

(1998) 11 DEL CK 0031

In the Delhi High Court

Case No : C.W.Nos. 3991/92, 4484/96, CW 5208/97 and CW 2513/98, CW No. 4484/96, C.W. No.5208/97, C.W. No. 2513/98

Usha Handa

APPELLANT

Vs

The Lt. Governor Union Territory of Delhi Raj Bhavan

RESPONDENT

Date of Decision : 01-11-1998

Acts Referred:

Citation : (1998) 7 AD 1 : (1999) 77 DLT 17 : (1999) 49 DRJ 378

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. P.P. Khurana Adv Mr. Ajay Pandey, Adv P.P. Khurana, Adv Ms. Maninder Acharya, for the Appellant;

Judgement

K. Ramamoorthy, J.

The petitioner (CW No. 3991/92) prayed for the following reliefs:

- i) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 25.01.1984, granting selection grade in T.G.T Science to Respondent No.4.
- ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to grant the selection grade in T.G.T. Science to the petitioner w.e.f. 01.08.1979 with all consequential benefits including senior selection grade.
- iii) Direct inquiry into the illegalities committed by the Respondents in manipulating of records including forging of documents and illegal appointments further directing suitable action against those found guilty.

The Petitioner in (CW No. 4484/96) prayed for the following reliefs:

- a) issue a writ of mandamus directing the respondents Nos 1 and 2, to exercise their statutory power and perform their duties in accordance with the provisions of Delhi School Act and Rules 1973; and
- b) direct respondent No.3, to permit the petitioner to report for duty as a

permanent Yoga Teacher;

c) direct the respondents to release the salary of the petitioner for the month of August, 1996 and also for all subsequent months from month to month.

The Petitioners in CW.5208/97 prayed for the following reliefs:

i) To allow the writ petition of the petitioners with costs.

ii) To quash the orders of termination dated 14.05.1997 in respect of petitioner No.1 and orders dated 07.05.1997 in respect of each of the petitioners Nos 2 to 5, and thereby to direct the respondents to take the petitioners back in service with all consequential benefits like salary and allowances on the footing as if the orders of termination were never passed.

iii) To direct the respondents to implement the usual scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of the recognised private School, comparable to the employees of the schools of corresponding status run by the Directorate of Education.

The petitioners in CW No. 2513/98 prayed for the following reliefs:

a) Writ, order or direction in the nature of certiorari quashing the letter/communication dated March 26, 1998 issued by Respondent No.2 and letter/communication dated April 27, 1998 issued by Respondent No.4, letter/communication dated 15.5.98 issued by Respondent No.3 and letter/communication dated 6.5.98 issued by Respondent No.4 whereby they have categorically refused to grant fee concession to the staff wards from the academic year 1998-99.

b) Writ, order or direction in the nature of mandamus directing Respondents Nos 1 to 5 to continue the fee concession up to two children of the staff wards of the Petitioners, who are employed with Respondent Nos 2 to 4.

2. The preliminary point relating to the maintainability of a petition under Article 226 to a private educational institution was debated in all the writ petitions. The learned counsel for the petitioners contended that in view of the judgment of the Supreme Court and Judgments of this court a writ petition against a Private Education Institution is competent on the ground that the Private Education Institutions merely supplement the affairs of the State in educating people and it is not an independent activity and it amounts to the Private Institutions performing governmental functions.

3. Learned counsel for the respondents submitted that Article 226 could be invoked only against the institutions which could be characterised instrumentalities of the State and the Private Education Institutions cannot be termed as such and they are generating their own funds for running the institutions and some of them are getting aid from the Government.

4. I shall take up the authorities relied upon by the learned counsel for the parties.

5. In *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , the facts of the case could be stated briefly in the following terms. An employee working in a municipal hospital was found guilty of negligence in performing his duties. Ultimately the employee was dismissed from service. The employee filed a suit for declaration that the dismissal was contrary to Rule 143 framed u/s 46 of the Bombay District Municipalities Act, 1901 which required the Municipality to give reasonable opportunity to an employee before any punishment is imposed. The Municipality contended that Rule was not mandatory. The trial court and the appellate court decreed the suit. The High Court on the main point relating to the violation of Rule 143 concurred with the view taken by the lower courts. It was contended before the Supreme Court challenging the decree of the High Court that even if dismissal was wrong the remedy of the employee was only to get damages and not a declaration. The Supreme Court observed:

