

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.1183 OF 2023

Between:

Mr.Samvit Gupta

... Petitioner

And

Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 29.11.2023

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 : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**WRIT PETITION No.1183 OF 2023****% 29.11.2023****Between:****# Mr. Samvit Gupta****... Petitioner****And****\$ Union of India & others****... Respondents****< Gist:****> Head Note:****! Counsel for the Petitioner** : Mr.Md.Sharfuddin**^ Counsel for the Respondents** :Mr.G.Praveen Kumar,
Dy.Solicitor General of India,
for R1
Mr.K.Rathanga Pani Reddy,
for R2
Mr.Vivek Jain, for R3**? Cases Referred:**

- (1) (2003) 10 SCC,733
- (2) 1989, AIR 1607
- (3) W.P.(C) No.476 of 2020
- (4) W.P.(Civil) Diary No.10955/2020
- (5) 2012, Volume 12, SCC, 331
- (6) (2021) 6 SCC, 771

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No. 1183 OF 2023****ORDER :**

Heard Mr.Md.Sharfuddin, learned Counsel for the petitioner, Mr.G.Praveen Kumar, learned Deputy Solicitor General of India, for Respondent No.1, Mr.K.Rathanga Pani Reddy, learned counsel for Respondent No.2 and learned Senior Counsel Mr.Prabhakar, appearing on behalf of Mr.Vivek Jain, learned counsel for Respondent No.3.

2. This Writ Petition is filed praying to issue a Writ of Mandamus to direct the 2nd respondent to initiate instructions and guidelines to 3rd Respondent to adhere to the notification dated 27.03.2020 RBI/2019-20/186 DOR No. BP.BC 47/21.04.048/2019-20 and 3rd respondent be directed to abide by circular dated 27.03.2020, circular dated 17.04.2020 and circular dated 05.05.2021 and subsequently direct the 1st and 2nd respondent to initiate instructions and guidelines for the implementation of the Emergency Credit Line Guarantee Scheme (ECLGS) Operational Guidelines updated as on October 06, 2022 and issue of Directions/guidelines to the 2nd respondent to direct and cease the illegal activity of 3rd respondent of realizing the default amounts from the secured assets through action etc. and

to prevent the 3rd respondent from persistently threatening the petitioner for the recovery of defaulted amounts and also direct the Respondents 2 and 3 to grant ex gratia compensation of Rupees fifty crore amount to the petitioner for not implementing the Moratorium circulars dated 27.03.2020 and 17.04.2020, 05.05.2021 and ECGLS guidelines and schemes in letter and spirit and causing damage to the reputation and business of the petitioner by turning its Account NPA illegally.

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, are as follows:

a) The petitioner herein is a Director of Bitstreet Technologies Pvt. Limited which is operating its business since 2015 from Hyderabad & Mumbai. However, all the work orders of about 75 Crores got cancelled due to Covid and booked a loss of about 10 Crores due to shut down of offices in Mumbai & Hyderabad during Covid due to nonsupport of bank credit line on time. Thereafter, the RBI Circular dated 27.03.2020 providing moratorium to all commercial borrowers under the light of COVID-19 came as relief to such entities as it would have

become a huge financial burden for the borrowers to pay the EMIs regularly in this period. However, that facility was denied to the petitioner.

b) Furthermore, the RBI Circular vide No. RBI/2019-20/186 DOR. No.BP. BC.47/21.04. 048/2019-20 of 27.03.2020 under the COVID-19 relief package which came as a relief for the business entities provided for the initiation of loan moratorium period wherein the customers of the financial institutions can defer the EMIs under the light of COVID-19 circumstances and therefore during such moratorium there will be no pressure on the borrowers to comply with the payment of the installments. Further, notification dated 17.04.2020 was brought by the RBI which restricted to declare any account NPA as per the guidelines issued.

c) Subsequently, the 3rd respondent on 30.04.2020 turned the account of the petitioner into NPA without any prior information, which was contrary to the circular issued by the RBI dated 27.3.2020 as covid19 relief package. During the moratorium period no relief was provided by the 3rd Respondent rather during such window the account was declared NPA. Moratorium relief is applicable to all those commercial loans which were in default on 01.03.2020 and yet the petitioner's loan

account was declared NPA and this period of moratorium was taken into consideration for the computation of 90 days for declaration of NPA.

