in a scheduled industry under item 30 (I) of the First Schedule to Industries (Development and Regulation) Act, 1951 and thus being engaged in matters of high public interest is the Government agency and doing business for the benefit of the public. The functions of respondent No. 8 are of great public importance, Interest, concern and welfare, and are activities of the nature carried on by a modern state and particularly a modern welfare state, for the promotion of social and economic welfare of the people as enunciated in Directive Principles of State Policy contained in part IV of the Constitution. Today State cannot be conceived of simply as a machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation. Reliance was placed on:

1. 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, ; 2 Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath

Ganguly and Another, Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; 4 Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; 5. DTC Vs. DTC Mazdoor Congress & Ors reported in 1991 Supp (1) 600; 6. Kuldip Mehta Vs. VOI & Ors. reported in 1993 (2) DL 196.

It was also submitted that by virtue of having been incorporated as the public Limited company under the companies Act and being one of the largest industries in the country in corporate organisation of business is not private phenomenon. Being such an organisation, respondent No.8 exercises quasi public authority and the problem posed by such corporate organisations is protection of the individual rights of the employees. Being such an organisation, respondent No. 8 exercises corporate governance power and is an such subject to fundamental constitutional limitations. Reliance was placed on:-

1. Sukhdev Singh Vs. Bhagatram reported in (1975) 5 SCR 619 : 2. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

4) Alternatively, it was submitted that was there was violation of fundamental rights of the petitioners, petitioners could enforce the same by way of writ petitions under Article 226 of the constitution. It was submitted that petitioners were confirmed employee with long service without any break and had acquired the status of confirmed permanent employees which guarantee security of tenure. They had a right and lien to continue in service till superannuation and their services could not be terminated arbitrarily, capriciously and abruptly without any rationale and for nonermane, extraneous and irrelevant reasons that their services were no longer required. By doing so, the respondent No.8 had deprived the petitioners of adequate means of their livelihood in violation of Articles 39(a) and 41 of the Constitution. Further the petitioners were deprived from carrying on their occupation which amounted the violation of their fundamental rights conferred by Articles, 14, 19(1)(g) and 21 as well as fundamental right to social and economic justice and equality of status guaranteed in the preamble of the Constitution. Such termination was null and void and petitioners had no other remedy except filing the writ petitions.

8. Reading of the aforesaid submission would show that principally two contentions are raised by the petitioners in their endeavor to Justify the maintainability of the writ petitions. The first attempt is to bring the respondent No. 8 within the ambit of Article 12. Alternatively, it is their submissions that even if it is not state under Article 12, writ could still be issued against respondent No. 8 in view of the language of Article 226 which empowers High Court to issue writ even against "any person". The arguments mentioned at (3) & (4) above are in fact different shades of the aforesaid two principles. Let me first deal with the question as to whether respondent No.8 can come within the sweep of Article 12 of the constitution of India.

9. Merely because certain public financial institutions have invested in respondent

No. 8 and the equity share capital jointly held by them is more than 50 per cent does not mean that respondent No. 8 would be characterised as "State" and / or "Instrumentality" and/ or "Agency" of the State. Respondents 3 to 7 and ICICI are different legal entities, They may all be public sector undertakings. However, for the purpose of determining the character of respondent No. 8. share holdings of respondents 3 to 7 and ICICI cannot be clubbed together. All these respondents 3 to 7 and ICICI are also companies registered under the Indian companies Act with separate entities, mutually distinctive from each other. They function in terms of their own memorandum and Articles of Association. If their nominees are on the Board of Directors of the respondent No. 8, it cannot be said that those Directors represent respondent No.1. Such a plea of the petitioners trying to infer the control of respondent No.1 through different instrumentalities i.e. respondents 3 to 7 & ICICI is clearly far fetched. In the case of Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, it was held that Government companies have their own corporate personality distinct from that of the Government. At this stage, one may also refer to the judgment of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, . Although in that case Supreme Court was concerned with construction of words "carried on under the authority of the Central Government " occurring u/s 2(a) of the Industrial Dispute Act which defines "appropriate Government". Following observations may be important in this case as well:

"An incorporated company, as is well known, has a separate existence and the separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that memorandum of association and others joining it as members are regarded as a body incorporate or a corporation aggregate and the new person beings to function as an entity. (of. Saloman Vs. Saloman and co. 1897 AC 22). Its rights and obligations are different from those of its shareholders.

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Therefore, the mere fact that the entire share capital of the respondent company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference."

