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2020 (0) AIJEL-HC 242240

GUJARAT HIGH COURT

Hon'ble Judges:Biren Vaishnav, J.

Mukesh Bhavarlal Bhandari Versus Nagesh Bhandari

SPECIAL CIVIL APPLICATION No. 4238 of 2020 ; *J.Date :- AUGUST 13, 2020

- CONSTITUTION OF INDIA Article - 226 , 227
- GUJARAT PRIVATE UNIVERSITIES ACT, 2009 Section - 2(t)(ii) , 14(1) , 14(4)(b) , 15(1)

Cases Referred To :

1. Anadi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jayanti Mahotsav Smarak trust Vs. V.R.Rudani & Ors., AIR 1989 SC 1607
2. Binny Ltd., & Anr Vs. Sadasivan & Ors., 2005 6 SCC 657
3. Jain Exports Pvt Ltd Vs. Uoi., 2017 354 ELT 30 : 2012 JX(Guj) 750 : 2012 GLHEL_HC 227535
4. K.K.Saksena Vs. International Commission Of Irrigation & Drainage., 2015 4 SCC 672
5. K.K.Saxena Vs. International Commission Of Irrigation And Drainage, 2015 4 SCC 670
6. Praga Tools Corporation V. C.V.Imanual, AIR 1960 SC 1306
7. Sohan Lal V. Union Of India, 1957 0 SCR 738
8. State Of Gujarat Vs. Meghji Pethraj Shah Charitable Trust & Ors., 1994 3 SCC 552 : 1994 (2) GLR 1247 : 1994 (2) GLH 188 : 1994 (2) GCD 842 : 1994 (2) Scale 374
9. State Of Travancore Vs. Matthew K.C, 2018 3 SCC 85
10. Synergy Fertichem Pvt Ltd Vs. State Of Gujarat., 2020 33 GSTL(Guj) 513
11. Virudhunagar Hindu Nadargal Dharma Paribalma Sabai & Ors Vs. Tuticorin Educational society & Ors, 2019 9 SCC 538
12. Zee Telefilms Ltd Vs. Union Of India., 2005 4 SCC 649

Equivalent Citation(s):
2020 JX(Guj) 428 : 2020 AIJEL_HC 242240
JUDGMENT :-

1 This petition filed by the petitioners, under Article 226 of the Constitution of India, challenges the order dated 11.06.2020 passed by the respondent No.2 -Indus University, by which the University has decided to terminate the services of the petitioner forthwith.

2 Initially, the petition was filed with a prayer challenging the show cause notice dated 11.02.2020. This Court had heard the petitioner on 17.02.2020, at which stage the respondent No.2 -University was joined as a party. Thereafter, it was adjourned to 02.03.2020 on which date the Court had issued notice and it has come up for hearing now. In the interregnum, it has been adjourned and pending the petition, the respondent No.2 - University heard the petitioner on the show cause notice and passed the impugned order. The petition was subsequently therefore amended and the order of termination dated 11.06.2020 was passed. The brief facts of the petition are as under:

> 2.1 It is the case of the petitioner No.2 that he is a Commonwealth Fellow and a Doctorate from the University of Cambridge. He has highlighted his biodata in the petition and submitted that he is an Associate President of the Indus University established under the Gujarat Private Universities Act, 2009. According to the petitioner, he was not given any formal appointment letter. It was for the first time that the petitioner came to know of the kind of approach that the University was undertaking. A show cause notice dated 11.02.2020 was issued to the petitioner listing several infirmities on the part of the petitioner, which was the subject matter of challenge when the petition was initially filed.
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> 2.2 According to the petitioner, the respondent No.1 Dr. Nagesh Bhandari, is mismanaging the University, he is no longer the President of the Trust which manages the University and it is in fact, his

wife Mrs. Ritu Bhandari, who is now the President. According to the petitioner, there is a dispute which is undergoing of the Trust and is pending before the Charity Commissioner.

