IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE TWENTY THIRD DAY OF APRIL TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL AND THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT APPEAL NO: 227 OF 2025

Writ Appeal under clause 15 of the Letters Patent Against the Order dated 31-12-2024 in WP.No. 26298 of 2024 on the file of the High Court.

Between:

1. Gowripaga Albert Lael, S/o Late G. P. Lazarus, Aged about 55 years, Founding Member/ First Director of Respondent Public charities 7, 8 and 9 R/o.H.No.1-5-1004/5, Bhoopathi Rao Nagar, Old Alwal, Secunderabad-500010.

2. Jeyapaul Jesudasan, S/o.Mihavel Jesudasan, Aged about 48 years, Representing displaced Field Workers/staff, R/o.No.301, Vijayalaxmi Arcade, Spring Field Colony, Suchitra Junction, Secunderabad-500067.

3. Bollu Vishwas, S/o.B.Samuel, Aged 52 years, occ: Representing displaced Service Staff/Class IV employees, Occ: Ex-Employee, R/o.2-2-124/66, Sri Sai Reddy Nagar Colony, Macha Bollaram, Alwal, Secunderabad-500067.

...APPELLANTS

AND

1. Joseph D Souza, S/o Mr. Lawrence D Souza, aged about 75 years, R/o 34/35 Father Ballaih Nagar, Old Alwal, Secunderabad 500 010

2. Josh Lawrence D Souza, S/o. Mr. Joseph D souza aged about 44 years, R/o 34/35 Father Ballaih Nagar, Old Alwal, Secunderabad 500 010

3. Beryl Ann D Souza, D/o. Mr. Joseph D souza aged about 44 years, R/o 34/35 Father Ballaih Nagar, Old Alwal, Secunderabad 500 010

4. Kumar Swamy, S/o. Dorai Swamy Aged 70 years, Flat-205, Prithivi Ganga Vihar, Spring Field Colony, Jeedimetla Village, Secunderabad-500067

5. Paothang Haokip, 1-5-423/1, Surya Nagar, Old Alwal, Secunderabad, Telangana- 500010

6. Operation Mobilisation India, Logos Bhavan, Jeedimetla Village, Secunderabad Represented by its Managing Trustee Mr. Alfred E Franks (Aged about 84 years)

7. Operation Mercy India Foundation, Logos Bhavan, Jeedimetla Village, Secunderabad Represented by its Managing Director
8. Good Shepiherd Community Society, Logos Bhavan, Jeedimetla Village, Secunderabad Represented by its Managing Director
9. O.M Books Foundation, Logos Bhavan, Jeedimetla Village, Secunderabad Represented by its Managing Director
10. OM International, Clifford Court, Cooper Way, Carlisle, Cumbria CA3 OJG, United Kingdom, Represented by its International Director, Mr. Lawrence Tong.
11. Regional Director, South Eastern Region Ministry of Corporate Affairs, 3rd Floor, Corporate Bhavan, GSI Post Bandlaguda, Hyderabad - 500 068
12. Bishops Counsel and Synod, Good Shepherd Community Church Represented by Mr. Joseph D'souza

...RESPONDENTS

IA NO: 4 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Direct the 11th Respondent to conduct an inspection and audit under the relevant provisions of the Companies Act, 2013 and take appropriate action against the erring Directors of the 9th Respondent-public charity (since the filing of the writ petition, the 11th Respondent has already confirmed that an inspection and audit of the 7th Respondent under the Companies Act has been initiated).

IA NO: 3 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to appoint Advocate Commission or a former judge or judges as administrator(s) to oversee Respondent Institutions 6 to 9 and their associated entities and further, direct the Advocate Commission to constitute of legally compliant Boards with respective members, former trustees, and founding directors as per their Articles of Association.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated. 31-12-2024 in WP.No. 26298 of 2024 pending the disposal of the Writ Appeal.

IA NO: 6 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Direct the Advocate Commissioner or a committee of retired judges to formulate a comprehensive scheme to address the grievances of displaced, illegally and arbitrarily terminated staff members, particularly Class IV workers and other employees who, due to financial hardship and fear of retaliation, have been unable to seek redress through the Labour Court or other legal forums, and to ensure justice is rendered to them.

IA NO: 5 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Declare that the actions of the 10th Respondent in establishing Respondents 6 to 9 under Indian laws to fulfill public duties, and subsequently abandoning these responsibilities after initiating a whistle blowing investigation against Respondents 1 to 9 and confirming malfeasance and, direct the 10th Respondent to take necessary steps to restore these institutions to their original mandate of serving public duties.

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Direct Respondents No. 1 to 5 to permit the Petitioners, albng with other affected workers and their families of Respondent Institutions 6 to 9, who have been unjustly and arbitrarily denied entry through brute force, to freely and peacefully attend and partake in the Church services conducted by Respondent No. 8 within the premises/campus of. Respondent No. 6, without fear, intimidation, or obstruction.

