

# Delhi Golf Club Employees Union vs Union Of India & Ors on 12 June, 2020

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3403/2020

DELHI GOLF CLUB EMPLOYEES UNION ... Petitioner  
Through: Ms. Sunita Bhardwaj, Advocate

versus

UNION OF INDIA & ORS. .... Respondents  
Through: Mr. Sandeep Sethi, Sr. Advocate with  
Mr. Gourav M. Liberhan, Advocate  
for R-6.  
Mr. Jawahar Raja, Adv for R-4.

HON'BLE MS. JUSTICE JYOTI SINGH  
ORDER

% 12.06.2020 Hearing has been conducted through Video Conferencing. Ms. Sunita Bhardwaj appearing for the Petitioner has drawn the attention of this Court to a judgment in the case of Roychan Abraham v. State of U.P. and Others, 2019 SCC OnLine All 3935 : AIR 2019 All 96, by the Allahabad High Court to contend that the Delhi Golf Club is performing a public function and, therefore, is amenable to the writ jurisdiction of this Court. Paras relied upon by the learned Counsel are as under :-

"Public duty/public function:

21. The concept of public law function is yet to be crystallized. Concededly, however, the power of judicial review can be exercised by the Supreme Court under Article 32 and by the High Courts under Article 226 of the Constitution of India only in a case where the dispute involves a public law element as contradistinguished from a private law dispute. (See: Dwarka Prasad Agarwal (D) by LRs. v. B.D. Agarwal).

22. General view, however, is that whenever a State or an instrumentality of a State is involved, it will be regarded as an issue within the meaning of public law but where individuals are at loggerheads, the remedy therefor has to be resorted in private law field. Situation, however, changes with the advancement of the State function particularly when it enters in the fields of commerce, industry and business as a

result thereof either private bodies take up public functions and duties or they are allowed to do so which primarily is a State function. The distinction has narrowed down but again concededly such a distinction still exists. Drawing inspiration from the decisions of the Supreme Court as also other courts, it may be safely inferred that when essential governmental functions are placed or allowed to be performed by a private body they must be held to have undertaken a public duty or public function.

23. When the „State merely authorizes a given „private action that action cannot automatically become one taken under „state authority . Private action would not be a public function. Which authorizations would have that Constitution triggering effect will necessarily turn on the character of the decision-making responsibility placed in private hands. However described, there must exist a category of responsibilities regarded at any given time as so „public or „governmental that their discharge by private persons, pursuant to state authorization even though not necessarily in accord with state direction, is subject to the constitutional norms that would apply to public officials discharging those same responsibilities.

24. Governmental functions are multifacial. There cannot be a single test for defining public functions. Such functions are performed by a variety of means.

Furthermore, even when public duties are expressly conferred by statute, the powers and duties do not thereunder limit the ambit of a statute, as there are instances when the conferment of powers involves the imposition of duty to exercise it, or to perform some other incidental act, such as obedience to the principles of natural justice. Many public duties are implied by the courts rather than commanded by the legislature; some can even be said to be assumed voluntarily. There are, however, public duties which arise from sources other than a statute.

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33. The Supreme Court on the question of maintainability of the writ petition for mandamus as against the management of the college held as under:

"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. 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.

34. The issue as to whether a private body, though not „State within the meaning of Article 12 of the Constitution, would be amenable to the writ jurisdiction of the High Court under Article 226 was examined by the Constitution Bench in *Zee Telefilm Ltd.* The question that fell for consideration was whether Board of Control for Cricket in India (in short "BCCI") falls within the definition of „State . The ratio laid down in *Andi Mukta* was approved, but on the facts of the case, Supreme Court, by majority held that BCCI does not fall within the purview of the term „State but clarified that when a private body exercises public function 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. Para 31, 32 and 33 of *Zee Telefilm* reads thus:

"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.

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....."

35. The ratio decidendi of *Zee Telefilms* is clear that: (i) BCCI a private body is not „State within the meaning of Article 12; (ii) BCCI discharges public functions; (iii) an aggrieved party can seek public law remedy against the BCCI under Article 226 of the Constitution of India.

36. In *G. Bassi Reddy v. International Crops Research Institute*, the Supreme Court observed that though 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 Court accordingly held that the primary activity of research and training voluntarily undertaken by the respondent institution therein cannot be said to be a public duty as the institution does not owe the duty to the Indian public to provide research and training facilities.

37. In *State of U.P. v. Johri Mal*, the Supreme Court held that for a public law remedy enforceable under Article 226, the action of a person or the authority need to fall in the realm of public law. The question is required to be determined in each case.

"The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law-be it a legislative act or the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question is required to be determined in each case having regard to the nature of and extent of authority vested in the State. However, it may not be possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions."

