

Bilkesh Parveen Vs. the Board of Trustees, Kala Vikash Kendra Foundation Trust Represented by Management Trustees and ors.

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Court : Orissa

Decided On : Jul-09-2004

Reported in : 99(2005)CLT163

Judge : A.K. Patnaik and ;M.M. Das, JJ.

Acts : [Constitution of India](#) - Articles 12 and 226

Appeal No. : W.P.(C) No. 10433 of 2003

Appellant : Bilkesh Parveen

Respondent : The Board of Trustees, Kala Vikash Kendra Foundation Trust Represented by Management Trustees and or

Advocate for Def. : A.B. Mishra, Sr. Adv., ;S.K. Das (1), ;G. Misra, ;M.B. Das, ;D. Mohanty, ;B.C. Sahoo, ;B. Ray and ;P.K. Sahoo, Advs.

Advocate for Pet/Ap. : Bibudhendra Mishra, Sr. Adv., ;Karunakar Jena and ;Biswaranjan Dalai, Advs.

Judgement :

A.K. Patnaik, J.

1. Kala Vikash Kendra, Cuttack (for short, 'KVK') is a society governed by the Societies Registration Act and has been founded by Late Babulal Doshi for promoting dance, music and drama. KVK runs, inter alia, Trupti Ghosh Working Women's Hostel (for short, 'the hostel'). The petitioner is a Lecturer in English in Tangi Mahavidyala of Cuttack district and has been staying in the hostel to pursue her research in the subject under the Utkal University. The Opp. Party No. 3, Secretary of KVK issued a notice dated 30.9.2003 to the petitioner asking her to vacate the hostel by the 10th of October, 2.003. In the said notice, the Opp. Party No. 3 has stated that the petitioner was allowed to stay few months more and she was advised to make alternative arrangement. The petitioner has filed this Writ Petition under Article 226 of the Constitution praying for setting aside the said notice dated 30.9.2003 issued by the Opp. Party No. 3.

2. On 8.10.2003 a Learned Single Judge of this Court acting as the Vacation Judge notice to the opposite parties and passed orders in Misc. Case No. 10100 of 2003 directing that there be interim stay of the impugned notice dated 30.9.2003. On 27.10.2003 since no one appeared for the opposite parties despite service of the notice, a Division Bench of this Court passed orders continuing the said interim Order dated 8.10.2003 until further orders.

3. On 28.10.2003 a preliminary counter-affidavit was filed on behalf of the opposite parties contending inter alia that the Writ Petition was not maintainable and was liable to be dismissed on the ground that the opposite parties are not amenable to the Writ Jurisdiction of this Court. The opposite parties relied on the order dated 29.10.1996 in OJC No. 9803 of 1996 Sri Brundaban Chandra Rath v. Kala Vikash Kendra and another and the Order dated 29.6.1997 in OJC No. 10450 of 1997 Sanatan Sethi v. Kala Vikash Kendra and another by which the Writ Petitions filed against KVK were dismissed on the ground that KVK was not amenable to the Writ Jurisdiction of this Court. When the matter was listed thereafter on 22.4.2004 the Counsel for the opposite parties relying on the said two decisions of the Division Bench of this Court submitted that the Writ Petition against KVK was not maintainable and after perusing the Order dated 29.10.1996 in OJC No. 9803 of 1996 and the Order dated 29.6.1997 in OJC No. 10450 of 1997 the Court observed that no reasons had been given in the said two orders for the view taken

by two Division Benches of this Court that the Writ Petition was not maintainable against KVK and observed that the question of maintainability of the Writ Petition against KVK has to be decided by a reasoned order and posted the matter for hearing.