d) Moreover, the Notification in simple sense portrays the fact all those accounts which were granted as standard account on or before 29.02.2020, and such account's cannot be converted into Non-Performing Assets further, in later stage after this notification is brought in. The Statement pertaining to development and regulatory policies issued by the 2nd Respondent on 27.03.2020 along with the regulatory package issued on 27.03.2020 primarily establishes the fact that the 2nd Respondent has prima facie tried to maintain a status quo as on 01.03.2020 in respect to all the installments payment for which had to be made post 01.03.2020 till 31.05.2020.

e) Therefore, the non-action and reluctance by the 3rd Respondent along with the inhuman action of the Bank has resulted in the violation of petitioner's fundamental rights primarily right to livelihood and right to live with dignity under Article 21 of the Constitution of India. Hence this Writ Petition.

4. The averments of Counter Affidavit filed by Respondent No. 3, in brief are as under:

a) The 3rd respondent Bank took steps under the provisions of the SARFAESI Act against M/s. Bitstreet Technologies Private Limited and thus the petitioner company filed S.A.No.125 of 2021 to set aside the proceedings initiated by the 3rd respondent Bank under the possession notice dated 07.07.2021 and the said S.A is pending. Along with the said S.A, the petitioner therein filed I.A.No.1183 of 2021 in S.A.No.125 of 2021 and interim stay was granted to stay all further proceedings pursuant to the possession notice dated 07.07.2021 directing the applicant to deposit Rs.80.00 lakhs in two installments directly with the 3rd respondent bank herein.

b) Subsequently, there was default in complying with the said orders. In the meanwhile, Crl.M.P.No.80 of 2021 was filed even prior thereto. Thereupon, M/s. Bitstreet Technologies Private Limited and others filed W.P.No.538 of 2022 before this court and the same was disposed by order dated 06.01.2022, wherein the petitioners were directed to deposit Rs. 50.00 lakhs as directed by the Tribunal on 05.08.2021 within a further period of four weeks from the date of orders and if such deposit were made, the respondent therein was directed not to take further steps pursuance to the notice of the Advocate commissioner

dated 28.12.2021, which was subject to the outcome of the S.A.No.125 of 2021.

c) The M/s. Bitstreet Technologies Private Limited availed credit facility in the form of overdraft for its business development on 07.03.2016, but the petitioner did not give any details to this respondent Bank, that the petitioner company is an entity registered under the provisions of the Micro, Small and Medium Enterprises Act. The respondent Bank initially sanctioned over draft of Rs.2.00 crores along with interest at the rate of 15% p.a. on 29.03.2016, which was enhanced to Rs.4.00 crores on 06.07.2016 and to Rs.6.00 crores on 26.7.2019.

d) However, the petitioner committed default in paying the monthly interest and regularizing the account in spite of several requests and demands and also committed default in the manner of carrying out the transactions and accordingly the account become an NPA even by 30.10.2019 in terms of the RBI guidelines issued vide Circular No.RBI/2015-16/01/DBR No.BP.BC.2/21.04.048/2015-2016 dated 01.07.2015. However, after awaiting a long period formally the account was classified as NPA on 30.04.2020. Thereafter, steps were initiated under the provisions of the SARFAESI Act for realization of the amount due under the subject Over Draft account.

e) Alongside, the 3rd respondent is advised that the restructuring facility announced by the Reserve Bank of India on 05.05.2021, is not relevant to the petitioner's company and the Reserve Bank of India Circular dated 27.3.2020 being referred to by the petitioner would have no application to the facts of the present case. At the outset the company committed default prior to 27.03.2020 and even thereafter and as such the said circular would be of no avail to the petitioner.

f) Alongside, the restructuring plan - Covid 2019 which is also called as Guaranteed Emergency Credit Line (GECL) is not applicable to the 3rd respondent Bank and the contentions raised in the present writ petition would also arise for consideration in S.A.No.125 of 2021 which is already pending. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD :

5. Counter affidavit filed by the 3rd respondent - Bank, in particular, Paras 3, 4 and 5, read as under:

"3. Before advertng the allegations made by the writ petitioner in the affidavit under reply, it is pertinent to state that the writ petition is liable to be dismissed for suppression of material fact and pursuing parallel remedies. In this context it is submitted that when this respondent No.3 Bank took steps under the provisions of

the Securitisation and Reconstruction of Financial Establishments Interest Act, 2002, (for short, 'the SARFAESI Act) M/s. Bitstreet Technologies Private Limited filed S.A.No.125 of 2021 before the Hon'ble Debt Recovery Tribunal-II, Hyderabad to set aside the proceedings initiated by the respondent No.3 Bank under the possession notice dated 07.07.2021, under Section 13 (4) of the SARFAESI Act and to set aside all/any other proceeding under the said Act, among other reliefs. The said S.A is pending. Along with the said S.A, the applicants therein filed I.A.No.1183 of 2021 in S.A.No.125 of 2021. The Hon'ble Debts Recovery Tribunal-II, Hyderabad granted interim stay of all further proceedings pursuant to the possession notice dated 07.07.2021 directing the applicant to deposit Rs.80.00 lakhs in two instalments, the first instalment of Rs.30.00 lakhs to be deposited within three weeks from the date of orders and the second instalment of Rs.50.00 lakhs to be deposited within two weeks thereafter directly with the respondent No.3 bank herein. It is also made it clear that in the event of failure the respondent bank was at liberty to proceed against the secured assets. These orders are dated 24.09.2021. A copy of the said order is filed herewith. It is further submitted that there was default in complying with the said orders. In the meanwhile, CrI.M.P.No.80 of 2021 was filed even prior thereto and vide orders dated 06.07.2021, the Hon'ble Chief Metropolitan Magistrate, Hyderabad passed orders on 28.12.2021 as there was default in payment of the very first instalment as also the second instalment. Thereupon,

M/s. Bitstreet Technologies Private Limited and others filed W.P.No.538 of 2022 in the Hon'ble High Court of Telangana at Hyderabad to set aside the proceedings initiated by the respondent No.3 Bank in pursuance of the advocate commissioner's notice dated 28.12.2021 fixing the time for 15 days to take physical possession of the property pursuant to the warrant in Crl.M.P.No.80 of 2021 issued by the Hon'ble Chief Metropolitan Magistrate, Hyderabad and consequently direct the Debts Recovery Tribunal - II, Hyderabad to dispose of the S.A.No.125 of 2021 on merits. This writ petition was disposed of by order dated 06.01.2022, wherein the petitioners were directed to deposit 50.00 lakhs as directed by the Hon'ble Tribunal on 05.08.2021 within a further period of four weeks from the date of orders and if such deposit were made, the respondent therein was directed not to take further steps pursuant to the notice of the Advocate commissioner dated 28.12.2021, which was subject to the outcome of the S.A.No.125 of 2021. A copy of the orders dated 06.01.2022 in W.P.No.538 of 2022 are filed herewith. It is submitted that pursuant to the orders in the writ petition, the amount is since deposited, we could not take any steps in view of the orders of stay. We have already filed our replies in S.A.No.125 of 2021 and the matter is thus pending. Suppressing all these facts, which are relevant for the purpose of disposal and consideration of the present writ petition, the present writ petition is filed only by applicant No.2 in S.A.No.125 of 2021/petitioner No.2 in W.P.No.538 of 2022. In this context it is also relevant to

submit that the borrower company is not a party before this Hon'ble Court.

4. It is submitted that M/s. Bitstreet Technologies Private Limited availed credit facility in the form of over draft for its business development on 07.03.2016. This is a company incorporated under the Companies Act. The petitioner did not give any details to this respondent Bank, that the petitioner company is an entity registered under the provisions of the Micro, Small and Medium Enterprises Act. This respondent Bank initially sanctioned over draft of Rs.2.00 crores along with interest @ 15% p.a. on 29.03.2016. This limit was enhanced to Rs.4.00 crores on 06.07.2016 and to Rs.6.00 crores on 26.7.2019. The security offered was hypothecation of Book Debts, mortgage of house property at Banjara Hills, Hyderabad, personal guarantees of the petitioner herein and three others. Rate of interest was reduced to 14% p.a. from 15% p.a. on 15.11.2017 consequent to the change of rate of interest as per the bank's norms. This respondent further submits that the petitioner committed default in paying the monthly interest and regularising the account inspite of several requests and demands from this respondent and also committed default in the manner of carrying out the transactions. As a matter of fact, when Over Draft facilities are availed by any entity from this respondent Bank, they are required to credit their business incoming amounts into the overdraft account. The said borrower company failed to pay the monthly interest and

regularise the account and accordingly the account becomes a NPA even by 30.10.2019, in terms of the RBI guidelines issued vide Circular No.RBI/2015-16/01/DBR No.BP.BC.2/21.04.048/2015-2016 dated July 01, 2015. However, after awaiting a long period formally the account was classified as NPA on 30.04.2020. Thereafter, steps were initiated under the provisions of the SARFAESI Act for realisation of the amount due under the subject Over Draft account. The same were also challenged by the petitioner and the borrower along with others before the Hon'ble Debts Recovery Tribunal and before this Hon'ble Court, the particulars of which are mentioned in this counter affidavit.

