

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 27774 of 2022

Between:

Shaily Mahesh Agarwal

... Petitioner

And

Centre for DNA Fingerprinting

... Respondent

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 27774 of 2022

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Shaily Mahesh Agarwal

..... Petitioner

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... Respondent

< **Gist:**

> **Head Note:**

! Counsel for the Petitioner : Vasudha Nagaraj

^ Counsel for the Respondent: Sri K.K.H.M. Syam Sundar

? Cases Referred:

1. 1979 (3) SCC 489
2. 2002(5) SCC 111
3. 2015 (16) SCC 530
4. 2005 (4) SCC 649
5. 2005 (6) SCC 321

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 27774 of 2022****ORDER:**

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondent.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the proceedings dated 11.03.2022 issued by the respondent as unconstitutional, arbitrary and opposed to the principles of Natural justice and to set aside the same and consequently direct the respondent to restore the access of the petitioner to the residential complex in the institute and to pay the HRA that has been deducted from April 2022.

3. The case of the Petitioner, in brief, is as follows:

a) Petitioner is hailing from Maharashtra, having qualified the National Level PhD entrance exam in 2019 (CSIR-NET and DBT) and also the interview conducted by the respondent institute and having joined as Junior Researcher Fellow in the respondent institute, currently the petitioner is in 3rd year of PhD programme pursuing research on Molecular Oncology

and has been upgraded to a Senior Research Fellow and receives a monthly fellowship amount of Rs. 35,000/- (Rupees Thirty Five Thousand only).

b) On the night of 28.11.2020, upon the request of petitioner's friend, the petitioner had gone into room, which was already occupied by others (Shayantan, Shubra, Arijit including the Complainant "X"). The petitioner was in the friend's room for a brief time before returning to petitioner's room and in the brief time, petitioner did not witness any harassment between the complainant and the other male students in the room. The petitioner later came to know that the complainant has been sexually harassed by one of the male students in the room.

c) Petitioner came to know that Ms. X has preferred a complaint against the male student and that a Sexual Harassment Complaints Committee (SHCC) has been constituted to inquire into the complaint. Petitioner, who has been briefly in the office for a brief period, where the incident took place, was called by the Committee and was asked about the details of that night and petitioner had informed the committee about what little, the petitioner knew of.

d) Petitioner for the past 2 (Two) years neither had any knowledge that, petitioner too was named as one of the harassers/accused in the complaint by Ms.X nor did the petitioner receive any intimation to submit the statement of defence and on 11.03.2022, the respondent institute issued proceedings alleging that the petitioner has been involved in the facilitation of sexual harassment and had deliberately ignored the acts of sexual harassment against Ms.X. Petitioner never did receive the complaint copy preferred by Ms.X and till date no action had been taken by the SHCC.

e) Without even conducting an enquiry, Petitioner had been subjected to punishment and the HRA which is provided by the University Grants Commission (UGC) can only be cancelled when there has been misconduct. The Respondent Institute without sharing the information has taken upon itself to cancel the HRA and the same is illegal.

f) Petitioner made a representation to the respondent institute on 21.04.2022 vide email requesting the respondent institute to set aside the punishment initiated against the petitioner and since there has been no response to the representation, the petitioner filed the present writ petition.

4. The case of the Respondent, in brief, is as follows:

a) The respondent institute is not a "State" under Article 12 of the Constitution of India and not amenable to Writ Jurisdiction and is liable to be dismissed in limine, as the respondent institute is "Society" managed by its Governing Council.

b) The respondent Institute is having hostel accommodation for research hostel but the hostel is common for Ladies and Men and there have been instances of inappropriate behavior in rooms, including the incidents of misbehavior, unethical activities. The Internal Complaints Committee (will be referred to as ICC) had received a complaint by the petitioner dated 09.01.2021 about sexual harassment and the ICC had submitted a detailed report on 21.02.2022, which is confidential and as per the recommendation of ICC, the evidence was inconclusive in respect of the allegations by the Petitioner.

c) The petitioner had filed a complaint with Nagpur City Ganeshpeth Police Station on 31.12.2021 about the alleged sexual harassment by one Mr. Abhishek Taterao against the petitioner and the same was forwarded to the Rachakonda