Counsel for the Appellant : SRI J.SUDHEER
Counsel for the Respondents No.1to9: SRI A.SRINIVASULU
Counsel for the Respondents No.10 : --
Counsel for the Respondents No.11 : SRI A.S.VASUDEVAN
Counsel for the Respondents No.12 : --

The Court delivered the following: JUDGMENT

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE SMT JUSTICE RENUKA YARA

WRIT APPEAL No.227 of 2025

JUDGMENT: *(Per the Hon'ble the Acting Chief Justice Sujoy Paul)*

Sri J. Sudheer, learned counsel for the appellants; Sri Prathamesh Kamat, learned counsel representing Sri A. Srinivasulu, learned counsel for respondent Nos.1 to 9 and Sri A.S.Vasudevan, learned counsel for respondent No.11.

2. Heard on admission.

3. This *intra*-Court appeal takes exception to the order of the learned Single Judge passed in W.P.No.26298 of 2024, dated 31.12.2024, whereby the learned Single Judge opined that the Writ Petition is not maintainable. The parties have confined their arguments to the question of maintainability of the Writ Petition.

Contention of the appellants/writ petitioners:-

4. Sri J. Sudheer, learned counsel for the appellants/writ petitioners submits that the Writ Petition is maintainable even against a private entity, if it is involved in public duties and performing the functions of public importance. It is also maintainable if the said body/persons are acting in a manner that affects the public rights or duties. More-so, when such

body/persons are regulated or controlled by the State to a significant extent. In order to show what public duty/function is, it is submitted that if a private entity is discharging functions which are indeed State functions, the Writ Petition may be maintainable. For instance- (i) running educational institutions; (ii) managing hospitals or health care services and (iii) providing essential services like electricity or water.

5. The next submission is that there exists nexus between the State and private entities herein. The respondents herein are entities operating under the Government contracts, they are receiving State funds and it is a case where the Fundamental Rights are breached. In cases of violation of Fundamental Rights, the Writ Petition is entertainable. Reliance is placed on **Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayant Mahotsav Smarak Trust v. V.R.Rudani**[1]. In support of the aforesaid submissions, he also placed reliance on the following judgments:

1. Dwarka Nath v. Income Tax Officer[2]**.**

2.U.P State Cooperative Land Development Bank Ltd.

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[1] 1989 AIR SC 1607
[2] 1965 SCC OnLine SC 61

v. Chandra Bhan Dubey[3].

3. Zee Telefilms Ltd. v. Union of India[4].

4. Binny Ltd. v. V. Sadasivan[5].

5. Dr. Janet Jeyapaul v. SRM University[6].

6. Ramakrishna Mission v. Kago Kunya[7].

7. Roychan Abraham v. State of U.P.[8].

8. St. Mary's Education Society v. Rajendra Prasad Bhargava[9].

9. D. Bright Joseph v. Church of South India (CSI)[10].

6. It is submitted that the learned Single Judge has not considered the pleadings and material on record and erred in holding that Writ Petition was not maintainable. The judgment of Supreme Court in **St. Mary's Education Society** (supra) was considered by the Full Bench of Madras High Court in **D. Bright Joseph** (supra) and in view of this judgment, the Writ Petition was very much maintainable and the learned Single judge has erred in not considering the order of the Madras High Court.

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[3] (1999) 1 SCC 741
[4] (2005) 4 SCC 649
[5] (2005) 6 SCC 657
[6] (2015) 10 SCR 1049
[7] (2019) 16 SCC 303
[8] 2019 SCC OnLine All 3935
[9] (2023) 4 SCC 498
[10] W.P.No.304272 of 2022 of Madras High Court, dated 29.02.2024.

Contention of the respondents:-

7. *Per contra,* Sri Prathemesh Kamat, learned counsel for respondent Nos. 1 to 9 submits that a minute reading of reliefs claimed by the appellants/writ petitioners and the parties, who were impleaded shows that the learned Single Judge has rightly held that no relief is due to the writ petitioners because the Writ Petition is not maintainable. To elaborate, it is submitted that respondent Nos.1 to 5 are individuals and not any statutory body. Respondent No.9 is a company. By taking this Court to the reliefs claimed, it is submitted that these reliefs could not have been granted in a Writ Petition. The Advocate Commissioner cannot be directed to be appointed in a Writ Petition to take care of activity of individuals or an institution, which does not fall within the ambit of Article 12 of the Constitution. Petitioner No.1/appellant No.1 approached National Company Law Tribunal ('NCLT') and claimed certain reliefs which were similar to the reliefs claimed in the present Writ Petition, but the NCLT, did not grant any relief. The NCLT passed order on 26.06.2020, which could have been assailed by filing an appeal before the concerned Appellate Tribunal. No appeal was admittedly preferred by writ petitioner

No.1/appellant No.1. Writ petitioner No.1 though approached NCLT, exhausted one remedy, but did not take the matter any further to the Appellate Tribunal. To short-circuit that proceedings and by modifying the reliefs, the writ petitioners prayed for similar reliefs in the Writ Petition, which cannot be granted.

