

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 11499 OF 2014**
(ARISING OUT OF SLP (C) NO. 30348 OF 2011)

K.K. SAKSENA

.....APPELLANT(S)

VERSUS

INTERNATIONAL COMMISSION ON
IRRIGATION AND DRAINAGE & ORS.

.....RESPONDENT(S)

J U D G M E N T**A.K. SIKRI, J.**

Leave granted.

- 2) By the impugned judgment dated April 25, 2011 passed by the High Court of Delhi in LPA No. 554 of 2006, the High Court has held that the writ petition against respondent No.1, namely, International Commission on Irrigation and Drainage (for short, 'ICID'), under Article 226 of the Constitution is not maintainable as it is not a 'State' under Article 12 of the Constitution. It has also held that its actions or not amenable for judicial review under Article 226 of the Constitution, either. It resulted in dismissal of the said intra-court appeal, which was filed challenging the judgment of the learned Single Judge rendered in the writ petition filed

by the appellant taking the same view. The appellant even filed review petition seeking review of the judgment dated April 25, 2011, which met the same fate as the said review petition was dismissed by the High Court by orders dated August 05, 2011.

- 3) From the aforesaid, it is apparent that the issue agitated before us pertains to the maintainability of the writ petition under Article 226 of the Constitution of India against the respondents herein. This has arisen in the following circumstances:
- 4) The appellant herein was appointed to the post of Secretary, ICID, vide letter of appointment dated January 03, 1997. Pursuant to that letter, he joined the services in ICID on January 20, 1997. Thereafter, his services were terminated vide letter dated August 15, 1999, with immediate effect from August 16, 1999, on the ground that the same were no longer required by the ICID. It was followed by a communication dated August 27, 1999 whereby the appellant was given two cheques in the sum of ₹77,388/- and ₹98,141.50/- towards three months' basic pay in lieu of notice and the dues towards contributory provident fund respectively. It would be pertinent to note that these dues were given pursuant to the request of the appellant contained in his letter dated August 19, 1999 claiming three months' salary as per the rules as also payments for provident fund. After receiving these

cheques, the appellant requested for revocation of the order of termination, which was followed by reminders dated September 02, 1999 and October 16, 1999. As he did not receive any response to the aforesaid requests, he approached the High Court by filing writ petition under Article 226 of the Constitution of India alleging that the termination of his services by the ICID was an act of arbitrariness and unreasonableness and, thus, violative of Article 14 of the Constitution. Plea of the appellant in this behalf was that the said order of termination was without holding the inquiry and no reason was given to dispense with the said inquiry as well and, therefore, was in violation of ICID Employees Conduct Rules, 1967, particularly Rule 33(b) thereof, which mandates reason to be given for dispensing with the inquiry.

- 5) In the writ petition, the appellant also specifically took the plea that ICID is a 'State' within the meaning of Article 12 of the Constitution of India and further it is involved in performing public duty. It was averred that ICID is under the control of Government and the criteria and test set out for determining whether a corporation or society is a 'State' or 'other authority' under Article 12 of the Constitution of India is satisfied inasmuch as ICID was established by the Central Government by giving a grant of ₹15,000/- in 1950; that there are instances when the Government officers had come on deputation to the society; that the

Central Government has been paying the subscription for administrative and other functions of ICID and, hence, the financial control rests with the Government; that the staffing pattern of the ICID is in accord with the line of the Government; that ICID has monopoly status since it is the only society established by the Government of India to bring together information on irrigation from India and outside; that the Government provides to it irrigation related information generated in the country and uses public cost and also uses information pulled by it for Government irrigation works; and that the President or Vice President in-charge of the central office of the society is a Government officer and the officer of the Central Government is ex-officio Secretary General, though he does not draw salary from ICID. Additional plea was taken that in any case writ petition under Article 226 of the Constitution of India was maintainable even if ICID does not qualify to be a 'State' within the purview of Article 12 of the Constitution inasmuch as the term 'other authority' appearing in Article 226 was of much wider connotation and it would embrace within itself those authorities which discharge public functions or public duty of great magnitude. The appellant pleaded that going by the functions which ICID is discharging, it is apparent that these are public functions and, therefore, writ petition under Article 226 of the Constitution of India could be filed against it.

