G. Bassi Reddy vs International Crops Research Instt. & ... on 14 February, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1764, 2003 (4) SCC 225, 2003 AIR SCW 1197, 2003 LAB. I. C. 1157, 2003 (2) UPLBEC 1185, 2003 (2) ALL CJ 1476, 2003 (3) COM LJ 90 SC, 2003 (2) SCALE 136, 2003 (2) ACE 421, (2003) 4 ALLINDCAS 809 (SC), 2003 (4) ALLINDCAS 809, 2003 (2) SLT 435, (2003) 1 SCR 1174 (SC), (2003) 2 JT 180 (SC), 2003 (5) SRJ 153, (2003) 2 LABLJ 1123, (2003) 2 ALL WC 1199, (2003) 2 CURLR 290, (2003) 98 FACLR 488, (2003) 2 LAB LN 1083, (2003) 3 SERVLR 220, (2003) 2 UPLBEC 1185, (2003) 2 SUPREME 42, (2003) 2 SCALE 136, (2003) 3 INDLD 879

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Bench: Ruma Pal, B.N. Srikrishna

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           CASE NO.:
Appeal (civil)  2399 of 1986

PETITIONER:
G. Bassi Reddy

RESPONDENT:
International Crops Research Instt. & Anr.

DATE OF JUDGMENT: 14/02/2003

BENCH:
RUMA PAL & B.N. SRIKRISHNA

JUDGMENT:
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J U D G M E N T With CA Nos. 5800/99, 2400-2411/96, 2858/96, 2393-2398/96 RUMA PAL, J.

The appellants were employees of the respondent No.1 (ICRISAT). Their services were terminated. They filed writ petitions before the High Court of Karnataka against ICRISAT and the Union of India. The writ petitions were dismissed. The first writ petition so dismissed was W.P.No.2730/1981 (K.S. Mathew v. ICRISAT) . A second group of writ petitions was dismissed on 30th June 1988. The dismissals are the subject matter of these appeals. Both the Division Benches held that ICRISAT was an international organisation and was immune from being sued because of a Notification issued in 1972 under the United Nations (Privileges and Immunities) Act,1947 and that a writ under Article 226 could not be issued to ICRISAT. What or who is ICRISAT? Was the High Court right in holding that it was not amenable to the writ jurisdiction under Article 226?

ICRISAT was proposed to be set up as a non-profit research and training centre by the Consultative Group on International Agricultural Research (CGIAR). The CGIAR is an informal association of about 50 government and non- governmental bodies and is co-sponsored by the Food and Agriculture Organisation of the United Nations, (FAO), the United Nations Development Program (UNDP), the United Environment Program (UNEP) and the World Bank. The members of the CGIAR at the relevant time were the African Development Bank, the Asian Development Bank, Belgium, Canada, Denmark, the Food and Agriculture Organization of the United States, Ford Foundation, France, Germany, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Development Research Centre, Japan, Kellogg Foundation, Netherlands, Norway, Rockefeller Foundation, Sweden, Switzerland, United Kingdom, United Nations Development Programme and the United States of America. In addition there were representatives from the five major developing regions of the world, namely, Africa, Asia and the Far East, Latin America, the Middle East, Southern and Eastern Europe. The object of setting up ICRISAT was to help developing countries in semi-arid tropics to alleviate rural poverty and hunger in ways that are environmentally sustainable. The developing countries include India, parts of south-Asian, sub- Saharan and South and Eastern Africa and parts of Latin America. The object was sought to be achieved by research and development of scientific technologies which could improve the quantity and quality of sorghum (bajra), pearl and finger millet, pigeon peas, chick peas and ground nut. Certain members of the Consultative Group agreed to provide funds to support the setting up and continued functioning of ICRISAT. The financing members of CGIAR entered into an agreement on 20th March 1972 with the International Bank for Re-construction and Development (IBRD) to establish a special account. The IBRD then entered into an agreement with Ford Foundation under which Ford Foundation undertook to implement the proposal for setting up ICRISAT. A memorandum of agreement was then entered into between the Government of India and the Ford Foundation (acting on behalf of the Consultative Group) on 28th March 1972 (referred to as the March agreement) for the establishment of ICRISAT. The agreement provided that the principal headquarters of ICRISAT would be at Hyderabad, India. The agreement recorded that ICRISAT would, inter-alia, serve, as a world centre for conducting research and training of scientists for the improvement of sorghum, millet, pigeon peas and chick peas.