8. It is further submitted that relief (c) of the Writ Petition is vague and does not specify for whom the present Writ Petition was filed. In fact, 17 employees/persons were terminated, who independently assailed their termination orders under the provisions of **the Industrial Disputes Act, 1947** ('I.D. Act'). This Writ Petition is not filed as a Public Interest Litigation. The writ petitioners have no *locus standi* to seek annulment of termination of other employees in a Writ Petition of this nature. The writ petitioners cannot raise grievance relating to alleged violation of Fundamental Rights and other reliefs for other persons.

9. So far the relief against respondent No.11 is concerned, indeed he is a statutory authority of the Government, but he was not under any obligation to entertain and decide the representation of the writ petitioners. Furthermore, respondent

No.10 is an authority situated in United Kingdom. Hence, no Writ Petition against it is maintainable.

10. Coming to relief (f), it is a relief pertaining to 'internal committee' to be constituted by the respondents. This Court cannot deal with this aspect as this aspect does not fall under writ jurisdiction.

11. Since no public law element is involved and the detailed procedure is prescribed under the Maharashtra Public Trusts Act, 1950, the Writ Petition was rightly not entertained by the learned Single Judge. Heavy reliance is placed on the decision of the Supreme Court in **St. Mary's Education Society** (supra).

12. Learned counsel for the respondents placed reliance on the following judgments in support of his submissions:

1. **Federal Bank Ltd. v. Sagar Thomas**[11].
2. **R.S. Madireddy v. Union of India**[12].
3. **Lakhichand Marotrao Dhoble v. Joint Charity Commissioner, Civil Lines, Nagpur**[13]
4. **Ramakrishna Mission (supra).**
5. **Totaram Dasuji Rathod v. Atmaram Kisansingh**

[11] (2003) 10 SCC 733
[12] (2024) 6 SCR 934
[13] 2020 (6) MHL 662

Rathod[14].

6. **Eknath Tukaramji Pise v. Rama Kawaduji Bhende**[15].

7. **South Indian Bank Ltd. v. Naveen Mathew Phillip**[16].

8. **Chander Mohan Khanna v. National Council for Education, Research and Training**[17].

9. **Samir Kumar Majumdar Vs. Union of India**[18].

10. **State of Uttar Pradesh Vs. Nawab Hussain**[19].

11. **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**[20].

12. **K.K. Saksena v. International Commission on Irrigation and Drainage** [21].

13. **Prakash Singh v. Union of India**[22].

14. **State of Uttar Pradesh Vs. Uttar Pradesh Rajya Kanij Vikas Nigam SS**[23].

15. **CCT v. Glaxo Smith Kline Consumer Health Care Ltd.**[24]

Rejoinder submissions:-

13. Learned counsel for the appellants/writ petitioners in rejoinder submissions urged that the Writ Petition was

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[14] (2020) 1 MhLJ 922
[15] (2020) SCC OnLine Bom 934
[16] 2023 SCC OnLine SC 435
[17] (1991) 4 SCC 578
[18] 2023 SCC OnLine SC 1182
[19] (1977) 2 Supreme Court Cases 806
[20] (2002) 5 SCC 111
[21] (2015) 4 SCC 670
[22] (2022) SCC Online Del 2213
[23] (2008) 12 SCC 675
[24] (2020) 19 SCC 681

maintainable and after the decision of NCLT, certain subsequent events had taken place. The order of the NCLT was not decided on merits and matter even travelled to the Supreme Court and the Supreme Court reserved liberty to the parties to approach appropriate forum as per law.

14. It is noteworthy that the learned counsel for the respondents also placed reliance on the said order of the Supreme Court.

15. Both the parties have filed list of judgments.

16. No other point is pressed by the learned counsel for the parties.

17. We have heard the parties at length and perused the material on record.

Findings:

18. Before dealing with the rival contentions, it is apposite to reproduce the relief of the writ petitioners, which reads thus:

> "a) Declare that Respondents 1 to 5 have no right to hold the office of trustees, directors, or office bearers in Respondent Public Charities 6 to 9, as well as other associated public charities, by virtue of their legal disqualifications and their anti-institutional conduct, which fundamentally undermines the existence and purpose of these institutions.

b) Appoint an Advocate Commissioner or a former judge/judges of this Hon'ble Court as administrators to manage the affairs of Respondents 6 to 9 and the associated group, and to identify and reinstate the former trustees and/or founding directors to oversee the administration, ensuring it aligns with the purposes for which Respondents 6 to 9 were originally established, particularly in view of their public duty activities.

c) Direct the Advocate Commissioner or committee of judges to formulate a scheme that addresses the individual grievances of displaced and illegally terminated staff members, particularly Class IV workers and other employees who, due to severe financial constraints and fear of retaliation, have been unable to approach the Labour Court or other courts, and to render justice to them.

d) Declare the inaction on the part of the 11th Respondent in conducting inspection and audit under relevant sections of the Companies Act and take appropriate action against the Directors of Respondent-public charities 7 and 9 under the said Act by holding 11th Respondent not doing so as bad, illegal, unconstitutional, and contrary to the provisions of law despite the fact that the 1st Petitioner along with three other founding directors filed complaint on 26.12.2018 and also on 18.07.2024

e) Declare that the actions of the 10th Respondent in establishing Respondents 6 to 9 under Indian law for the purpose of fulfilling public duties and while subsequently abandoning these responsibilities and allowing Respondent No.1 to usurp control of these charities without establishing a proper accountability structure, as illegal, arbitrary to law, thereby undermining the very purpose of these institutions, consequently, direct the 10th Respondent to take the necessary steps to revive these institutions to their original mandate of serving public duties.

f) Declare the creation of Respondent No.12 a sham and non-statutory body established by Respondent No.1, rendering Respondent-Public Charities 6 to 9, along with other associated public charities which are legal entities constituted under the relevant provisions of their respective Acts subservient to Respondent No.12, and unlawfully elevating Respondent No.1 as the supreme authority over all these

entities are bad in law, unconstitutional, and violative of the relevant legal provisions governing such entities."