The cases of a statutory status of an employee can also form the subject-matter of protection of the rights of an employee under the statute. In *Vine's case* (supra), the removal of Vine's name from the register was held to be a nullity. The statutory scheme of employment was held to confer on the worker a status. An unlawful act of the Board was found to be interference with status. The status of the dock worker was recognised by this Court in *Jaffar Imam's case* (supra). In *Jaffar Imam's case* (supra), the termination of the employment in breach of clause 36(3) of the scheme made by the Central Government in exercise of the power conferred on it by Section 4(1) of the Dock Workers (Regulation of Employment) Act, 1948 was held to be bad. The ground given by this Court was that before any disciplinary action was taken under clause 36(1) and (2) of the scheme in *Jaffar Imam's case* (supra), the person concerned was to be given an opportunity to show cause as to why the proposed action should not be taken against him.

6. On the basis of this observation, it is argued on behalf of the petitioners that under the statute the Delhi School Education Act, 1973, the teachers get a statutory status to enforce their rights, under the statute they can move this court under Article 226 of the Constitution of India. The question of maintainability was not raised before the Supreme Court.

7. The facts in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, , could be recounted shortly in the following terms. The defendant in the suit was the appellants before the Supreme Court. The Executive Committee of Vaish Degree College issued notice to not to discharge him from the post of the Principal. The ultimately the services of the respondent No.1 before the Supreme Court was dispensed with. The case of the plaintiff was that the Appellant Executive Committee having been affiliated to the Agra University and thereafter to the Meerut University and being governed by the provisions of the concerned Act, the College became statutory body and the

college have no jurisdiction to terminate the services of the plaintiff without seeking the previous approval of the Vice-Chancellor. The trial court dismissed the suit. The appellate court reversed the decision of the trial court. The College filed an appeal in the High Court of Allahabad. The learned Single Judge before whom the matter came up referred the case to the Full Bench framing the following issues:

Can the civil court grant the relief of injunction in view of the facts and circumstances of the present case?

The Full Bench held:

1. That the defendant/appellant being a statutory body was bound by the provisions of the University Acts and the statutes made there under and Therefore the termination of the services of the plaintiff/respondent without obtaining the sanction of the Vice-Chancellor was illegal and invalid; and

2. That in the facts and circumstances of the case, the plaintiff/respondent was entitled to the injunction as prayed for.

8. The Full Bench give the opinion confirming the decree of the appellate court with some modifications.

9. It was submitted before the Supreme Court on behalf of the College that it was not a statutory body and secondly there was no agreement between the College and the Principal as required under the law. The Supreme Court held that the Executive Committee of the College was not a statutory body merely because it was affiliated to the University or is regulated by the provisions of Universities Act of the statute made there under and held that the view taken by the Full Bench of the Allahabad High Court was erroneous. It is not necessary to go into the other aspects of this case. The Supreme Court had referred to the observations of the case reported in Sukhdev Singh Vs. Bhagatram Sardar Singh Raghuvanshi wherein this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A.N. Ray C.J. observed as follows:

A company incorporated under the Companies Act is not created by the Act. it is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

10. The The Principal and Others Vs. The Presiding Officer and Others, was cited but the question that was mooted out before the Supreme Court was that whether the protection under the Delhi School Education Act,1973 could be available to a teacher of an unrecognised school. The Supreme Court pointed out the difference between the affiliation and recognition. The relevant portion of the Judgment reads as under:

Re: Point No.1: For determination of this point, which is crucial it is necessary to refer to S.2 (t) of the Act which defines a "recognised school" as a school recognised by the appropriate authority. The expression "appropriate authority"

is defined in S.2(e) of the Act as under:-

"2 (e) `appropriate authority" means: -

- i) in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;
- ii) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;
- iii) in the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation;
- iv) in the case of any other school, the Administrator or any other officer authorised by him in this behalf".