6) ICID filed its counter affidavit controverting the aforesaid pleas taken by the appellant in his writ petition. The stand taken by the appellant was refuted by contending that ICID is neither a State under Article 12 of the Constitution of India nor is it amenable to writ jurisdiction under Article 226 of the Constitution. It was put forth that the said society does not fulfill the requisite tests which would bring it within the purview of Article 12 of the Constitution inasmuch as the management of the affairs of the society is vested in an International Executive Council (IEC) consisting of office bearers and one duly appointed representative from each National Committee; that the office bearers of ICID consist of one President, 9 Vice Presidents and 1 Secretary General and all the office bearers, except the Secretary General, who is the full-time office bearer appointed by IEC, are elected by majority of votes of the members of the said Council; that the representatives of the World Bank, FAO, United National Educational, Scientific and Cultural Organization (UNESCO) and International Irrigation Management Institute amongst others, have a place in the International Executive Council of ICID as permanent observers; that the representatives of the World Bank, FAO, UNESCO and other related UN agencies also participate in the work and various activities of ICID; that ICID comprises about 30 staff members in all and works under the general supervision of the Council and under the immediate direction of the President; that Clause 7.3 of

the Constitution of ICID empowers the Secretary General to frame such rules and procedure as he considers necessary for governing the staff and for the proper functioning of the central office in consultation with the staff committee; that the following of a staffing pattern by ICID in the line of the Central Government does not bring the society under the control of the State; that ICID is an independently funded organization whose functions are financed by subscriptions from several countries; and that deputation of some officers from the Government at certain times does not give it the character of a State.

- 7) Plea of the appellant regarding availability of remedy under Article 226 of the Constitution was opposed on the ground that ICID does not perform any public duty which would make it amenable to writ jurisdiction since its objects stimulate and promote the development and the application of the arts, sciences and techniques of engineering, agriculture, economics, ecology and social sciences in managing water and land resources for irrigation, drainage, flood control and river training and for research in a more comprehensive manner adopting upto date techniques and its activities cannot be stated to be intrinsically public in nature or closely related to those performable by the State in its sovereign capacity.
- 8) The order of termination was sought to be justified on merits as well,

taking up the contention that the appellant was not performing the duties satisfactorily and, therefore, his services were dispensed with, as per the Rules and, hence, no inquiry was necessary. Various other grounds were also pleaded to justify the order of termination.

- 9) After hearing the arguments on either side, the learned Single Judge of the High Court dismissed the writ petition at the threshold, without going into the question about the validity of the termination of the appellant's services as he held that ICID is neither a 'State' under Article 12 of the Constitution, nor is it discharging functions which will bring it within the ambit of public duty making it amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India. As a result, writ petition was dismissed vide judgment dated January 17, 2006. As pointed out above, this view of the learned Single Judge has been upheld by the Division Bench of the High Court vide impugned judgment dated April 25, 2011. In the process, the Division Bench has discussed the aspect of maintainability on the touchstone of Article 12 as well as Article 226 of the Constitution of India, in great details.
- 10) Mr. Dinesh Agnani, learned senior counsel appearing for the appellant, was candid in conceding that he was not joining issues insofar as the judgment of the High Court hold ICID not to be 'State' under Article 12 of the Constitution. Thus, this part of the judgment has been accepted by

the appellant. However, the quintessence of the argument advanced by him, with great emphasis, was that ICID was performing public duty. He referred to the functions which ICID is discharging and made a strenuous attempt to show that those functions would come within the ambit of public functions and the duties of ICID as public duty, which would bring it within the ambit of the expression 'other authority' appearing in Article 226 of the Constitution and making ICID amenable to the writ jurisdiction.

11) Because of the concession of the learned senior counsel, though we are absolved from undertaking any exercise on the character of ICID on the issue as to whether it is a 'State' under Article 12 of the Constitution or not, nevertheless, we deem it appropriate to delve the manner in which this issue is dealt with by the High Court. Reason for doing the same is that it will have some bearing on the other related issue which is the main brunt of the appellant's submissions.

12) The High Court has referred to the provisions of the Constitution of ICID while embarking on the aforesaid discussion and in this process it has noted as under:

“14...The preamble which occurs in Article 1 of the Constitution of ICID reads as follows:

“1.1 The International Commission on Irrigation and Drainage is established as a Scientific, Technical,

Professional, and Voluntary Not-for-Profit Non-Governmental International Organization (NGO-ONG), dedicated, inter alia, to enhance the world-wide supply of food and fibre for all people by improving water and land management, and the productivity of irrigated and drained lands through the appropriate management of water, environment and the application of irrigation, drainage and flood control techniques.