Police Commissionerate on 27.01.2022 for re-registration and as such FIR No. 78 of 2022 had been re-registered for offenses under section 354, 354A, 506 of IPC against Mr. Abhishek Taterao.

d) As per the 3 page recommendation made by the ICC dated 24.02.2022, it is relevant to state the involvement of the petitioner in the unethical acts and abetments if sexual harassment by Mr.Arjit against Ms.X. The respondent institute on 11.03.2022 took action against 11 (Eleven) persons, barring the petitioner from entering the hostel premises and stopping of HRA from 01.04.2022 and this action was taken for maintenance of utmost discipline in the Hostel premises.

e) A copy of the report of SHCC had been furnished to the petitioner on 21.02.2022 and there was no arbitrary action on part of the respondent institute. Keeping in mind their academic/educational career, only lighter punishments were given to all 11 persons including the petitioner.

f) There was no complaint filed by Ms.X against the petitioner. The SHCC was constituted based on the complaint filed by the petitioner only and since the SHCC cannot take

disciplinary action, they had recommended to constitute a Disciplinary Committee through its report dated 24.02.2022 to the respondent institute.

g) Disciplinary Committee has been constituted by the respondent institute on 01.03.2022 and the petitioner had participated in both the enquiries by the ICC and the Disciplinary Committee.

h) In the 3 page recommendation of the SHCC, there was prima facie material against the petitioner and about petitioner's unethical activities in the hostel, conduct in abetment of her sexual molestation.

i) Since the petitioner had participated willingly in both the Disciplinary Committee and the ICC, there is no prejudice caused to the petitioner. Hence the Writ Petition is liable to be dismissed.

5. PERUSED THE RECORD :

i. The order impugned dated 11.03.2022 of the Respondent reads as under :

"I constituted a Disciplinary Committee to investigate the inappropriate and unacceptable behavior of the students, who are residing in the CDFD hostel. **Based**

on the report submitted by the Sexual Harassment Complaints Committee (SHCC) and its own independent investigation, the Committee finds that you were involved in facilitation of indecent behavior with fellow female colleague in the CDFD hostel. This incident is particularly distasteful, as you watched a fellow female colleague being molested in front of you and instead of protecting or supporting her, you deliberately ignored, which encouraged your male colleagues to keep molesting the victim.

Based on the above observation, the Disciplinary Committee has unanimously recommended the following disciplinary action against you:

1. You should vacate the hostel within seven days of receiving the official communication. Subsequently, your entry should be banned from the CDFD residential complex forever.
2. Despite being evicted from the hostel, you will not be entitled to HRA.
3. No financial core and project support from CDFD will be given to you for the entire duration of your stay in CDFD.

Further, the committee recommended that you should undergo psychological counselling which should start immediately. CDFD can facilitate a psychologist if you are in-station. However, if you are out of Hyderabad, you should arrange for a psychologist at your own expense. In the latter case, the proof of

this counseling has to be submitted to Director's office. This counseling should be complete in order for you to obtain your Ph.D degree. This should be accompanied with a letter from the psychologist clearly stating that the counseling was about your callous attitude towards your fellow colleague, and gender-sensitization.

You are advised not to approach the victim in retaliation or encourage your friends to do the same. If any such harassment, is brought to the notice of the authorities, CDFD reserves the right to review this punishment. In case any further incidence of inappropriate and/or indecent behavior of you are brought to the notice of the authorities, CDFD reserves the right to investigate and impose further disciplinary actions including termination of your Ph.D.

The above incidents are very serious in nature, inappropriate and unbecoming of a research scholar. I fully endorse and approve the above recommendations and instruct you to adhere to the same in toto. You are also directed to submit a certificate from the psychologist attesting to the successful completion of the counseling sessions.

ii. MEMORANDUM OF ASSOCIATION AND RULES AND REGULATIONS OF CENTRE FOR DNA FINGER PRINTING AND DIAGNOSTICS, HYDERABAD, filed by the Sole

Respondent vide Memo dt. 24.04.2023 with additional material papers reads as under:

"1. The name of the Society shall be Centre for DNA Fingerprinting & Diagnostics (CENTRE).