2.3 According to the petitioner, Dr. Nagesh Bhandari and one Mr. Maulik Dave, a Member of the Board of Governors, called for a meeting asking the petitioner to resign from the post of Provost. Since the petitioner did not succumb to the tactics of the respondent No.1 -Dr. Nagesh Bhandari, a show cause notice was issued. The show cause notice and the allegations made therein are extensively set out in the petition. As stated, pending the petition, since there was no interim relief, by the order of 11.06.2020 the petitioner's services were terminated after holding an inquiry which resulted in the petitioner amending the petition.

3 Heard Mr. Percy Kavina, learned Senior Advocate with Mr.Aftabhusen Ansari, learned advocate for the petitioners. Mr. Kavina, learned Senior Advocate would make the following submissions:

(A) The respondent No.1 had ceased to exist as a President. Taking me through various provisions of the Gujarat Private Universities Act, 2009 , especially Section 2(t)(ii) of the Act and Section 14(1) of the Act, Mr. Kavina, would submit that the President is to be appointed by the Sponsoring Body in consultation with the State Government for a period of three years. The Indus University was established in the year 2012 and the respondent No.1 was appointed as a President, whose term has expired in the year 2015. The Sponsoring Body never appointed, or renewed the term of the respondent No.1 as President.

(B) There are two mandatory conditions for the appointment of the President, namely, that it has to be through a Sponsoring Body and with the consultation of the State Government which has not been followed, and therefore, the show cause notice issued by Dr.Nagesh Bhandari, who no longer ceases to be the President is without authority of law.

(C) Taking me to the provisions of the Act, especially Section 14(4)(b) and Section 15(1), Mr.Kavina, learned Senior Advocate would submit that the power to remove the Provost lies in two places under the Act, namely, Section 14(4)(b) and under Section 15(c) which provides that the President may remove the Provost after making necessary inquiry and after giving an opportunity of hearing. The Provost has to be present before the Sponsoring Body and not the President.

(D) The term governing body is described in chapter IV of the Act and the governing body is, therefore, the only the administrative branch of the Act. In other words, Mr. Kavina, taking me through the provisions of the Act would submit that the petitioner himself being part of the governing body is unaware of as to when a decision was taken to issue a show cause notice to the petitioner.

(E) The show cause notice was issued on 11.02.2020. An Inquiry Committee of five persons, including the respondent No.1, his wife, his lawyer appearing before the Charity Commissioner and Trustees and close family aides and an employee of Mr. Nagesh Bhandari were appointed as members of the Inquiry Committee. He would, therefore, submit that the constitution of the Inquiry Committee itself is illegal as the members are selected and picked up by the respondent No.1. No opportunity of hearing, to the petitioner who was a Provost has been given by the Sponsoring Body as per the Statutes of the University.

(F) The respondent No.1 had no authority to call for the meeting on behalf of the Sponsoring Body without discussion with all the Trustees. An illegal Committee was, therefore, constituted of which he became a Member-cum-Chairman though there is no President of the Indus University.

(G) The petitioner remained present before the Inquiry Committee on 17.02.2020. No document or any charge sheet was supplied by the Inquiry Committee and that the meeting was audio-cumvideographed (a transcript of which is produced by the respondents). The inquiry proceedings were then adjourned to 28.02.2020. The daughter of Nagesh Bhandari -Radhika Bhandari, respondent NO.1 read out the charges. She was not part of the Inquiry Committee.

(H) Mr.Kavina, learned Senior Advocate has raised a grievance that by an order dated 02.03.2020, in the Court, the petitioner specifically raised the grievance that the respondents were not supplying any documents, complaints or charge sheet, and therefore, they need be supplied. It was only on 11.03.2020 that the Inquiry Committee supplied the copy of the documents to the petitioner and a response was sought.

4 Adverting to the order dated 11.06.2020 and the written brief submitted by the counsel for the respondent - University, Mr. Kavina, learned Senior Advocate, would submit that it is apparent that the order is bad,

inasmuch as, it refers to the fact that the Inquiry Committee conducted discreet meetings with the complainant behind the back of the petitioner.

4.1 Mr. Kavina, learned Senior Advocate, would submit that the order dated 11.06.2020 has been passed subverting the process of the Court. A statement was made by the respondents on 02.03.2020 that no final order will be passed in connection with the show cause notice; however, the petitioner's services were put to an end, and therefore, an amendment was necessary in the petition.