10. This alleged and loose type of control, even if it is presumed to be so, can by no stretch of imagination be treated as "direct, deep and pervasive" control of respondent No.1 in the affairs of respondent No.8. In fact there is no control at all of respondent No.1 over respondent No.8 Therefore, on this reckoning, respondent No.8 cannot be treated as a "State" under Article 12 of the Constitution of India. Similarly, merely because respondent No.8 is having the business of manufacture, sell and export of all types of automobile tyres, inner tubes for various types of vehicles, it cannot be said that such a function is public function or a function of public importance. The activity of the respondent No.8 is like any other business activity and the nature of such business cannot be a

yardstick or a relevant factor too bring respondent No.8 within the ambit of "State" under Article 12 of the Constitution of India. It is nothing but a desperate bid on the part of the petitioners to enlarge the concept of "State" occurring under Article 12 of the Constitution. If this plea is accepted, many companies in private sector engaged in pure business and commercial activities would come within the umbrella of Article 12 of the Constitution of India. This cannot be and was not the intention of framers of the Constitution while drafting Article 12 of the constitution.

11. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, the Apex Court culled out six criteria s laid down in the judgment of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, to determine whether as concern is an instrumentality or agency of the State. These are the following:

1. "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government."

2. "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

3. "It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected."

4. "Existence of "deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality."

5. "If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

6. "Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government."

12. Respondent No.8 does not meet any of the aforesaid criteria. Admittedly, the Government is not holding any share capital of respondent No.8. Few financial institutions have invested in respondent No.8 company from which it cannot be said that the Government is holding the share capital of the respondent No.8 much less its entire share capital. It also cannot be said that any financial assistance is provided which meets almost all the entire expenditure of respondent No.8. There is no state control, much less "deep and pervasive" state control. It is equally misconceived on the part of the petitioners to argue that functions of respondent No.8 are of public importance. As pointed out above, respondent No.8 is merely carrying out business/commercial activity. Moreover by no stretch of imagination it can be said that these functions are closely related to governmental functions. One may also refer to the judgment of Supreme

Court in the case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and others [OVERRULED], . While holding NCERT as not "State" or "instrumentality" or an "agency" of the State, following pertinent observations were made by the Supreme Court which may be an answer to the inventive and ingenious argument put forth by the petitioners.

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

4. x x x x

5. The subject of the NCERT as seen from the above analysis is to assist and advise the ministry of Education and Social Welfare in the implementation of the governmental policies and major programmes in the field of education. The NCERT undertakes several kinds of programmes and activities connect with the coordination of research extension services and training, dissemination of improved educational techniques, collaboration and publication of books, materials, periodicals and other literature. These activities are not wholly related to governmental functions. The affairs of the NCERT are conducted by the Executive committee comprising government servants and educationists. The Executive committee would enter into arrangements with government, public or private organisations or individuals in furtherance of the objectives for implementation of programmes. The funds of NCERT consist of: (i) grants made by the government, (ii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The government control is confined only to the proper utilisation of the grant. The NCERT is thus largely an autonomous body."

6. Almost a similar case was considered by this court in Tekraj Vasandi K.L. Basandhi Vs. Union of India. This Court was required to determine whether the Institute of constitutional and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was the then Speaker of the Lok Sabha. Out of the five Vice Presidents three were the then Central ministers; the other two were then Chief Justice of India and the Attorney General. The objects of the

society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation. It found further that though the annual financial contribution from the State was substantial, it was entitled to receive contributions from other sources. Its objects were not governmental business. As regards the argument that the government exercised pervasive control over ICPS, the Court said: (SCC p. 257, para 20)-

"In a Welfare State Governmental Control is very pervasive and in fact touches all aspects of social existence. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

13. The petitioner cannot even venture to claim that respondent No.8 would be at par with NCERT or ICPS and even those bodies were not held to be "State". All necessary ingredients of Article 12 are completely lacking.

14. Thus I hold that respondent No.8 is not "State" and/or "instrumentality" and/or an "agency" of the State within the meaning of Article 12 of the constitution of India.

15. Once the conclusion is reached that respondent No.8 is not State within the meaning of Article 12 of constitution of India, it is not open to the petitioners to contend that there was any violation of Articles 14, 16, 21 or 39 of the constitution of India. (Refer: Sabhajit Tewary Vs. Union of India (UOI) and Others,

16. Let me now deal with the basic submission of the petitioners which was strenuously argued, namely, even if respondent No.8 is not "State" within the meaning of Article 12 of the constitution, it would still be amenable to writ jurisdiction under Article 226 as being covered by the expression "any person" occurring under article 226 of the constitution of India.

17. In order to appreciate this contention, let us first reproduce provision of Article 226(1) of the constitution. This Article reads as under:

"226 (1): Power to High Courts to issue certain writs.