1.2 In the text of this Constitution, the International Commission on Irrigation and Drainage is referred to as the Commission or as ICID (CIID in the French version) and among international authorities, as CID (CIID).”

15. Article 3 deals with Membership. The basis of membership is as follows:

“3.1 ICID consists of National Committees of Participating Countries, on the basis of one National Committee for each such country. Where no National Committee exists, officers of government or of an institution or institutions effectively representing interests within the scope of the objects of the Commission may participate in ICID activities. In such cases one officer shall be designated as Representative.

3.2 Any geographical area independently administered by a sovereign government and having interest in the activities of the Commission shall be eligible to participate in the activities of the Commission. Accordingly, in exceptional cases, the Council may, having regard to the coexistence of separate sovereign geographical areas or countries, accept the representation of the sovereign parts of a country by separate National Committees. In the case of a Federal System of government, or similar set-up, only one National Committee shall be recognized for membership in ICID.”

16. Article 4 deals with the composition of the national committees and its responsibility.

17. Article 5 deals with the International Executive

Council. Clause 5.1 of Article 5 reads as follows:

“5.1 The International Executive Council, hereinafter called the Council, the Executive Council or the IEC is vested with the management of the affairs of the International Commission on Irrigation and Drainage.

5.2 The Council shall consider all matters of policy which may be initiated or sponsored by any member National Committee or Office-Bearer or by the Management Board and may itself initiate and determine or otherwise advise and lay down any matter of policy. The Central Office of ICID shall act as an instrument for carrying into effect all decisions taken by the Council. The Council shall also consider what action, if any, need be taken on the recommendations or conclusions of the studies, experiments or discussions organized by the Commission. All matters affecting the executive or administrative functions and financial liabilities of ICID must come up before the Council and its decisions shall be conclusive.”

18. Article 6 provides for the office-bearers. Clause 6.2 deals with the election of President and Vice-Presidents. Clause 6.3.1 provides for the appointment of Secretary General. It is profitable to reproduce clause 6.3.1:

“6.3.1 Nomination: The Secretary-General shall be nominated by the President, acting as Chairperson of the Management Board, and appointed by Council.

19. Article 7 deals with Management. Clause 7.1 deals with Management Board. It is as follows:

“7.1 The Council shall be assisted in the management of the affairs of the Commission by a Management Board composed of the President of ICID, who shall be the Chairperson, immediate past President of ICID (one year only), Chairpersons of the Permanent Technical Activities Committee, Permanent Finance Committee and Permanent Committee on Strategy Planning and Organizational Affairs and the Secretary-General.”

Clause 7.2 of Article 7 provides that the Central Officer shall be located in New Delhi, India and shall be maintained under the general provision of the Council and under the immediate direction of the President. Clause 7.3.1 deals with financial management.

20. Article 10 provides for dues, subscriptions and funds. It is apposite to reproduce clauses 10.1, 10.2 and 10.3, which read as follows:

“Annual Subscriptions

10.1 In order to defray the cost of the activities of the Commission or for special purposes, the National Committees or representative organizations of participating countries shall regularly pay to the order of the Secretary-General annual subscriptions (in as near the beginning of each calendar year as may be possible) on the basis pre-determined by the Council and taking into consideration, inter alia, the interest and the capacity to pay of the participating country. National Committees or representative organizations of participating countries shall also pay such other special subscriptions as may be determined by the Council.

10.2 For each Congress, regional conference, technical session, international workshop or such other international activity, the Council may, in consultation with the National Committee of the host country, fix individual registration fees, or fees for participating organizations. In addition, the portion of the proceeds that should accrue to the budget of the Central Office of the Commission from such events shall also be determined by the Council.

Funds

10.3 The Central Office shall be authorized to receive and to handle as funds of the Commission, any subscription, subvention or gift that may be made in the general interests of the objects of the Commission, or for specific research, special investigation or experimental work; and it may arrange, under general authority given by the Council, cooperative research, investigations or experimental work with other international

organizations, properly qualified institutions, governmental or private, or with technical societies or associations.”