4.2 To the preliminary objection of the respondents that the petition is not maintainable, Mr. Kavina, learned Senior Advocate would submit that it is the specific case of the petitioner that the appointment and the removal of the Provost has to be in accordance with the Gujarat Private Universities Act, 2009. He would submit that he has extensively pointed out the breach of such provisions of the Act, and therefore, it is only by way of a writ petition that such a conflict could be resolved. Referring to the decisions in the case of Anadi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jayanti Mahotsav Smarak Trust vs. V.R.Rudani & Ors., reported in AIR 1989 SC 1607 and in the case of Binny Ltd., & Anr vs. Sadasivan & Ors., reported in 2005 (6) SCC 657, Mr. Kavina would submit that the petition is maintainable.

4.3 Legality of the termination order was challenged on the ground that it was passed despite an assurance given to this Court that the same shall not be passed.

4.4 Malafides have been argued by the learned counsel for the petitioner that Shri Nagesh Bhandari and one Shri Maulik Dave, one of the members of the Board of Governors, called a meeting and asked the petitioner to resign. The respondent No.1 sent an E- mail asking the petitioner to resign and when the petitioner did not, he was presented with an order of termination. On the charges leveled in the show cause notice, Mr.Kavina, learned Senior Advocate, would submit that the charges are baseless, frivolous and the termination is also based on certain charges which were not part of the show cause notice.

4.5 Mr. Kavina then referred to the litigations that the Sponsoring Body and the petitioner No.1 are undergoing in terms of Special Civil Application No. 5419 of 2020 and Special Civil Application No.5420 of 2020 relating to the Bhandari Charitable Trust, which manages the University. An additional affidavit has also been filed by the petitioner.

5 The respondents have also filed an affidavit-inreply and an additional affidavit disputing the averments made in the petition. In the additional reply, Mr. Kavina, learned Senior Advocate, would submit that one Mr. Dhruvin Shah, who is an advocate representing the respondent No.1 in the litigations before the Charity Commissioner is also made a member of the Inquiry Committee which shows the manner in which the respondents are after the petitioner. Initially, the reply was filed to the petition by the respondents objecting to the maintainability of the petition on two grounds-(1) that it was against a show cause notice and (2) that the petition under Article 226 is not maintainable as the dispute falls within the realm of private contract.

6 Mr.Anshin Desai, learned Senior Advocate with Mr.Parth Contractor, learned advocate for the respondents, has taken me through the first affidavit-in-reply and pointed out that the respondent No.2 is a private University, and therefore, not amenable to writ jurisdiction under Article 226 of the Constitution of India. He would submit that there are serious disputed facts, and therefore, the Court should not interfere.

6.1 Mr. Desai, learned Senior Advocate, would further submit that the petitioner's intentions of dragging the University to Court smacks of malafides. Though the petition is styled as one challenging the petitioner no.2's order of termination, the petitioner No.1 -Mukesh Bhandari has been joined as petitioner No.1 who has no locus to file the petition. The petitioner No.2 is acting in collusion with the petitioner NO.1 and indulging in the politics of the Sponsoring Body and he has no concern with the dispute of the petitioner No.2. According to Mr. Desai, learned Senior Advocate, the petition at the hands of petitioner No.1, therefore, is not maintainable and the fact that he has been joined as a co-petitioner would suggest the agenda of the petitioner No.2.

6.2 An additional affidavit has been filed to the amended petition by the respondents. Inviting my attention to the additional affidavit, Mr.Desai,learned Senior Advocate, would submit that pursuant to the order passed by this Court on 17.02.2020, on that date, the hearing of the show cause notice was scheduled where the Petitioner under took to participate. The petition was filed by the petitioners without joining the University. The respondent No.2 was joined as a party on the objection taken by the respondent No.2. The petition was adjourned to 27.02.2020. No objection was raised on behalf of the petitioner NO.2 to appear before the Inquiry Committee, in fact, a statement was made that he will participate and co-operate. Instead of remaining present at the stipulated time on 17.02.2020, the

petitioner No.2 made the members of the Inquiry Committee wait and then sent an E-mail that he will be attending the meeting at 5:00 p.m.