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

18. As already recorded above, the main contention of the petitioners is that the

expression "any person" occurring in Article 226 has to be given wide meaning and it should not be restricted to person exercising sovereign or public functions or Governmental authority. According to the counsel appearing for petitioners, the expression "any person" would include in its ambit even respondent No. 8. Otherwise, the said expression would be surplusage and otiose. Once I have already held that respondent No.8 is not a State and/or instrumentality and/or agency of the state under Article 226 of the constitution. It is a company incorporated under the Indian Companies Act and belongs to, what is commonly known as, private sector. The dispute between respondent No.8 and its employees would Therefore be a private dispute. It is in this light, the contention of the petitioners is to be examined namely, whether Article 226 gives this court jurisdiction even to decide such private disputes and issue mandamus against private parties namely respondent No.8 treating it as "any person". The judicial trend shows court's jurisdiction will not extend to deciding such private disputes. H.M. seervai in his book entitled "Constitutional Law of India", Fourth Edition, Vol.2 at page 1579 has listed the following propositions which emerged from the cases rejecting such contention:

"(1) The literal construction, of Art. 226 could not have been intended because "it would enable any person to obtain any relief by an application under this Article. This construction of the Article would practically abrogate the entire judicial system and the machinery set up for the administration of justice in the State."

(2) There is internal evidence in Art. 226 that the words "to any person" and "for any purpose" cannot be construed literally. For, whatever other power Art. 226 confers on the High Courts, it undoubtedly confers the power to issue writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto. But these writs cannot be issued "to any person" and "for any purpose". The purposes for which, and the persons to whom, these writs can be issued have long been well settled. Therefore, the power to issue writs of the nature expressly mentioned "to any person" can only mean "the power to issue such a writ to any person to whom, according to well established principles the writ lay". And the words "for any other purpose" must mean "for any other purpose for which any of the writs would according to well established principles issue" the word "other" being read in antithesis to "for the enforcement of fundamental rights". it is submitted that from the propositions set out in (2) above, proposition (3) must follow:

(3) Orders, directions or writs are to be issued "to any person" and for "any purpose". Once the meaning of these words is ascertained with reference to writs, a different meaning cannot be given to them with reference to "orders" or "directions". Nor should this surprise us. In England, the writs of mandamus, certiorari and prohibition were replaced by "orders" of the same name in 1933; the writ of quo warranto later by an injunction that is, an order of the court. In India the writs of habeas corpus and mandamus were replaced by "directions" in

the nature of habeas of mandamus by S. 419, Cr.P.C., and S.45, Specific Relief Act, 1877, respectively. The words "orders" and "directions" were used to describe what at one time were called writs, and at one time were called writs, and since the terminology had been in use in England and in India, all the three words have been used in Art. 226 to describe well recognized English writs.

(4) Article 226 should not be construed so as to replace the ordinary remedies by way of a suit and application available to the litigant under the general law of the land.

19. This Court in the case of National Seeds Corporation Employee's Union and Another Vs. National Seeds Corporation, New Delhi, I held that once the origin and history of the prerogative Writs are remembered, it is clear that powers given to the High court under Article 226 are to be exercised in accordance with the principles which govern the present writs. Therefore, the expression "any person" is to be read ejusdem generis and it cannot include private persons. Interpreting in this manner, "any person" should be the person who is discharging the public function. It may be mentioned that in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , Supreme Court even when giving liberal interpretation to the words "any person or authority" used in Article 226 and holding that these words not to be confined only to statutory authorities and instrumentalities of the State, still covered any other person or body performing public function.

20. No doubt in the case of Kuldeep Mehta Vs. UOI & Ors., reported in 1993 (2) DL 196. the division Bench of this Court observed that the distinction between public function and private function was being obliterated. In fact, same sentiments are echoed in a recent judgment of the Supreme Court.

21. However, the Court still did not extend the principle by laying down any rule of law that direction can be issued to a private person as well. In both the cases i.e. Kuldeep Mehta (supra) as well as Supreme court judgment, decision ultimately rested on the proposition that the persons in question were dancing to the tune of Central Government and their affairs were controlled by the Central Government. This can be demonstrated from following portion of the judgment in Kuldeep Mehta.

" In view of the law which had developed all these years and as propounded by the Supreme Court it may not be necessary to refer to other judgments of the High Courts. But the fact remains that in all these judgments which we have been referred to, the Judges are speaking in one vein, that of the issuance of writs, and said that the person against whom these writs would lie must be performing the public functions. To us, however, it appears 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.