Clause 4 of the March agreement under the head 'Administration and Governance' provided:

> "The Institute shall be established in India as an autonomous, international philanthropic, non-profit, research, educational, and training organisation.
>
> The Institute shall be administered by a Director who shall be selected by the Governing Board. The Director shall be responsible for the internal operation and management of the Institute and for assuring that the programme and objectives of the Institute are properly developed and carried out. He shall be a member of the Board ex- officio.
>
> The Board shall be responsible for development and/or approval of the Institute's programmes and for the policies under which the Institute operates, shall be responsible for selection and employment of the Director, and shall approve the

appointment of the senior staff members on the recommendation of the Director. The Board shall also review and approve the budget estimates for the Institute.

The Governing Board may consist of no more than fifteen members selected as follows: -

3 members designated by the host country. 3 members designed by the Consultative Group on International Agricultural Research. 6 to eight members at large with relevant interests and qualifications from countries or areas being served or from countries or agencies which have been concern for and provide substantial support for work in the fields of the Institute's major responsibilities. 1 Director of the Institute, ex-officio.

The Consultative Group on International Research, through its sub-committee for ICRISAT shall be responsible for constituting the Initial Governing Board. India will be represented on the sub-Committee."

Pursuant to the March agreement a further agreement was entered into between Ford Foundation representing CGIAR and the Government of India on 7th July 1972 by which ICRISAT was established. ICRISAT set up its headquarters with its office, staff quarters, seed producing centres and research laboratories in about 3000 hectres of land in Andhra Pradesh provided by the Indian Government.

The initial financial support for setting up and administering ICRISAT was provided substantially by the Governments of the United Kingdom, United States of America, United Nations Development Programme (UNDP) and IBRD. Other members of the Consultative Group provided non- monetary service in kind. According to the figures presented by ICRISAT to Court, India's contribution to the respondent No. 1 has ranged between 0.3% to 2.0% as against 99.7% to 98% of the total contribution from other countries. ICRISAT has programmes in Tanzania, Sudan, Niger, Mali, Nigeria, Senegal and Upper Volta under the United Nations Development Programme (UNDP) and in 1984 set up a second centre in Niger. It has also entered into agreements with Niger, Malawi, Mali, Nigeria, Kenya and Zimbabwe for establishing centres and regional programmes in these countries.

ICRISAT is staffed by persons from 22 nations including India who work in Asia, Africa and Latin America. Training has been imparted to 2500 research members and students from 97 countries including 850 from India. There are 15 members in the Governing Board of ICRISAT apart from three nominees of the Government of India. The other members are from different countries and as at present are from Norway, Zambia, Phillipines, Germany, France, Sweden, USA, Canada, Australia, Japan, Brazil and Nigeria.

Clause 6 of the March agreement provided for the grant of immunity to ICRISAT by the Government of India under the United Nations (Privileges and Immunities) Act, 1947. The clause is reproduced below:

> "(a) The Government of India shall recognise the Institute as a philanthropic, non-profit organisation with the purposes set forth in this Memorandum. The international status of the Institute will be ensured by the Government of India issuing suitable Notification as contemplated in Clause 3 of the United Nations (Privileges and Immunities) Act, 1947 extending the operation of Articles I and II, Sections 2,3,4,5,6,7 and 8 of the Schedule of the said Act to the Institute. Further, the interests of non-Indian officials of the Institute staff will be safeguarded to the extent; envisaged in Article V, Section 17, 18(b), (d), (e) and (g), 19,20 and 21 of the said Schedule and Government of India instructions thereunder being no less favourable than that extended to non-Indian officials of the IBRD".