6.3 Mr.Desai, learned Senior Advocate, would submit from the affidavit-in-reply that it is evident that the behaviour of the petitioner no.2 was absolutely non-co-operative and ill-tempered. This left no alternative but for the Committee to defer the hearing to 28.02.2020. On 28.02.2020, the petitioner no.2 remained present and was heard at length. During the course of hearing on 02.03.2020 before this Court, an assurance was made that the petitioner should collect the relied upon documents. On 07.03.2020, the University called upon the petitioner to remain present to collect the documents for the hearing scheduled on 11.03.2020. The petitioner No.2 did not come forward to collect the documents. On 08.03.2020, the petitioner demanded a soft copy of the relied upon documents, which were eventually collected by the petitioner at 06:30 p.m on 11.03.2020. This compelled the respondents to reschedule the hearing from 11.03.2020 to 17.03.2020.

6.4 According to Mr.Desai, learned Senior Advocate, the petitioner continued to address frivolous E-mails to the Inquiry Committee. Such E-mails were sent in a format which prohibits the E-mails for being printed, copied or forwarded and further self destructs after a stipulated time. Additional averments in the affidavit suggest that in the profile and the resume, the petitioner no.2 submitted to the MIT World Peace University at the time of applying for the post of Pro VC of the MIT that the petitioner No.2 was a member of the Indus University Board of Management since 2015 which was a clear misrepresentation made to the MIT. This, would suggest that the petitioner does not deserve any sympathy.

6.5 Mr. Desai, learned Senior Advocate, invited the attention to the note of submissions that is filed in the paper book and reiterated his submission that the petition is not maintainable as the dispute is in the realm of a private contract and the respondent No.2 is a private University.

6.6 Proceedings of the Inquiry Committee and the Report of the Inquiry Committee have been placed on record with the reply to submit the conduct of the petitioner.

6.7 With regard to the submission that the petition is not maintainable, he would contend that the only ground raised in the petition is that the order was passed in violation of principles of natural justice and the lack of jurisdiction of the Inquiry Committee. In support of his submission that the petition under Articles 226 and 227 of the Constitution of India is barred, Mr. Desai, learned Senior Advocate, would rely on the following decisions:

(i)State of Travancore vs. Matthew K.C, reported in 2018 (3) SCC 85.

(ii) Virudhunagar Hindu Nadargal Dharma Paribalma Sabai & Ors v. Tuticorin Educational Society & Ors, reported in 2019 (9) SCC 538.

6.8 On the submission of disputed facts, Mr.Desai, learned Senior Advocate would rely on the decisions of:

(i) ICRI vs. Indus University (Order dated 18.10.2019 passed in SCA No. 14529 of 2019 para14) (page 52-62 of the compilation).

(ii) Synergy Fertichem Pvt Ltd vs. State of Gujarat., reported in 2020 33 GSTL 513(Guj.) - para 180

(iii) Jain Exports Pvt Ltd vs. UOI., reported in 2017 354 ELT 30(guj.) - para 20.

6.9 On the submission that the dispute falls within the realm of private contract, Mr.Desai,learned Senior Advocate would rely on the following decisions:

(i) K.K.Saxena vs. International Commission of Irrigation and Drainage reported in 2015 (4) SCC 670 (page 1-27 of the compilation).

(ii) State of Gujarat vs. Meghji Pethraj Shah Charitable Trust & Ors., reported in 1994 (3) SCC 552 (page 28-45 of the compilation)

6.10 According to Mr.Desai, learned Senior Advocate, the only ground which the petitioner has raised is the violation of principles of natural justice which is unwarranted. He submits that from the record, it is evident that the petitioner has been continuously recalcitrant and non co-operative with the inquiry proceedings. Sufficient opportunities were given to him, inquiry hearings were re-scheduled from time

to time and the petitioner did not remain present. Therefore, there is no breach of principles of natural justice.