5. I humbly state that the writ petition of petitioner is liable to be dismissed on the aforesaid grounds alone."

6. Learned counsel for the petitioner put forth the following submissions.

- (1) The writ petition is maintainable under Article 226 of the Constitution of India, since the subject issue pertains to fundamental rights of the petitioner under Article 21 of the Constitution of India and also the infringement of constitutional rights of the petitioner.
- (2) The 3rd respondent – Bank primarily on 09.02.2021 declared the petitioner's loan account as

Non-Performing Asset (NPA), without any prior intimation and justification.

- (3) During the moratorium period no relief was provided by the 3rd respondent.
- (4) The benefit of moratorium as per Regulatory Package should be made available to the borrowers who were in-default as on 01.03.2020.
- (5) Period of moratorium during which there is a lockdown will not be reckoned by the lenders or financial institution for the computation of 90 days to classify the account as Non-Performing Asset, as per the Reserve Bank of India Guidelines.
- (6) The Circular dated 27.03.2020 issued by the Reserve Bank of India has not been implemented by the 3rd respondent.
- (7) The moratorium relief had been denied to the petitioner as applicable even to the loans which were in-default as on 01.03.2020.
- (8) The petitioner is under persistent threat by the 3rd respondent and its recovery agents who are threatening to realize the defaulted amount through secured assets.

- (9) Learned counsel for the petitioner seeks a direction to the 2nd respondent to initiate instructions and guidelines to the 3rd respondent to adhere to the Notification dated 27.03.2020 and Circular dated 17.04.2020 and Circular dated 05.05.2021.
- (10) Through the Reserve Bank of India Circular dated 27.03.2020, Covid-19 relief package was released for the business entities and the said notification provided for initiation of loan moratorium period wherein the customers of the financial institutions can defer the EMIs under the light of Covid-19 circumstances, and therefore, during such moratorium there will be no pressure on the borrowers to comply with the payments of the instalments as per the Circular dated 17.04.2020 which was brought by the RBI which restricted to declare any amount NPA as per the guidelines issued and through the Circular dated 05.05.2021 restructuring facility has been announced by the RBI. But, however, the 3rd respondent is not implementing the same in its letter and spirit.
- (11) The fundamental rights Right to Live with Dignity and Right to Livelihood of the petitioner is at stake, and

therefore, the learned counsel submits that the writ petition should be allowed as prayed for.

7. Learned counsel for the petitioner placed reliance on the following judgments.

- 1) The Delhi High Court Order dated 06.04.2020 in the matter of "ANANT RAJ LIMITED v. YES BANK LIMITED", wherein the Delhi High Court observed that the moratorium relief is applicable even to loans which were in default as on 01.03.2020, the Delhi High Court had indicated in the said order dated 06.04.2020 that the extension of the said moratorium relief should be given to all commercial borrowers as mentioned in the RBI package.
- 2) The Judgment of the Bombay High Court vide order dated 11.04.2020 in the matter of "TRANSCON SKYCITY PRIVATE LIMITED AND OTHERS v. ICICI BANK AND OTHERS", wherein the Bombay High Court has concurred with the view of the Delhi High Court in *Anant Raj's* case and mentioned with greater clarity that the benefit of moratorium as per the Regulatory Package shall be available to the borrowers who were in-default as on 01.03.2020. The Bombay High Court also affirmed that

the period of moratorium during which there is a lockdown will not be reckoned by the lender or financial institution for the computation of (90) days to the classified account as 'Non-Performing Asset' (NPA) as per the RBI guidelines.

- 3) The Judgment of the Apex Court dated 30.04.2020 passed in W.P.(Civil) Diary No.10955/2020 in the matter of **"KAMAL KUMAR KALIA v. UNION OF INDIA AND ANOTHER"**, whereunder the Apex Court directed the Reserve Bank of India to ensure implementation of the Circular dated 27.03.2020 in its letter and Spirit.