4. At the hearing, Mr. Bibudhendra Mishra, Learned Counsel for the petitioner, submitted that under Article 226 of the [Constitution of India](#) the High Court has powers to issue direction, order or writ to 'any person or authority' and the expression 'any person or authority' is wide enough to include a person or authority other than the State as defined in Article 12 of the Constitution. He submitted that the law is well settled that a direction, Order or Writ can be issued to even a private person performing a public duty. He argued that KVK is performing functions which are part of the functions of a Welfare State and has been receiving grants from the Government from time to time for such welfare activities. Referring to various publications on the KVK produced in Court, he submitted that KVK runs a College of Indian Dance and Music, is an Odissi Dance Centre for Performing Artists, is a Research Bureau for Folk and Tribal Dance, is a center for Champaklal Meheta Fine Arts, runs a hostel for children known as 'Sishu Manjari' and also runs a Working Women's Hostel known as 'Trupti Ghosh Working Women's Hostel'. He further pointed out that the Departments of Hindustani Sangeet and Instrumental Music of KVK are affiliated to Indira Kala Sangeet Mahavidyalaya, Khairagarh, M.P. and Akhil Bharatiya Gandarva Mahavidyalaya Mandal, Maharashtra and the Departments of Odissi Dance and Music of KVK are affiliated to Orissa Sangeet Natak Academy, Bhubaneswar. He further submitted that KVK prepares students for 6 year degree courses and 2 year postgraduate courses on the aforesaid subjects and has been recognized by the Government of Orissa. He submitted that the KVK receives grants from the Department of Culture under the Ministry of Human Resource Development of the Government of India and also receives grants from the Central Social Welfare Board. The Foundation Stone of KVK was laid by Dr. Harekrushna Mahtab, the then Chief Minister of Orissa and a sum of Rs. 10,000/- was sanctioned from the Local Development Fund of the Government at that time. The ground floor of KVK building was inaugurated by Shri Humayun Kabir, the then Minister of the Department of Culture, Government of India, and a grant of Rs. 5,000/- was made

by him to KVK. He further submitted that the Government of India released Rs. 24,000/- and Rs. 65,000/- while the Government of Orissa released a grant of Rs. 75,000/- and Pandit Jawaharlal Nehru, the then Prime Minister of India had made a grant of Rs. 10,000/- to the KVK. He submitted that the Delhi Sangeet Natak Academy had also made a grant to KVK for research in Folk Music and Dance. The Industries Department, Government of Orissa has also made a grant for the Tailoring Department of KVK. He further stated that the Government of Orissa leased out 14 gunths of land at a Salami of Rs. 400/- for construction of the building of KVK and also leased out 8 gunths of land at a Salami of Re. 1/- for construction of the hostel. He pointed out that Shri Basanta Kumar Biswal, the then Deputy Chief Minister of Orissa, had given a grant of Rs. 77,000/- to KVK for a standby generator and other equipment and Shri Ranganath Mishra, Member of Parliament, has granted Rs. 2 lakhs from the M.P's Discretionary Fund for improvement of the stage of KVK. He argued that all the aforesaid facts stated in different publications of KVK produced before the Court would clearly show that KVK and its authorities are performing public duties and are amenable to the Writ Jurisdiction of this Court under Article 226 of the Constitution.

5. Mr. Bibudhendra Mishra, Learned Counsel for the petitioner, cited the decisions of this Court in *Antaryami Rath v. State of Orissa*, represented by the Secretary, Education and Youth Services Department, and others, 70 (1990) CLT 642, *Basanti Mohanty v. State of Orissa and others*, 72 (1991) CLT 127, and *Smt. Susama Patnaik v. Managing Committee, Buxi Jagabandhu English Medium School and others*, 73 (1992) CLT 494 in which this Court has taken a view that Educational Institutions including private Educational Institutions perform public duty and are amenable to the Writ Jurisdiction of the High Court under Article 226 of the Constitution. He also relied on the judgment of B. L. Hansaria, C. J. of this Court (as he then was) in *Bijayalaxmi Tripathy and Ors. v. The Managing Committee of Working Women's Hostel and others*, AIR 1992 Orissa 242 in which his Lordship has taken a view that the duty of the Utkal Manila Samiti relating to the running of a Working Women's hostel is public in nature and any allegation about the violation of the rules governing the admission and any grievance about the disciplinary action against the intimates of the hostel could be entertainable by this Court and it would be permissible for the High Court to issue appropriate Writ,

direction or order against the utkal Manila Samiti in case any necessity for the same would be felt by the High Court. He also placed great reliance on the judgment of the Supreme Court in *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V. R. Rudani and other*, AIR 1989 SC 1607 for the proposition that under Article 226 of the Constitution Writs can be issued not only for enforcement of any fundamental rights but for any other purpose and the words 'any person or authority' used in Article 226 of the Constitution are not to be confined only to the statutory authorities and instrumentalities of the State but must cover any other person performing public duty and if a positive duty is cast on any authority, mandamus cannot be denied.

