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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 11 January 2024
Pronounced on: 18 January 2024

\+ W.P.(C) 3667/2023 & CM APP No. 1019/2024

APOORVA Y K ..... Petitioner

Through: Mr. Abhik Chimni, Mr. Saharsh Saxena, Mr. Anant Khajuria & Ms. Riya Pahuja, Mr. Mukul Kulhari, Advocates.

versus

SOUTH ASIAN UNIVERSITY ..... Respondent

Through: Mr. Sandeep Kumar Mahapatra, Mr. Mvinmayee Sahu Mahapatra, Mr. Tribhuvan, Mr. Sugam Kr. Jha, Mr. Raghav Tandon, Mr. Harsh Raj, Advocates.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% 18.01.2024

1. The petitioner registered for the LLM course with the respondent South Asian University (SAU, also referred to as "the University") on 25 October 2021. The course was due to be completed in May 2023.

2. On 26 November 2022, the Proctor of the University issued a Show Cause Notice to the petitioner, alleging that the petitioner had, on 23 November 2022,

> "1. Entered the office of Associate Dean of Students Dr. Navnit Jha without his permission and persistently demanded in a threatening language complete revocation of the disciplinary action against certain students,
> 2. Entered a Mathematics class of Director (A&E) Prof. Pankaj Jain at about 10:30 AM without his permission and wanted to address the Mathematics students. When he requested you to meet him after the class, you shouted at him in these words, "Can I know your name?" When he informed you that it was the last week of the semester studies, you used such abusive words as "forget about your ****ing[1] studies".
> 3. Forcefully and without permission of the Acting Registrar entered his office when he was meeting officials of the University.
> 4. Attempted to force the Acting Registrar at the said other officials to do what they were not bound to do (such as to completely revoke disciplinary action against certain students and to offer their resignation) or omit from doing (such as discussion before considering necessary action as per the Rules, Regulations and Bye Laws) under the said SAU Rules, Regulations and Bye Laws.
> 4. Made office of the said Acting Registrar totally dysfunctional/paralysed by forcefully and without his permission entering it and by attempting as aforesaid at paras. 3 and 4, respectively.
> 5. Made the said Acting Registrar captive for several hours to again force him to do what he was not bound to do, as aforesaid, or omit from doing, as aforesaid, thereby did not allow him to leave his office for home until the availability of assistance from the Host country[2]."

The petitioner was directed to explain, in writing, within a week of receipt of the said Show Cause Notice as to why disciplinary action be not taken against her as per the SAARC Intergovernmental Agreement, Rules, Regulations and Bye-Laws, including the Headquarters Agreement between the University and India.

[1] The asterisks represent a well known four-letter expletive which, rather surprisingly, has been reproduced in the Show Cause Notice. However, propriety demands that I refrain from doing so.
[2] Section 2(k) of the South Asian University Act, 2008 defines India as the "host country".

3. The petitioner submitted her response to the above Show Cause Notice on 9 December 2022. All allegations in the Show Cause Notice were categorically denied. The reply asserted that, on 22 November 2022, Ammar Ahmed ("Ammar"), a first-year M.A. Sociology student in the University had had seizures and become unconscious, and had to be hospitalised. During hospitalisation, Ammar suffered a cardiac arrest. He was resuscitated and had to be intubated, in which condition he remained in the ICU at the Primus Hospital in New Delhi. The petitioner and other students of the University were distressed at the fact that no official of the University visited Ammar at the Hospital. They were also concerned about the cost of the treatment that Ammar would have to be provided. In the interregnum, Ammar was rusticated. With respect to the individual allegations against her, the petitioner denied that she, either herself or any other students, had ever sought to intimidate Dr. Jha or Prof. Pankaj Jain, and merely requested them to intervene in the matter of Ammar, as he was in the ICU. The allegation that she had, herself or with other students, held the Acting Registrar captive or compelled any of the school authorities to do any act which they ought not to have done, was also categorically denied. It was submitted that they had never paralysed the office of the Acting Registrar or made it dysfunctional. Though the petitioner acknowledged having visited the office of the Acting Registrar, she submitted that it was merely to discuss the concerns of the students, and not to indulge in any coercive tactics. As the entire incident had arisen out of the concerns of the students especially *vis-à-vis* Ammar, the petitioner prayed that

the proceedings be not continued. In the event that the respondent desired, nonetheless, to continue the proceedings, she prayed that the principles of natural justice and due process be followed.

4. On 6 January 2023, the petitioner received an email from the Deputy Registrar (Administration) in the office of the respondent, informing her that a High Powered Committee ("HPC", hereinafter) had been constituted and requiring her to be present before the HPC on 13 January 2023 for consideration of the petitioner's representation/response to the Show Cause Notice issued to her.

5. The petitioner responded on 10 January 2023, requesting to be informed about the constitution of the HPC, the powers vested in it and the procedural rules that applied to it as, in the event of the reply filed by the petitioner having been found to be unsatisfactory, the Bye Laws applicable to the respondent required the constitution of a proctorial committee to enquire into it, in accordance with the provisions of the Bye Laws.

6. Though the petitioner never received a response to her representation, she appeared before the HPC on 13 January 2023, as scheduled.

7. On 17 February 2023, the following Office Order was issued by the Proctor:

"No. SAU/Proctor/2023/1382 17 February 2023

OFFICE ORDER

WHEREAS you have submitted your representation on 09 December 2022 and against the show cause notice issued to you on 26 November 2022.

WHEREAS your said representation was considered by an impartial High-Powered Committee constituted by the competent authority with the Proctor as its Chairperson and Deans of the Faculties of Economics, Life Sciences and Biotechnology, Mathematics and Computer Science and Social Sciences as its Members and the Deputy Registrar (Administration) as its Member-Secretary.

WHEREAS the said Committee heard you and afforded you a reasonable opportunity to present your case and defend you on 13 January 2023.

WHEREAS the said Committee has recommended your expulsion from, and out of bounds of, the South Asian University.

WHEREAS the said Committee has further recommended that you may be debarred from joining any programme of the University in future.

WHEREAS the Intergovernmental Agreement for the Establishment of South Asian University, 2007, Rules, Regulations and Bye Laws remain in force, including Rules 10.3.1 and 29.3 and Regulation 5.1.7.

WHEREAS the Headquarters Agreement between the Government of the Republic of India and the South Asian University, 2008, remains in force, including its Article III.3 and VIII.

WHEREAS the competent authority has accepted the said recommendations.

NOW, THEREFORE, you are said representation stands disposed of in terms as aforesaid.

You are required to vacate the hostel within seven days of the receipt of this Order.

This issues with approval of the competent authority.

Sd/-
Proctor"

8. The petitioner submitted a representation dated 26 February 2023 to the Proctor, requesting that the decision dated 17 February 2023 be reconsidered. She reiterated her denial of the allegations against her and undertook to abide by all rules, regulations and Bye Laws applicable to the University.

9. By Office Order dated 2 March 2023, the Proctor, purportedly "with approval of the competent authority" rejected the petitioner's representation dated 26 February 2023.

10. The petitioner has, therefore, approached this Court by means of the present writ petition, under Article 226 of the Constitution of India, seeking issuance of writs of *certiorari* setting aside the Office Orders dated 17 February 2023 and 2 March 2023.

11. The writ petition points out that the SAU finds place at S. No. 12 of the list of Central Universities appended to the University Grants Commission Act (UGC Act), 1956 and is, therefore, a "University" as defined in Section 2(f)[3] of the UGC Act. Further, it is submitted that the SAU was established under the South Asian

[3] (f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

University (SAU) Act, 2008, Section 29[4] of which insulates the SAU from legal proceedings only in respect of acts done in good faith or intended to be done in pursuance of any of the provisions of the SAU Act. It is not open, therefore, to the SAU to contend that it is immune from Article 226 of the Constitution of India.

12. Inasmuch as the expulsion of the petitioner from the University has been effected in violation of the Proctorial Committee Rules and Regulations (PCRR), which required fair opportunity, including recording of evidence, to be undertaken by the Proctorial Committee before arriving at a decision on the disciplinary action to be taken against the student, the writ petition avers that the University cannot be said to have acted in good faith. It is pointed out, in this regard, that no opportunity of fair hearing was granted to the petitioner by the University before the Office Order dated 17 February 2023 was issued and that the order was issued in breach of the procedure prescribed in the PCRR.