2. The Registered Office of the Society shall be at Hyderabad and is at present in the East Wing, 3rd Floor, Centre for Cellular and Molecular Biology, Uppal Road, Hyderabad 500 007.

3. The objectives for which the Centre for DNA Fingerprinting & Diagnostics is established are:

- i) To carry out scientific research pertaining to DNA profiling and related analysis in civil cases like paternity disputes, immigration, and exchange of new borns in hospitals, for various agencies including private parties, on appropriate payment;
- ii) To provide DNA fingerprinting and related analysis to crime investigation agencies,
- iii) To assist police personnel, forensic scientists, lawyers and the judiciary in understanding the evidential value of the DNA profile analysis and related techniques in crime investigation and family matters;
- iv) To establish DNA diagnostic methods for detecting genetic disorders and to develop probes for such detections;
- v) To use DNA fingerprinting technique for the authentication of plants and animal cell materials, cell lines and develop new probes where necessary for such purposes;

vi) To provide training in DNA fingerprinting techniques;

vii) To undertake basic, applied and developmental R&D work;

viii) To provide consultancy services to medical institutions, public health agencies and industry in the country;

ix) To collaborate with foreign research institutions and laboratories and other international organisations in fields relevant to the objectives of the Centre;

x) To establish affiliation with recognised universities and institutions of higher learning for the purpose of enabling research scholars to register for post-graduate degrees;

xi) To receive grants, donations and contributions in cash or in other forms from the Government of India, State Governments, Charitable Institutions/Trusts, individuals and industry within the country;

xii) To receive, with the prior approval of the Central Government, monetary assistance from foreign sources including international organizations for training programmes, scientific research and other activities;

xii) To acquire by gift, purchase, exchange, lease, hire or otherwise howsoever, any property movable/or immovable or to construct, improve, alter, demolish or repair buildings and structures as may be necessary or convenient for carrying on the activities of the CENTRE:

xiv) For the purpose of the CENTRE, to draw and accept, make and endorse, discount and negotiate Government of India and other Promissory Notes, Bills of Exchange, Cheques or other Negotiable Instruments;

xv) For investing the funds of or money entrusted to the CENTRE, to open such securities or in such manner as may from time to time be determined by the Governing Council and to sell or transpose such investment:

xvi) To do all such other lawful acts as may be necessary, incidental or conducive to the attainment of all or any of the above objectives;

xvii) To institute Professorships, other faculty positions, fellowships including visiting fellowships, research and cadre positions, scholarships, etc., for realising the objectives of the CENTRE;

xviii) To establish, maintain and manage laboratories, workshops, stores, library, office and other facilities for scientific and technological work of the CENTRE;

xix) To acquire or transfer technical know-how from/to entrepreneurs and industries; and

xx) To register patents, designs and technical know-how that may be developed by the CENTRE and transfer any portion of such patents/designs/technical know-how in the interest of the CENTRE.

4. a. The Government of India may appoint one or more persons to review the work and progress of the CENTRE and to hold enquiries into the affairs thereof and to report thereon, in such manner as the Government of India may stipulate: and

upon receipt of any such report, the Government of India may take such action and issue such directions as it may consider necessary in respect of any of the matters to be dealt with in the report and the CENTRE shall be bound to comply with such directions.

b. The Government of India may give directives to the CENTRE in respect of its policies and programmes.

c) If at any time a difficulty arises in the functioning of the CENTRE because of any lacunae in the Memorandum of Association or in the Rules, or the failure of any of their provisions to operate, the Government of India shall have powers to give directives to resolve the difficulty and such directives shall be binding on officers and authorities of the CENTRE.

