BINNY LTD. AND ANR. A

v.

V. SADASIVAN AND ORS.

AUGUST 8, 2005

[K.G. BALAKRISHNAN AND P. VENKATARAMA REDDI, JJ.] B

Constitution of India 1950

Article 226—Writ Remedy—Available against whom—Scope of Writ of mandamus—Whether available against private party—Held, writ remedy though pre-eminently a public law remedy is available against a private party if such party is discharging a public function—Scope of remedy is determined by the nature of the duty to be enforced, rather then the identity of the authority against whom it is sought. C

Article 226—Writ jurisdiction—Mandamus—Held, contractual duties cannot be enforced by writ of mandamus unless there is some public law element and the contractual power is used for a public purpose. D

Article 226—Writ jurisdiction, scope of—Enforcement of contractual duties—Services of respondents terminated as per the agreement of service by giving one months salary—Respondents filed writ petition in the High Court for a declaration that the service agreement and the order of termination was illegal and void—Relief granted by the High Court—On appeal, held, public policy principle cannot be applied in the matter of employment of workers by private persons on the basis of contracts entered into between them, unless a public element is involved—The decision of the employers to terminate services of the employees cannot be said to have any element of public policy and the remedy of the respondents is to seek redressal in civil law or labour law—Further held, it was not appropriate to construe those contracts of employment as being opposed to public policy under section 23 of the Contract Act, 1872 as clause 9 provide for an inquiry in case of termination for misconduct. E F G

Appellant company suspended operations of the mill as its premises got flooded with rain water and issued orders of termination to the respondents–employees as per clause 8 of their agreement of employment. Respondents filed writ petition for a declaration that clause 8 of the H

A agreement and order of termination thereunder was void and illegal and violative of section 23 of the Contract Act, 1872. They also contended that the service agreement was violative of Article 21 of the Constitution and the closure of the mill was against section 25 F and 25 N of the Industrial Disputes Act, 1947.

B The High Court held that clause 8 of the agreement was void and unenforceable as being violative of section 23 of the Contract Act, 1872 and gave the declaration sought for. Hence the present appeal by the appellant company.

C The appellant company contended that :

1. The jurisdiction under Article 226 could not be invoked against a private authority who was discharging its function on the basis of contract entered into by the employer and the employees.

D 2. As there was alternative efficacious remedy available to respondents, the discretionary jurisdiction under Article 226 could not be exercised. Remedy available to the workers was only ordinary civil litigation.

E 3. As they were neither public authorities nor their action involved public law element, remedy of writ of mandamus was not available.

4. The High Court was wrong in invoking extraordinary jurisdiction under Article 226.

F Allowing the appeal, the court

HELD : 1.1. Superior Court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this G jurisdiction High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III of the Constitution for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, this is a public law remedy and is available against a body or person performing H public law function. [429-A-C]

1.2 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, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. 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. The courts always retained the discretion *to withhold the* remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. [440-FH; 441-A-B; 430-B-C]

1.3 It is difficult to draw a line between the 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. [431-C-D]

Dwarkanath **v.** *Income Tax Officer,* **[1965] 3 SCR 536;** *Regina* **v.** *Panel on Take-overs and Mergers, Ex parte Datafin Plc.,* **(1987) 1 QB 815 and** *Council of Civil Services Union* **v.** *Minister for the Civil Service,* **(1985) AC 374, relied on.**

Wade and Forsyth, Administrative Law **(9th ed.) OUP p.621;** *de Smith, Woolf & Jowell, Judicial Review of Administrative Action* **(5th ed.) chapter 3 para 0.24;** *Halsbury's Laws of England,* **3rd ed. Vol. 30, p. 682, referred**

A to.

2.1 A distinction has always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. The interpretation and implementation of clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226. There must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties. [430-E-F; 441-F-H; 442-B-C]

2.2 A contract would not become statutory simply because it is for construction of public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or Government authorities at all levels is increasingly employing contractual techniques to achieve its regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principle cannot be used to enforce the contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably. [441-C-E]

2.3 The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under section 23 of the Contract Act. The remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments. [441-E-F; 442-B-C]

Praga Tools Corporation v. *C.A. Imanual,* [1969] 1 SCC 585; *VST Industries Ltd.* v. *VST Industries Workers' Union,* [2001] 1 SCC 298; *General*