From the above definitions, it is clear that no school can be treated as a "recognised school" unless it is recognised or acknowledged by the "appropriate authority". In case of the School in question, it is the Administrator or the officer authorised by him who could accord recognition to it. A perusal of letters dated April 6, 1976, February 1, 1977 and June 6, 1977 of the Directorate of Education, New Delhi (at pages 90, 95 and 162 of the record) makes it clear beyond any shadow of doubt that the School was not recognised in terms of the Act till the end of April, 1977 and it was only with effect from May 1, 1977 i.e. long after the relevant date viz. August 8, 1975 that the approval or recognition was accorded to it vide letter No.F.22 (15)Z-XI (B)-1968/2003 dated June 6, 1977 of the Directorate of Education, Rajinder Nagar, New Delhi. This position has been admitted even by respondent No.2 in para 4 of the Supplementary Affidavit filed by him before this Court. Even according to para 2 of the said affidavit, the recognition of the School by the competent authority was not there on the relevant date. The observation of the Tribunal in regard to the point under consideration appear to be based on a misconception of the true legal position. It seems to think that since the name of the School figured in the list of the Higher Secondary and Middle Schools in the Union Territory of Delhi for 1974-75 prepared by the Statistical Branch of the Directorate of Education of the Delhi Administration, the School must be treated as a "recognised school". This is clearly a wrong assumption. The fact that the name of the School finds a mention in the aforesaid list is not enough to clothe it with the status of a "recognised school." It appears to us that since the School was affiliated to the Board, the Delhi Administration caused its name to be included in the aforesaid list. The fact that the School is affiliated or attached to the Board is also of no consequence and cannot justify the conclusion that the School is a "recognised school". There is a significant difference between "affiliation" and "recognition" Whereas "affiliation", it may be noted is meant to prepare and present the students for public examination, "recognition" of a private school is for other purposes mentioned in the Act and it is only when the School is recognised by the "appropriate authority" that it becomes amenable to other provisions of the

Act. Again the fact that the School was in existence at the commencement of the Act cannot confer on it the status of a recognised school and make it subject to the provisions of the Act and the rules made thereunder. To clothe it with that status, it is essential that it should have been a "recognised private school" as contemplated by the Act. Nothing has, however, been brought to our notice to show that it was an "existing school" as defined in S.2(j) of the Act. In view of all this, we have no hesitation in holding that the School on the relevant date and was, Therefore, not amenable to the provisions of the Act.

11. The case in *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, was referred to. In this case the appellant before the Supreme Court who was confirmed as Auditor in the office of Accountant General Assam offered himself as a candidate for an appointment as a lecturer in English in Lady Keane Girls College, Shillong. His services were terminated on the ground that the prior approval had not been given by the competent authority for his appointment. The Appellant filed a suit for a declaration and injunction. The trial court held that the appointment was irregular and the same contravened the Government regulations regarding the reservation of the posts for the backward section of the State and the remedy was.

12. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , after the closure of the college the academic staff demanded arrears of salary, provident fund and gratuity and the closure compensation by the issuance of a writ of mandamus. The trust who was running the institution raised the following objections:

- i) The trust is not a statutory body and is not subject to the writ jurisdiction of the High Court;
- ii) the Resolution of the University directing payment to teachers in the revised pay scales is not binding on the trust;
- iii) the University has no power to burden the trust with additional financial liability by retrospectively revising the pay scales;
- iv) the claim for gratuity by retrenched teachers is untenable. It is payable only to teachers retiring, resigning, or dying and not to those removed on account of closer of the college; and
- v) Ordinance 120-E prescribing closure compensation is ultra virus the powers of the syndicate. It is at any rate not binding on the trust, since it was enacted prior to affiliation of the college.

13. The reasoning given by the Supreme Court is as follows:

Article 226 reads:

226. Power of High Courts to issue certain writs - (1) Not with standing anything in Article 32, every High Court shall have power, throughout the territories in

relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any government, within those territories directions, orders or writs, including 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 purpose.

The scope of this article has been explained by Subba Rao. J. in *Dwarkanath Vs. ITO*: (SCR pp. 540-41).

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 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 does not 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 Court 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 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.

In *Praga Tools Corporation V. C.A. Imanual*, this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed: (SCC p.589, para 6: SCR p. 778).

It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A

mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities.

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed 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 easily 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.

14. In Miss Raj Soni Vs. Air Officer in Charge Administration and another, , the petitioner in the Supreme Court in a petition under Article 32 of the Constitution of India was retired from the Air Force Central School, New Delhi, as a teacher on her attaining the age of 58 years. According to her, the age of superannuation applicable to her was 60 years and as such, the Management of the School acted arbitrarily in depriving her of two years of service. The argument on behalf of the respondents was that the School was being run by a private Board, there was no government control and no aid of any kind was given to the school and according to the learned counsel for the respondents before the Supreme Court, the Management of the School was neither a State nor any authority under Article 12 of the Constitution of India and as such, no writ petition was competent. The Supreme Court expressed the view:

The Executive Committee which manages the school is headed by Air Force Officer in charge Administration, Air Force Headquarters, New Delhi and consist of all high ranking Air Force Officers of the rank of Sqdrn Leader to Air Marshal. The said membership is in their official capacity which indicates complete control over the school by the Air Force. It is, however, not necessary to decide in this case as to whether or not the school is a State or an authority under Article 12 of the Constitution of India.