(Emphasis Supplied)

19. Learned Single Judge framed a question regarding maintainability of the Writ Petition and answered it in relevant paragraphs, which read thus:

"**Is the Writ Petition maintainable in its present form ?**

9. It would be evident from the prayers in the writ petition that the petitioners seek removal of the respondent Nos.1-5 who are presently Directors/Office Bearers/Trustees of the respondent Nos.6-9 (prayer-a); appointment of an Advocate Commissioner to act as an Administrator for managing the affairs of the respondent Nos.6-9 and for reinstating the founding Directors to oversee the administration of the Trust (prayer-b); direction on the Advocate Commissioner to formulate a scheme for addressing the individual grievances of the staff members and employees who were allegedly illegally terminated (prayer-c); direction on the respondent No.11 (the Regional Director, South Eastern Region, Ministry of Corporate Affairs) to take appropriate action against the Directors of the respondent Nos.7 and 9 (prayer-d) and direction on the respondent No.10 to take necessary steps to revive the respondent Nos.6-9 institutions to their original mandate of serving public duties (prayer – e). Prayer-f is directed against the position and powers given to the respondent No.1 and for a declaration in respect of the actions taken by the respondent No.1.

10. The cause of action pleaded in the writ petition and the consequential reliefs prayed for makes it clear that the petitioners have brought a dispute directed against individuals which is purely private and personal in nature.

11. Even a bare perusal of the writ petition would show that the cause of action is one of personal animosity primarily arising out of the petitioners' service being terminated by the Directors/persons in control of the respondent Nos.6-9. The cause of action clearly lacks the accepted markers of an action

within the parameters of Article 226 of the Constitution of India which must necessarily include a public element or an infraction of fundamental rights guaranteed under Part III of the Constitution or the complained act being in violation of the principles of natural justice: *Federal Bank Ltd. Vs. Sagar Thomas* ((2003) 10 SCC 733) and Mr.*R.S. Madireddy Vs. Union of India ((2024) 6 SCR 934).*

12. In order to successfully pass the test of maintainability, the petitioners must also show that the impugned act is by or at the behest of a "State" as defined under Article 12 of The Constitution or a "Person" or "Authority" having the trappings of a State either in form or in discharge of functions or owing a positive obligation to the affected party. The writ petition lacks these ingredients by way of pleadings as well as the material disclosed.

13. It is undisputed that the respondent Nos.6-9 are not financially, functionally or administratively dominated by the Government or under the control of the Government. In any event, mere regulatory control, under a statute or otherwise, will not adorn the body with the trappings of a "State" or an instrumentality of a State: *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* ((2002) 5 SCC 111). *St. Mary's Education Society Vs. Rajendra Prasad Bhargava ((2023) 4 SCC 498)* reinforced the dictum that judicial review of an action can only be brought within Article 226 of the Constitution if there is a public law element and not for enforcing a contract of personal service with a further qualification that a contract of personal service includes all matters relating to the service of the employee including suspension, termination, confirmation and transfer. *St. Mary's* (supra) relied on *K.K. Saksena v. International Commission on Irrigation and Drainage((2015) 4 SCC 670)* which demarcated the exceptions to a contract of personal service where the employee is a public servant or is employed by an authority within the meaning of Article 12 of the Constitution or is a "workman" within the meaning of section 2(s) of The Industrial Disputes Act, 1947. Admittedly, the petitioners do not fall within the exceptions carved out in *K.K. Saksena* (supra).

14. The mere fact that the respondent No.7 is imparting education will not make the said respondent amenable to writ jurisdiction in the absence of a public law element which is

quintessential to the maintainability of the writ petition: *St. Mary Education Society* (supra).

15. Admittedly, the schools functioning under respondent No.2 are unaided private institutions and come within the ambit of section 2(n)(iv) of The Right of Children to Free and Compulsory Education Act, 2009. Section 12(2) of the said Act clarifies that the "school" specified under section 2(n)(iv) providing free and compulsory elementary education shall be reimbursed expenditure incurred by it by the State. It is not the petitioners' case that the respondent Nos.5-7 receive State aid or finances. Even if it is assumed that the respondent Nos.5-7 receive State aid, the case is unsubstantiated and in any event disputed by the respondents.