Manager, Kisan Sahkar Chini Mills Limited, Sultanpur, UP **v.** *Satrughan Nishad,* **[2003] 8 SCC 639;** *Federal Bank Ltd.* **v.** *Sagar Thomas,* **[2003] 10 SCC 733;** *State of U.P.* **v.** *Bridge & Roof Co.,* **[1996] 6 SCC 22 and** *Kerala State Electricity Board* **v.** *Kurien E. Kalathil,* **[2000] 6 SCC 295, followed.**

Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. **v.** *V.R. Rudani,* **[1989] 2 SCC 691;** *Central Inland Water Transport Corporation Ltd.* **v.** *Brojo Nath Ganguly,* **[1986] 3 SCC 156 and** *Delhi Transport Corporation* **v.** *DTC Mazdoor Congress,* **[1991] Supp. 1 SCC 600, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1976 of 1998.

From the Judgment and Order dated 2.12.97 of the Madras High Court in W.P. No.11862 of 1996.

WITH

C.A. No. 4839 of 2005.

Dr. Rajiv Dhawan, Ms. Indira Jaisingh, (NP), Shasidharan, V. Balaji, Ms. A. Radhakrishnan, Ms. T.S. Santhi, P.N. Ramalingam, Bharat Sangal, Ms. Sangeeta Panicker and R.R. Kumar for the Appellants.

Jamshed Cama, S. Guru Krishna Kumar, Mrs. Srikala, C.K.M. Singh, S.R. Setia, K. Gulati, Ms. Seema Sundd, Mrs. Manik Karanjawala for the Respondents.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. : Leave granted in SLP(C) No. 6016/2002 and the appeal is heard along with Civil Appeal No. 1976/1998. In these two appeals, common questions of law arise for consideration.

In Civil Appeal No. 1976/1998, narration of brief facts is necessary to understand whether the reliefs as prayed for by respondents 2 to 36 could have been granted by the High Court. Each of the respondents was working as member of the management staff of the appellant company, which was engaged in the manufacture of cloth. The respondents were originally

A appointed in the appellant-company in various jobs such as Clerks, Machine Overlookers, Supervisors, etc. According to these respondents, from 1981 onwards, the appellant company started insisting on them to be designated as management staff with the object of avoiding payment of overtime wages. The respondents signed an agreement with the Management acceding to the B request of the appellant company, but they continued to perform the same duties as before. The appellant company contended that there was incessant rain in the night of 12.6.1996 when the entire company premises was flooded with water and it caused serious damage to the plant and machinery and finished-stock and the appellant company stayed all the operations and informed the Commissioner of Labour that water had entered the mill C premises causing serious damage to the plant and machinery and management had no other alternative but to suspend the operations of the mill. Order of termination was issued to the respondents invoking Clause 8 of the agreement dated 12.3.1991 entered into by the respondents with the appellant company. As per clause 8 of the agreement, the Management had a right to terminate D the services without assigning any reason by just giving one month's notice or salary in lieu thereof. Appellant contended that all these respondents were drawing salary of more than Rs. 1,600 per month and they were not 'workmen' under the Industrial Disputes Act, 1947. The respondents filed Writ petition No. 11862/1996 for a Declaration that Clause 8 of the Agreement read with Order of termination dated 31.7.1996 issued by the E appellant company was void and illegal and violative of Section 23 of the Indian Contracts Act. The respondents had also contended that the agreement entered into by the respondents with the appellant company was violative of Article 21 of the Constitution and the closure of the mill was against Section 25F and 25N of the Industrial Disputes Act, 1947, and they sought for a F direction to reinstate them in service with continuity of service and all consequential benefits. The appellant-company contended that the Writ Petition was not maintainable as the appellant company was a private body; therefore, the question of granting the declaration sought would not arise. It was also contended that there was alternative efficacious remedy available to them and therefore, the discretionary jurisdiction under Article 226 of the G Constitution of India should not be exercised. The appellant company also contended that the respondents were not entitled to seek a Writ of Mandamus as the appellant was a private company and the decision of the appellant company to terminate the services of the respondents is not liable to be the subject matter of judicial review. According to the appellant company, they H were neither 'public authorities' nor their action involved public law element,

for which remedy of Writ of Mandamus was available. The Writ Petition was considered by the Division Bench of the Madras High Court. The Court held that Clause 8 of the agreement entered into between the respondents 2 to 36 and the appellant was void and unenforceable against the respondents as being violative of Section 23 of the Indian Contracts Act. Reliance was placed on *Central Inland Water Transport Corporation Ltd.* v. *Brojo Nath Ganguly,* [1986] 3 SCC 156 and the High Court ultimately held that in the proceedings under Article 226, the respondents herein would not be entitled to get the relief of reinstatement and back wages and the court granted only a declaratory relief to the effect that the termination order was illegal and the respondents had to work out an appropriate remedy before the appropriate forum.