Section 3 of the United Nations (Privileges and Immunities) Act, 1947 (hereafter referred to as '1947 Act') empowers the Central Government by notification in the Official Gazette to declare that the provisions of the Schedule to the 1947 Act shall apply, subject to such modification, if any, as the Central Government may consider necessary or expedient for giving effect to any international agreement, convention or other instruments to confer on any international organisation and its representatives and officers privileges and immunities as provided for in the Schedule to the 1947 Act and "notwithstanding anything to the contrary contained in any other law", the provisions of the 1947 Act so declared to be applicable are "to have the force of law in India". Pursuant to clause 6 of the agreement and in exercise of powers conferred by Section 3 of the 1947 Act, a notification was issued by the Government, Ministry of External Affairs on 28th October 1972 which was duly gazetted on the same day. By the notification the Central Government declared:

> "that the provisions of Article I, Article II and Article V (Section 17, 18(b), (d), (e) and (g), 19, 20 and 21) of the Schedule to the said Act shall, subject to the modifications specified below, apply mutatis mutandis, to the International Crops Research Institute for the Semi- Arid Tropics and to its officers recruited on an international basis, except that the exemptions under Sections 18 and 19 shall apply only to the non-Indian officials of the said Institute.
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> Modifications
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> (i) for the words "United Nations" wherever they occur, the words "international Crops Research Institute for the Semi-arid Tropics"

shall be substituted;

(ii) for the words "Secretary General" wherever they occur, the word "Director" shall be substituted.

2. In Section 17 and Section 20, words "General Assembly and Security Council", the words "Governing Board" shall be substituted.

3. In Section 19,

(i) for the words "Secretary-general" and all Assistant Secretaries-general" the word "Director" shall be substituted.

(ii) for the words "their spouses", the words "his spouse" shall be substituted".

The Articles of the Schedule to the 1947 Act which were made applicable under the notification were Articles I, II and certain provisions of Article 5. Article I of the Schedule deals with the juridical personality of the international organisation, Article II with its 'Property, Funds and Assets" and Article 5 with the 'Officials" of the International Organisation and the grants of privileges and immunities to them. What was not included was Article VIII, particularly section 29 thereof, which would have made the Organisation liable to make provisions for "appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the international organisation is a party". However, clause 6 (2) of the March agreement recorded the Government of India's assurance of authority to the Governing Board of ICRISAT to establish employment policies and conditions for the senior staff of the Institute on an international basis. In addition, the Governing Board was given authority under the agreement to establish terms and conditions of employment for junior scientists, technicians, clerical, administrative and operational support personnel. The conditions of employment were expected "to more nearly approximate accepted norms of the host country, with such modifications as may be necessary to assure availability of well qualified staff and a high quality of performance". Guidelines known as Personnel Policy Statements relating to the services of personnel which were to remain effective and be applied pending formulation of Rules were framed by ICRISAT on 3rd July 1976 which included the procedure in respect of disciplinary action. The procedure envisaged the framing and issuing of a charge-sheet by the Personnel Manager, reply thereto by the employee within the stipulated period, examination of the reply by the Personnel Manager with the Department Head, the dropping of the case in the event the explanation was found sufficient, and institutional inquiry in the event the explanation was not accepted and the measure of punishment. The nature of the indiscipline and misconduct warranting major penalty for example dismissal etc. was defined. The disciplinary authority named for specified categories of employees had also the authority to constitute the enquiry committee and to suspend employees. The ICRISAT (Discipline and Appeal Rules) came to be formulated subsequently in 1991.

As all the appeals raise the same issues, we limit the factual consideration to Civil Appeal No. 2399 of 1986. The appellant in this appeal was appointed by ICRISAT on 15th January 1975 as a Field Helper. The offer of appointment issued to the appellant stated that apart from the terms and conditions specifically mentioned in the appointment letter, the other terms of employment would be governed by the ICRISAT Personnel Policy Statement as amended upto date and all such further amendments made from time to time and intimated to the appellant. It was made clear that the Personnel Policy Statement would form part of the terms and conditions of service as though embodied specifically in the offer of contract of employment. A copy of the Personnel Policy Statement was enclosed with the letter. The appellant signed the offer of employment on 20th January 1975 expressly accepting the terms and conditions. In a separate letter dated 23rd April 1975 the appellant acknowledged the receipt of the amendments to the Personnel Policy for professional and support staff (locally recruited). The letter recorded that the appellant had studied

and understood the contents thereof and undertook to abide by ICRISAT's policies. The letter concluded with the following paragraph:

> "In particular I am aware of the legal position of the ICRISAT and I undertake to respect the same and seek ventilation of my grievances, if any, strictly and only through the Grievance Procedure laid down in these policies. I further appreciate that since the ICRISAT is an international organisation immune from the laws of India, I am not entitled to seek recourse under such laws, including industrial laws, for rectification of grievances."