The recognised private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When any authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor

an "authority" under Article 12 of the Constitution of India.

The Supreme Court further observed:

It is not necessary and we do not propose to go into the question in this case as to whether the petition is maintainable under Article 32 of the constitution, because this petition has been pending in this Court since 1981. The petitioner's claim is just. it will, Therefore, be a travesty of justice to send her to any other forum at this stage.

15. In Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , the question was whether the National Council of Educational Research and Training should be considered as a State as defined under Article 12 of the Constitution of India. The Supreme Court after referring to the discussion by High Court considered the question as under:

"The NCERT is governed by a Memorandum of Association subscribed to by seven officers of the Government of India on June 6, 1991. Under clause 3.1 of the Memorandum of Association the object of the Council is to assist and advise the Ministry of Education and Social Welfare in the implementation of its policies and major programmes in the field of education particularly school education. Under clause 3.2 the Council is empowered, for the realisation of the above objectives to undertake several kinds of programmes and activities which include coordination or research, extension services and training, dissemination of improved educational techniques and practices in schools, collaboration in educational programmes, distribution of ideas and information, preparation and publication of books, materials, periodicals and other literature and allied activities. Under clause 5 the income and property of the Council is to be applied towards the promotion of its objects and cannot be disposed of by way of dividends, bonus etc. But under this clause, the Council is free to apply the income and property towards its objectives in such manner as it may think fit. It is subject to the limitations placed by the government of India in this regard only in respect of the expenditure of grants made by the government. Under clause 6 of the Government of India could review the work and progress of the Council and take appropriate action to give effect to the reports received on enquiries. In addition, the government could at any time issue directions to the Council on important matters of policy and programmes. Rule 3 of the Rules of the Council provides for constitution of the Council which consists mainly of various government officials but also includes the Chairman of the University Grants Commission, four Vice chancellors and a number of nominees, four form school teachers and several others. Rule 7 enables the government to fix the period of appointment of the members and to extend it from time to time. The council's affairs are conducted by the Executive Committee whose constitution is outlined in Rule 23. This includes various government servants but it also includes four educationists and three Professors and Heads of Departments who may be nominated by the President. Rule 37 provides that if there is any difference of opinion the view of the majority will prevail subject to a veto which could be

exercised by the Government of India within a month. It also enables the President to refer any question for the decision of the government. Rule 40 enables the Executive Committee to frame and amend Regulations not inconsistent with the rules. Rule 42 empowers the Executive Committee to enter into arrangements with government, public or private organisations or individuals in furtherance of its objectives and implementation of its programmes. Rule 57 provides that the funds of the Council shall consist of (i) grants made by government; (ii) contribution from other sources; (iii) income from the assets of the Council; and (iv) receipts of the Council from other sources".

The object 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 particularly school education. The NCERT undertakes several kinds of programmes and activities, connected with the coordination of research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes. It also undertakes preparation 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 the NCERT consist of: (i) grants made by the government, (ii) contribution from other sources and (iii) 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.

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 the 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 aid from the public and in fact, received 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".

In the light of all these factors it was held that ICPS was not "State".

In the present case, the High Court has relied upon the Constitution Bench decision of this Court in *Sabhajit Tewary V. Union of India*. there it was held that the Council of Scientific and Industrial Research (CSIR), which was sponsored and controlled by the Central Government and registered under the Societies Registration Act was not "State" within the meaning of article 12. But this decision has been distinguished and watered down in the subsequent decisions particularly in *Ajay Hasia* and *Ramachandra Iyer* cases.

Counsel for the appellant strongly relied upon the decision in *P.K. Ramachandra Iyer* case where this Court held that Indian Council for Agricultural Research (ICAR) was "State" under Article 12. But it may be noted that ICAR was originally an attached office of the Government of India and its position was not altered when it was registered as a society. That case, Therefore, is clearly distinguishable.

In our opinion, the case on hand, having regard to the indications to which we have called attention earlier, does not satisfy the requirements of "State" under Article 12 of the Constitution.