21. Article 12 deals with dissolution and liquidation. Clause 12.1 deals with dissolution which reads as follows:

“12.1 ICID may be declared dissolved only by a decision to be reached at a regular or a special meeting of the Council and provided that at least two-thirds of the total number of participating countries, whether represented at such a meeting of the Council or not, vote for dissolution.”

Clause 12.2 deals with liquidation and its procedure.”

- 13) ICID has also framed its bye-laws which provide for election of office bearers, working bodies of ICID, permanent committees, role and membership, temporary working bodies, International Executive Council and various other aspects. After taking note of the aforesaid provisions, the High Court while coming to the conclusion that respondent No.1 is not a 'State' under Article 12 of the Constitution, summed up the position in the following manner:

“23. On a comprehensive survey of the Constitution of ICID and the bye-laws, we do not perceive that there is either any control of the government either financially, functionally or administratively or it is dominated by any action of the government. We do not even remotely see that there is any kind of pervasive control. Some officers may be coming on deputation regard being had to the character of the ICID or there may be initially a grant of Rs.15,000/- in 1950 or some aid at times but that does not clothe it with the character and status of 'other authority' as understood under Article 12 of the Constitution of India. Hence, we conclude and hold that ICID is not an instrumentality of state or other authority under Article 12 of the Constitution of India.”

14) We may also like to point out that the aforesaid examination of the issue undertaken by the High Court is keeping in view the principles laid down by this Court in catena of judgments and the tests which are to be applied to arrive at the decision as to whether a particular authority can be termed as 'State' or 'other authority' within the meaning of Article 12. It took note of the Constitution Bench decision in ***Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.***¹, wherein the following six tests were culled out from its earlier judgment in the case of ***Ramana Dayaram Shetty v. International Airport Authority of India & Ors***²:

“(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p.507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p.508, para 15)

(3) It may also be a relevant factor...whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p.508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)

(5) If the functions of the corporation of public importance and closely related to governmental functions, it would be

¹ (1981) 1 SCC 722

² (1979) 3 SCC 489

a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p.509, para 16)

(6) “Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference’ of the corporation being an instrumentality or agency of Government. (SCC p.510, para 18).”

- 15) The Court also took into consideration and referred to the following passage from the judgment in **Pradeep Kumar Biswas & Ors. v. Indian Institute of Chemical Biology & Ors.**³:

“40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

- 16) The aforesaid judgment was relied upon by another Constitution Bench in **M/s. Zee Telefilms Ltd. & Anr. v. Union of India & Ors.**⁴ In that case, the Court was concerned with the issue as to whether Board of Control for Cricket in India (BCCI) is a 'State' within the meaning of Article 12 of the Constitution. After detailed discussion on the functioning of the BCCI, the Constitution Bench concluded that it was

³ (2002) 5 SCC 111

⁴ (2005) 4 SCC 649

not a 'State' under Article 12 and made the following observations in this behalf:

“30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in *Pradeep Kumar Biswas* case is not a factor indicating a pervasive State control of the Board.”

- 17) Before arriving at the aforesaid conclusion, the Court had summarized the legal position, on the basis of earlier judgments, in para 22, which reads as under:

“22. Above is the *ratio decidendi* laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in *Pradeep Kumar Biswas* case. Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in *Pradeep Kumar Biswas* case for a body to be a State under Article 12. They are:-

“(1) Principles laid down in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State."

- 18) It is in the context of the aforesaid legal position and the Constitution of ICID, its bye-laws were examined by the High Court and conclusion arrived at (as already extracted above) that ICID does not qualify to be a 'State' under Article 12 of the Constitution.
- 19) It would be necessary to keep in mind the aforesaid legal position *qua* Article 12, which has been accepted by the learned senior counsel for the appellant, while dealing with the issue as to whether ICID performs public functions or discharges public duty which makes it amenable to writ jurisdiction under Article 226 of the Constitution of India. Thus, we have to proceed on the premise that there is no pervasive governmental control over the functioning of ICID and merely because some government officers come on deputation, it has no consequence.
- 20) Keeping in view the aforesaid matrix, we proceed to the issue which was canvassed before us.
- 21) Before we take note of the submissions of Mr. Agnani, it would be apt to scan through the judgment of the High Court to find as to how this issue is dealt with by it.