5. The Governing Council of the CENTRE shall be the BODY constituted to be the Governing Council under the Rules and Regulations of the said CENTRE and the Governing Council members shall be the members of the Society and further the first members of the Governing Council shall be:

Name	Address	Occupation/Designation
1. Dr V S Rama Murthy	C11/41 Moti Bagh New Delhi 110021	Secretary, DBT Chairman
2. Dr R A Mashelkar	DG's Suite CSIR Scientific Centre Lodi Gardens Gate No.2, New Delhi 110003	DG, CSIR Member
3. Dr. Manju Sharma	D-1/55, Satya Marg, Chanakyapuri, New Delhi 110023	Advisor-I, DBT Member
4. Shri S B	D-11/234, Vinay	Joint Secretary &

Krishna	Marg, Chanakyapuri, New Delhi 110021	Fin. Adviser, DBT Member
5. Shri V K Malhotra	C-11/124 Moti Bagh-I New Delhi 110021.	Joint Secretary (CS) MHA. Member
6. Shri P C Kannan	B. 5, Andrews Ganj Extn. New Delhi 110049.	Joint secretary & Legal Adviser M/o Law & Justice, Dept. of Legal Affairs. Member
7. DG, BPR&D or his nominee		DG, BPR&D. Member
8. Prof D Balasubramanian	C6, IICT Quarters, IICT Campus, Hyderabad 500017	Director, CCMB. Member
*9. Chairman of the scientific Advisory Committee of the CENTRE		
*10. Reputed scientist as individual expert		
*11. Reputed scientist as individual expert		
12. Dr Lalji Singh	D18, IICT Quarters, IICT Campus, Hyderabad 500017.	Scientist F, CCMB & Officer on special Duty CDFD. Secretary

* (to be nominated by the Governing Council of CENTRE)"

**iii. The counter affidavit filed by the sole Respondent
(para 3 and 6) reads as under:**

"Para 3. At the outset the Respondent states and submit that the above Writ Petition is liable to be dismissed in limine as being not maintainable, since the Respondent is not a "State" under Art. 12 of the

Constitution of India, and not amenable to Writ Jurisdiction. The Respondent's Organization/Institute is a "Society" managed by its Governing Council. There is another research Institute of similar nature in Kolkata (West Bengal) which was also constituted by the Dept of Science and Technology, under Ministry of Science and Technology, Govt. of India. But, in that case, the Calcutta High Court has held that Bose Institute is not a "State" under Art. 12 of the Constitution of India. In Sri Raj Kumar Sardar vs. Union of India & Ors Case No. 21536(W) of 1995 dated 15-9-1998 Calcutta High Court, it was held in para 9. Keeping in view the decision of the Apex Court in Chander Mohan (supra) I am of the opinion that Bose Institute is not a State within the meaning of Article 12 of the Constitution of India and, thus, no writ is maintainable (Relying on Chander Mohan Khanna vs. The National Council of Education Research & Training (1991) 4 SCC 578: AIR 1992 SC 76). Finally, it was held that -In any event, this Court keeping in view the disputed question of fact involved in the matter particularly when the respondent No. 2 is not a State within the meaning of Article 12 of the Constitution of India cannot entertain such writ application, as the question involved can only be decided by adduction of oral and documentary evidence.

6. Further it is submitted that the employees/Officers of CDFD do not get any Pension as per CCS(Pension) Rules on par with Central Govt. Employees. The Petitioner-Society is a Non-profit organization, and the Petitioner-Society's accounts, Balance Sheet, income/expenditure statements are certified by a Private Chartered Accountant every year. The employees of the Society-CDFD are not automatically eligible for 7th Pay Commission Pay Scales. Those pay Scales are only voluntarily adopted by the Petitioner. Getting funds/financial grants from the Govt. of India, does not make the Society, a Department or part of the Government of India or an establishment under the Control of Central Government. In a decided case by the Supreme Court, it was held that in case of