6. Mr. Bibudhendra Mishra, Learned Counsel for the petitioner, next submitted that by notice dated 11.1.2002 annexed to the preliminary counter affidavit filed on behalf of the Opp. Parties No. 1, 2 and 3 as Annexure-E/1 the petitioner was asked to vacate the Working Women's hostel by the Opp. Party No. 3 on the ground that she was regularly remaining absent from the Working Women's hostel since four to five months and her present employment was doubtful. About twenty months after the said notice dated 11.1.2002 the petitioner was served with another notice dated 30.9.2003 annexed to the said preliminary counter affidavit filed on behalf of the Opp. Parties No. 1, 2 and 3 as Annexure-F/1 stating therein that the Warden had allowed the petitioner to stay for a few months more and that the petitioner Was asked to make alternative arrangement for her stay and that the petitioner has overstayed grace period and that the petitioner should vacate the hostel forthwith and she will not be allowed entry to the hostel when it reopens on 10.3.2003. Mr. Bibudhendra Mishra submitted that before issuing the impugned notice dated 30.9.2003 asking the petitioner to vacate the hostel as a disciplinary measure, the petitioner was not afforded any opportunity to show cause or to be heard and this act on the part of the opposite parties is violative of principles of natural justice and the Court should issue a Writ of mandamus quashing the impugned notice dated 30.9.2003 and directing the opposite parties to continue the petitioner in the hostel.

7. Mr. A. B. Mishra, Learned Counsel for the opposite parties, submitted relying on the preliminary counter affidavit and the reply to the rejoinder filed on behalf of the opposite parties that KVK is a purely private entry and is not receiving any regular grant or aid from the Central Government, State Government or any authority. He submitted that some random amount received by KVK from the Central Government, State Government or any authority will not make KVK a State or an instrumentality of State within the meaning of Article 12 of the Constitution. He further argued that the functions performed by the KVK including the function of providing accommodation to Working Women in the Working Women's Hostel are not sovereign or public in nature and therefore no mandamus can be issued to the KVK. He cited the judgment of Jagadeb Roy, J. in *Bijayalaxmi Tripathy and Ors. v. The Managing Committee of Working Women's Hostel and others* (supra) in which he has held that it was not an obligatory public duty of the Government to provide accommodation to the working people or poorly paid employees and that the Mahila Samiliti did not owe any public duty to provide accommodation to working women. He also relied on a decision of a Full Bench of this Court in *Banabihari Tripathy v. Registrar of Co-operative Societies and another*, AIR 1989 Orissa 31 in which it has been held that in the absence of any deep and pervasive State control over a Co-operative Bank registered under the Co-operative Societies Act, such a Co- operative Bank is not authority within the meaning of Article 12 of the Constitution and is not amenable to the Writ Jurisdiction of the High Court. He submitted that in *Chander Mohan Khanna v. The National Council of Educational Research and Training and others*, AIR 1992 SC 76 the Supreme Court held that the activities of National Council of Educational Research and Training which comprised of several kinds of programmes and activities connected with co-ordination of research extension services and training and dissemination of improved educational programmes and preparation of and publication of books are not wholly related to Governmental functions and NCERT is not a State within the meaning of Article 12 of the Constitution and is therefore not amenable to the Writ Jurisdiction of the High Court under Article 226 of the Constitution. He also cited the decision of a Full Bench of this Court in *Sandit Kumar Mishra v. Regional College of Education, Bhubaneswar and others*, 81 (1996) CLT 699 holding that a Writ Petition under Article 226 of the Constitution against the Regional College of