22) After taking note of certain judgments of this Court wherein the principles are laid down as to how the term 'authority' used in Article 226 is to be read in contradistinction to the same term used in Article 12 of the Constitution and what would constitute public function/public duties, the Court took note of Clause 2.1 and 2.2, which read as follows:

“Mission

2.1 The Mission of the International Commission on Irrigation and Drainage is to stimulate and promote the development of the arts, sciences and techniques of engineering, agriculture, economics, ecology and social science in managing water and land resources for irrigation, drainage, flood control and river training applications, including research and development and capacity building, adopting comprehensive approaches and up-to-date techniques for sustainable agriculture in the world.

Scope

2.2 The Commission in achieving its mission may consider the following objectives:

“(a) Planning, financing, socio-economic and environmental aspects of irrigation, drainage, flood control and undertakings for the reclamation and improvement of lands as well as the design, construction and operation of appurtenant engineering works including dams, reservoirs, canals, drains and other related infrastructure for storage, conveyance, distribution, collection and disposal of water.

(b) Planning, financing, socio-economic and environmental aspects of schemes for river training and behaviour, flood control and protection against sea water intrusion of agricultural lands as well as the design, construction and operation of appurtenant works, except such matters as relate to

the design and construction of large dams, navigation works and basic hydrology.

(c) Research and development, training and capacity building in areas related to basic and applied science, technology, management, design, operation and maintenance of irrigation, drainage, flood control, river training improvement and land reclamation.

(d) Facilitation of international inputs required by the developing countries, particularly the low income countries lagging in the development of irrigation and drainage.

(e) Promotion of the development and systematic management of sustained irrigation and drainage systems.

(f) Pooling of international knowledge on the topics related to irrigation, drainage and flood control and making it available worldwide.

(f) Addressing of international problems and challenges posed by irrigation, drainage and flood control works and promoting evolution of suitable remedial measures.

(h) Promoting savings in use of water for agriculture.

(i) Promoting equity including gender equity between users and beneficiaries of irrigation, drainage and flood control systems.

(j) Promotion of preservation and improvement of soil and water quality of irrigated lands.”

23) From the aforesaid it transpires that ICID has been established as a scientific, technical, professional and voluntary non-governmental international organization dedicated to enhance the worldwide supply of food and fibre for all people by improving water and land management

of the productivity of irrigated and drained lands so that the appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. In the opinion of the High Court, these functions are not similar to or closely related to those performed by the State in its sovereign capacity. The activities undertaken by ICID, a non-governmental organization, do not actually partake the nature of public duty or State action and there was absence of public element. The High Court also held that duties discharged do not have a positive application of public nature as ICID carries on voluntary activities, which many a non-governmental organizations perform.

- 24) It was argued by Mr. Agnani, learned senior counsel appearing for the appellant, that the High Court grossly erred in holding a society registered in India as international body when the settled law was that once incorporated in an Act of country, the body was amenable to law of the said country even if its (i) activities were spread abroad (or beyond territorial boundary of the country) or subscribers of Memorandum of Association (MOA) and office bearers, etc. including the foreigners; (ii) ICID was not granted any international status by Government of India under UN Privileges and Immunities Act; and (iii) ICID was not listed as an international body in the Government of India, Ministry of External Affairs list of international organizations in India.

25) Referring to the judgment in **M/s. Zee Telefilms Ltd.** (supra), Mr. Agnani's submission was that in that case the Constitution Bench had held that if the function of the body were akin to State functions, the aggrieved party could always seek remedy by way of writ petition under Article 226 of the Constitution even if the body was not the State. According to him, the High Court omitted to refer to its following functions laid down by the Government of India in 1948 and incorporated in the MOA of ICID as the objects and the means of accomplishing these objects:

“To encourage progress in design, construction, maintenance and operation of large and small irrigation works and canals (including navigation canals); to bring together information thereon; and to study all questions relating thereto.”

He argued that the design, construction, maintenance and operation of irrigation works are functions of State Irrigation Departments, duly supported by the Ministry of Irrigation. The Ministry does not directly execute these works but only facilitates their execution and its facilitating activities do not take it away from the ambit of State functions. ICID also works as Secretariat and its above functions were akin to State functions. Para 31 of the Constitution Bench decision in **M/s. Zee Telefilms Ltd.** (supra), while referring to the decision in **Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna**

Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.⁵, has further said that form of body concerned is not very much relevant and what is relevant is the nature of duty imposed on the body. Thus, according to him, the writ against ICID was admissible on account of its above defined nature of duty.