independent Society, since because the society is getting funds from the Central Government, they cannot be said to be 'under the control', of the Central Government. **In Tata Memorial Hospital Workers Union vs. Tata Memorial Centre &Anr on 9 August, 2010 CIVIL APPEAL NO.6394 OF 2010, Full Bench of Supreme Court of India (AIR 2010 SC 2943) has held that- Para 7 The trustees of a public charitable trust known as Sir Dorabji Tata Trust, established sometime in the year 1940, a hospital in Mumbai, named as the Tata Memorial Hospital for the Treatment and Cure of Cancer and Allied Diseases. The hospital was then being maintained out of the funds of the trust and also from the grant made available from time to time by the Central Government and by the then Government of Bombay. Para 9 "the Central Government on 4.2.1957 and under clause (1) thereof, the government agreed to takeover control and management of the hospital and to manage it at its own expenses from 1.4.1957." Para 62. Hence we have to conclude that even on the test of control and management of the Hospital and the Centre, they are functioning independently under the 1st respondent Society.** They cannot be said to be under the control', of the Central Government. In the circumstances the State Government shall have to be held as the appropriate government for the 1st respondent for the purpose of I.D. Act consequently the MRTU & PULP Act. Para 64 The first respondent cannot be held to be functioning under the authority of the Central Government. The State Government is therefore the appropriate Government for the respondent No. 1 for the purposes of ID Act and MRTU and PULP Act."

iv. The interim order dt. 07.07.2022 passed in

W.P.No.27774/2022 reads as under:

"ORDER

The learned counsel for petitioner submits that vague allegations have been made against the petitioner that

she was involved in facilitation of indecent behavior with fellow female colleague in CDFD hostel and that the said incident is particularly distasteful as the petitioner watched a fellow female colleague being molested in front of her and instead of protecting or supporting her, petitioner deliberately ignored which encouraged petitioner's male colleagues to keep molesting the victim.

Dr. K.K.H.M.Shyam Sundar appearing on behalf of sole respondent submits that the respondent is a society registered under the Societies Registration Act and is not amenable to writ jurisdiction. The said contention of the learned counsel needs to be examined in the main writ petition.

The only allegation against the petitioner is that she did not come to the rescue of her female colleague who was allegedly molested and based on such vague allegation, petitioner was issued with impugned proceedings dated 11.03.2022.

In the opinion of the court, the impugned proceedings issued by the respondent is in violation of principles of natural justice and without application of mind.

Therefore, there shall be interim suspension as prayed for.

Counter if any to be filed by the next date of hearing."

6. DISCUSSION AND CONCLUSION :

- a. A bare perusal of the Counter Affidavit filed by the Respondent indicates that the Respondent herein is registered under Andhra Pradesh (Telangana Areas)

Public Societies Registration Act, 1350 Fasli. A bare perusal of Memorandum of Association and Rules and Regulations of the Respondent herein i.e., the Centre for DNA Finger Printing and Diagnostics, Hyderabad, filed by the Respondent vide Memo dated 24.04.2023 (referred to and extracted above) clearly indicates the objectives of the Respondent herein and also the details of the Governing Council and certain features of Respondent throw considerable light on the true nature of the Respondent. The Respondent as indicated in Clause 3 (x) (xi) and (xii) of MOA and Rules establishes affiliation with recognized universities and receives grants, donations and contributions in cash or in other forms from the Government of India, State Governments, Charitable Institutions/Trusts, Individuals and Industry within the country and further the Respondent with the prior approval of the Central Government also receives monetary assistance from foreign sources including international organizations for training programmes/ scientific research and other activities. A bare perusal of Clause 4 (a, b, c) and

Clause 5 indicate that the Central Government may appoint one or more persons to review the work and progress of the Respondent and to hold enquiry into the affairs thereof and to report thereon in such manner as the Government of India may stipulate and upon receipt of any such report the Government of India may take such action and issue such directions as it may consider necessary in respect of any of the matters dealt with in the report and the Respondent shall be bound to comply with such direction and further the Government of India may give directives to the Respondent in respect of its policies and programmes and if at any time a difficulty arises in the functioning of the Respondent because of any lacunae in the Memorandum of Association or in the Rules, or the failure of any of their provisions to operate, the Government of India shall have powers to give directives to resolve the difficulty and such directives shall be binding on officers and authorities of the centre. A bare perusal of members of the governing council indicate the details as follows :