In the appeal arising out of SLP (Civil) No. 6106/2000, the appellant was employed as a Corporate Legal Manager with the 1st respondent company, which is a private limited company engaged in the manufacture of chemicals. The services of the appellant were terminated with effect from 1.6.1998. The appellant sought for the issue of a Writ or other appropriate Order to quash or set aside the Termination Order dated *1.6.1998.* He also sought for a Writ of Mandamus directing the respondents to allow the appellant to report for work in the same grade and pay-scale to which he was originally employed. The respondent company contended that the Writ Petition was not maintainable as the respondent company was a private employer and the appellant was working under a private contract of employment. The Writ Petition filed by the appellant was referred to a larger Bench in view of the important question of law raised by the parties and the Full Bench of the Bombay High Court elaborately considered the question and held that the appellant was not entitled to the remedy sought for and the Writ Petition was not maintainable. The Full Bench held that by terminating the services of the appellant, the Company was not discharging any public function and, therefore, the action sought to be challenged by the appellant was not amenable to the jurisdiction of judicial review.

We heard the learned Counsel on either side. Reference was made to various decisions on the subject.

The contention of the appellant in Civil Appeal No. 1976/1998 was that the decision of the High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution was incorrect and that the Court should not

A have interfered with the decision of a private limited company and that the powers under Article 226 cannot be invoked against a private authority who is discharging its functions on the basis of the contract entered into between the employer and the employees. It was contended that the remedy available to the workers was only ordinary civil litigation. It was also contended that
B there was no public law element in the action taken by the appellant against the employees and, therefore, the public law remedy of judicial review had no application.

Employees who are respondents in that appeal contended that their contract with the appellant was *per se* illegal and void as it was opposed to
C Section 23 of the Indian Contracts Act. It was argued that under similar circumstances, this court had given direction to redress the grievances of the employees. Reference was made to *Central Inland Water Transport Corporation Ltd.* v. *Brajo Nath Ganguly,* [1986] 3 SCC 156 and it was contended by the respondent employees that the decision to terminate their
D services was based on a specific clause in the contract which by itself is void in view of Section 23 of the Indian Contracts Act. Therefore, the High Court was justified in giving a declaratory relief in their favour.

In Civil Appeal arising out of SLP (Civil) No. 6016 of 2002, the appellant contended that the action of the respondent was illegal and void
E and his services should not have been terminated by the employer. According to the appellant, even if the decision-making authority is a private body or not an 'authority' coming within the purview of Article 12 of the Constitution, on wider issues, the jurisdiction of the High Court under Article 226 can be invoked to set aside the illegal act and to protect the fundamental rights of
F the aggrieved party. The learned Counsel for the respondent representing the company submitted that the appellant had been rightly discharged from the services and the company being a private authority was not amenable to the writ jurisdiction of the High Court. It was submitted that under the powers of judicial review by the High Court, a public action alone could have been challenged and the decision to terminate the service of an employee on the
G ground that his services were unsatisfactory does not have any public law element and, therefore, the High Court has rightly rejected the contentions advanced by the appellant therein.

We have carefully considered the various contentions urged by the
H parties on either side. In order to decide the question, it is necessary to trace

the history of law relating to judicial review of public actions. A

Superior Court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction High Court can issue to any person or authority, any direction or order or writs for enforcement of B any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing public law function. Before considering the scope and ambit of public law remedy in the light of certain C English decisions, it is worthwhile to remember the words of *Subha Rao J.* expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in *Dwarkanath* v. *Income Tax Officer,* [1965] 3 SCR 536 at pages 540-41:

> "This article is couched in comprehensive phraseology and it ex D facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood E in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and F complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution of India with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country G like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

The Writ of Mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the H

A normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the sovereign to subordinates. In England, in early times, it was made generally available through the Court of King's Bench, when the Central Government had little administrative machinery of its own. Early B decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporation which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the C interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary D contractual remedies such as damages, injunction, specific performance and declaration. In the *Administrative Law (Ninth Edition)* by *Sir William Wade and Christopher Forsyth,* (Oxford University Press) at page 621, the following opinion is expressed:

> "A distinction which needs to be clarified is that between public E duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there F are other adequate remedies. This difference is brought out by the relief granted in cases of *ultra vires*. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are G inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases."

Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, H 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 the 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. In a book on *Judicial Review of Administrative Action* (Fifth Edn.) by *de Smith, Woolf & Jowell* in Chapter 3 para 0.24, it is stated thus:

> "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. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.
>
> Public functions need not be the exclusive domain of the state.

> Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognise the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Non-governmental bodies such as these are just as capable of abusing their powers as is government."

In *Regina* v. *Panel on Take-overs and Merges, Ex parte Datafin Plc. And Another,* (1987) 1 Queen's Bench Division 815, a question arose whether the Panel of Take-overs and Mergers had acted in concert with other parties in breach of the City Code on Take-overs and Mergers. The panel dismissed the complaint of the applicants. Though the Panel on Take-over and Mergers was purely a private body, the Court of Appeal held that the supervisory jurisdiction of the High Court was adaptable and could be extended to any body which performed or operated as an integral part of a system which performed public law duties, which was supported by public law sanctions and which was under an obligation to act judicially, but whose source of power was not simply the consent of those over whom it exercised that power; that although the panel purported to be part of a system of self-regulation and to derive its powers solely from the consent of those whom its decisions affected, it was in fact operating as an integral part of a governmental framework for the regulation of financial activity in the City of London, was supported by a periphery of statutory powers and penalties, and was under a duty in exercising what amounted to public powers to act judicially; that, therefore, the court had jurisdiction to review the panel's decision to dismiss the applicants' complaint; but that since, on the facts, there were no grounds for interfering with the panel's decision, the court would decline to intervene.

Lloyd L.J., agreeing with the opinion expressed by *Sir John Donaldson M.R.* held :

> "I do not agree that the source of the power is the sole test whether a body is subject to judicial review, nor do I so read Lord Diplock's speech. Of course the source of the power will often, perhaps usually, be decisive. If the source of power is a statute, or subordinate

> legislation under a statute, then clearly the body in question will be subject to judicial review. If at the end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review.

In that decision, they approved the observations made by *Lord Diplock in Council of Civil Service Unions* v. *Minister for the Civil Service,* (1985) A.C. 374, 409 wherein it was held :

> "...for a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of 'the prerogative.' Where this is the source of decision-making power, the power is confined to executive officers of central as distinct from local government and in constitutional practice is generally exercised by those holding ministerial rank"

It is also pertinent to refer to *Sir John Donaldson M.R.* in that *Take-Over Panel* case :

> "In all the reports it is possible to find enumerations of factors giving rise to the jurisdiction, essential or as being exclusive of other factors. Possibly the only essential elements are what can be described as a public element, which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to is jurisdiction."

The above guidelines and principles applied by *English* courts cannot be fully applied to Indian conditions when exercising jurisdiction under Article 226 or 32 of the Constitution. As already stated, the power of the High Courts under Article 226 is very wide and these powers have to be exercised

A by applying the constitutional provisions and judicial guidelines and violation, if any, of the fundamental rights guaranteed in Part III of the Constitution. In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the courts had been reluctant to exercise the powers of judicial review and whenever the powers were exercised as B against private employers, it was solely done based on public law element involved therein.

This view was expressly stated by this Court in various decisions and one of the earliest decisions is *The Praga Tools Corporation* v. *Shri C.A. Imanual and Others,* [1969] 1 SCC 585. In this case, the appellant company C was a company incorporated under the Indian Companies Act and at the material time the Union Government and the Government of Andhra Pradesh held 56 per cent and 32 per cent of its shares respectively. Respondent workmen filed a writ petition under Article 226 in the High Court of Andhra Pradesh challenging the validity of an agreement entered into between the D employees and the company, seeking a writ of mandamus or an order or direction restraining the appellant from implementing the said agreement. The appellant raised objection as to the maintainability of the writ petition. The learned Single Judge dismissed the petition. The Division Bench held that the petition was not maintainable against the company. However, it granted a declaration in favour of three workmen, the validity of which was E challenged before this Court. This Court held at pages 589-590 as under:

> "....that the applicant for a mandamus should have a legal and specific right to enforce the performance of those dues. Therefore, the condition precedent for the issue of mandamus is that there is F in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or any inferior tribunal requiring him or them to do is particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority G on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the H statutes authorizing their undertakings. A mandamus would also lie

against a company constituted by a statute for the purpose of fulfilling public responsibilities [Cf. Halsbury's Laws of England (3rd Ed.), Vol.II p 52 and onwards]. A