The learned counsel for the petitioner prayed for the writ petition to be allowed as prayed for.

8. Learned Senior Counsel Mr.Prabhakar, appearing on behalf of the 3rd respondent – Bank had put forth the following submissions:

- (1) The writ petition is neither maintainable in law nor on facts and the same is devoid of merits and is liable to be dismissed.
- (2) The petitioner has an alternative remedy by approaching the Debt Recovery Tribunal.

- (3) The petitioner is a chronic defaulter in repaying the loans which led to declare petitioner's account as 'NPA' on 09.02.2021.
- (4) The petitioner had been provided initial moratorium of six months by default in terms of guidelines of respondent No.2, though loan account of the petitioner was not regular.
- (5) The account of the petitioner was not eligible for further restructuring nor for ECLGS as his loan account was delinquent prior to 28.02.2020 and the same was intimated to the petitioner vide reply dated 11.08.2022.
- (6) The petitioner challenged the possession notice issued under Rule 8(1) of SARFAESI Act before the Debt Recovery Tribunal – II in Second Appeal No.211 of 2021 and obtained stay on a condition to deposit 25% in two instalments in I.A.No.177 of 2023 vide order dated 24.01.2023 that the petitioner failed to comply the orders of the Hon'ble Debt Recovery Tribunal till date and approached the Court by filing the present writ petition.

- (7) The petitioner is not entitled for the relief as prayed for in the present writ petition, because the 3rd respondent is a private bank.
- (8) The petitioner suppressed the true facts and the petitioner committed default and was declared 'NPA' in the year 2021 and not in the year 2020.

The learned counsel placed reliance on the Judgment of "FEDERAL BANK LIMITED v. SAGAR THOMAS AND OTHERS", reported in (2003) 10 Supreme Court Cases 733 and the learned counsel prayed for dismissal of the writ petition.

9. Learned counsel appearing on behalf of 2nd respondent – Reserve Bank of India, put forth submissions as follows:

- (1) The petitioner had not represented to the RBI with regard to the subject issue even as on date.
- (2) It is for the 3rd respondent to first examine the grievance of the petitioner and thereafter only the 2nd respondent's role would come into play.
- (3) Any borrowing arrangement is a commercial contract between the lender and the borrower and each lending

institution is best placed to assess the requirements of its customers and therefore the discretion is left to the lending institutions concerned.

- (4) The Reserve Bank of India only provides an enabling mechanism for the lenders to implement the resolution plans in terms of resolution frameworks. However, the discretion regarding extending the same in specific cases is left to the lending institutions concerned who were to decide as per their Board approved policies.
- (5) Finally, the petitioner had not addressed any representation to the 2nd respondent as on date and hence no Mandamus can be issued against the 2nd respondent and no in action can be alleged against the 2nd respondent.

DISCUSSION AND CONCLUSION :

10. In so far as the plea of the 3rd respondent placing reliance on the judgment of the Apex Court in “FEDERAL BANK LIMITED v. SAGAR THOMAS AND OTHERS”, reported in (2003) 10 Supreme Court Cases 733, that the writ petition is not maintainable against the 3rd Respondent is concerned, this Court opines that the said plea of the

learned counsel appearing on behalf of the 3rd respondent is not tenable as per the discussion arrived at below:-

The grievance of the petitioner in the present writ petition admittedly relates to enforcement of the Circulars dated 27.03.2020, 17.04.2020 and 05.05.2021 and the said Circulars having been issued to protect and preserve the economy of the country on account of the Covid-19 Pandemic, this Court opines that the issuance of the said Circulars is in the public interest, interest of the economy and the country and the enforcement thereof would also come within the purview of enforcement of a public duty under the Circular dated 27.03.2020. In terms of the RBI Circulars, this Court opines that a Right is created in the petitioner as a borrower from the Bank to avail a Moratorium which however had not been considered by the 3rd respondent.

The Apex Court in **ANANDI MUKTA SADGURU SHREE MUKTA v. V.R.RUDANI AND OTHERS**", reported in 1989 AIR 1607, in the judgment dated 21.04.1989 observed at para Nos. 6, 8 and 9 of the said Judgment, reads as under:

"(6) Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. 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".

(8) The words “any person or authority” used in Article 226 are 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.

(9) Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute.”