6.11 On the question of jurisdiction, Mr. Desai, learned Senior Advocate would rely on Section 15(1) r/w. Section 15(6) of the Gujarat Private Universities Act and submits that Provost is appointed by the Governing Body / Body of Governors. He would further submit that the President may on a representation made or otherwise and after making such inquiry direct the Provost to relinquish his office. Reliance is placed on the Statute 3.2.5.6, wherein, the powers are vested with the President to approve, appoint or re-appoint or terminate the appointment of the Provost. He would therefore submit that the Governing Body constituted an Inquiry Committee. The Inquiry Committee offered an opportunity of hearing, the Governing Body on 16.04.2020, passed a resolution terminating the services of the petitioner empowering the President to issue a termination letter and a termination letter was issued by the President on 11.06.2020. The procedure as required under the law has been scrupulously adhered to.

6.12 Mr.Desai, learned Senior Advocate, would then vehemently submit that whatever is argued by Mr.Kavina, learned Senior Advocate, is never made a part of the amended petition by which the order of termination is challenged. No grounds of challenge, either in the memo of the petition or draft amendment have been stated or pleadings have been made as to on what grounds the order of termination is challenged.

6.13 Mr. Desai,learned Senior Advocate, would submit that the merits of the termination order, the allegations, the evidence and the complaints fall within the realm of disputed facts which can only be challenged by way of a suit.

6.14 Mr. Desai, learned Senior Advocate, would then take the Court to the findings on the allegations against the petitioner which have been arrived at, on the basis of documents. He would submit that several financial irregularities, misbehaviour with staff members, indulging in politics, provoking sentiments qua CAA were allegations which were proved. No submissions or facts which were not provided by or were outside the purview of the Committee were relied upon. The Inquiry Committee has not relied upon any facts, instance or statement which was not provided to the petitioner and therefore the petition is bereft of merits and therefore deserves to be dismissed.

7 Having considered the submissions of learned Senior Advocate Mr. Percy Kavina appearing with Mr. Aftabhusen Ansari, learned advocate for the petitioners and Mr. Anshin Desai, learned Senior Advocate appearing with Mr. Parth Contractor, learned advocate for the respondents, a few things need to be noted, which are as under:

(A) The petition is filed with a prayer initially for quashing of the show cause notice dated 11.02.2020 issued to the petitioner no.2 being illegal and in disregard of the provisions of the Gujarat Private Universities Act, 2009. Pending the petition, on 11.06.2020 the petitioner's services were terminated after holding an inquiry, and therefore, the amendment was moved and granted by which the prayer to set aside the order of termination has been incorporated. The petition has been filed not solely by the Petitioner No.2 but also at the hands one Petitioner No.1 who has a dispute pertaining to the management of the Trust. Had it been filed purely by the petitioner No.2, may be the Court would have taken a different view. This is not to say that the view could have been in favour of the petitioner. The fact that the petitioner No.2 has sought to make the member of the family of the respondent No.1 as the first petitioner would lead me to believe and accept the submissions of the learned advocate for the respondents that the petition has been filed purely in collusion with the petitioner No.1 to wash dirty linen of the trust fight in the Court. During the course of written submissions, emphasis was laid that there is a fight between the petitioner No.1 and the respondent No.1 and the proceedings are before the Charity Commissioner. In the rejoinder and during the course of submissions, learned Senior Advocate Mr. Percy Kavina has also stressed on the malafides in passing the order of termination on the ground that one of the members of the Committee is one Dhruvin Shah, who is a lawyer representing the respondent No.1 in the litigation before the Charity Commissioner. A passing reference was also made to pending petitions being Special Civil Applications No. 5419 and 5420 of 2020. A submission to that effect has been made in the later half of the written arguments. Obviously, therefore, the allegations of malafides and perception of the Court had it been brought solely at the hands of petitioner no.2 would have developed a different colour. But the fact that the petitioner no.1 has been made so as the petitioner no.1, obviously this petition though styled as a petition challenging the order of termination is also a passing shot to settle the scores before the Charity Commissioner.

(B) I am supported by this view when we examine the conduct of the petitioner when the petition was filed. When the petition came up initially for hearing on 17.02.2020, the only respondent was Dr. Nagesh Bhandari, the President by name. Indus University was not joined as a party respondent,

though the Show cause notice was issued by the University of which the petitioner no.2 claims to be a Provost. It was only when on an advance copy Mr. Anshin Desai, learned Senior Counsel appeared and made an oral submission, that the University was joined as a party. This, obviously, deters the Court from examining the merits of the case at the hands of such a petitioner particularly petitioner no.2 on the facts on which the order of termination is challenged.