Education, Bhubaneswar which is a constraint unit of National Council of Educational Research and Training is not maintainable. He placed great reliance on a recent decision of the Supreme Court in *Federal Bank Ltd. v. Sagar Thomas and others*, 97 (2004) CLT 363 (SC) in which the Supreme Court after discussing at length the tests laid down in its earlier decisions held that merely regulatory provisions to ensure that activities carried on by private bodies work within a discipline, do not put any positive obligation of a public nature upon such private bodies which may be enforced through issue of a Writ under Article 226 of the Constitution. He pointed out that in the case of *T.M.A. Pai Foundation and Ors. v. State of Karnataka and others*, AIR 2003 SC 355. The Supreme Court has taken a view that unaided private aided Educational Institutions are entitled to maximum autonomy. He vehemently argued that the decisions of the two Division Benches of this Court in OJC No. 9803 of 1996 *Sri Brundaban Chandra Rath v. Kala Vikash Kendra and another*, and the Order dated 29.6.1997 in OJC No. 10450 of 1997 *Sanatan Sethi v. Kala Vikash Kendra and another*, that KVK is not amenable to the Writ Jurisdiction of the High Court are binding on us even if they do not contain any reason. He cited the decision of the Supreme Court in *Shyamaraju Hegde v. U. Venkatesha Bhat and others*, AIR 1987 SC 2323 for the proposition that a Co-ordinate Bench of a High Court cannot overrule, an earlier judgment of the High Court.

8. Mr. A. B. Mishra, Learned Counsel for the opposite parties, next submitted that in any event a resident of Trupti Ghosh Working Women's Hostel of KVK has a right to continue in the hostel for only year beginning from 1 st of April of a year to 31 st of March of next calendar year and can continue in the subsequent year only if she is readmitted into the hostel. In this context, he referred to the rules and regulations of the Working Women's Hostel of KVK and, in particular, Rule 6(iv) and Explanation 1 thereto. He pointed out that similarly provisions have also been made in Rule 10(i) of the Orissa Working Women's Hostel (Management) Rules, 1987 stipulating that admissions to hostel will be for a year beginning from the 1st of April. He submitted that since the petitioner had occupied the hostel for a year and had not applied for readmission after a year, she was not entitled to continue in the hostel. He further submitted that in any event under Rule 10(ix) of the Orissa Working Women's Hostel (Management) Rules, 1987 no boarder can be allowed

to continue in the hostel for more than 5 years and only in special cases, the Managing Committee has the discretion to continue beyond 5 years for one additional year. He submitted that since the petitioner has remained in the hostel already for six years, she cannot be allowed to continue beyond 6 years under the Orissa Working Women's Hostel (Management) Rules, 1987. He cited the decision of the Supreme Court in *D. H. Maniar and Ors. v. Woman Laxman Kudav*, AIR 1976 SC 2340, and argued that once the period of licence to occupy a property is over and the licensee has not applied for renewal of the licence', such a person cannot be allowed to continue on the property by the Court. He also relied on the decision of a Full Bench of this Court in *Laxminarayan Saw Mill and Anr. v. State of Orissa and others*, 79 (1995) CLT 189 for the proposition that in case of a conflict between 'individual interest' and 'public interest', individual interest must yield to public interest. He argued that continuance of the petitioner in the Working Women's Hostel of KVK is not in the 'public interest' but may be in the 'private interest' of the petitioner but such private interest of the petitioner should yield to the public interest.

9. We have considered the submissions of Learned Counsel for the parties and we find that the petitioner has been a boarder of the Trupti Ghosh Working Women's Hostel of KVK. She was served with a notice dated 18.7.2001 by the General Secretary of KVK Opp. Party No. 3 copy of which has been annexed to the preliminary counter affidavit filed on behalf of the opposite parties as Annexure-D/1. In the said notice, Opp. Party No. 3 has stated that the petitioner is having a regular visitor coming everyday in the morning and at other times and the petitioner does not listen to the Matron when she warns her. In the said notice, the petitioner was informed that she had two options : either the visitor stops coming or the petitioner vacated the hostel by 31.7.2001. Thereafter no disciplinary action was taken against the petitioner for about six months till January, 2002 on the ground that she was having a regular visitor as alleged in the said notice dated 18.7.2001. In January, 2002 the General Secretary of KVK Opp. Party No. 3 issued another notice dated 11.1.2002 stating therein that the petitioner was regularly remaining absent from the hostel since four to five months and she did not inform the reason for her absence. In the said notice dated 11.1.2002 the Opp. Party No. 3 advised the petitioner to vacate the hostel by the end of January, 2002