13. The writ petition also makes reference to the United Nation's (Privileges and Immunities) Act, 1947 ("the UN Act"). Section 3[5] of

[4] 29. **Protection of action taken in good faith.** – No suit or other legal proceeding shall lie against the University, any of its officers or employees for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act.

[5] **3. Power to confer certain privileges and immunities on other international organisations and their representatives and officers. –** Where in pursuance of any international agreement, convention or other instrument it is necessary to accord to any international organisation and its representatives and officers privileges and immunities in India similar to those contained in the provisions set out in the Schedule, the Central Government may, by notification in the Official Gazette, declare that the provisions set out in the Schedule shall, subject to such modifications, if any, as it may consider necessary or expedient for giving effect to the said agreement, convention or other instrument, apply *mutatis mutandis* to the international organisation specified in the notification and its representatives and officers, and thereupon the said provisions shall apply accordingly and, notwithstanding anything to the contrary contained in any other law, shall in such application have the force of law in India.

the UN Act empowers the Central Government to, by notification, extend the protection provided in the Schedule to the UN Act to international organisations. However, this protection, submits the writ petition, is available only in respect of acts done in accordance with the procedure established by law. Else, the citizen can always invoke Article 226 of the Constitution of India. Inasmuch as the impugned expulsion of the petitioner from the University was effected without following the procedure prescribed in that regard, it is contended that the University cannot claim immunity under Section 3 of the UN Act.

14. The PCRR, contends the writ petition, was violated as, firstly, the petitioner was never provided copies of any complaints against her, secondly, the petitioner was never confronted with any evidence against her, and, thirdly, the petitioner was denied the opportunity of cross-examining any witness on whom the University relied.

15. The petitioner contends that approaching the University authorities with grievances cannot be regarded as an act of indiscipline or a violation of the Rules, Regulations or Bye Laws governing the University. The impugned orders, it is submitted, had been passed without considering the facts of the case and without proper application of mind.

16. The University has filed a counter-affidavit. The HPC, it is contended, was the Proctorial committee constituted in accordance with Rules 6.2.1, 7, 10.3.1 and 29.3 and Regulation 5.1.7 of the Rules

and Regulations applicable to the University. Though the University has placed its Rules and Regulations on record, I am unable to find Rule 6.2.1. Rule 7, with its various clauses, deal with the Dean, his appointment and his powers. Rule 10.3.1 deals with the manner in which the Proctor is to be appointed. Rule 29.3 empowers the President of the University to expel any student for indiscipline. Regulation 5.1.7 empowers the President to exercise all powers, not expressly mentioned in the Regulations, as are necessary or incidental for the smooth functioning of the University. The counter-affidavit asserts that the petitioner had been given an adequate opportunity to represent herself, including an opportunity of personal hearing, and was expelled only on her representation being found to be unsatisfactory. It is further asserted that the principles of natural justice were scrupulously followed.

17. The counter-affidavit also questions the maintainability of the writ petition. It is asserted that the SAU is an intergovernmental University established consequent to an agreement executed among Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, as members of the South Asian Association for Regional Cooperation (SAARC) in 2007. This 2007 Agreement, it is asserted, is the highest law of the University, and the intergovernmental Rules, Regulations and Bye Laws are, in descending reference, subordinate to it. Reliance has also been placed on the Preamble to the SAU Rules which, while recognising that the member States of the SAARC may be required to establish the SAU by national legislations, further provides that, "if such national

legislations come in conflict with the Agreement and other agreed upon Inter-Governmental legal instruments of the University, the provisions of the latter shall prevail".

18. It is further asserted that the SAU is not "state" within the meaning of Article 12[6] of the Constitution of India. Ergo, it is not amenable to the writ jurisdiction of this Court. Further, Section 6[7] of the South Asian University (SAU) Act vests management of the affairs of the SAU in a Governing Board consisting of two members from each of the member States of SAARC. As such, the affairs of the SAU are not controlled only by the Government of India.

19. The reliance, by the petitioner, on the UGC Act, is alleged to be misplaced. It is contended, in the counter-affidavit, that Article 7 of the Agreement dated 4 April 2007 among the member countries of the SAARC required the degrees granted by the University to be recognised by the UGC, which is why the University figures in the Schedule to the UGC Act. The University does not receive any grant from the UGC, unlike other Central Universities. Mere grant of recognition to the University as a Central University does not divest it of its character as a non-state, non-profit, self-governing international educational institution. Proceeding against the respondent in the teeth

[6] **12. Definition. –** In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

[7] **6. Governing Board. –**

(1) There shall be a Governing Board of the University consisting of two members from each of the Member States of the SAARC and the President of the University:

Provided that until the first Governing Board is formed, the Inter-Governmental Steering Committee of the SAARC shall function as an interim Governing Board.

of the provisions of the agreement, it is submitted, would violate Article 51(c)[8] and 253[9] of the Constitution of India.

20. The University invokes Section 14[10] of the SAU Act, which confers, on the University as well as its President and members of the academic staff, privileges and immunities notified by the Central Government under Section 3 of the UN Act. In conformity with Section 14 of the SAU Act, it is pointed out that the Ministry of External Affairs (MEA), *vide* Gazette Notification dated 15 January 2009, issued under Section 3 of the UN Act, accorded, to the officials of the University, as well as to the University itself, immunities in the following terms:

> "And whereas, in pursuance of the decision of the Inter-governmental Steering Committee of the SAARC, it is expedient to accord the Project office and officials thereof, and the South Asian University, its President, Registrar and Faculty members the privileges and immunities in India similar to those contained in Articles II, III, IV, V, VI and VII of the Schedule to the United Nation's (Privileges and Immunities) Act, 1947. Now therefore, the Central Government in exercise of the powers conferred by Section 3 of the said Act, hereby declare that the provisions of Articles II, III. IV, V, VI and VII of the Schedule to the said Act shall apply mutatis mutandis to the Project Office and officious thereof, and the South Asian University, its President, Registrar and Faculty Members for giving effect to the said Headquarters Agreement."

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[8] **51. Promotion of international peace and security. –** The State shall endeavour to –

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(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another;

[9] **253. Legislation for giving effect to international agreements. –** Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

[10] **14. Privileges and immunities of President and academic staff. –** The University, the President and the members of the academic staff and, where applicable, their dependents or members of the family, shall enjoy such privileges and immunities as the Central Government may notify under Section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947).

The extension of this immunity to the University as well as to its officials, it is contended, precludes the petitioner from instituting the present writ petition. The immunities extended to the University have, it is pointed out, been maintained by the latest Gazette Notification dated 13 May 2021.

21. The invocation of Section 29 of the SAU Act, by the petitioner, is alleged to be misconceived. The power to regulate and enforce discipline among students and to take disciplinary measures in that regard, as well as the power to do all acts necessary, incidental or conducive to the promotion of the objects of the University, it is pointed out, stand expressly conferred by clauses (xix) and (xxviii) of Section 8[11] of the SAU Act. The University also places reliance on Rules 29.1 to 29.4[12] of the SAU Rules. In view thereof, it is contended that it is not open to the petitioner to urge that, in deciding

[11] **8. Powers of University. –** The University shall have the following powers, namely: —

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(xix) to regulate and enforce discipline among the students and the employees, and to take such disciplinary measures in this regard as may be deemed by the University to be necessary;

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(xxviii) to do all such other acts as may be necessary, incidental or conducive to the promotion of all or any of the objects of the University.

[12] 29.1 All powers relating to discipline and disciplinary action in relation to students shall vest in the President.

29.2 The President may delegate all or any of his/her powers as he/she deems proper to the Propter and such other person or persons as he/she may specify in this behalf.

29.3 Without prejudice to the generality of his – her powers relating to the maintenance of discipline and taking such action in the interest of maintaining discipline as may be seen to him/her appropriate, the President may, in exercise of its/her aforesaid powers, order or direct that any student or students be expelled from the Department, Faculty RESEARCH Centre/Institution maintained by the University; or the for a stated period, rustic or it; or not, for a stated period, admitted to a course or courses of study in any such Department, faculty or Research Centre/Institution maintained by the University; or be fined sum that may be specified; or be debarred from taking any examination or examinations for one or more semester; or that the results of student or students concerned in the examination or examinations in which he/she/they have appeared be cancelled or withheld.