8 Much has been said by the learned advocate for the petitioner taking me through the provisions of the Gujarat Private Universities Act, 2009 , to submit that the entire process of holding an inquiry right from inception i.e. the issuance of a charge sheet is not in consonance with the provisions of the Gujarat Private Universities Act, 2009.

9 Mr.Anshin Desai, learned Senior Advocate, through his reply and written arguments has justified this proposition by pointing out various sections under the Act to submit that it was within the powers of the governing body to issue a show cause notice and take action of terminating the services of the petitioner. The question is, can this Court get into this controversy in the petition at the hands of the petitioner No.2. who in tandem with the petitioner No.1 has approached this court. My answer to the question is in negative.

10 There are more reasons than one apart from this. Perusal of the Gujarat Private Universities Act, 2009, would indicate that the Private Universities Act was enacted to provide for establishment and incorporation of private universities in the State of Gujarat. The emphasis on establishment of private universities was, as is evident from Section 3(7) that they shall not receive any grant in aid or other financial assistance from the State Government or the Central Government. Essentially, therefore, though the respondent No.2-University carries out what the petitioner would want to profess, public service or public functions by advancing education, it is at the hands of the private university, and therefore, the dispute between the petitioner No.2 and that of the University would fall purely in the realm of private contract.

11 Mr.Kavina, learned Senior Advocate,has relied on a decision in the case of Anadi Mukta (supra) and Binny Ltd (supra). However, I would rather fall back on the decision of the Supreme Court in the case of K.K.Saksena vs. International Commission of Irrigation & Drainage., reported in 2015 (4) SCC 672. It will be worthwhile to consider the analysis of Supreme Court while discussing the decisions on hand in the case of Anadi Mukta (supra), Binni Ltd (supra) and in the case of Zee Telefilms Ltd vs. Union of India., reported in 2005 (4) SCC 649. The relevant paras of the said decision read under:

> "31 We have given our thoughtful consideration to the arguments of learned counsel for the parties.
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> 32 If the authority/body can be treated as a 'State' within the meaning of Article 12 of the Constitution of India, indubitably writ petition under Article 226 would be maintainable against such an authority/body for enforcement of fundamental and other rights. Article 12 appears in Part III of the Constitution, which pertains to 'Fundamental Rights'. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.
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> 33 In this context, when we scan through the provisions of Article 12 of the Constitution, as per the definition contained therein, the 'State' includes the Government and Parliament of India and the Government and Legislature of each State as well as "all local or other authorities within the territory of India or under the control of the Government of India". It is in this context the question as to which body would qualify as 'other authority' has come up for consideration before this Court ever since, and the test/principles which are to be applied for ascertaining as to whether a particular body can be treated as 'other authority' or not have already been noted above. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be a 'State' under Article 12. Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also 'for any other purpose'. Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject matter which can be dealt with under this Article is also wider in scope.
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> 34 In this context, the first question which arises is as to what meaning is to be assigned to the expression 'any person or authority'. By catena of judgments rendered by this Court, it now stands well grounded that the term 'authority' used in Article 226 has to receive wider meaning than the same very

term used in Article 12 of the Constitution. This was so held in Shri Anadi Mukta Sadguru (supra). In that case, dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained to payment of certain employment related benefits like basic pay etc. Matter was referred to the Chancellor of the Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award. Teachers filed the writ petition seeking mandamus and direction to the trust to pay them their dues of salary, allowances, provident fund and gratuity in accordance therewith. It is in this context an issue arose as to whether writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private trust running an educational institution. The High Court held that the writ petition was maintainable and said view was upheld by this Court in the aforesaid judgment.

35 The discussion which is relevant for our purposes is contained in paras 14 to 19. However, we would like to reproduce paras 15, 17 and 20, which read as under:

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See -The Evolving Indian Administrative Law by M.P. Jain (1983) p.266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

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17 There, however, the prerogative writ of mandamusmus (sic) confined only to public authorities to compel performance of public duty. The 'public authority' for them means every body which is created by statute -and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities;. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

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20. The term "authority" used in Article 226, in the context, must receive a liberal meaning like the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art.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."