16. In *V.S. Rahi Vs. Lt. Governor of Delhi*, , a Division Bench of this Court considered the question in a writ petition by a teacher seeking mandamus for pension. Two points were raised on behalf of the management. In para 5 of the judgment the Division Bench dealt with the matter in the following terms:

Primarily two questions require to be considered; (i) Whether the petitioner can invoke the writ jurisdiction to seek a relief which is certainly against a private school; and (ii) Whether petitioner is entitled to the benefit of pension as contended by him. The first question need not detain us long in view of the decision of the Supreme Court in *Miss Raj Soni Vs. Air Officer in Charge Administration* and another, in the said case, the Supreme Court entertained a petition filed by a teacher under Article 32 of the Constitution, against a private school which was not receiving any aid, to enforce the provisions of the Act and the Rules, and granted her the benefit of the age of retirement as 60 years, while, under the rules of the school she was to retire at the age of 58 years.

17. In *Miss Payal Gupta Vs. Lt. Governor of Delhi & Ors.* 1994 3 AD (Del) 1119, a Division Bench of this Court dealt with the case of a student who was denied admission by a private school. About the maintainability, the Division Bench held:

The question whether a writ could lie against a recognised unaided school is no

longer rest integra. It was contended by Mr. Kaul that the Cambridge School was not a State and that it was run by a society registered under the Societies Registration Act. Jurisdiction of this Court under Article 226 of the Constitution is not confined to the authority which is a State within the meaning of Article 12 of the Constitution. In *Kuldip Mehta Vs. Union of India and others*, 1993 (2) D L 196, this Court has taken the view that Article 226 also speaks of directions and orders which can be issued to any person or authority. In that case a writ was issued against a public limited company which had nominees on its Board of Directors from the National Textile Corporation Limited, a Government company. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , referring to the scope of Article 226 of the Constitution, the court observed as under:

"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 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 does not 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. In enables the High Courts to mould the reliefs to meet the peculiar and complicated requirement of this country. Any attempt to equate the scope of the power of the High Court under Art. 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 to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicitly in the article and others may be evolved."

In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , the court observed that a private educational institutions merely supplement the efforts of the State in educating the people, and that it was not an independent activity. It further said that no private educational institution could survive or subsist without recognition and/or affiliation, and that the bodies which granted recognition and/or affiliation were the authorities of the State, and these private educational institutions were under same obligations as enjoined upon the recognizing/affiliating authority and would, thus, be a State. The Cambridge School which is a recognised school under the Act and the Rules would, Therefore, certainly be amenable to the writ jurisdiction of this Court.

18. The Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, dealt with the difference between aided and un-

aided institution and held:

The emphasis in the case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty.

19. In *M/s Sanghi Technologies Pvt. Limited Vs. Union of India and Ors.*, the Full Bench of this Court had to consider the meaning of the words in Article 226 of the Constitution of India. The Full Bench opined:

On the question as to whether a particular authority is an instrumentality or agency of the State and hence "other authority" within the meaning of Article 12 of the Constitution, there is a plethora of case law, including Constitution Bench decisions of the Supreme Court, but we do not propose to burden the judgment by all the authorities on the point except to mention that in the earlier judgments a more conservative view was taken and the term continued to be expanded in the later judgments. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, the term "other authority" was confined to a constitutional or statutory body. This test was followed by A.N. Ray, C.J. in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Officers, Shyam Lal, Industrial Finance Corporation*, but K.K. Mathew, J emphasised the drastic change in the thinking by extending the ambit of the Article to private corporations as well. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, the Supreme Court went still further to say that Government may act through Natural persons or juridical persons to carry out its functions and it is not necessary that it is created by a Statute.

How then to find out if a person or body falls within the ambit of "other authority" is the prime question.