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39. We accordingly hold that a private body though not „State , but performing public duty is amenable to the writ jurisdiction under Article 226 of the Constitution. Whether a writ would lie at the behest of an aggrieved party against the offending act of the private body performing public duty would depend upon the facts and the nature of the offending act complained against."

Attention of the Court is also drawn to the judgment of the Surpeme Court in *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107, to argue that even if the Petitioner has an alternative remedy, it can invoke the writ jurisdiction under Article 226 of the Constitution against violation of its fundamental rights. Para 7 as relied upon by the learned counsel is as under:-

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non- existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

Mr. Sandeep Sethi, learned Senior Advocate appearing for Respondent No.6 contends that the present Petition is not maintainable and relies on various judgments on this aspect including a judgment of the Division Bench of this Court in *Air Vice Marshal J.S. Kumar v. Governing Council of Air Force Sports Complex & Anr.*, 2006 SCC OnLine Del 8 :

(2006) 86 DRJ 711 (DB), relevant part of which reads as under:

"14. In our opinion, the writ petition should have been dismissed on the short ground that it has been filed against a private body not performing any public functions, and ordinarily no writ lies against a private body except a writ of Habeas Corpus.

15. In our opinion the AFSC cannot be regarded as „State under Article 12 of the Constitution. As mentioned in the Counter affidavit, it runs in accordance with its own rules & bye-laws laid down by its Governing Council. Its funds are generated through monthly subscription and grants from the Welfare Funds and no funds are sanctioned from the Ministry of Defence to it.

16. Mr. Chetan Sharma, learned counsel for the appellant submitted that the AFSC should be regarded State under Article 12 of the Constitution, since its golf club is run on Government allotted land, the liquor served in the AFSC is subsidized by the Government and the Members of the Governing body are Air Force officials. In our opinion, these factors would not make the AFSC „State under Article 12 of the Constitution.

17. In our opinion, the respondent is neither performing any public function nor is it discharging any public duty. It is only providing some recreation to Air Force personnel, both serving and retired. This, in our opinion, would not make it „State under Article 12 of the Constitution. Merely because the Government has provided some land to the AFSC, would also not make the AFSC „State under Article 12 of the Constitution. The Government can give some facilities or benefits even to private bodies, but that, in our opinion, would not make that body „State under Article 12 of the Constitution. In the present case, the Government may have granted some facilities like land, subsidized liquor, etc. for providing recreation facilities to the Defence personnel, both serving and retired, but that is only as a kind of benefit or facility.

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56. In our opinion, in this case, it cannot be said that the AFSC is State under Article 12 of the Constitution as the Government has no deep and pervasive control over it. The funds of the AFSC mostly come from private contributions. Hence when the Supreme Court regarded the ICPS as not State under Article 12 although most of its funds were coming from the Government, all the less can we regard the AFSC as „State under Article 12.

57. It is true that a writ will lie against a private body if it is performing public functions vide *Binny Ltd. v. Sadasivan* (Supra). However, in our opinion, it cannot be said that the AFSC is performing public functions or discharging public duties.

58. As regards the meaning of the expression „public function or „public duties , that has been explained by the Supreme Court in *G. Bassi Reddy's case* (Supra), where it has been held that public function is a function akin to the sovereign functions of the State. In our opinion, providing recreation for Air Force Officers, serving or retired, can certainly not be called sovereign functions of the State. No doubt providing entertainment or sports may be conducive to one's mind or health, but in our opinion, this is not a sovereign function of the State.

59. Up to the 19th Century, the sovereign functions of the State were regarded to be only (1) defence of the country and (2) maintaining law and order within the country. However, with the emergence of the modern welfare State, the State functions now include providing for the welfare of the people. Hence providing for education, health of the people, etc. are nowadays also regarded State functions. However, it cannot be said that the State functions have expanded now to such a large extent that even providing for sports and recreation are to be regarded as sovereign functions. Despite the enlargement of the concept of the State functions in modern times, in our opinion, they are not so large as to include sports and recreation. In our opinion State functions would include those provided in the Directive Principles of State Policy in our Constitution, but these do not include recreation.

60. The AFSC, in our opinion, is a private body only providing recreation to Air Force Officers, and it is not discharging any public function or public duty."

Issue Notice.

Notice is accepted by Mr. Gourav M. Liberhan, Advocate on behalf of Respondent No.6.

Mr. Jawahar Raja, Advocate, accepts Notice on behalf of Respondent No.4/ Government of NCT of Delhi.

There is no appearance on behalf of Respondent Nos. 1, 2, 3 and 5. Issue Notice to Respondent Nos. 1, 2, 3 and 5, returnable on 06.07.2020.

Petitioner is at liberty to serve Respondent Nos. 1, 2, 3 and 5 through electronic mode before the next date of hearing.

Counter-Affidavits be filed within a period of two weeks from today. Rejoinder be filed within one week thereafter.

List on 6th July, 2020.

**JYOTI SINGH, J JUNE 12, 2020**