The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company." B C

It was also observed that when the High Court had held that the writ petition was not maintainable, no relief of a declaration as to invalidity of an impugned agreement between the company and its employees could be granted and that the High Court committed an error in granting such a declaration. D

In *VST Industries Limited* v. *VST Industries Workers' Union & Anr.*, [2001] 1 SCC 298, the very same question came up for consideration. The appellant-company was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, *Rajendra Babu, J.*, (as he then was), held as follows : E F

"7. In *de Smith, Woolf and Jowell's Judicial Review of Administrative Action,* 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law, e.g., the activities by private bodies may be governed by the standards of public when its decisions are subject to duties conferred by statute or when by virtue of the function it is performing or possible its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to G H

public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarized the position with the following propositions :

(1) The test of a whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2) The principles of judicial review *prima facie* govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function.

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

Applying the above principles, this Court held that the High Court rightly held that it had no jurisdiction.

Another decision on the same subject is *General Manager, Kisan Sahkar Chini Mills Limited, Sultanpur, UP* v. *Satrughan Nishad and Ors.*, [2003] 8 SCC 639. The appellant was a cooperative society and was engaged in the manufacture of sugar. The respondents were the workers of the appellant and they filed various writ petitions contending that they had to be treated as permanent workmen. The appellant challenged the maintainability of those writ petitions and applying the principles enunciated in *VST Industries'* case (supra), it was held by this Court that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function.

In *Federal Bank Limited* v. *Sagar Thomas & Ors.*, [2003] 10 SCC 733, the respondent was working as a Branch Manager of the appellant Bank. He was suspended and there was a disciplinary enquiry wherein he was found guilty and dismissed from service. The respondent challenged his dismissal by filing a writ petition. The learned Single Judge held that the Federal Bank was performing a public duty and as such it fell within the definition of "other authorities" under Article 12 of the Constitution. The appellant bank preferred an appeal, but the same was dismissed and the decision of the Division Bench was challenged before this Court. This Court observed that a private company carrying on business as a scheduled bank cannot be termed as carrying on statutory or public duty and it was therefore held that any business or commercial activity, whether it may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money which do have an impact on the economy of the country in general, cannot be classified as one falling in the category of those discharging duties or functions of a public nature. It was held that that the jurisdiction of the High Court under Article 226 could not have been invoked in that case.

The counsel for the respondent in Civil Appeal No. 1976 of 1998 and for the appellant in the civil appeal arising out of SLP(Civil) No. 6016 of 2002 strongly contended that irrespective of the nature of the body, the writ petition under Article 226 is maintainable provided such body is discharging a public function or statutory function and that the decision itself has the flavour of public law element and they relied on the decision of this Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors.* v. *V.R. Rudani & Ors.*, [1989] 2 SCC 691.

In this case, the appellant was a Trust running a science college affiliated to the Gujarat University under Gujarat University Act, 1949. The teachers working in that college were paid in the pay scales recommended by the University Grants Commission and the college was an aided institution. There was some dispute between the University Teachers Association and the University regarding the fixation of their pay scales. Ultimately, the Chancellor passed an award and this award was accepted by the State Govt. as well as the University and the University directed to pay the teachers as per the award. The appellants refused to implement the award and the respondents filed a writ petition seeking a writ of mandamus and in the writ petition the appellants contended that the college managed by the Trust was not an "authority" coming within the purview of Article 12 of the Constitution and therefore the writ petition was not maintainable. This plea was rejected and this Court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and 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.

The above decision cannot be applied to the facts of this case. It is important to note that the college was an aided institution and imparting education to students. These facts are specifically stated in paragraph 15 of the judgment. It was in this background that this Court held that there was a public law element in the matter involved therein and that the college authorities were bound to pay salary and allowances to the teachers. The said case did not emanate from a contract of employment between the workers and the private body. For that reason, the *Rudani's* case cannot be applied to the facts of the present case.