He further argued that, in fact, the learned Single Judge had admitted that functions of ICID were of relevance and value to public and Government which itself shows public nature of its functions, but writ was denied saying they were not intrinsically public in nature when no verdict of this Court ever classified a public function into intrinsic and non-intrinsic.

- 26) His next submission was that the High Court also did not discuss the MOA of ICID, though it was necessary to deal with the same while deciding an issue of this nature. His other related argument was predicated on the judgment of this Court in **Anadi Mukta Sadguru** (supra). He particularly referred to para 14 of the said judgment wherein this Court ruled that mandamus cannot be refused to aggrieved party if service conditions were not purely of private nature. His submission was that the High Court, in analyzing admissibility of writ under Article 226 of the Constitution, has neglected the service conditions of ICID, which from outset include the pay as paid in

⁵ (1989) 2 SCC 691

Government of India, fundamental and supplementary rules of Government of India, permanency, lien, deputation of Government servants etc. as in Government sponsored societies.

He concluded his submissions by insisting that this Court should accept that ICID, being a body incorporated in India, discharged public function and was amenable to writ jurisdiction under Article 226 of the Constitution of India. When the Government had laid down its functions, ICID could not be a private body and the appellant, according to the note on his selection as new Secretary of ICID, was appointed to a public office and ICID, by its own admission, was a Government sponsored society.

- 27) Learned counsel for respondent No.1, on the other hand, placed heavy reliance upon the reasons given by the High Court in its judgment and submitted that every aspect of the matter has been lucidly and convincingly dealt with in the impugned judgment, which was rendered keeping in view the principles laid down by this Court and, therefore, it would not warrant any interference.
- 28) We have given our thoughtful consideration to the arguments of learned counsel for the parties.
- 29) 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.

- 30) 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.

- 31) 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. The discussion which is relevant for our purposes is contained in paras 14 to 19. However, we would like to reproduce paras 14, 16 and 19, which read as under:

“14. 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.

XX XX XX

16. There, however, the prerogative writ of mandamus (*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”.

XX XX XX

19. 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.”

- 32) In para 14, 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.** 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.

- 33) In ***K. Krishnamacharyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr.***⁶, this Court again emphasized that 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.
- 34) In ***G. Bassi Reddy v. International Crops Research Institute & Anr.***⁷, the Court was concerned with the nature of function performed by a

⁶ (1997) 3 SCC 571

⁷ (2003) 4 SCC 225

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:

“...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).”

- 35) 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.”

- 36) 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.

⁸ (2003) 10 SCC 733

⁹ (2005) 6 SCC 657

- 37) 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.
- 38) 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.

- 39) Within a couple of years of the framing of the Constitution, this Court remarked in ***Election Commission of India v. Saka Venkata Subba Rao***¹⁰ that administrative law in India has been shaped in the English mould. Power to issue writ or any order of direction for 'any other purpose' has been held to be included in Article 226 of the Constitution 'with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of the King's Bench in England. It is for this reason ordinary 'private law remedies' are not enforceable through extraordinary writ jurisdiction, even though brought against public authorities (See – *Administrative Law*; 8th Edition; H.W.R. Wade & C.F. Forsyth, page 656). In a number of decisions, this Court has held that contractual and commercial obligations are enforceable only by ordinary action and not by judicial review.
- 40) On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in ***Federal Bank Ltd.*** (supra), such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.

¹⁰ AIR 1953 SC 210

41) In the present case, since ICID is not funded by the Government nor it is discharging any function under any statute, the only question is as to whether it is discharging public duty or positive obligation of public nature. It is clear from the reading of the impugned judgment, the High Court was fully conscious of the principles laid down in the aforesaid judgments, cognizance whereof is duly taken by the High Court. Applying the test in the case at hand, namely that of ICID, the High Court opined that it was not discharging any public function or public duty, which would make it amenable to the writ jurisdiction of the High Court under Article 226. The discussion of the High Court is contained in paras 33 to 35 and we reproduce the same for the purpose of our appreciation:

“33. On a perusal of the preamble and the objects, it is clear as crystal that the respondent has been established as a Scientific, Technical, Professional and Voluntary Non-Governmental International Organization, dedicated to enhance the world-wide supply of food and fibre for all people by improving water and land management and the productivity of irrigated and drained lands so that the appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. It is required to consider certain kind of objects which are basically a facilitation process. It cannot be said that the functions that are carried out by ICID are anyway similar to or closely related to those performable by the State in its sovereign capacity. It is fundamentally in the realm of collection of data, research, holding of seminars and organizing studies, promotion of the development and systematic management of sustained irrigation and drainage systems, publication of newsletter, pamphlets and bulletins and its role extends

beyond the territorial boundaries of India. The memberships extend to participating countries and sometimes, as by-law would reveal, ICID encourages the participation of interested national and non-member countries on certain conditions.