No decipherable test or significant criteria to identify "other authority" was laid down till the decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, came, where some tests were evolved. In *Som Parkash Rekhi Vs. Union of India*, the Court besides others, referred and relied on two earlier pronouncements of the Constitution Benches; on the amplitude of "other authorities" in Article 12 and came to the conclusion that "other authorities... under the control of the government of India in Article 12 is comprehensive enough to take care of Part III without unduly stretching the meaning of "the State"; to rope in whatever any autonomous body which has some nexus with government". The Supreme Court analysed in earlier decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and called out the following tests to decide whether a company or

society or other authority is a State for the purpose of this Article:

- i) If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of the Government;
- ii) existence of deep and pervasive control of the State may offer an indication that the Corporation is a State agency or instrumentality;
- iii) if the financial assistance by the Government is so much as to meet almost entire expenditure of the Corporation, it would be some indication of the same being impregnated with governmental character;
- iv) monopoly status of a Corporation may be another indication of its being a State.
- v) if the functions of the Corporation are 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 the government;
- vi) specifically, if a department of Government is transferred to a Corporation, it would be a strong factor supportive of its interference of the Corporation being an instrumentality or agency of the Government.

While laying down the aforesaid parameters, it was observed in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that there is no strait-jacket formula to hold what is "Other Authority" and it is not necessary that all the tests must be satisfied for reaching a conclusion for or against holding an institution to be a State. In a given case some of the features emerge so boldly and prominently that second view is not possible. There may yet be other cases where the matter would be on border line and it would be difficult to take one view or the other outright. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities of human experience in view so as to reach a reasonable conclusion.

The fundamental test as laid down by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, relied upon by the five Judges Bench of the Supreme Court in *M.C. Mehta and another Vs. Union of India and others*, is - "the enquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860, or any other similar statute" (like a trust under the Trusts Act, 1882). Succinctly stated what is really to be determined for whether a body is or not "other authority" is - who created the body and why - what are its aims and objects, how is it running, the extent of Government financial aid or grant to it and its dependency on the Government and the latter's control over it.

The sum total, broadly speaking, is that constitutional or statutory bodies set up under a statute - whether as a Government body or undertaking or as corporation - a Government company or public company or a private company under the Companies Act, 1956, or in the form of a society registered under the Societies Registration Act or any other form constituted under a similar statute or a body or a person performing the functions of a Government character will be included in the expression "other authority".

20. In *Ms Urmil Sharma Vs. Director of Education* 1996 III AD (Delhi) 48, a Division Bench of this Court had to deal with the right of withdrawal of resignation before its acceptance. Writ was issued against the Private Management.

21. In *Anand Dev Tyagi Vs. Lt. Governor of Delhi & Ors.* 1996 4 Del 249, the question was whether the order of the Management suspending a teacher from the school without getting the prior approval of the competent authority. The order of suspension was held to be void in law and writ was issued against the private school.

22. In *Sahdeo Singh Solanki Vs. Government of NCT of Delhi*, , the termination of the services of the teacher was set aside by a Division Bench of this Court.

23. In the case reported in *Nisha Tyagi Vs. Seema Model School*, , the head note brings out the point which is as under:

The appeal lies to the Tribunal u/s 8(3) of the Delhi School Education Act. According to Section 8(3), an employee of a recognised private school who is dismissed, removed or reduced in rank may within three months reduction rank, file an appeal against such order to the Tribunal. This case does not fall in the broad categories mentioned above, and, in cases where there is no fundamental breach of the statutory provisions of the Act and where there is complete denial of the principles of natural justice, the petitioner would be justified in invoking the jurisdiction of this Court under Article 226 of the Constitution.

24. In *H. Singh Vs. Govt. of N.C.T. Delhi* Vol.119 >(1) (1997) DLT 163, a learned Single Judge of this court issued a writ directing Management of a School to allow the writ petitioner to function as Principal as the order of suspension passed by the school was revoked by the Director.

25. In *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, , the Supreme Court had to deal with a similar question that is posed before me. The Judgment of the Supreme Court is a very short one and the same is as under:

The admitted position is that the appellant and six others had been appointed on daily wages to the post of Lab Assistants as non-teaching staff of the respondent-private college. They were being paid daily wages. A writ petition and appeal seeking equal pay having been dismissed, they have filed the present appeal for direction to pay them equal pay for equal work on a par with the other

government employees.

It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on a par with the government employees. The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the writ petition under Article 226 of the Constitution is not maintainable" In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent - Management paid the salaries on a par with the Government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on a par with government employees under Article 39(d) of the Constitution.

26. In the light of the exposition of the legal position of the Division Bench of this Court in *Miss Payal Gupta Vs. Lt. Governor of Delhi & Ors.* 1994 III AD (Delhi) 1119, it is not open to the respondents to contend that the writ petition is not competent. Accordingly I hold the writ petition is maintainable. The writ petitions have to be dealt with on merits.

Post these writ petitions for directions on 28.01.1999.