Occupation	Designation
Secretary, DBT	Chairman
DG, CSIR	Member
Advisor – I DBT	Member
Joint Secretary & Finance Advisor, DBT	Member
Joint Secretary (CS) MHA	Member
Joint Secretary & Legal Advisor M/O Law & Justice, Dept. of Legal Affairs	Member
DG, DPR & D	Member
Director, CCMB	Member
Scientist F, CCMB & Officer on Special Duty, CDFD	
Secretary	

b. A bare perusal of the objectives of the Respondent herein indicate clear control of the Central Government over the Respondent herein and a bare perusal of the Members of the Governing Council of the Respondent herein indicates (referred to and extracted above) that it consists of Senior Government Officials, Government of India, the Respondent is funded by Government of India and the charges collected by the Respondent from the public and investigating agencies to provide DNA Finger Printing and related services are credited to Government Treasury/Sub-Treasury/ Reserve Bank of India or in any of the Nationalized Banks. This Court opines that every test discussed above leaves no doubt that the Respondent herein falls

within the definition of State within the meaning of the expression of Article 12. Therefore, this Court opines that the Respondent herein is an Authority within the meaning of Article 12 of the Constitution of India and amenable to the writ jurisdiction of this Court (para 33 of the judgment of the Apex Court reported in 1979 (3) SCC 489 in *Ramana Dayaram Setty Vs. International Airport Authority of India & Others*). It is also a fact as borne on record that our High Court at Hyderabad on earlier occasions even entertained writ petition and contempt case against the Respondent herein and passed orders on merits (WP No.6679/2004 & C.C. No.586/2004 reported in 2004 SCC Online AP 1431).

c. The Apex Court in its 7-Judges Bench Judgement reported in 2002 (5) SCC 111 in *Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & Others* at paras 50, 51 and 59 observed as under:

"Para 50. The dominant role played by the Government of India in the Governing Body of CSIR is evident. The Director- General who is ex-officio Secretary of the Society is appointed by the Government of India [Rule 2(iii)]. The submission of the learned Attorney General that the Governing Body consisted of members, the majority of whom were non-governmental members is,

having regard to the facts on record, unacceptable. Furthermore, the members of the Governing Body who are not there ex officio are nominated by the President and their membership can also be terminated by him and the Prime Minister is the ex-officio President of CSIR. It was then said that although the Prime Minister was ex-officio President of the Society but the power being exercised by the Prime Minister is as President of the Society. This is also the reasoning in *Sabhajit Tewary* . With respect, the reasoning was and the submission is erroneous. An ex- officio appointment means that the appointment is by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer, in this case the Prime Minister, which are not specifically conferred upon him, but are necessarily implied in his office (as Prime Minister), these are ex-officio .

Para 51. The control of the Government in the CSIR is ubiquitous. The Governing Body is required to administer, direct and control the affairs and funds of the Society and shall, under Rule 43, have authority 'to exercise all the powers of the Society subject nevertheless in respect of expenditure to such limitations as the Government of India may from time to time impose'. The aspect of financial control by the Government is not limited to this and is considered separately. The Governing Body also has the power to frame, amend or repeal the bye-laws of CSIR but only with the sanction of the Government of India. Bye-law 44 of the 1942 Bye-laws had provided 'any alteration in the bye-laws shall require the prior approval of the Governor General in Council'.

Para 59. From whichever perspective the facts are considered, there can be no doubt that the conclusion reached in *Sabhajit Tewary* was erroneous. If the decision of *Sabhajit Tewary* had sought to lay down as a legal principle that a society registered under the Societies Act or a company incorporated under the Companies Act

is, by that reason alone, excluded from the concept of State under Article 12, it is a principle which has long since been discredited. "Judges have made worthy, if shamefaced, efforts, while giving lip service to the rule, to riddle it with exceptions and by distinctions reduce it to a shadow.

Applying paras 50, 51 and 59 of the said judgment to the facts of the present case this Court opines that the Respondent falls within the purview of the term "State" under Article 12 of the Constitution, as per the DISCUSSION in para 6 (a) and (b) above."

d. The Apex Court in its Division Bench Judgement reported in 2015 (16) SCC 530 in JANET JEYA PAUL vs. SRM UNIVERSITY & OTHERS at para 30 observed as under:

"30. This we say for the reasons that firstly. Respondent 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to Respondent 1, which inter alia provides for effective discharge of the public function, namely, education for the benefit of the public. Fifthly, once Respondent 1 is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution."