16. Imparting education, *per se*, will not pull the respondents within the stranglehold (in a punitive sense) of Article 226 of the Constitution unless the respondents can be shown to discharge a public duty with an attending public law element or that there is a pervasive State control in their day-to-day affairs. Although the Supreme Court in *Pradeep Kumar* (supra) opined that the tests formulated in *Ajay Hasia v. Khalid Mujib Sehravardi((1981) 1 SCC 722)* are not a rigid set of principles, the question in each case would be whether the body is financially, functionally and administratively dominated by or under the control of the Government in the light of the cumulative facts as established.

17. The Court, therefore, concludes that the writ petition is for settling of a personal score with a stark absence of a case being made out that the respondents are amenable to the writ jurisdiction of the Court.

18. The essential requirement of the alleged wrongdoer falling within a "State" or a "Public Authority" is discussed in the next point.

The Writ Petition is against a Public Trust:

19. The Objects of the respondent No.6 "Operation Mobilisation India" indicate that the activities of the respondent No.6 are voluntary in nature with a focus on spreading the teachings of Jesus Christ. Admittedly, the respondent No.6/Trust does not receive any financial

assistance from the State and would, therefore, not fall within the definition of "State" under Article 12 of the Constitution.

20. As stated above, the cause of action pleaded revolves around personal rights and agenda and does not involve any public law element: *Ramakrishna Mission Vs. Kago Kunya((2019) 16 SCC 303)* and *Lakhichand Marotrao Dhoble Vs. Joint Charity Commissioner, Civil Lines, Nagpur(2020 (6) MHL 662)*. In the latter case, the Division Bench of the Bombay High Court considered the objects of a Public Trust which engaged in religious activities to be purely of a voluntary nature without any financial assistance from the State. The Court opined that inculcating religious feelings amongst members of a particular community cannot be equated to a public function or discharge of a public duty. A public function is generally for achieving a collective benefit for the public or a section of the public with a flavour of social or economic affairs in public interest: *Binny Ltd. Vs. S. Sadasivan(2005) 6 SCC 657)*.

21. It is hence clear that the respondent No.6 does not qualify under the accepted parameters of a State or an instrumentality of the State. The reason for this view finds place in the next captioned heading.

<u>The Bombay Public Trusts Act, 1950, specifically provides for the power to remove a Trustee</u>.

22. The fact that the respondent No.6 is a Public Trust registered under The Bombay Public Trusts Act, 1950 is not disputed. Section 41B of the said Act confers the power to institute an enquiry with regard to a particular charity or a class of charities on the Charity Commissioner. Section 41D delineates the procedure for suspending, removing or dismissing Trustees. Section 47 reiterates the power of the Charity Commissioner to appoint, suspend, remove or discharge Trustees and invest property to new Trustees. Section 80 declares that Civil Courts shall not have jurisdiction to decide or deal with any question covered by the Act of 1950.

23. The above provisions of The Bombay Public Trusts Act,1950 makes it clear that the respondent No.6/Public Trust is amenable to the said Act which also provides for the mechanism for the precise relief which the petitioners have

prayed for in the present writ petition. Besides, the procedure for suspension and removal of Trustees, as provided under section 41D (2) of the Act, entails leading of evidence and proving of the charges framed against a Trustee along with the explanation given by the Trustee. The aforesaid matters are beyond the periphery of a writ petition: *Totaram Dasuji Rathod Vs. Atmaram Kisansing Rathod*((2020) 1 MHLJ 922) and *Eknath Tukaramji Pise Vs. Rama Kawaduji Bhende* (2020 SCC OnLine Bom 934). The importance of leading evidence and proving of the charges levelled against the Trustee was noted in *Totaram Dasuji Rathod* (supra) in view of the harsh consequences of removal from the Trust.

24. The above discussion would lead to the inescapable conclusion that the petitioners have invoked the writ jurisdiction of the Court despite a precise statutory remedy being available to the petitioners under The Bombay Trusts Act, 1950.

This also means that the petitioners have an efficacious alternative statutory remedy available to them.

25. The Bombay Public Trusts Act, 1950 demonstrates that the petitioners' cause can very well be espoused before the Charity Commissioner and other officers under the Act. The writ petition does not disclose any challenge to the vires of any statute or any allegation of violation of fundamental rights or the principles of natural justice. Therefore, the Court does not find any ground to entertain the writ petition despite the existence of an efficacious alternative remedy: *South Indian Bank Ltd. Vs. Naveen Mathew Philip*(*2023 SCC OnLine SC 435*). This decision relied on *Whirlpool Corporation Vs. Registrar of Trade Marks* ((*1998) 8 SCC 1)* and *Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.*((2003) 2 SCC 107)) where the Supreme Court laid down the proposition that availability of alternative remedy may not be an absolute bar in certain contingencies.

The Writ Petition is in any event hit by the Principles of *Res Judicata*/Constructive *Res Judicata*

26. The following facts are undisputed in respect of the captioned heading.

27. The first petitioner had filed a Company Petition seeking identical relief against the respondents for oppression and mismanagement under sections 241 and 245 of The Companies Act, 2013 which included the relief for termination or modification of Agreements under section 243 of The Companies Act, 2013.

