



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.4818 of 2025**

***Jayanta Kumar Dash***

....

***Petitioner***

***Mr. A.K. Panda, Adv.***

*-versus-*

***President Siksha O***

....

***Opposite Parties***

***Anusandhan (SOA), BBSR***

***Mr. P. Behera, Adv.***

**COROM:**

**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**

**18.03.2025**

**Order No**

**03. 1.** This matter is taken up through Hybrid Mode.

**2.** Heard Mr. A.K. Panda, learned counsel appearing for the Petitioner with regard to maintainability of the Writ Petition against the Opp. Parties.

**3.** Learned Counsel appearing for the Petitioner in support of maintainability of the Writ Petition, relied on two decisions of the Hon'ble Apex Court.

**1. *Dr. Janet Jeyapaul Vs. SRM University & Others, AIR 2016 SC 73***

**2. *Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jaya Vs. V.R. Rudani & Others. 1989 AIR 1607***



4. In the case of **Dr. Janet Jeyapaul**, Hon'ble Apex Court in para 15 of the said judgment has held as follows :

15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty, mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [ See M.P. Jain, The Evolving Indian Administrative Law (1983) 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

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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 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.”

**19.** 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*, (2005) 4 SCC 649] 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 [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691] 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* [*Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649] , SCC p. 682)

“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.”

5. In the case of **Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jaya**, Hon’ble Apex Court has held as follows:

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 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.

In *Praga Tools Corpn. v. C.A. Imanuel* [(1969) 1 SCC 585 : (1969) 3 SCR 773] 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: (SCC p. 589, para 6 : SCR p. 778)

“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.)”

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.

**6.** This Court placing reliance on the aforesaid two decisions is inclined to issue notice to the Opp. Parties.

**7.** Since Mr. Pravakar Behera, learned counsel contended that he has instruction to appear on behalf of the Opp. Parties, no notice need be issued to the Opp. Parties. Let two extra copies of the Writ Petition be served on Mr. P. Behera by tomorrow (19.03.2025).



**8.** On the request made by Mr. P. Behera, list this matter in the week commencing 5<sup>th</sup> May, 2025.

**(Biraja Prasanna Satapathy)**  
**Judge**

Sangita