29.4 The Deans of the Faculties, Pages of Regional campuses, the Institutions, Departments, Research Centres or any other academic units in the University shall have the authority to exercise all such disciplinary powers over the students in their respective jurisdictions as may be necessary to the proper conduct of such academic units.

to expel her from the University, the University did not act in good faith.

22. It is further contended that the University has, in place, a graded Grievance Redressal Mechanism, which students are required to utilise to redress their legitimate grievances. A Standing Committee for Redressal of Grievances of Students (SCORGS) has also been constituted. The Bye Laws applicable to the University require that all issues be resolved through discussions and negotiation, via the Grievance Redressal Mechanism. Resort to violence, intimidation and coercive measures is completely proscribed. Clearly, contends the University in the counter-affidavit, the petitioner did not avail the prescribed mode of redressal of grievances and had, therefore, admittedly acted in violation of the Bye Laws governing the University. Even on this sole ground, it is contended that the writ petition merits dismissal.

23. The counter affidavit also annexes various complaints stated to have been received against the petitioner, addressed by the Acting Registrar, the Director (Admissions and Examinations) and the Associate Dean. Inasmuch as the behaviour of the petitioner is stated to have vitiated the academic atmosphere of the University, the counter-affidavit asserts that the petitioner is not entitled to any relief from this Court. Insofar as the condition of Ammar was concerned, the counter-affidavit states that he was responsible for his own condition, as he was a bipolar schizophrenic who had consumed

marijuana. The University could not, therefore, be blamed for Ammar's condition.

24. Apropos the manner in which the HPC proceeded with the matter, para 28 of the counter-affidavit deserves to be reproduced in full:

> "28. It is stated that the process of hearing before the said HPC commenced by way of communication dated 06.01.2023, by which the Petitioner were called upon to be present before the said Committee on 13.01.2023, present her case. It is pertinent to mention that on 13.01.2023, the Petitioner appeared before the HPC and was heard in detail and was afforded a reasonable opportunity to present her case in defence. The entire hearing was video recorded. On 27.01.2023, the HPC heard the complainant's (the Acting Registrar, Director (Admissions and Examinations) and Associate Dean of Students) and video recorded the hearing. It is stated that on 29.01.2023, the HPC recorded the statements of two Senior Associate Professors, the said Chairperson, Department of International Relations, the said Assistant Director (Housekeeping and Student Services), one Assistant Professor, one Faculty Assistant and three students who had witnessed the incident of 23 November 2022 in the Acting Registrar's office. The HPC found that the evidence was conclusive that the Petitioner shouted at Director (Admissions and Examinations) Professor Pankaj Jain in such abusive words as "forget about your ****ing studies" and that she was found guilty in respect of three complaints against. It is submitted that the proceedings before HPC had been concluded with the submission of its recommendations not only that the punishment of expulsion may be given to the petitioner but also that the petitioners may be debarred from joining any programme of the University in future. The competent authority has accepted the recommendations of the HPC and the Petitioner has been informed accordingly on 17.2.2003."

It is further contended that the decision to expel the petitioner from the University, taken on 2 March 2023, had received prior approval of the Acting President, as required by Rule 29 of the SAU Rules.

25. It is further contended in the counter-affidavit that the petitioner could have taken recourse to arbitration, as envisaged by Section 27[13] of the SAU Act.

26. The counter-affidavit prays, therefore, that the writ petition be dismissed.

Rival Contentions

27. I heard Mr. Abhik Chimni learned counsel for the petitioner and Mr. Sandeep Kumar Mahapatra, learned counsel for the respondent-University at length. Many of the submissions advanced by them already stand captured in the recital hereinabove. They are not, therefore, being repeated.

Preliminary objections by Mr. Mahapatra

28. Besides reiterating the objections to the maintainability of the writ petition, and the contention that the University enjoys immunity from legal action, Mr. Mahapatra relied on para 40 of the judgment of the Constitution Bench in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***[14], pointing out that the SCO is not "State" or "other authority" within the meaning of Article 12 of the Constitution of India, as it is not subject to Indian governmental control. Insofar as

[13] **27. Procedure of arbitration in disciplinary cases against students. –**Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal for Arbitration and the provisions of sub-sections (2), (3) and (4) of Section 26 shall, as far as may be, apply to the reference made under this section.

[14] **(2002) 5 SCC 111**

the public function of education that the SAU discharges, Mr. Mahapatra submits that it is not merely Indians, but outsiders, too, who can benefit therefrom. The ACU cannot, therefore, be analogised to an Indian educational institution such as, for example, the Jawahar Lal Nehru University. The very existence of the SAU is to implement the Agreement.

29. Insofar as the UN Act is concerned, Mr. Mahapatra refers me to Sections 3[15] in Article II, Section 11(a)[16] in Article IV and Sections 18(a)[17] and 20[18] in Article V of the Schedule to the said Act, the benefit of which stands extended to the SAU and its officials. In this context, Mr. Mahapatra also cites the decision in ***G. Bassi Reddy v. International Crops Research Institute***[19].

30. Mr. Mahapatra further relies on para-20 of the decision in ***Sanjaya Bahel v. U.O.I.***[20]**.**

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[15] 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

[16] 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

[17] 18. Officials of the United Nations shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

[18] 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

[19] **(2003) 4 SCC 525**

[20] **2019 SCC OnLine Del 8551**

Submissions of Mr. Chimni

31. Apart from the submissions contained in the pleadings of the petitioner, Mr. Chimni, first addressing the aspect of maintainability and availability of immunity to the University, submits that Section 4(1) and (2)[21] of the SAU Act itself clarifies that the University is capable of being sued. Section 3[22] of the SAU Act, he points out, accords, to all provisions of the Agreement, set out in the Schedule to the SAU Act, the force of law. Clause 4[23] of Article 1 of the Agreement, which forms part of the Schedule to the SAU Act, includes, in the legal capacity of the University, the right to sue and to be sued in its name. The University, submits Mr. Chimni, cannot claim immunity from being sued under Article 226 of the Constitution of India.

32. Apropos the MEA Notification dated 15 January 2009, Mr. Chimni points out that the clause of the Notification, to which Mr. Mahapatra referred, itself clarifies that the Notification was extending, to the SAU and its officials, the benefit of the provisions in Articles II to VII of the Schedule to the UN Act only "for giving effect to the said Headquarters Agreement". He submits that the benefit of

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[21] **4. Incorporation of South Asian University**. –
(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established, for the purposes of giving effect to provisions of the Agreement, a University to be called as South Asian University.
(2) The University shall be a body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

[22] **3. Provisions of Agreement to have force of law. –** Notwithstanding anything contrary contained in any other law, the provisions of the Agreement set out in the Schedule shall have the force of law in India.

[23] 4. The legal capacity of the University shall, inter alia, include:—
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(c) to sue and be sued in its name;

Article VIII of the Schedule to the UN Act has not been extended to the University, so that the University cannot seek the benefit of Sections 29 and 30[24], which are comprised in Article VIII. In this context, Mr. Chimni places reliance on paras 5 to 9, 19 and 30 of the judgment of the Supreme Court in ***Dr. Janet Jeyapaul v. S.R.M. University***[25]. In support of his contention that, despite the provision for arbitration, the petitioner would be entitled to maintain the writ petition, Mr. Chimni relies on ***Whirlpool Corpn. v. Registrar of Trade Marks***[26] and ***Harbanslal Sahnia v. Indian Oil Corporation Ltd***[27] .

33. Thus, submits Mr. Chimni, it cannot be said that the writ petition is not maintainable. Nor can the University claim immunity from the consequences of its actions.

34. On merits, Mr. Chimni has placed reliance on the PCRR. It starts with the following recital:

> "The Competent Authorities of the South Asian University (hereafter 'SAU') has empowered the Proctorial Committee (hereafter 'Committee') to investigate cases of student indiscipline in violation of the student code of conduct on complaint by students , faculty members, SAU administration and/or on *Suo motu* cognizance by the Committee."

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[24] 29. The United Nations shall make provisions for appropriate modes of settlement of:
(a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.
30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

[25] **(2015) 16 SCC 530**

[26] **(1998) 8 SCC 1**

[27] **(2003) 2 SCC 107**

The competent authority to investigate into alleged indiscipline by students is, therefore, the Proctorial Committee, and not a High Powered Committee. As the constitution of the HPC had not been disclosed by the University in its email dated 6 January 2023, whereby the petitioner was called to attend personal hearing, the petitioner, in her response, desired to know the Constitution of the HPC. Besides, points out Mr. Chimni, the petitioner denied every allegation against her, point by point. Additionally, in paras 3 and 5 of her response, the petitioner specifically desired any evidence, submitted to the University on which it was relying against the petitioner, to be shared with her. She also sought permission to cross examine any witness who would testify against her before the HPC.