28. The Company Petition (C.P.No.60/241/HDB/2019) was dismissed on merits by the NCLT, Hyderabad Bench on 22.06.2020. The findings in the order of dismissal include that the petitioner failed to prove any oppression and management into the affairs of the Company/Operation Mercy India Foundation (the respondent No.7 herein) and also failed to file documentary proof for considering the prayer in the Company Petition. Incidentally, the petitioner also prayed for an order of investigation into the affairs of the Company and to suspend the Board and to appoint a Commissioner. The first petitioner herein was the first petitioner in the Company Petition.

29. The petitioner Nos.2 and 3 herein approached the Industrial Tribunal along with 18 other employees against the termination of their employment. The request for re-instatement was rejected by the Industrial Tribunal by an order dated 10.07.2023. The petitioner No.1 also filed a writ petition (W.P.No.36200 of 2022) challenging his termination before this Court, said writ petition is pending as on date.

30. This Court therefore finds substance in the contentions of the answering respondents that the multiple actions instituted by the petitioner No.1 for similar relief and the findings of the NCLT and Industrial Tribunal attract the principles of *res judicata* and constructive *res judicata*: *State of Uttar Pradesh Vs. Nawab Hussain ((1977) 2 Supreme Court Cases 806), Samir Majumdar Vs. Union of India(2023 SCC OnLine SC 1182)*. A three Judge Bench of the Supreme Court in the former decision explained 'constructive *res judicata*' as a rule which postulates that if a plea could have been taken by a party in an earlier proceeding, he/she would not be permitted to take that plea against the same party in a subsequent proceeding founded on the same cause of action. The rule is anchored on public policy as no party can be encouraged to institute one proceeding after another and urge new grounds every time. *Amalgamated Coalfields Ltd. Vs. Janapada Sabha,*

Chhindwara(AIR 1964 SC 1013), categorically held that the principle of *res judicata* is also applicable to writ petitions.

31. The above facts would indicate that the present writ petition has been filed beyond the statutory time period provided under The Companies Act, 2013 for filing an Appeal from an order of the NCLT to NCLAT. The order of the NCLT, Hyderabad dismissing the Company Petition on 22.06.2020 means that the challenge to the said order could only have been filed within 45 + 45 days from the date on which a copy of the order of NCLT was made available to the petitioner under section 421(3) read with the proviso to The Companies Act, 2013.

32. It is evident that the petitioners seek to re-agitate the very same points in the writ petition which were raised before the NCLT without complying with the timelines of the challenge provided under The Companies Act, 2013. Article 226 of the Constitution of India cannot be used to entertain belated claims unless the petitioners offer a credible explanation.

The writ petition is not maintainable against a Society

33. The respondent No.8/Good Shepherd Community Society is registered under The Andhra Pradesh Co-operative Societies Act, 1964 whose objects include imparting spiritual teachings, setting up primary health and literary centers. Such a society cannot fall within the definition of "State" within the meaning of Article 12 of the Constitution of India. A writ petition is also not maintainable against a Co-operative Society: *Chander Mohan Khanna Vs. National Council of Educational((1991) 4 Supreme Court Cases 578).* The Supreme Court in this case agreed with the contention that NCERT is a Society registered under the Societies Registration Act and was not a "State" under Article 12 of the Constitution.

34. The respondent No.10/O.M International situated in United Kingdom is admittedly a foreign entity which has no control over or connection with the respondents. The respondent No.12/Bishops Council and Synod is also not a legal or statutory entity incorporated under any law. Its constitution is approved by the Council of Bishops on 31.07.2014 with four Bishops including a Presiding Bishop. It is the headquarters of the Good Shepherd Community Church.

35. In *Prakash Singh Vs. Union of India ((2022) SCC Online Del 2213)*, a Division Bench of the Delhi High Court held that the respondent No.2 therein i.e., Agence France Press is an entity of France and cannot be termed as "State" under Article 12 of the Constitution of India and therefore is not amenable to Writ jurisdiction.

36. The Court also agrees with the contentions raised on behalf of the respondents that the writ petition concerns disputed questions of fact since the petitioners have only proceeded on the allegations of mismanagement and corrupt practices which have been disputed by the respondents. The nature of allegations require evidence and conclusive proof which the Writ Court is not equipped to deal with: *State of Uttar Pradesh Vs. Uttar Pradesh Rajya Kanij Vikas Nigam SS((2008) 12 SCC 675).*

37. The decisions cited on behalf of the petitioner are distinguishable on facts as well as in law. *D.Bright Joseph Vs. Church of South India(W.P.No.304272 of 2022)* involved a challenge to the election of a member of the Synod at the instance of an elected member. The Supreme Court held that the writ petition was maintainable as the institution in that case was discharging a public duty. In the present case, the reliefs claimed are entirely in the realm of private law and the petitioners, as ex-employees, are seeking re-instatement. *Roychan Abraham Vs. State of U.P. (2019 SCC Online All 3935)* was considered in *St.Mary's Education Society (supra)* where the Supreme Court held that a writ petition against an educational institution cannot be maintained if there is no direct nexus between the act complained of and discharge of public duty *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani((1989) 2 SCC 691)* was a case involving a public trust running a college affiliated to the Gujarat University with a dispute of pay scales in relation to the governing provisions of the University Grants Commission. *Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority(2023 SCC OnLine SS 95)* considered the issue of an alternative remedy of appeal under section 33 of the Haryana Value Added Tax Act, 2003. The Supreme Court held that a writ petition can be maintained to deal with a pure question of law despite existence of the alternative remedy."