The Full Bench of the Apex Court in the Judgment dated 23.03.2021 in W.P.(C) No.476 of 2020 in “SMALL SCALE INDUSTRIAL MANUFACTURES ASSOCIATION (REGISTERED) v. UNION OF INDIA AND OTHERS”, in its conclusion observed as under:

“Writ Petition (Civil) No.955 of 2020 stands disposed of in terms of the statement made by Shri V.Giri, learned Senior Advocate appearing on behalf of the RBI that Circular dated 27.03.2020 shall be applicable to all banks, non-banking financial

companies, housing finance companies and other financial institutions compulsorily and mandatorily."

11. The order of the Apex Court dated 30.04.2020 passed in W.P.(Civil) Diary No.10955/2020 in the matter of "Kamal Kumar Kalia v. Union of India and another", wherein it is observed as under:

"However, learned counsel for the petitioner submits that the Circular dated 27.03.2020 issued by the Reserve Bank of India has not been implemented by the banks. In view of the above, we direct the Reserve Bank of India to ensure implementation of the Circular dated 27.03.2020 in its letter and spirit.

12. The Apex Court in the Judgment of "RAMESH AHLUWALIA v. STATE OF PUNJAB AND OTHERS", dated 13.09.2012 reported in 2012, Volume 12, SCC, page 331, wherein in the relevant paras it is observed as under:

"20. The terms "authority" used in Article 226, in the context, must receive a liberal meaning unlike the terms in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only

to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition." The aforesaid observations have been repeated and reiterated in numerous judgments of this

Court including the judgment in Unni Krishnan and Zee Telefilms Ltd.(supra), brought to our notice by the learned counsel for the Appellant Mr.Parikh.

In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent – institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions, i.e. providing education to children in their institutions throughout India."

13. The Apex Court in a judgement dated 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishan Industries vs. State of Himachal Pradesh referring to Whirlpool Corporation vs. Registrar of Trade Marks (reported in 1998 (8) SCC 1) at para 15 observed as under:

"The principles of law which emerge are that

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where

an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the

exercise of its writ jurisdiction, such a view would not readily be interfered with.

In the present case this Court opines that 15(i) (extracted above) are attracted and hence the present writ petition is maintainable and the plea of availability of alternative remedy is unsustainable.

14. Taking into consideration the aforesaid facts and circumstances of the case this Court is of the firm opinion that there is no inaction on behalf of the 2nd or 3rd respondent in considering the grievance of the petitioner as put forth in the present writ petition since admittedly as borne on record and as even admitted by the learned counsel appearing on behalf of the petitioner, the petitioner had not represented about his grievance as put forth in the present writ petition either to the 2nd respondent or 3rd respondent even as on date and therefore the relief as prayed for by the Petitioner cannot be granted in the present writ petition. But however duly considering the observations of the Apex Court at paras 6, 8 and 9 of the Judgment dated 21.04.1989, reported in 1989 AIR 1607 in "ANANDI MUKTA SADGURU SHREE

MUKTA Vs. V.R.RUDANI AND OTHERS” and also the observation’s at para 15(i) of the judgment of the Apex Court dated 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishan Industries vs. State of Himachal Pradesh and also the observations of the Apex Court in the various judgments (referred to and extracted above), it is however observed that it is open to the petitioner to submit a detailed representation raising all the pleas as put forth by the petitioner in the present writ petition to the 2nd respondent and 3rd respondent herein, within a period of two (02) weeks from the date of receipt of a copy of the order, and upon receipt of the said representation, the 2nd and 3rd respondents herein are directed to consider the same in accordance to law, and pass appropriate orders, within a period of two (02) weeks thereafter by affording reasonable opportunity of hearing to the petitioner, in conformity with principles of natural justice duly taking into consideration the Full Bench Judgment of the Apex Court dated 23.03.2021 passed in W.P.(C) No.476 of 2020 in “Small Scale Industrial Manufactures Association (Registered) v. Union of India and others”, and the order of the Apex Court

dated 30.04.2020 passed in W.P.(Civil) Diary No.10955/2020 in the matter of "Kamal Kumar Kalia v. Union of India and another" (referred to and extracted above) and also duly considering the observations of this Court in the present order and duly communicate the decision to the petitioner. With these observations the writ petition is disposed off. However, there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

SUREPALLI NANDA, J

Date: 29.11.2023

Note : L.R. Copy to be marked.
(B/o) *Yvkr.*