On 23rd June 1983, in view of growing indiscipline in the Institute the Director-General issued a circular which inter-alia stated:

> "A new set of disciplinary and appeal procedures for staff has been drafted and the Staff-Management Joint Council will be consulted in this regard. Until these procedures are promulgated, procedures laid down in 1976 continue to apply. These provide for minor and major penalties according to the Schedule in Annexure I. Where the nature of the misconduct warrants a major penalty, an enquiry must be held before the penalty can be proposed and awarded."

A show cause notice was issued to the appellant calling for an explanation for the acts of misconduct specified therein. The appellant gave an explanation on 25th July 1983. The explanation was not found satisfactory and an Enquiry Officer was appointed to enquire into the charges framed against the appellant. In August 1983, the appellant filed the writ application which was resulted in the impugned order. The prayer in the writ petition was for issuance of a writ of mandamus directing ICRISAT to frame rules regarding the conditions of service which "nearly approximate to the accepted custom of India" and to direct the Union of India to take action for fulfilment of clause 6(a)(2) of the March agreement between the Union of India and CGIAR. It is not clear whether any copy of the writ petition was served on the respondents at that stage. In any event, ICRISAT proceeded with the disciplinary enquiry against the appellant. An inquiry notice was issued on 13th September 1983. The appellant did not participate in the inquiry. Ultimately, the Enquiry Officer submitted a report to the Personnel Manager on 17th October 1983 finding the charges against the appellant proved. The order of termination was passed on 5th August 1983 by the Principal Administrator. In the order dismissing the appellant, it was stated that the appellant would stand relieved with effect from 5th December 1983 and that the appellant would be entitled to three months' salary in lieu of notice consequent upon the cessation of his employment with ICRISAT. It does not appear that the appellant's writ petition was amended to challenge the order of dismissal.

It was submitted on behalf of the appellant before us that the 1947 Act had been enacted by Parliament to give effect to the Convention on the Privileges and Immunities of the United Nations, 1946. According to the appellants the power to grant immunity to 'International Organizations' under the 1947 Act therefore did not extend to organizations like ICRISAT which was neither an organ of the United Nations nor a specialised agency within the meaning of Article 57 of the U.N. Charter. The appellant also contended that in any event the immunity granted to ICRISAT could not

extend beyond or to matters unrelated to the functions of the organization. It is argued that the prohibition on the employees to take recourse to the municipal Courts in connection with settlement of disputes relating to employment would not come within the grant of that immunity nor could immunity be granted against the power of judicial review. Reliance has been placed on Dadu V. State of Maharashtra 2000(8) SCC 437 in this connection. It is also argued by the appellants that the Government could not enter into a treaty or any international agreement nor issue a notification pursuant thereto which may have the effect of infringing fundamental or constitutional rights of the citizens in derogation of Constitutional provisions. It was submitted that the provisions of the March agreement and the notification would therefore have to be read in a manner in keeping with the constitutional provisions. It was submitted that the non inclusion of Sections 29 and 30 of Article VIII of the Schedule to the 1947 Act in the notification, is violative of the fundamental rights of the ICRISAT employees under Articles 14, 21 and 311. It was submitted that the absence of an independent and impartial Tribunal to decide labour disputes between ICRISAT and its employees was also in violation of Article 8 of the Universal Declaration of Human Rights. It was submitted that the conferment of the immunity without imposition of a corresponding obligation on ICRISAT to provide for an impartial tribunal to decide disputes between ICRISAT and its employees is violative of Article 14. It was finally submitted that the impugned order of termination was arbitrary and in violation of the principles of natural justice and was devoid of procedural fairness.

Learned counsel for the Union of India submitted that the notification had been issued in terms of the March agreement entered into between the Government and CGIAR. According to the Union of India, it could not unilaterally change the terms of the agreement with CGIAR pursuant to which the notification had been issued. It was also submitted that ICRISAT was not subject to the Court's jurisdiction under Article 226 as it was neither the Government nor any wing of the Government nor was it in any way accountable or subject to or under the financial or administrative control of the Government. ICRISAT supported the Union of India and also submitted that no writ application was maintainable against it. It was further submitted that in any event the action which was taken against the appellants was in accordance with the procedural rules framed by ICRISAT which were fair and in keeping with the domestic law, namely, the Industrial Employment (Standing) Orders, 1946.