(Emphasis Supplied)

20. The relief (a) is directed against respondent Nos.1 to 5. The said respondents are impleaded in their private capacity. The Writ Petition is not maintainable against the said private persons.

21. So far relief (b) is concerned, it is prayed that a former judge/judges of the High Court be appointed as administrator/s to manage affairs of respondent Nos.6 to 9 and the associated group. It is also prayed to reinstate former Trustees/Directors to oversee the administration. The relief prayed before the NCLT in case C.P.No.60/241/HDB/2019, wherein writ petitioner No.1 herein was applicant, is as under:

> "1. Under consideration is a Company petition filed under Section 213 and 241 of the Companies Act, 2013 (hereinafter called as 'Act, 2013') alleging various acts of oppression and mismanagement in the affairs of M/s.Operational Mercy India Foundation (hereinafter called as the 'Company'), inter-alia seeking following reliefs:
>
> i. To order investigation into the affairs of the Company under Section 213 of the Companies Act, 2013;
>
> ii. To grant appropriate reliefs in terms of Section 241 of the Companies Act, 2013;
>
> iii. As an interim measure pending the investigation, to suspend the Board and appoint a Commissioner;
>
> iv. To freeze all assets of the Company pending investigation and resolution of the cases referred to in the Petition.

v. To pass such order as deemed fit in the interest of better working of the Company and in the interest of justice."

(Emphasis Supplied)

22. The NCLT admittedly has not granted the relief to the applicants therein. Indisputedly, against the said order of the NCLT no appeal or other proceedings were filed. We find substance in the arguments of the learned counsel for the respondents that reliefs claimed in clause (b) of the prayer clause has thread relation with the reliefs claimed before the NCLT in the above mentioned matter. There is no occasion for this Court to undertake the exercise of appointment of Advocate Commissioner or former Judge/Judges to take up administration and affairs of respondent Nos.6 to 9.

23. Apart from this, paragraph No.10 of the aforesaid order of the NCLT makes it clear that the Supreme Court declined to quash the FIR and directed the authorities to expedite the process of investigation regarding the allegations of mismanagement etc,. The NCLT in candid terms opined that the instant Company Petition has not only given rise to duplicity of investigation proceedings, but undoubtedly will hamper and disturb the process

of proceeding with the enquiry and investigation by the concerned authorities, which is under process as per the directions of the Supreme Court. Thus, NCLT declined interference. The Writ Court has rightly declined the interference by holding that the Writ Petition is not maintainable.

24. So far relief (c) is concerned, the Advocate Commissioner/Judges were sought to be appointed to address the individual grievance of displaced and illegally terminated staff members, particularly Class IV workers and other employees. Learned counsel for the respondents raised valid objections that the Writ Petition cannot be equated with Public Interest Litigation. The employees whose Fundamental Rights are allegedly violated and who have been illegally terminated can assail the said orders in appropriate proceedings. The Writ Petition was not maintainable for the said relief.

25. In relief (d), it is prayed to take action against respondent No.11, who failed to conduct inspection and undertake exercise as prayed for. Sri J. Sudheer, learned counsel for the appellants/writ petitioners drew attention of this Court to the counter of respondent No.11, wherein he specifically stated that

the representation of the writ petitioners has been disposed of. Despite repeated queries, learned counsel for the appellants/writ petitioners could not point out that the writ petitioners preferred such representation pursuant to any statutorily enabling provision and respondent No.11 had any corresponding obligation to decide the said representation. In absence thereof, the Writ of Mandamus cannot be issued on mere asking (see **Director of Settlements, A.P. v. M.R.Apparao**[25], **Bhartiya Kishan Sangh District Bhind v. Union of India**[26] and **Municipal Corporation of Greater Mumbai v. Rafiqunnisa M. Khalifa**[27]). Learned Single Judge has committed no error in rejecting the Writ Petition on the aspect of maintainability.

26. The relief (e) is claimed against the action of respondent No.10, who is admittedly situated in United Kingdom. The affairs between respondent No.10 and respondent Nos.6 to 9 are their internal affairs and no Writ can be issued adjudging the action of respondent No.10, who is situated beyond the territorial jurisdiction of the country. The relief (f) is also offshoot of the other reliefs.

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[25] (2002) 4 SCC 638
[26] (2007) 4 MPLJ 548 (12)
[27] (2019) 5 SCC 119

27. The learned Single Judge passed a detailed order and examined the question of maintainability on relevant parameters. The judgment of Madras High Court in **D. Bright Joseph** (supra) was considered and a plausible view is taken thereupon.