35. Besides the fact that the University did not accede, or even respond to, these requests, Mr. Chimni submits that the enquiry was held in violation of the stipulated procedure contained in the PCRR. He has placed reliance on the following Regulations contained in the PCRR:

> "**Inquiry**
>
> 1) The enquiry may be conducted by the Committee/a Sub-Committee as considered appropriate by the Proctor in each case.
>
> 2) The students will have the right to defend them before the Committee/Sub- Committee.
>
> 3) The Committee/Sub- Committee may summon any student with the general notice of 24 hours or with an extraordinarily notice of 12 hrs.
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> **Evidence**

The Committee/Sub- Committee shall follow the rules of evidence admissible in administrative enquiries and shall admit all evidence, including documentary evidence and evidence by witness, probative of the case before it.

Appeal

- The student may appeal to the Grievance Redressal Committee (GRC) of the SAU only after the announcement of the punishment.
- The GRC can reject the appeal of the student/can recommend the change in punishment/withdrawal of the punishment.
- Only the SAU President is the final authority to accept or reject the recommendations of the GRC."

36. The decision on the petitioner's appeal, submits Mr. Chimni, stands completely vitiated, as it has been again signed by the Proctor. In effect, therefore, it was an appeal from Caesar to Caesar.

37. To support his submission that the impugned decisions against the petitioner had been taken in violation of the principles of natural justice, Mr. Chimni relies on the judgments of the Supreme Court in ***K.L. Tripathi v. State Bank of India***[28] and the decision of this Bench in ***Master Singham v. D.O.E.***[29] Any action which entails civil consequences, submits Mr. Chimni, has necessarily to be informed by natural justice, for which purpose he relies on para 66 of ***Mohinder Singh Gill v. Chief Election Commissioner***[30], para 15 of ***Canara***

[28] **(1984) 1 SCC 43**
[29] **256 (2019) DLT 562**
[30] **(1978) 1 SCC 405**

Bank v. Debasis Das[31] and para 8 of the judgment of the High Court of Punjab and Haryana in ***V.P. Gupta v. U.O.I.***[32]

Submissions of Mr. Mahapatra in reply

38. The submissions of Mr. Mahapatra, in reply on the merits of the matter, have already been noted while recording the submissions contained in the rival pleadings. Interestingly, however, Mr. Mahapatra specifically relied on para 28 of the counter-affidavit filed by the University to justify the impugned decision.

Analysis

A. Is the writ petition maintainable?

39. Several summers have passed since the Supreme Court exorcised the ghost of Article 12 from the realm of Article 226. The once hallowed notion that a writ under Article 226 can be issued only against a "State" or "other authority" under Article 12 is now both archaic and anachronistic. The extant position in law is that a writ can be issued even against a private individual, *provided* the private individual discharges a public function, and the writ is for enforcement of *that* public function.

[31] **(2003) 4 SCC 557**
[32] **ILR (2006) 1 P & H 31: (2005) 6 SLR 483 (DB)**

40. Decisions on the point are numerous. ***Binny*** enunciated the proposition thus:

> "29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd edn., Vol. 30, p. 682,
>
> > "1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those 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."

41. In ***Andi Mukta Sadguru Shree Muktajiee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani***[33], the Supreme Court expressed the principle thus:

> "**17.** There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of

[33] **(1989) 2 SCC 691**

public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

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19. The scope of this article has been explained by Subba Rao, J., in ***Dwarkanath v. ITO***[34] :

> "This article is couched in comprehensive phraseology and it ex-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 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 complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution 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 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."

20. *The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32.* Article 226 confers power on

[34] **(1965) 3 SCR 536**

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.*

21. In ***Praga Tools Corpn. v. C.A. Imanual***[35] this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed:

> "*It is, however, not necessary that the person or the authority 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 statutes authorising 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 Edn., Vol. II, p. 52 and onwards.)"

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." [Judicial Review of Administrative Action, 4th Edn., p. 540] 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."

[35] **(1969) 1 SCC 585 : (1969) 3 SCR 773**

(Emphasis Supplied)

42. In ***Janet Jeyapaul***, the Supreme Court was dealing with an appeal filed by the appellant Janet Jeyapaul ("Janet" hereinafter) against the judgment of the Division Bench of the High Court of Madras. Janet was working as a lecturer in the Department of Biotechnology in the SRM University ("SRMU"). She was served with two memos dated 14 and 22 February 2012 alleging misdemeanour by her. She submitted detailed responses to the said memos. She was then served a notice dated 4 April 2012 stating that she would be relieved from the services of the University with effect from 4 May 2012.

43. Janet challenged the said notice before the High Court of Madras by way of Writ Petition 12676/2012. A learned Single Judge of the High Court allowed the writ petition by order 8 April 2013, quashed Janet's termination and directed the University to reinstate her in service. The University appealed to the Division Bench which, by judgment dated 4 July 2013, allowed the appeal on the ground that, as SRM University was neither a "State" nor an "other authority" within the meaning of Article 12 of the Constitution of India, it was not amenable to the writ jurisdiction of the High Court. The Division Bench did not go into the merits of the case.

44. Janet appealed to the Supreme Court.

45. The Supreme Court appointed an eminent Senior Counsel to assist it in determining the issue in controversy. Paras 15 to 24 and 27 to 30 of the judgment of the Supreme Court deserved to be reproduced thus:

> "15. Submissions of Mr Harish Salve were manifold. According to him, while deciding the question as to whether the writ lies under Article 226 of the Constitution of India against any person, juristic body, organisation, authority, etc., the test is to examine in the first instance the object and purpose for which such body/authority/organisation is formed so also the activity which it undertakes to fulfil the said object/purpose.
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> 16. Pointing out from various well-known English commentaries such as de Smith's Judicial Review, 7th Edn.; H.W.R. Wade and C.F. Forsyth's Administrative Law, 10th Edn.; Michael J. Beloff in his article "Pitch, Pool, Rink,……Court?: Judicial Review in the Sporting World", 1989 Public Law 95; English decisions ***Breen v. Amalgamated Engg. Union***[36], ; ***Reg.* v. *Panel on Take-overs and Mergers, ex p Datafin Plc***[37]; ***Evans* v. *Newton***[38] **;** and of this Court in ***Andi Mukta*** and ***Zee Telefilms Ltd.* v. *Union of India***[39] , Mr Harish Salve submitted that perusal of these authorities/decisions would go to show that there has been a consistent view of all the learned authors and the courts all over the world including in India that the approach of the Court while deciding such issue is always to test as to whether the body concerned is formed for discharging any "*public function*" or "*public duty*" and if so, whether it is actually engaged in any public function or/and performing any such duty.
>
> 17. According to the learned counsel, if the aforesaid twin test is found present in any case then such person/body/organisation/authority, as the case may be, would be subjected to writ jurisdiction of the High Court under Article 226 of the Constitution.
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> 18. The learned Senior Counsel elaborated his submission by pointing out that the expression "*any person or authority*" used in Article 226 is not confined only to statutory authorities and instrumentalities of the State but may in appropriate case include any other person or body performing "*public function/duty*". The

[36] **(1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)**
[37] **QB 815 : (1987) 2 WLR 699 : (1987) 1 All ER 564 (CA)**
[38] **1966 SCC OnLine US SC 1 : 15 L Ed 2d 373 : 382 US 296 (1966**
[39] **(2005) 4 SCC 649**

learned counsel urged that emphasis is, therefore, always on activity undertaken and the nature of the duty imposed on such authority to perform and not the form of such authority. According to Mr Harish Salve, once it is proved that the activity undertaken by the authority has a public element then regardless of the form of such authority it would be subjected to the rigor of writ jurisdiction of Article 226 of the Constitution.