36 In para 15 of Aadi Mukta Sadguru case, the Court spelled out two exceptions to the writ of mandamus, viz. (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aiding institution, because of this reason, it discharges public function, like Government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating University are applicable to such an institution, being an aided institution. In such a situation, held the Court, the service conditions of

academic staff were not purely of a private character as the staff had super-aided protection by University's decision creating a legal right and duty relationship between the staff and the management.

37 Further, the Court explained in para 19 that the term 'authority' used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 31, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term 'authority' appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

38 In K. Krishnamacharyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr. [6], this Court again emphasized that

"4.....where 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 education get an element of public interest in performance of their duties."

In such a situation, remedy provided under Article 226 would be available to the teachers. The aforesaid two cases pertain to educational institutions and the function of imparting education was treated as the performance of public duty, that too by those bodies where the aided institutions were discharging the said functions like Government institutions and the interest was created by the Government in such institutions to impart education.

39 In G. Bassi Reddy v. International Crops Research Institute & Anr.[7], the Court was concerned with the nature of function performed by a research institute. The Court was to examine if the function performed by such research institute would be public function or public duty. Answering the question in the negative in the said case, the Court made the following pertinent observations:

"28...Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities."

Merely because the activity of the said research institute enures to the benefit of the Indian public, it cannot be a guiding factor to determine the character of the Institute and bring the same within the sweep of 'public function or public duty'. The Court pointed out:

"28...In Praga Tools Corporation v. C.V. Imanual, AIR 1960 (sic -1969) SC 1306, the Court construed Art. 226 to hold that the High Court could issue a writ of mandamus" to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

"6...an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal v. Union of India, 1957 SCR 738)."

40 Somewhat more pointed and lucid discussion can be found in the case of Federal Bank Ltd. v. Sagar Thomas & Ors.[8], inasmuch as in that case the Court culled out the categories of body/ persons who would be amenable to writ jurisdiction of the High Court. This can be found in para 18 of the said judgment, specifying eight categories, as follows:

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

41 In Binny Ltd. & Anr. v. V. Sadasivan & Ors. [9], the Court clarified that though writ can be issued against any private body or person, the scope of mandamus is limited to enforcement of public duty. It is the nature of duty performed by such person/body which is the determinative factor as the Court is to enforce the said duty and the identity of authority against whom the right is sought is not relevant. Such duty, the Court clarified, can either be statutory or even otherwise, but, there has to be public law element in the action of that body.

42 Reading of the categorization given in Federal Bank Ltd. (supra), one can find that three types of private bodies can still be amenable to writ jurisdiction under Article 226 of the Constitution, which are mentioned at serial numbers (vi) to (viii) in para 18 of the judgment extracted above.

43 What follows from a minute and careful reading of the aforesaid judgment of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. the reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contracts or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

11.1 The Supreme Court has drawn a distinction by discussing Anadi Mukta (supra) and found that even if it is a private body running substantially on State funding and a private body discharging public function or positive application of a public nature, a writ under Article 226 of the Constitution of India would be maintainable. However, what needs to be seen is, the Court spelled out two exceptions, namely, if the rights are purely of a private character, no mandamus would lie, and if the management of the college is purely a private body, a mandamus will not lie.

11.2 The Court in the facts of the case in K.K. Saksena (supra) further held that the body therein even in addition to not being a State within the meaning of Article 12, even if it carried out public functions it would not make it amenable to the writ jurisdiction of this Court. The Court held as under:

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

11.3 Considering the facts of the present case, particularly when the the present petitioner no.2 has tried to enforce a contract of service which is in the realm of a private contract and in addition thereto by making the Petitioner No.1 of the Trust dispute as Petitioner No.1, I am inclined to hold against the petitioner.

11.4 Even in the case of State of Gujarat vs. Meghji Pethraj Shah (supra), while considering the admission to medical colleges, the Hon'ble Supreme Court did hold that when the dispute arises in the realm of a private contract, a writ petition would not be maintainable.