28. In **St. Mary's Education Society** (supra), the Apex Court held as under:

> "36. **It needs no elaboration to state that a school affiliated to CBSE which is unaided is not a State within Article 12 of the Constitution of India** [see *Satimbla Sharma* v. *St Paul's Senior Secondary School* [*Satimbla Sharma* v. *St Paul's Senior Secondary School*, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75]]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [see *K. Krishnamacharyulu* v. *Sri Venkateswara Hindu College of Engg.* [*K. Krishnamacharyulu* v. *Sri Venkateswara Hindu College of Engg.*, (1997) 3 SCC 571 : 1997 SCC (L&S) 841]]. The school affiliated to CBSE is therefore an "authority" amenable to the jurisdiction under Article 226 of the Constitution of India[see *Binny Ltd.* v. *V. Sadasivan* [*Binny Ltd.* v. *V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]]. **However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee** — confirmation, suspension, transfer, termination, etc. [see *Apollo Tyres Ltd.* v. *C.P. Sebastian* [*Apollo Tyres Ltd.* v. *C.P. Sebastian*, (2009) 14 SCC 360 : (2009) 5 SCC (Civ) 358 : (2010) 1 SCC (L&S) 359]].
>
> 37. This Court in *K.K. Saksena* v. *International Commission on Irrigation & Drainage* [*K.K. Saksena* v. *International Commission on Irrigation & Drainage*, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] , after an exhaustive review of its earlier decisions on the subject, held as follows : (SCC pp. 692 & 696, paras 43 & 52)

"*43.* What follows from a minute and careful reading of the aforesaid judgments 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 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 these 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 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.

***

52 It is true 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."

38. The following decisions have been adverted to in *K.K. Saksena* [*K.K. Saksena* v. *International Commission on Irrigation & Drainage*, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] :

1. *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691 : AIR 1989 SC 1607] ,

2. *G. Bassi Reddy* v. *International Crops Research Institute* [*G. Bassi Reddy* v. *International Crops Research Institute*, (2003) 4 SCC 225] ,

3. *Praga Tools Corpn.* v. *C.A. Imanual* [*Praga Tools Corpn.* v. *C.A. Imanual*, (1969) 1 SCC 585] ,

4. *Federal Bank Ltd.* v. *Sagar Thomas* [*Federal Bank Ltd.* v. *Sagar Thomas*, (2003) 10 SCC 733].

39. This Court in *Janet Jeyapaul* v. *SRM University* [*Janet Jeyapaul* v. *SRM University*, (2015) 16 SCC 530 : (2015) 13 Scale 622 : 8 SCEC 68] , held that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In *Binny case* [*Binny Ltd.* v. *V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , this Court held that Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge of public function.

40. Para 11 of the judgment in *Binny* [*Binny Ltd.* v. *V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] is reproduced below : (SCC pp. 665-66)

> "*11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function.* The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. *At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is*

accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

(emphasis supplied)

41. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in *Binny case* [*Binny Ltd.* v. *V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] as under : (SCC p. 673, para 29)

"*29.* **Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds.** It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. *If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action.* Sometimes, it is difficult to distinguish between public law and private law remedies."

(emphasis supplied)

42. In the penultimate paragraph, this Court [*Binny Ltd.* v. *V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] ruled as under : (*Binny case* [*Binny Ltd.* v. *V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , SCC p. 674, para 32)

"*32.* Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. ***But there must be a public law element and it***

cannot be exercised to enforce purely private contracts entered into between the parties."

(emphasis supplied)

43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State **but there must be a public element in the action complained of."**

(Emphasis supplied)

29. The aforesaid judgment of Supreme Court was considered by the learned Single Judge in its correct perspective. So far, the Full Bench judgment of Madras High Court in **D. Bright Joseph** (supra) is concerned, the said judgment is based on a different factual scenario. In view of the authoritative pronouncement of the Supreme Court in **St. Mary's Education Society** (supra), we find no infirmity in the order of the learned Single Judge.

30. At the cost of repetition, the learned Single Judge has considered the judgments cited by both sides and after thorough analysis rightly came to hold that in view of reliefs claimed, public law element was missing and respondent-institutions were not getting any grant-in-aid from the Government. In absence of any public law element being involved, the Writ Petition was not maintainable.

31. Learned Single Judge has considered the submissions *in extenso* and has taken a plausible view. Another view is possible, is not a ground for interference (see **Narendra & Co. (P) Ltd. v. Workmen**[28]).

32. Accordingly, the Writ Appeal is **dismissed**. There shall be no order as to costs. Miscellaneous applications, if any, shall stand closed.

SD/-N. RAJAGOPAL
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

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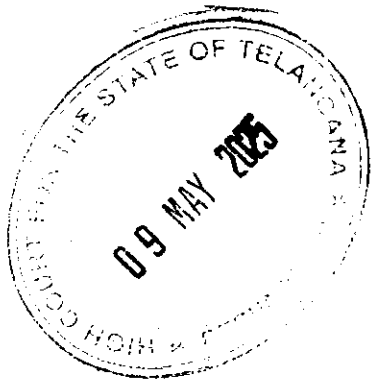
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[28] (2016) 3 SCC 340

HIGH COURT

DATED:23/04/2025



JUDGMENT

WA.No.227 of 2025

DISMISSING THE WRIT APPEAL WITHOUT COSTS

(6)

9/5/25