19. The learned counsel then urged that in the light of several decisions of this Court, one cannot now perhaps dispute that "*imparting education to students at large*" is a "*public function*" and, therefore, if anybody or authority, as the case may be, is found to have been engaged in the activity of imparting education to the students at large then irrespective of the status of any such authority, it should be made amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

20. The learned counsel further pointed out that the case in hand clearly shows that Respondent 1, a juristic body, is engaged in imparting education in higher studies and what is more significant is that Respondent 1 is conferred with a status of a "*Deemed University*" by the Central Government under Section 3 of the UGC Act. These two factors, according to Mr Harish Salve, would make Respondent 1 amenable to writ jurisdiction of the High Court under Article 226 because it satisfies the twin test laid down for attracting the rigor of writ jurisdiction of the High Court.

21. In reply, Mr Sanjay R. Hegde, learned Senior Counsel for Respondent 1 while supporting the impugned order ***S.R.M. University* v. *Janet Jeyapaul***[40], contended that if this Court holds that Respondent 1 is amenable to writ jurisdiction then apart from employees even those who are otherwise dealing with Respondent 1 would start invoking writ jurisdiction which, according to the learned counsel, would open the floodgate of litigation in courts.

22. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by Mr Harish Salve.

23. To examine the question urged, it is apposite to take note of what De Smith, a well-known treatise, on the subject "*Judicial Review*" has said on this question [See *de Smith's Judicial Review*, 7th Edn., p. 127 (3-027) and p. 135 (3-038)].

[40] **2013 SCC OnLine Mad 3887**

"AMENABILITY TEST BASED ON THE SOURCE OF POWER

The courts have adopted two complementary approaches to determining whether a function falls within the ambit of the supervisory jurisdiction. First, the court considers the legal source of power exercised by the impugned decision-maker. In identifying the 'classes of case in which judicial review is available', the courts place considerable importance on the source of legal authority exercised by the defendant public authority. Secondly and additionally, where the 'source of power' approach does not yield a clear or satisfactory outcome, the court may consider the characteristics of the function being performed. This has enabled the courts to extend the reach of the supervisory jurisdiction to some activities of non-statutory bodies (such as self-regulatory organisations). We begin by looking at the first approach, based on the source of power."

"JUDICIAL REVIEW OF PUBLIC FUNCTIONS

The previous section considered susceptibility to judicial review based on the *source of the power*: statute or prerogative. The courts came to recognise that an approach based solely on the source of the public authority's power was too restrictive. Since 1987 they have developed an additional approach to determining susceptibility based on by the type of *function performed* by the decision-maker. The 'public function' approach is, since 2000, reflected in the Civil Procedure Rules: Rule 54.1(2)(*a*)(*ii*), defines a claim for judicial review as a claim to the lawfulness of 'a decision, action or failure to act in relation to the exercise of a public function'. (Similar terminology is used in the Human Rights Act, 1998 Section 6(3)(*b*) to define a public authority as 'any person certain of whose functions are functions of a public nature', but detailed consideration of that provision is postponed until later). As we noted at the outset, the term 'public' is usually a synonym for 'governmental'."

(emphasis supplied)

24. The English Courts applied the aforesaid test in ***Reg.* v. *Panel***, wherein Sir John Donaldson, MR speaking for three-Judge Bench of Court of Appeal (Civil Division), after examining the various case laws on the subject, held as under: (All ER p. 564*g-h*)

"In determining whether the decisions of a particular body were subject to judicial review, the court was not confined to considering the source of that body's powers and duties but

could also look to their nature. Accordingly, if the duty imposed on a body, whether expressly or by implication, was a public duty and the body was exercising public law functions the court had jurisdiction to entertain an application for judicial review of that body's decisions."

xxxxx

27. This issue was again examined in great detail by the Constitution Bench in ***Zee Telefilms Ltd.* v. *Union of India*** **[*Zee Telefilms Ltd.* v. *Union of India*[41]**, wherein the question which fell for consideration was whether the Board of Control for Cricket in India (in short "BCCI") falls within the definition of "*State*" under Article 12 of the Constitution. This Court approved the ratio laid down in ***Andi Mukta*** *case* but on facts of the case held, by majority, that BCCI does not fall within the purview of the term "State". This Court, however, laid down the principle of law in paras 31 and 33 as under: (***Zee Telefilms Ltd.*** *case)*

"*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.

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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."

28. It is clear from a reading of the ratio decidendi of the judgment in ***Zee Telefilms Ltd.*** firstly, it is held therein that BCCI discharges public duties and secondly, an aggrieved party can, for this reason, seek a public law remedy against BCCI under Article 226 of the Constitution of India.

[41] **(2005) 4 SCC 649**

> 29. Applying the aforesaid principle of law to the facts of the case in hand, we are of the considered view that the Division Bench of the High Court erred in holding that Respondent 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution. In other words, it should have been held that Respondent 1 is subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.
>
> 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."

46. Thus, in the above passages, the Supreme Court has not only held that a writ petition under Article 226 would lie against a private body discharging public function, for enforcement of the said public functions, but also clarified that imparting of education was in fact a public function.

47. The concept of "public function", in this context, was further examined by the Supreme Court in its judgment in ***K.K. Saksena v. International Commission on Irrigation and Drainage***[42] (authored by A.K. Sikri, J.)**,** which analysed a whole host of earlier decisions of the Supreme Court on the point. In that case, the appellant K.K.

[42] **(2015) 4 SCC 670**

Saksena ("Saksena" hereinafter) was appointed as Secretary in the office of the respondent-International Commission on Irrigation and Drainage (ICID). His services were terminated. He challenged the order of termination by way of a writ petition before this Court. On the aspect of maintainability, Saksena contended that ICID was "State" within the meaning of Article 12 of the Constitution of India and that, even if ICID was not "State" it was nonetheless amenable to Article 226 as it was discharging public functions. ICID contested the maintainability of the writ petition.

48. A learned Single Judge of this Court dismissed the writ petition on the ground that ICID was neither a State nor was discharging any public function and was not, therefore, amenable to the writ jurisdiction of this Court. The Division Bench of this Court upheld the decision of the learned Single Judge.

49. Saksena appealed to the Supreme Court. Before the Supreme Court, Saksena conceded that ICID was not "State" within the meaning of Article 12. He, however, contended that ICID was nonetheless amenable to Article 226, as it was performing a public duty.

50. The Supreme Court took note, among others, of para 40 of the decision in ***Pradeep Kumar Biswas***, on which Mr. Mahapatra has specifically placed reliance before me.

51. Having done so, the Supreme Court proceeded to held thus, in paras 32 to 34, 38 to 40, 42, 43 and 45 to 53 of the report:

> 32. *If the authority/body can be treated as "State" within the meaning of Article 12 of the Constitution of India, indubitably a writ petition under Article 226 would be maintainable against such an authority/body for enforcement of fundamental and other rights.* Article 12 appears in Part III of the Constitution, which pertains to "fundamental rights". *Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III.* Article 226 of the Constitution, which deals with powers of the High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.
>
> 33. In this context, when we scan through the provisions of Article 12 of the Constitution, as per the definition contained therein, the "State" includes the Government and Parliament of India and the Government and legislature of each State as well as "all local or other authorities within the territory of India or under the control of the Government of India". It is in this context the question as to which body would qualify as "other authority" has come up for consideration before this Court ever since, and the test/principles which are to be applied for ascertaining as to whether a particular body can be treated as "other authority" or not have already been noted above. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, *under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be "State" under Article 12. Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also "for any other purpose". Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject-matter which can be dealt with under this article is also wider in scope.*
>
> 34. In this context, the first question which arises is as to what meaning is to be assigned to the expression "any person or authority". By a catena of judgments rendered by this Court, it now stands well grounded that the term "authority" used in Article 226

has to receive wider meaning than the same very term used in Article 12 of the Constitution. This was so held in ***Andi Mukta Sadguru***. …

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38. In ***K. Krishnamacharyulu* v. *Sri Venkateswara Hindu College of Engg.***[43] , this Court again emphasised that :

> "*4. … when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in performance of their duties*."

In such a situation, *remedy provided under Article 226 would be available to the teachers. The aforesaid two cases pertain to educational institutions and the function of imparting education was treated as the performance of public duty, that too by those bodies where the aided institutions were discharging the said functions like government institutions and the interest was created by the Government in such institutions to impart education.*

39. In ***G. Bassi Reddy*** the Court was concerned with the nature of function performed by a research institute. The Court was to examine if the function performed by such research institute would be public function or public duty. Answering the question in the negative in the said case, the Court made the following pertinent observations:

> "28. … Although, it is not easy to define what a public function or public duty is, *it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity*. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities."