12 Even the conduct of the petitioners would desist this Court from exercising discretion in favour of the petitioners. From the affidavit-in-reply, the rejoinder and the petition, what is evident is that the petitioners approached this Court. On 02.03.2020 he has showed the Court that he will co-operate with the proceedings. The order unequivocally states that there is no stay against the proceedings. Therefore, the order of 11.06.2020 cannot be faulted on the ground that the respondents tried to play smart with the Court. From the tenor of the controversy involved, it appears that the petitioner no.2 under the guise of pending petition approached the Inquiry Committee at his own choice and whims. The conduct of the petitioner is reflected from the reply when even addressing the E-mails addressed to the University, he would address E-mails in the format, which could not be copied or taken prints of. The petitioner's educational qualifications and credentials, as reflected in the memo of the petition, may not be of any doubt, but that itself would not give

the petitioner the leverage to behave in the manner that he did as is evident from the affidavit-in-reply and the unfolding chronology of dates. Apart from sending e-mails in the version that he did, what appears is that even when he asked for relied upon documents, though the respondent University supplied to him on the time and place where he wanted, he did not reciprocate equally by accepting the documents, but then asked for soft copies. It was only eventually on 11.03.2020 that the petitioner collected the relied upon documents at 1830 hrs. This was despite a specific statement made by him before the High Court that he would do so on 07.03.2020. Under the pretext of pending petition, it appears that the petitioner no.2 got emboldened by the pending petition and thought it fit not to co-operate in the inquiry proceedings.

13 Having held that the petition is not maintainable being a remedy under the realm of a private contract in view of the decision of the Supreme Court in the case of K.K.Saksena (supra), the Court would therefore not go further in getting into the merits of the Inquiry Committee's Report. However, what is evident also from the amendment made to the petition is that just for the sake of amending the petition and the pleadings, the order of 11.06.2020 is annexed and a prayer is added. This finding may sound harsh to the petitioners but it has to be appreciated from the context when the petition was initially moved. I have, in my earlier part of the decision, deprecated the conduct of the petitioner no.2 in joining hands in tandem with the petitioner no.1 in filing the petition and trying to settle scores of a trust dispute. The casual and the cavalier attitude of the petitioner in just amending the petition by only adding a prayer of quashing and setting aside the order of termination without really setting out the grounds on which and how termination was bad goes to the basic tenets of pleadings. No pleading as to how the order was bad have been substantially supported in the pleadings of the petition. Extensive submissions were made over a period of time by the learned Senior Advocate Mr.Kavina as to how the petitioner's termination was bad, that it was in violation of principles of natural justice, that it was malafide, that it was against the tenets of fair play, inasmuch as, what was relied upon was complaints made and statements taken behind the back of the petitioner. These submissions cannot form a foundation to support the petitioner who casually files a petition, amends it by only adding a prayer to challenge the order of termination, particularly when he thinks it fit to fight for his cause challenging the termination in company of a trustee as petitioner No.1 and brings in disputes inter-se of a trust in between. That also supports this Court's conclusion that it is essentially a dispute in the realm of a private contract in terms of the decision of K.K.Saksena (supra). I am of the view that considering the decisions of the Apex Court as above, if at all there is an alleged arbitrary action, the same may give cause for the aggrieved person to initiate civil action before the Civil Court but in the facts of the present case not a writ petition against a private educational institution governed by the Gujarat Private Universities Act, 2009.

14 It is well settled law that powers under Article 226 of the Constitution of India are discretionary and plenary in nature and therefore unless there is no other remedy available, this court does not think it fit to issue a writ unless questions of public law arise for consideration. In the present case, it is not a case where the petitioner seeks enforcement of any fundamental rights, or there is a failure of principles of natural justice and the orders or proceedings are neither wholly without jurisdiction or arbitrary.

15 For the aforesaid reasons, the petition is dismissed. For the casual attitude of filing of a bulky voluminous petition with the written submissions without supportive pleadings, the Court would have been inclined to dismiss the petition with costs. However, I don't want to add to the agony of the petitioner who can otherwise express his anguish and take a legal recourse by way of an appropriate proceedings before an appropriate forum rather than having approached this Court by way of a petition under Article 226 of the Constitution of India. The petition is dismissed with no orders as to costs.