The appellant's arguments that the Union of India could not have granted immunity from legal process to ICRISAT under the 1947 Act and that in any event the grant of such immunity could not serve to curtail the Courts Constitutional power under Article 226, proceeds on the basis that were it not for such immunity, a writ could issue to ICRISAT. If a writ did otherwise lie against a body, it is a moot point whether judicial review of its actions could be excluded by grant of immunity either by Statute or by a Statutory Notification. Since, in our view, no writ would lie against ICRISAT, therefore the further questions whether it could or should have been granted immunity or whether the immunity debarred remedies under Article 226 do not arise.

A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. v.State of W.B.; AIR 1962 SC 1044, 1047-1048]. The claim as made by the appellant in his writ petition is founded on Articles 14 and

16. The claim would not be maintainable against ICRISAT unless ICRISAT were a 'State' or authority within the meaning of Article 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & ors. (2002) 5 SCC 111 at p. 134 in which we said:

> " The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article
>
> 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State".

The facts which have been narrated earlier clearly show that ICRISAT does not fulfil any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by not is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.

It is true that a writ under Article 226 also lies against a 'person' for "any other purpose". The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well- established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would, according to well established principles issue. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty [Praga Tools Corporation v. C.A. Imanual, (1969) 1 SCC 585; Andi Mukta Sadguru Trust v. V.R. Rudani, (1989) 2 SCC 691, 698; VST Ind. Ltd. v. VST Ind. Workers' Union & Another, (2001) 1 SCC 298]. ICRISAT has not been set up by a statute nor are its activities statutorily controlled. 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 the ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corporation V. C.V. Imanual AIR 1960 SC 1306, this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

".. 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, 1957 SCR 738] We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT.

The second relief sought in the writ petition is against the Union of India. The prayer is that the Union should take action to fulfil clause 6 of the March agreement. The prayer is unsustainable as in substance the relief claimed is against ICRISAT. Furthermore It is doubtful whether the agreement between the Indian Government and ICRISAT is specifically enforceable as such in domestic Courts, particularly when the agreement does not form part of any domestic legislation. The case of Dadu V. State of Maharashtra relied upon by the appellant has no bearing on the issues which arise for consideration in the case before us. In that case, the Constitutional validity of Section 32A of the Narcotics Drugs and Psychotropic Substances Act, 1985 which prohibited appellate Courts from suspending sentence despite the appeal being admitted, was questioned. The impugned section clearly ran contrary to the provisions of the Criminal Procedure Code which allowed the appellate courts discretionary powers to suspend sentences. One of the arguments raised by the Respondent State to justify this apparent contradiction was that the section had been enacted in discharge of the Government of India's international obligations under the United Nations Convention Against Illicit Trafficking in Narcotics and Psychotropic, 1988. The Court held that the Convention clearly and unambiguously showed that the Convention was made subject to "constitutional principles and the basic concept of its legal system prevalent in the polity of the member country".

The States argument was rejected as it was found as a fact that there was no international agreement which obliged countries notwithstanding the constitutional principles and basic concept of its legal system, to put a blanket ban on the power of the Court to suspend the sentence awarded to a criminal under the Act. There was no conflict between the Government's international obligation and the domestic law. In the present case there is no question of any conflict. What is sought for on the other hand is an enforcement of a clause in an international agreement.

In any event, it could not be said that the Personnel Policy Statement framed by ICRISAT dealing with internal discipline was not in terms of clause 6 (2) of the March agreement. It has not been shown how these guidelines (which were in fact followed in the appellant's case) deviated from or did not approximate to the established disciplinary procedures followed by other private concerns in the country. In these circumstances, we dismiss the appeals without any order as to costs.