without fail. Thereafter, for a period of eight months, no disciplinary action was taken against the petitioner on the ground that she was remaining absent from the hostel without informing the reasons of her absence or that her present employment was doubtful, as alleged in the said notice dated 11.1.2002. After a gap of eight months, a fresh notice dated 30.9.2003 was issued to the petitioner by the General Secretary of KVK-Opp. Party No. 3 advising the petitioner to vacate the hostel forthwith and informing her that she will not be allowed entry to the hostel when it reopens on 10th of October, 2003. It is this notice dated 30.9.2003 which is annexed to the Writ Petition as Annexure-1 and which is impugned in this Writ Petition. The impugned notice dated 30.9.2003 issued to the petitioner is extracted herein below :

'KALAVIKASH KENDRA'

A Centre Of Culture (EST : 1952)

K.V.K. Marg, Cuttack - 753001 (Orissa)

Tele Fax : 0671-301243

No. 797/2003

Email : Kalavikash @ yahoo. Co. in

Dated : 30.9.2003

To

Ms. Bilkesh Parveen

Trupti Ghosh W.W. Hostel,

Kala Vikash Kendra, Cuttack

Subject : Vacating Working Women's Hostel.

Madam,

You were served a notice vide our letter No. 304/2002 to vacate the hostel.

On your repeated request the Warden allowed you to stay for a few months more. You were advised to make alternative arrangement for your stay.

You have overstayed the grace period. You are advised to vacate the hostel forthwith as no good will gesture can be extended further.

You will not be allowed entry to the hostel when it reopens on 10th October, 2003.

Sd. K. P. Mohanty

(Kshirod Prasad Mohanty)

General Secretary and

Member, Board of Trustees'

In the impugned notice dated 30.9.2003 extracted above, the Opp. Party No. 3 has stated that on the repeated request of the petitioner she had been allowed to stay for a few months more and she had been advised to make alternative arrangement for her stay and she had overstayed the grace period and no good will gesture could be extended to her any further and she will not be allowed to enter into the hostel when it reopens on 10th of October, 2003. Hence, by the impugned notice dated 30.9.2003, the petitioner has been asked to vacate the hostel not on the ground of any indiscipline but on the ground that she was allowed to stay for a few months more and she was asked to make alternative arrangement for her stay and that she had overstayed the grace period and no goodwill gesture could be extended to her any further. Thus, the questions which have to be decided by us in this Writ Petition are : whether the petitioner had any legal right to continue in the hostel and the opposite parties had any corresponding legal duty to continue the petitioner in the hostel, and whether before asking the petitioner to vacate the hostel by the impugned notice dated 30.9.2003 not on the ground of indiscipline but on the ground that she had overstayed in the hostel, the opposite parties were required to observe the principles of natural justice.

10. The first question to be decided is whether the petitioner had any legal right to continue in the hostel and the opposite parties had any corresponding duty to continue her in the hostel. The case of the petitioner in Paragraph 8 of the Writ Petition is that the Orissa Working Women's Hostel (Management) Rules, 1987 framed as a set of executive instructions by the Government of Orissa, CD, and R.R. Department, are applicable to the Trupti Ghosh Working Women's Hostel of KVK while the case of the opposite parties is that the said rules, though not strictly applicable, have been adopted by the KVK for its said Working Women's Hostel. Rule 10(i) of the Orissa Working Women's Hostel (Management) Rules, 1987 is quoted herein below :

'10. Admission : (i) Admission to the Hostel will be for a year beginning from the 1 st. April. Applications will be invited in the month of March. Residents living in the hostel will have to apply for admission each year. The last date for receipt of applications shall be 15th March each year. The formalities maintained at the time of admission will be maintained for readmission.'