Two other decisions relied upon by the appellant to argue that the writ petition was maintainable are the decisions reported in [1986] 3 SCC 156 *Central Inland Water Transport Corporation Ltd. & Anr.* v. *Brojo Nath Ganguly & Anr.* (supra) and in [1991] Supp (1) SCC 600 *Delhi Transport Corporation* v. *DTC Mazdoor Congress & Ors. The Central Inland* case was extensively relied on. In this case, the appellant corporation was a Govt.

company incorporated under the Companies Act and the majority of the shares were held by the Union of India and remaining shares were held by the State of West Bengal. Each of the respondents in the two appeals was in the service of the said company. A notice under Rule 9(1) was served on them and their services were terminated with immediate effect by paying three months pay. They filed writ petitions before the High Court and the Division Bench allowed the same. The appellant corporation filed an appeal before this Court. The main thrust of the argument of the respondents was that Rule 9(1) of *Central Inland Water Transport Corporation Limited* (Service, Discipline and Appeal) Rules, 1979 was void and illegal and violative of Article 14 of the Constitution and it was also void in view Section 23 of the Contract Act. This Court held that Rule 9(1) was violative of Article 14 as it was against the public policy as the employer had absolute power to terminate the service of an employee giving three months notice. This Court held that this was an absolute arbitrary power given to the corporation and termination of the respondent employees by invoking Rule 9(1) was illegal.

It is important to understand the real *dicta* laid down in the background of the facts involved therein. The appellant was a public sector undertaking and in that view of the matter it was held that the contract of employment and the service rules which gave absolute and arbitrary power to terminate the service of the employees were illegal. It may be also noticed that the termination clause was referred to in the context of the contract read as a whole and no enquiry was contemplated under the rules even in the case of allegation of misconduct and it was held to be violative of the principles of natural justice. It was also held to be violative of Section 23 of the Contract Act as it was opposed to public policy to terminate the services of the employee without conducting an enquiry even on the ground of misconduct. The public policy principles can be applied to the employment in public sector undertaking in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labour activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of private sector. The service rules and regulations which are applicable to govt. employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner. Therefore, the decision rendered by this Court in *Central Inland* case is of no assistance to the respondents in Civil

A Appeal No. 1976 of 1988 or to the appellants in the civil appeal arising out of SLP (Civil) No. 6016 of 2002.

In the second case also , namely, the *Delhi Transport Corporation* v. *DTC Mazdoor Congress & Ors.*, [1991] Supp. (1) SCC 600, the appellant
B was a public sector undertaking and the main controversy was about the term "other authorities" under Article 12 of the Constitution. Both in *Central Inland* and *DTC* cases, the decision of the public sector undertaking was under challenge and the question raised was whether the principles of natural justice and fairness are to be applied. It was held that this Court has got jurisdiction to consider this question by invoking the principles of judicial
C review. But it would be noticed that in both the cases, it was a public sector undertaking coming within the purview of "other authorities" under Article 12 of the Constitution.

In this context, it must be noted that the High Court purported to apply
D the ratio in the above two decisions on the assumption that all termination simplicitor clauses providing for termination on giving notice will be per se invalid. But the High Court has not examined clauses (8) & (9) of the Agreement between Management and the Staff of Binny Limited in their entirety. Clause (9) contemplates an inquiry in a case of termination for misconduct. Thus there is a provision for natural justice in case of termination
E involving misconduct and stigma. In such a case, whether the ratio of the decisions in *DTC* and *Central Inland* cases would apply or not, was not examined by the High Court. This is an additional reason why the declaration by the High Court should not be allowed to stand.

F 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
G 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
H 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. According to *Halsbury's Laws of England* 3rd ed. Vol. 30, page-682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit." There cannot be any general definition of public authority or public action. The facts of each case decide the point.

A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or Government authorities at all levels is increasingly employing contractual techniques to achieve its regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce the contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably.

The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in *State of U.P.* v. *Bridge & Roof Co.,* [1996] 6 SCC 22 and also in *Kerala State Electricity Board* v. *Kurien E. Kalathil,* [2000] 6 SCC 295. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

A Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a 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 B 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.

We are unable to perceive any public law element in the termination of the employees by the appellant in Civil Appeal No. 1976 of 1998 and the C remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments especially in view of the disputed questions involved as regards the status of employees and other matters. So also, in the civil appeal arising out of SLP(Civil) No. 6016 of 2002, the writ petition has been rightly dismissed by the High Court. We see no merit in the contention advanced by the appellant therein. The High Court D rightly held that there is no public law element and the remedy open to the appellant is to seek appropriate relief other than judicial review of the action taken by the respondent company.

In the result, we set aside the declaration ordered by the High Court and E allow Civil Appeal No. 1976 of 1998 to the extent indicated above. Civil Appeal arising out of SLP (Civil) No. 6016 of 2002 is dismissed leaving open the right of the appellant to seek redressal of his grievance before other appropriate forum.

K.G. Appeal allowed.