e. This Court opines that the respondent herein establishes affiliation with recognized universities and institutions of higher learning for the purpose of enabling research scholars to register for post graduate degrees in fact, the Respondent herein discharges a public function by way of imparting education to students at large and imparts education for the benefit of the public. Therefore this Court opines that it is an "Authority" within the meaning of Article 12 of the Constitution and therefore it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

f. The Apex Court in its Judgment reported in *Zee Tele Films Ltd., Vs. Union of India* at paras 31 and 33 observed as under :

"31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not

mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

33. Thus, it is clear 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 under the Constitution, by way of a writ petition under Article 226."

g. It is clear from a reading of the ratio decidendi of the judgement in Zee Tele Films Ltd., Vs. Union of India reported in (2005) 4 SCC 649 extracted above, that any authority discharging public duties falls within the purview of term "State" and any aggrieved party can, for this reason, seek a public law remedy against the said authority discharging public functions under Article 226 of the Constitution of India. Applying the aforesaid principle of law to the facts of the case on hand this Court is of a firm view that the Respondent herein can be subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

h. This Court has perused all the judgments referred to in the counter affidavit filed by the Respondent herein and also the judgments enclosed along with the counter affidavit. This Court also perused all the written submission and arguments filed by the Respondent with additional judgments and also the 5 judgments filed by the Respondent vide Memo dt. 15.02.2023 and this Court opines that the same however would not apply to the facts of the present case, in view of law laid down by the 7-Judges Bench judgement of the Apex Court reported in 2002 (5) SCC 111 in Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & Others (referred to and extracted above).

i. In so far as the merits of the order impugned dt. 11.03.2022 of the Respondent is concerned this Court opines that the same is an order passed by the Respondent herein in clear violation of principles of natural justice without even providing a reasonable opportunity to the Petitioner to put forth her case before the Respondent herein to prove her innocence

mechanically, irrationally, highhandedly, more so in view of the fact as borne on record that the Petitioner was not issued any notice calling upon the Petitioner to furnish her explanation either before the sexual harassment complaints committee or before the disciplinary committee. It is also borne on record that the Petitioner vide e-mail dt. 07.04.2022 sought for a copy of the internal complaints committee report to understand the allegations leveled against her and the reasons for passing the order impugned unilaterally against the Petitioner but however, vide e-mail dt. 13.04.2022 the Petitioner's request to share the report was rejected on the ground that it is confidential. This Court opines that the Petitioner had been judged, punished, and asked to undergo compulsory counseling without even hearing the Petitioner, without even calling for Petitioner's explanation on Petitioner's role in the subject issue unilaterally in clear violation of principles of natural justice.

j. The Apex Court in the judgment reported in (2005) 6 SCC 321 in **CANARA BANK Vs. V.K. AWASTHI** at para 10 and 11 observed as under :

Para 10 : The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the best limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable a opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle b found its way into the "Magna Carta". **The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420).**

"Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? c Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Para 11 : "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice".

7. This Court opines that "Justice should not only be done but should manifestly be seen to be done". This Court opines that the order impugned dt. 11.03.2022 of the Respondent herein is in clear violation of *Audi Alteram Partem* rule which says that no one should be condemned unheard and in clear violation of principles of natural justice since in the present case as borne on record the substantial requirements of justice had been violated deliberately by the Respondent herein. Taking into consideration the above referred facts and circumstances of the case and duly considering the law laid down by the Apex Court in 7-Judges Bench judgment of the Apex Court reported in 2002 (5) SCC 111 in Pradeep Kumar Biswas Vs. Indian Institute of

Chemical Biology & Others and the view taken by the Apex Court in judgments reported in 1979 (3) SCC 489 in Ramana Dayaram Setty Vs. International Airport Authority of India & Others and the judgment reported in 2005) 6 SCC 321 in CANARA BANK Vs. V.K. AWASTHI, the judgments (referred to and extracted above), the writ petition is allowed as prayed for and the order impugned of the Respondent dt. 11.03.2022 is set aside being in clear violation of principles of natural justice, by virtue of its inherent defect. It is however observed that it is left open to the Respondent to proceed and initiate fresh proceedings if the Respondent so desires but however, in accordance with law and in conformity with principles of natural justice. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
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