In the instant case it cannot be said that the appellant's legal right has been infringed. The appellants had a contractual relationship (contract of employment) with the respondent institute and any right or obligation between the two parties was purely contractual in nature. In a number of cases, the Supreme Court has categorically held that a writ petition under Article 226 cannot be

resorted to in order to enforce a contractual right. Accordingly the general rule is that no writ under Article 226 will lie to quash an order terminating a contract of service, albeit illegally [S.R. Tewari v. Distt. Board, Agra, AIR 1964 SC 1680; Bachhanidhi v. State of Orissa, AIR 1972 SC 843, 845; Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, (1976) 2 SCC 58] Exception is made only where order of termination is made by a statutory body acting in breach of a mandatory obligation imposed by a statute. [V.R. Mishra v. Managing Committee, Jai Narain College, (1972) 1 SCC 623] ICRISAT is certainly not a statutory body nor its activities are mandated by a statute.

The scope of a remedy under Article 226 of the Constitution is wider that the remedy under Article 32 since the latter "is restricted solely to enforcement of fundamental rights conferred by Part III of the Constitution". Nain Sukh Das V. State of Uttar Pradesh 1953 SCR 1184 at 1186.

Waiver Krishan Lal v. State of J &K 1994 (4) SCC 422 The petition in that case has been dismissed on the basis of a report submitted by the Anti-Corruption Commission set up under the provisions of the Jammu and Kashmir (Government Servants) Prevention of Corruption Act, 1962. Section 17(5) of that Act provided:

> "After the Commission submits its recommendation and after the Governor arrives at a provisional conclusion in regard to the penalty to be imposed, the accused shall be supplied with the copy of proceedings of the inquiry and called upon to show cause by a particular date why the proposed penalty should not be imposed upon him."

It is not in dispute that the order of dismissal had been passed without supplying a copy of the proceedings of the inquiry held by the Anti-corruption Commission to the petitioner. The question arose as to whether this right could be waived by the employee. This Court held affirming the latin maxim of law "Quilibet potest renunciare juri pro se introducto"

> meaning "an individual may renounce a law made for his special benefit" and that the requirement of giving a copy of the proceeding of the inquiry mandated by Section 17(5) of the Act being one for the benefit of the individual concerned could be waived despite being stated in mandatory terms. However, by a scrutiny of the facts it was found that the petitioner had not waived the benefit and had all along a copy of the proceedings and, therefore, the order of dismissal was set aside. Unless the respondent No. 1 is given immunity from Article 226 it would loose the very immunity which was granted by the notification and the purpose for which the immunity was granted would be defeated.
>
> Legislative powers conferred on the Parliament under Article 245 is to be exercised "subject to the provisions of the Constitution". Therefore, it has been held by this Court in In re.The Kerala Education Bill, 1957, "Although Parliament may enact legislation in discharge of obligations imposed on it by the directive principles enshrined in Part IV of the Constitution, it must nevertheless subserve and not override the fundamental rights conferred by the provisions of the Articles contained

> in Part III of the Constitution. In determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principles of State policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible".

Even where Article 226 is clearly available, nevertheless this Court has normally not interfered in academic matters regarding equivalence to the University degrees for the selection of candidates for academic posts. (University of Mysore V. Govinda Rao AIR 1965 SC 491) Common law liability of an employer towards his employee has been subjected to statutory limitations under labour laws enacted in this country and the Constitution in so far as particular employees are concerned. In respect of those employees who do not fall in either of these categories the common law principle has to operate.

No doubt although the jurisdiction of the civil court to entertain a suit may be excluded by the statute, nevertheless this does not affect the jurisdiction of the High court or the Supreme Court to issue higher prerogative writs. (Union of India V. A.V. Narasimhalu 1970(2) SCR 146, 150) "Article 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."

> "246 Subject matter of laws made by Parliament and by the Legislatures of States (1) Notwithstanding in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in the Constitution referred to as the "Union List") .
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> "Seventh Schedule (Article 246) List I - Union List (13) Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
>
> (14) Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

The concept of grant of immunity from legal process is not per-say constitutionally repugnant. Article 261(2) and (3) provide:

> "361(2) No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor of a State, in any court during his term of office.
>
> 361(3) No process for the arrest or imprisonment of the President, or the Governor of a State shall issue from any court during his term of office."

Similarly under Article 105(2) which provides for the powers, privileges etc. of the Houses of Parliament and of the Members and committees thereof says:

> "105(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

See also Article 194(2).

1. Carlshad M.W. Mfg. Co, V. H.M. Jagtiani AIR 1952 Cal 315 at 318