[43] **(1997) 3 SCC 571 : 1997 SCC (L&S) 841**

Merely because the activity of the said research institute enures to the benefit of the Indian public, it cannot be a guiding factor to determine the character of the Institute and bring the same within the sweep of "public function or public duty". The Court pointed out :

> "28. … In ***Praga Tools Corpn.*** this Court construed Article 226 to hold that the High Court could issue a writ of mandamus 'to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest'. The Court also held that :
>
> > '*6.* … an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See ***Sohan Lal* v. *Union of India***[44])'"

40. Somewhat more pointed and lucid discussion can be found in ***Federal Bank Ltd.* v. *Sagar Thomas***[45], inasmuch as in that case the Court culled out the categories of body/persons who would be amenable to writ jurisdiction of the High Court. This can be found in para 18 of the said judgment, specifying eight categories, as follows :

> "18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

42. Reading of the categorisation given in ***Federal Bank Ltd.***, one can find that three types of private bodies can still be amenable to writ jurisdiction under Article 226 of the Constitution, which are

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[44] AIR 1957 SC 529 : 1957 SCR 738
[45] (2003) 10 SCC 733

mentioned at Sl. Nos. (*vi*) to (*viii*) in para 18 of the judgment extracted above.

43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that *if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights*. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, *even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.*

45. *On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued*. However, as noted in ***Federal Bank Ltd.***, *such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.*

46. In the present case, *since ICID is not funded by the Government nor is it discharging any function under any statute, the only question is as to whether it is discharging public duty or positive obligation of public nature.*

47. It is clear from the reading of the impugned judgment that the High Court was fully conscious of the principles laid down in the aforesaid judgments, cognizance whereof is duly taken by the High Court. Applying the test in the case at hand, namely, that of ICID, the High Court opined that it was not discharging any public function or public duty, which would make it amenable to the writ jurisdiction of the High Court under Article 226. The discussion of the High Court is contained in paras 34 to 36 and we reproduce the same for the purpose of our appreciation:

"34. On a perusal of the preamble and the objects, it is clear as crystal that the respondent has been established as a scientific, technical, professional and voluntary non-governmental international organisation, dedicated to enhance the worldwide supply of food and fibre for all people by improving water and land management and the productivity of irrigated and drained lands so that there is appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. It is required to consider certain kind of objects which are basically a facilitation process. *It cannot be said that the functions that are carried out by ICID are anyway similar to or closely related to those performable by the State in its sovereign capacity. It is fundamentally in the realm of collection of data, research, holding of seminars and organising studies, promotion of the development and systematic management of sustained irrigation and drainage systems, publication of newsletter, pamphlets and bulletins and its role extends beyond the territorial boundaries of India.* The memberships extend to participating countries and sometimes, as bye-law would reveal, ICID encourages the participation of interested national and non-member countries on certain conditions.

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

enforce any statutory obligation or such obligations of public nature casting positive public obligation upon it.

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

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

49. There is yet another very significant aspect which needs to be highlighted at this juncture. *Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction.* In ***Praga Tools Corpn.***, as already discussed above, this Court held that *the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character*. That was a case where the employee concerned was seeking reinstatement to an office.

50. We have also pointed out above that in ***Election Commission of India v. Saka Venkata Rao***[46] this Court had observed that administrative law in India has been shaped on the

[46] **AIR 1953 SC 210**

lines of English law. There are a catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In ***R.(Hopley)* v. *Liverpool Health Authority***[47] (unreported)(30-7-2002), *Justice Pitchford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are : (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.*

51. Even in ***Andi Mukta Sadguru*** , which took a revolutionary turn and departure from the earlier views, this Court held that "any other authority" mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasised that if the rights are purely of a private character, no mandamus could issue."

52. From the above lucid analysis of the law by Sikri J in ***K.K. Saksena***, the following clear principles emerge:

(i) An authority which is "State" under Article 12 of the Constitution of India is *ipso facto* amenable to Article 226, for enforcement of its public functions, involving any fundamental or other right, but not for enforcement of any private right of a petitioner.

(ii) The definition of "State" in Article 12 is intended for enforcement of fundamental rights contained in Part III of the Constitution.

[47] **2002 EWHC 1723 (Admin) : 2002 Lloyd's Med Rep 494**

(iii) Any private body or authority is also subject to the writ jurisdiction of the Court under Article 226, if, either, it is substantially funded by the State, or if

(a) it is under a positive legal obligation (as opposed to a purely voluntary exercise) to discharge a public function or public duty, and

(b) the petitioner seeks enforcement of that public function or public duty.

(iv) A public function is one which is closely related to the functions that the State performs in its sovereign capacity.

(v) Imparting of education is, *ex facie*, a public function. There is an element of public interest in the duties performed by teachers who impart education, which is a fundamental right of citizens. Article 226 would, therefore, be available to teachers in an educational institution, to ventilate their legal rights. (*Ipso facto, in my view, this principle would equally – if not more – apply to students*.)

(vi) Carrying on research on a voluntary basis cannot be regarded as discharge of an obligatory public function.

(vii) Whether the institution is an international body, or otherwise, is not relevant, as what matters is the nature of the function that the institution performs.

53. In ***St. Mary's Education Society v. Rajendra Prasad Bhargava***[48], the Supreme Court was concerned with the challenge, by an employee to a private unaided minority educational institution, to the decision to terminate his services. In para 2 of the report, the Supreme Court framed the issues which arose for consideration thus:

> "2. In the present appeal, two pivotal issues fall for consideration of this Court:
>
> 2.1. (*a*) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?
>
> 2.2. (*b*) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution?
>
> 3. In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?"

54. The Supreme Court once again embarked on a study of several of the relevant decisions on the point. In para 29 of the report, the Supreme Court observed thus:

> "29. Respondent 1 herein has laid much emphasis on the fact that at the time of his appointment in the school, the same was affiliated to the Madhya Pradesh State Board. It is his case that at the relevant point of time the school used to receive the grant-in-aid from the State Government of Madhya Pradesh. Later in point of time, the school came to be affiliated to CBSE. The argument of Respondent 1 seems to be that as the school is affiliated to the Central Board i.e. CBSE, it falls within the ambit of "State" under Article 12 of the Constitution. The school is affiliated to CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short

[48] **(2023) 4 SCC 498**

"the 2009 Act"). *As Appellant 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, Appellant 1 could be said to be performing public duty. Even if a body performing public duty is amenable to the writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. If the action challenged does not have the public element, a writ of mandamus cannot be issued as the action could be said to be essentially of a private character."*

(Emphasis supplied)

55. Thereafter, in para 75 of the report, the Supreme Court set out its conclusions thus:

"75. We may sum up our final conclusions as under:

75.1. *An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public*.

75.2. Even if it be assumed that an educational institution is imparting public duty, *the act complained of must have a direct nexus with the discharge of public duty*. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. *Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.*

75.3**.** It must be consequently held that *while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a*

constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character."

56. It would thus be seen that while ***St Mary's Education Society*** broadly reinforces the principles contained in earlier decisions, it has subjected the right of employees in an education institution, to raise

service disputes through Article 226, subject to the condition that their service conditions are governed by statute.

57. That caveat does not, however, impact the present *lis*. *What does, however, to an extent, is the proposition that the public function discharged by the institution need not necessarily be available to the entire populace, but may also be available only "to a section of it"*.

58. Applying the above principles, it is clear that the SAU is imparting education. Ergo, it is discharging a public function. The petitioner is a student in the SAU. The decision of the University to expel the petitioner has resulted in curtailing her education. The challenge to the expulsion, therefore, amounts to seeking a mandamus to the University to continue to educate her. The mandamus is, therefore, being sought to enforce performance, by the University, of the public function which it discharges.

59. The writ petition is, therefore, maintainable.

60. Of the two remaining issues which arose for consideration, I deem it appropriate to first deal with the merits of the matter.