We need not go into the question as to what is the nature, scope or 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 also speaks of directions and orders which can be issued to any person or authority, including, in appropriate cases, any Government. We are not unmindful of the fact that trend of various judgments has been that perhaps since Article 226 is based on public law foundations power under this Article can be exercised when the dispute is in the realm of public law. But that question does not strictly fall for consideration in the present case because of the view which we are taking.

..... A member of the Indian Administrative service is on the helm of the affairs of the second respondent . There is a complete control of the State in the affairs of the second respondent where it has a great deal of majority. The Second respondent may not be, a Government Company in strict sense of the definition as given in the Companies Act, but it is certainly wearing the hat of the NTC, a Government Undertaking. The control of the Central Government through the NTC on the second respondent is deep and pervasive and it cannot be denied. That would arise is should not a company like the second respondent be amenable to the jurisdiction of this Court under Article 226 of the Constitution, may be not for the purpose of issuing a writ, but for issuing a direction or order, as the case may be. To contend that a writ would not lie when an order is of administrative nature, is a thing of the past .

22. It is clear from the above that Division Bench recognised the judicial trend. It is unanimous , that the writ can be issued against the person performing the public functions. No doubt the same observations were made to the effect that there should not be any difference between public functions and private functions as well issuing writ, no authoritative pronouncement was made on this aspect. On the other hand, the Bench specifically stated that this question did not strictly fall for consideration as the ultimate view which was taken was on the basis that will could lie against a member of the Indian Administrative Service, who was at the helm of affairs of the second respondent and there was complete control on the state of affairs of second respondent. The Court found deep and pervasive control of the Government in the affairs of second respondent and thus the principle on which ultimately conclusion based was on the touchstone of Article 12 of the Constitution of India. There was no principle enunciated in the said judgment to the effect that writ can lie against private a person or bodies doing pure commercial activity. Thus this judgment does not advance the case of the petitioners inasmuch as no such principle can be deduced from this judgment to the effect that writ lies against respondent No. 8, a private sector undertaking doing its business.

23. There is yet another very important common law principle which cannot be lost sight of while dealing with the maintainability of writ petition in cases of dispute between employer and employee (s). The principle is : contract of

personal service cannot be specifically enforced under the common law. There are three well known exceptions to this rule namely, (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute. There are series of case law towing the line that unless case of person falls in any of the aforesaid exceptions, he cannot be permitted to enforce the contract of persons service. Even if his services are terminated illegally, the only remedy available to him is to file a suit for damages for wrongful termination. (Refer : 1. Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, . 2. Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, 3. Indian Airlines Corporation Vs. Sukhdeo Rai, . 4. Bank of Baroda Vs. Jewan Lal Mehrotra reported in (1970) 2 Lab. LJ 54 S.R. Tewari Vs. District Board Agra and Another, . The case of the petitioners herein would not fall in any of the aforesaid exceptions. They are neither civil servants nor employees of any statutory authorities nor are they workmen under the Industrial Dispute Act. They were the employees of respondent No. 8. a Private concern. Their conditions of service were governed purely by the contract of employment. In such a case, remedy is to file a suit for wrongful dismissal and damages as held by Supreme Court in the case of Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, wherein following observations were made:

"The cases of dismissal or a servant fall under three broad heads, purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal service. Such a declaration is not permissible under the Law of Specific Relief Act.

The Second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrong fully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

24. Similarly in the case of Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, the Court held that the writ remedy was unavailable to enforce the contract. The aforesaid trend continues and there are judgments of the Supreme Court to this date following the aforesaid view. Purpose would be

served in referring to the case of Bakhtawar Singh and Another Vs. Union of India (UOI) and Another,

25. If the writ is entertained and relief granted to these employees, as claimed by them. It would amount to enforcing the contract of personal service and this would be contrary to the consistent view taken by the Apex Court in series of judgments mentioned above over a long period of time. It would amount to nullifying the effect of the aforesaid judgments. Therefore, the expression "any person" found in Article 226 has to be given an interpretation which harmonise with the legal thinking expressed in the aforesaid cases relating to enforcement of contract of personal service. One Therefore cannot extend the scope of expression "any person" to include those coming under the realm of private law. Keeping in view the aforesaid reasoning, it would not be necessary to deal with various judgments cited by the petitioners as they would fall into the pale of irrelevance, The cases cited by the petitioners are either on principle laid down in order to determine whether a particular authority is "State" or not, or relating to the principle for lifting corporate veil or concerning the welfare roll which the State organs discharge for the promotion of social and economic uplift of the people in tune with Directive Principles of State Policy etc. While there is no quarrel about the principles laid down in these judgments, suffice is to state that they are not applicable to the cases in hand in view of aforesaid discussion.

26. The result is that these petitions are dismissed as not maintainable. Interim orders are hereby vacated.

However, the parties will bear their respective costs.