34. As has been held in the case of **Federal Bank Ltd.** (supra), solely because a private company carries on banking business, it cannot be said that it would be amenable to the writ jurisdiction. The Apex Court has opined that the provisions of Banking Regulation Act and other statutes have the regulatory measure to play. The activities undertaken by the respondent-society, a non-governmental organization, do not actually partake the nature of public duty or state actions. There is absence of public element as has been stated in **V.R. Rudani and others** (supra) and **Sri Venkateswara Hindu College of Engineering and another** (supra). It also does not discharge duties having a positive application of public nature. It carries on voluntary activities which many a non-governmental organizations perform. The said activities cannot be stated to be remotely connected with the activities of the State. On a scrutiny of the constitution and by-laws, it is difficult to hold that the respondent-society has obligation to discharge certain activities which are statutory or of public character. The concept of public duty cannot be construed in a vacuum. A private society, in certain cases, may be amenable to the writ jurisdiction if the writ court is satisfied that it is necessary to compel such society or association to enforce any statutory obligation or such obligations of public nature casting positive public obligation upon it.

35. As we perceive, the only object of the ICID is for promoting the development and application of certain aspects, which have been voluntarily undertaken but the said activities cannot be said that ICID carries on public duties to make itself amenable to the writ jurisdiction under Article 226 of the Constitution.”

- 42) We are in agreement with the aforesaid analysis by the High Court and it answers all the arguments raised by the learned senior counsel appearing for the appellant. The learned counsel argued that once the

society is registered in India it cannot be treated as international body. This argument is hardly of any relevance in determining the character of ICID. The focus has to be on the function discharged by ICID, namely, whether it is discharging any public duties. Though much mileage was sought to be drawn from the function incorporated in the MOA of ICID, namely, to encourage progress in design, construction, maintenance and operation of large and small irrigation works and canals etc., that by itself would not make it a public duty cast on ICID. We cannot lose sight of the fact that ICID is a private body which has no State funding. Further, no liability under any statute is cast upon ICID to discharge the aforesaid function. The High Court is right in its observation that even when object of ICID is to promote the development and application of certain aspects, the same are voluntarily undertaken and there is no obligation to discharge certain activities which are statutory or of public character.

- 43) There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction.

In ***The Praga Tools Corporation v. Shri C.A. Imanual & Ors.***¹¹, as

¹¹ (1969) 1 SCC 585

already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the concerned employee was seeking reinstatement to an office.

- 44) We have also pointed out above that in ***Sata Venkata Subba Rao*** (supra) this Court had observed that administrative law in India has been shaped on the lines of English law. There are catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In ***Queen (on the application of Hopley) v . Liverpool Health Authority & Ors.*** (unreported) (30 July 2002), Justice Pithford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are: (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

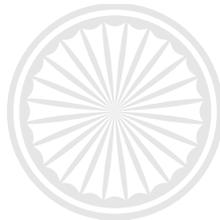
- 45) Even in ***Anadi Mukta Sadguru*** (supra), which took a revolutionary turn and departure from the earlier views, this Court held that 'any other

authority' mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasized that if the rights are purely of a private character, no mandamus could issue.

- 46) It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely: (i) when the employee is a public servant working under the Union of India or State; (ii) when such an employee is employed by an authority/ body which is a State within the meaning of Article 12 of the Constitution of India; and (iii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act. In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.
- 47) In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no 'public law rights' have accrued in favour of the appellant which are infringed. The service

conditions of the appellant are not governed in the same manner as was the position in **Anadi Mukta Sadguru** (supra).

- 48) We, thus, do not find any infirmity in a well considered judgment of the High Court. The appeal, being devoid of any merits, is, accordingly, dismissed leaving the parties to bear their own costs.



.....J.
(J. CHELAMESWAR)

.....J.
(A.K. SIKRI)

NEW DELHI;
DECEMBER 18, 2014.



JUDGMENT