B. <u>Has the SAU, in expelling the petitioner, acted in breach of the law?</u>

61. Para 28 of the counter affidavit is by itself fatal to the case of the University, insofar as the merits are concerned. It is admitted –

perhaps unwittingly – in the said para, that the HPC heard the petitioner on 13 January 2023 in the absence of the complainants as well as the witnesses who deposed in favour of the complaints, thereafter, heard the complainants behind the back of the petitioner on 27 January 2023 and, thereafter, on 29 January 2023, proceeded to record the statements of the witnesses who deposed in favour of the complainant. Such a procedure is completely unknown to law. This is especially so, as para 28 goes on to acknowledge that "the HPC found that the evidence was conclusive" against the petitioner. The evidence against the petitioner, which was thus found to be conclusive against her, was neither put to her, nor was she given an opportunity to test the evidence in any manner, as the only audience accorded to the petitioner by the HPC was on 13 January 2023, in the absence of the complainants as well as the witnesses who deposed in favour of the complaints. In other words, the HPC proceeded on the basis of evidence which the petitioner was never given a reasonable opportunity to controvert or challenge. *De hors* the rules and regulations, this procedure by itself does complete violence to the most elementary principles of natural justice and fair play and vitiates the resulting decision in its entirety.

62. That apart, the procedure followed by the HPC is also in the teeth of the applicable provisions of the PCRR already extracted in para 35 *supra*. The HPCC was, as per the PCRR, required (i) to follow the rules of evidence admissible in administrative enquires and (ii) to admit all evidence, including documentary evidence and evidence by witnesses, probative of the case before it.

63. It goes without saying that inherent in this stipulation was the requirement of making the said evidence, on which the HPC intended to rely, available to the petitioner, and offering, to the petitioner, of an opportunity to test the evidence by, if necessary, cross-examining the witnesses who testified against her, or by producing her own evidence by way of rebuttal. All these opportunities were denied to the petitioner, as the petitioner was merely confronted with allegations against her, as contained in the show cause notice dated 26 November 2022, and nothing more. The petitioner had, in her response to the show cause notice, specifically requested that the material against her be made available to her so that she could get an opportunity to traverse it. This was never done.

64. Para 38 of the counter affidavit clearly acknowledges that the allegations in the show cause notice were based on complaints received against the petitioner. In the light of the procedure contained in the PCRR, it was mandatory for the University to provide the said material to the petitioner. Without doing so, the entire exercise stood vitiated *ab initio*.

65. What is worse, the HPC proceeded not only on the basis of the said complainants but also on the basis of submission of witnesses who deposed against the petitioner and allegedly supported the allegations in the complaints. These statements, too, were recorded behind the back of the petitioner, on a day when she was not called for

hearing, and she was not given an opportunity to test the correctness or rebut the statements, much less to cross-examine the deponents thereof.

66. The entire exercise was, therefore, chimerical in character, with the clear intention, already formulated, to send the petitioner out. The petitioner was merely informed of the allegations made against her and, thereafter, effectively expelled her from University without any further by your leave.

67. The manner in which the entire exercise was conducted cannot even be elevated to the status of lip service to the principles of natural justice. It was, clearly, a sham, with a *prima facie* pre-determined intent to expel the petitioners from the University environs.

68. Such an exercise cannot be countenanced in law. The expulsion of the petitioner is, therefore, liable to be set aside.

C. Is the University entitled to immunity from grant of the reliefs sought in the petition?

69. The only issue remaining to be considered is whether the University is entitled to immunity as contended by Mr. Mahapatra.

70. In order to plead immunity from legal action, Mr. Mahapatra has relied upon the Preamble to the SAU Rules, Section 14 of the

SAU Act, Section 3 of the UN Act and Gazette Notifications dated 15 January 2009 and 13 May 2021 issued by the MEA read with Section 3 in Article II, Section 11(a) in Article IV and Sections 18(a) and 20 in Article V of the Schedule to the UN Act. As against this, Mr. Chimni has relied on Section 4 of the SAU Act and Clause 4 of Article I of the Agreement, which forms part of the Schedule to the SAU Act.

71. It is necessary, therefore, to comparatively analyse these provisions and assess the overall effect thereof.

72. Section 4 of the SAU Act, which establishes the SAU by sub-section (ii) thereof, clearly stipulates that the SAU would be a body corporate, which is capable of suing and being sued in its name.

73. Section 3 of the SAU Act confers, on the provisions of the Agreement set out in the Schedule to the SAU Act, the force of law in India. Clause 4 of Article 1 of the Agreement, as it forms part of Schedule to the SAU Act includes, in the legal capacity of the SAU, the capacity to sue and be sued in its name. Clearly therefore, the SAU is not impervious to legal proceedings in India, much less to Article 226.

74. It still remains however, to examine the provisions on which Mr. Mahapatra places reliance.

75. The preamble to the SAU Rules itself recognizes that national legislations were necessary to establish the SAU in the member countries of the SAARC. It was in implementation of this recognition that the SAU Act has been enacted by the Indian Parliament. Clearly, therefore, the SAU is a creature of the SAU Act, though the intention to establish the SAU may be manifested in the Agreement.

76. The preamble to the SAU Rules declares that, if national legislations come in conflict with the Agreement and other agreed upon intergovernmental legal instruments governing the SAU, the provisions of the latter would prevail. This caveat would apply clearly only in the event of a conflict between the national legislations and the Agreement or any other intergovernmental legal instruments of the SAU. Mr. Mahapatra has not drawn my attention to any such conflict. Nor, in the facts of the present case, does any such conflict arise. As such, the preamble to the SAU Rules is really of no significance, either in examining the vulnerability of the SAU to legal action under Article 226 of the Constitution of India or even regarding the merits of the matter.

77. The only other ground on which immunity has been claimed by Mr. Mahapatra turns on Section 14 of the SAU Act read with Section 3 of the UN Act, the Gazette Notifications dated 15 January 2009 and 13 May 2021 and Section 3 in Article II, Section 11(a) in Article IV and Sections 18(a) and 20 in Article V of the Schedule to the UN Act.

78. Section 14 of the SAU Act empowers the Central Government to notify privileges and immunities, under Section 3 of the UN Act, as would be available to the SAU and its President and Members of its academic staff. Section 14 does not therefore have any independent existence but applies only where there is a notification by the Central Government under Section 3 of the UN Act. The provision is intricately worded. The power to notify emanates from Section 3 of the UN Act. Once the Central Government, in exercise of the power conferred by Section 3 of the UN Act, notifies privileges or immunities as available to the SAU or its President or staff, those privileges or immunities would become *pro tanto* applicable and available.

79. Section 3 of the UN Act empowers the Central Government to declare by notification that the provisions set out in the Schedule to the UN Act, either as they are or with modifications, would apply *mutatis mutandis* to any international organizations specified in the notification and its representatives and officers. In other words, the Schedule to the UN Act enumerates privileges and immunities. Those privileges and immunities may be extended to other international organizations, as well as their representatives and officers by the Central Government by notification, either as they stand or subject to necessary modifications. Section 3 requires, however, that any such notification, if issued, is in pursuance of an international agreement, convention or other instrument.

80. There is no dispute about the fact that in exercise of the power conferred by Section 3 of the UN Act the Central Government has in fact extended to the SAU, as well as to its President and its staff, some of the privileges and immunities contained in the Schedule to the UN Act, through MEA Gazette Notifications dated 15 January 2009 and 13 May 2021. These immunities are, however, restricted to those contained in Articles II to VII of the Schedule to the UN Act. It has to be seen, therefore, whether the SAU enjoys any immunity with respect to the present proceedings or to any orders that the Court may pass in these proceedings by virtue of the provisions contained in Articles II to VII of the Schedule to the UN Act. Mr. Mahapatra has sought to invoke Section 3 in Article II, Section 11(a) in Article IV and Sections 18(a) and 20 in Article V of the Schedule to the UN Act. There is no doubt about the fact that by virtue of MEA Notifications dated 15 January 2009 and 13 May 2021, the benefit of these Sections is available to the SAU.

81. Section 3 in Article II of the Schedule to the UN Act, when applied *mutatis mutandis* to the SAU, renders the premises of the SAU inviolable and immunizes its properties and assets from search, requisition, confiscation, expropriations and any other form of interference, executive, administrative, judicial or legislative. Neither does the petitioner seek any such interference nor does the present judgment entail any such interference. Mr. Mahapatra actually seeks to rely on Section 3 to justify the charge against the Petitioner of having entered the office of the Associate Dean and Acting Registrar of the SAU. I do not see how this provision applies at all. The

petitioner is not even alleged to have damaged the property or assets of the SAU. In any event, the submissions of Mr. Mahapatra would apply to the allegations against the petitioner, with which this judgment is not concerning itself.

82. Similarly, Section 11 (a) in Article IV of the Schedule to the UN Act immunizes representatives of the SAU while exercising their functions, from personal arrest or detention, seizure of their personal baggage and legal process in respect of words spoken or written and acts done by them in their capacity as representatives. What is in question in the present case is, the decision of the SAU to expel the petitioner. This was a pure disciplinary action, taken against a student of the SAU, and cannot be regarded as an act done by any of the Members of the SAU in his capacity as a Member to the Principal or subordinate organs of the SAU.

83. Section 18(a) immunizes officials of the SAU from legal process in respect of words spoken or written or acts performed by them in their official capacity. The invocation of this provision in the facts of the present case is *ex facie* misconceived. In invoking the provision, in fact, Mr. Mahapatra has, in my opinion, failed to appreciate the real nature of the present dispute. The SAU has decided to expel the petitioner and thereby, to discontinue her studies in the SAU. This is a purely personal dispute between the SAU and the petitioner. The case of the petitioner is that the decision has been taken in violation of the binding statutes of the SAU. That allegation has already been found by me to be correct on facts and in law. In my

considered opinion, it is not permissible for the SAU to rely on Section 18(a) in Article V of the Schedule to the UN Act to debar the petitioner from seeking the benefit of Article 226 of the Constitution of India to ventilate her legitimate legal rights.

84. The reliefs sought by the petitioner themselves do not in any manner impact any of the officials of the SAU. It is the decision of the officials of the SAU, which is being sought to be called into question on the ground that it is not in conformity with the statutes of the SAU. The right to do so can hardly be divested by Section 18(a) in Article V of the Schedule to the UN Act.

85. Section 20 in Article V makes this position somewhat clear. Applied *mutatis mutandis* to the SAU, the Section clarifies that privileges and immunities which are granted to the officials is not intended for the personal benefit of the officials themselves but are granted in the interest of the SAU. If an individual official of the SAU therefore, acts illegally, he cannot seek immunity from legal action under Section 18 in Article V of the Schedule to the UN Act. It is only where the individual act, which is being sought to be called in question, would, if subjected to legal process, prejudice the interests of the SAU, that the immunities granted by Section 18 would be available.

86. In any event, in the face of Sections 3 and 4 of the SAU Act under which the SAU is capable of being sued in its name, it cannot

be said that the SAU enjoys immunity from being sued by virtue of Gazette Notifications dated 15 January 2009 and 13 May 2021.

87. Besides, as Mr. Chimni has correctly pointed out, the Notifications themselves clarified that certain privileges contained in the Schedule to the UN Act were being extended to the SAU and to its officials "for giving effect to the said Headquarters Agreement". The Headquarter Agreement does not in any manner immunize the SAU from legal action in a case such as the present; nor does it divest the petitioner of her right to invoke Article 226 of the Constitution of India to seek legal redress.

88. Moreover, Section 29 of the SAU Act insulates the SAU from legal proceedings only in respect of acts done in good faith or intended to be done in pursuance of any of the provisions of the SAU Act.

89. I have already found, in the present case, that expulsion of the petitioner from the rolls of the SAU has been effected in a manner contrary to the provisions of the SAU Act, its Rules and Regulations and the PCRR. If an act, though purportedly stated to have been done in pursuance of the provisions of the SAU Act, is actually violative of the said provisions, the benefit of immunity from legal proceedings under Section 29 would obviously not be available.

90. Equally, the SAU cannot be entitled to immunity from legal proceedings under Section 29 on the contention that it acted in good faith. The manner in which the SAU proceeded against the petitioner is completely alien to the stipulated procedure contained in the Rules and Regulations of the SAU including the PCRR. It is also in stark contravention of the most elementary principles of natural justice and fair play. The facts indicate that the SAU was determined to expel the petitioner from its rolls. There is no other explanation for the SAU not providing to the petitioner the copies of the complaints against her and hearing the complainants and the witnesses who supported the complaint behind the back of the petitioner and proceeding to rely on the said material against her. Equally, the fact that the impugned Office Orders dated 17 February 2023 and 2 March 2023 make no reference to the fact that the petitioner had denied the allegations against her or had sought to be provided the material that was being relied upon, also indicates that the outcome of the proceedings against the petitioner was pre-determined.

91. In ***Chamanlal v. State of Punjab***[49], the Supreme Court held, albeit in the context of the ninth exception to Section 499 of the IPC, that "good faith" requires care, caution and prudence in the background of the context and circumstances. An act done with due care and attention was held to be an act in "good faith" in ***Ghasi Ram v. Chait Ram Saini***[50]. Apropos the expression "good faith" as it occurs in Section 14 of the Limitation Act, 1963, the Supreme Court held, in

[49] **1971 SCC 590**
[50] **1998 6 SCC 200**

Deena v. Bharat Singh[51], that it meant "exercise of due care and attention". An act done with due care and attention which was not *mala fide* was presumed to have been done in good faith, as held in ***Assistant Commissioner v. Amtek India Limited***[52]. The same understanding of the expression "good faith" is reflected in ***Goondla Venkateswarlu v. State of A.P.***[53]. In ***Brijender Singh v. State of UP***[54], the Supreme Court held that the quality and quantity of the honesty requisite for constituting "good faith" is conditioned by the context and object of the statute in which this term is employed and that it is a cardinal canal of construction that an expression which has no uniform precisely fixed meaning takes it colour, light and content from the context.

92. Inasmuch as "good faith" is employed in Section 29 of the SAU Act in the context of the act done by the official concerned, the nature of the act, in the background of attendant circumstances, is crucial. The manner in which the SAU proceeded against the petitioner resulting in her expulsion from its portals cannot be regarded as partaking of "good faith" as understood in law.

93. I am unable therefore to accept Mr. Mahapatra's contention that the petitioner enjoys immunity from the present proceedings.

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[51] **2002 6 SCC 336**
[52] **2007 11 SCC 407**
[53] **2008 9 SCC 613**
[54] **1981 (1) SCC 597**

D. Other contentions

94. There are certain other minor contentions, which were raised, which really do not impact the present proceedings but which may, nonetheless, be addressed.

95. The UGC Act is not of any particular significance. The fact that the SAU figures in the list of Central Universities, affiliated with the UGC Act, too does not seriously affect these proceedings as they do not contemplate any action relatable to the UGC Act.

96. Similarly, the contention of Mr. Mahapatra that the Governing Body of the SAU consists of Members from each of the Member States from SAARC is also of no particular relevance as the issue in controversy is whether the decision to expel the petitioner from SAU is, or is not, legally sustainable. The constitution of the Governing Body of the SAU is of no consequence in that regard.

97. The fact that education is imparted by the SAU not only to Indian students but also to others is also of no significance. Imparting of education by the SAU is *ex facie* a public duty and a public function. The students who are entitled to be imparted education by the SAU is really of no consequence. It is not Mr. Mahapatra's case that Indian students cannot secure education under the SAU. The fact that foreign students may also be permitted to educate themselves under the SAU, makes no difference. Indeed, foreign students are entitled to have themselves educated under several educational

institutions in India. It is the providing of the education which amounts to a public function and, thereby, renders the educational institutions amenable to Article 226 of the Constitution of India.

98. Mr Mahapatra also sought to contend that as Section 27 of the SAU Act envisaged settlement of disputes by arbitration, the writ petition was not maintainable. It is well settled that arbitration does not constitute an alternate remedy. Section 27 itself clothes the student with the discretion whether to opt, or not to opt, for reference of the dispute to arbitration. Besides, it is settled, in law, that the existence of an option of arbitration cannot be regarded as an alternate remedy so as to disentitle the petitioner from invoking Article 226 of the Constitution of India. Reference may be made, in this context, to ***Sanjana M. Wig v. Hindustan Petroleum Corpn Ltd***[55]. Besides, no disputed issues of fact are involved, in the present case, as would require detailed arbitral adjudication.

Conclusion

99. In view of the above discussion, the decision to expel the petitioner, as contained in the impugned office orders dated 17 February 2023 and 2 March 2023, cannot sustain the scrutiny of law.

100. Accordingly, the impugned Office Orders dated 17 February 2023 and 2 March 2023 are quashed and set aside.

[55] **(2005) 8 SCC 542**

101. The writ petition is, therefore, allowed with no orders as to costs.

C. HARI SHANKAR, J.

JANUARY 18, 2024
dsn

Click here to check corrigendum, if any