From the aforesaid provision of Rule 10(i) it is clear that admission to the hostel is only for a year beginning from 1st April and after completion of one year, the resident may apply for re-admission. This also is the provision in the Rules and Regulations of the Working Women's Hostel of KVK. Rule 6(iv) and Explanation-1 thereto of the said Rules and Regulations of the Working Women's Hostel of KVK are quoted herein below :

'6. Admission :

(i)to(iii).....

(iv) Admission to the Hostel will be sought for every year, beginning from 1st April. Application for admission will be invited in the month of March and finalized by the end of March.

Explanation 1. : A resident's occupation ends on 31st March. She will have to vacate on 1st April, if she fails to apply afresh in time or if her application has not been sanctioned.'

Hence, the petitioner could be admitted to the Trupti Ghosh Working Women's Hostel of KVK only for a period of one year beginning from 1 st April of the year and ending on 31 st of March of the subsequent year. Assuming that the opposite parties have allowed the petitioner to remain as a boarder even after 31st of March, 2003 and had thereby readmitted the petitioner in the hostel, on the basis of the said readmission, the petitioner could have continued in the hostel only up to 31st of March, 2004 and not beyond 31st of March, 2004. Thus, taking any view of the matter, the petitioner would have no right to continue in the hostel as a boarder after 31st of March, 2004 and correspondingly the opposite parties would have no duty to continue the petitioner in the hostel after 31st of March, 2004.

11. The next question is whether principles of natural justice were required to be followed before the impugned notice dated 30.9.2003 was given to the petitioner to vacate the hostel. As we have discussed above, although initially notices dated 18.7.2001 and 11.1.2002 were given by the Opp. Party No. 3 to the petitioner making some allegations against the petitioner on account of which the petitioner was asked to vacate the hostel as a disciplinary measure, no such disciplinary action was taken against the petitioner on the basis of the said notices dated 18.7.2001 and 11.1.2002. Ultimately, by the notice dated 30.9.2003 the petitioner was asked to vacate the hostel on the ground that she had overstayed the grace period. When the petitioner was asked to vacate the hostel not as a disciplinary measure but on the ground that she had overstayed in the hostel, in our considered opinion, the opposite parties were not under any legal duty to follow the principles of natural justice. In *Bijayalaxmi Tripathy and Ors. v. The Managing Committee of Working Women's Hostel and others* (supra) the Managing Committee of the Working Women's Hostel removed Bijayalaxmi Tripathy and four other inmates of the Working Women's Hostel on the allegation that they were returning to the hostel beyond the scheduled hour and sometimes at very late hours and not even signing the Late-comer's Register and they were cooking inside the living room of the hostel which was prohibited. B. L. Hansaria, C.J. (as he then was) held that although principles of natural justice had been followed before taking the disciplinary action, the five petitioners in that case should be allowed a further opportunity to have their say in the matter, while K. C. Jagadeb Roy. J. held that there was no violation of principles of natural justice in taking the

decision to remove the inmates of the hostel and he did not find any reason for calling upon the authorities for giving further opportunity to the petitioners of that case to have their say in the matter. Thus, the case of Bijayalaxmi Tripathy and Ors. v. The Managing Committee of Working Women's Hostel and others (supra) was a case of removal of some inmates of the hostel by way of disciplinary action. But in this case, as we have seen, the petitioner was asked to vacate the hostel by the impugned notice dated 30.9.2003 not as a disciplinary measure but on the ground that she had overstayed in the hostel.

12. In our considered opinion therefore the opposite parties did not owe any duty under law to continue the petitioner in Trupti Ghosh Working Wmen's Hostel of KVK beyond 31 st of March, 2004 and also did not have any duty under law to observe the principles of natural justice before issuing the impugned notice dated 30.9.2003 and therefore no mandamus or other Writ or direction can be issued by the High Court under Article 226 of the Constitution quashing the impugned notice dated 30.9.2003 in Annexure-1 to the Writ .Petition and directing the opposite parties to continue the petitioner any longer in Trupti Ghosh Working Women's Hostel of KVK. Since we have to whether or not KVK is amenable to the Writ Jurisdiction of the High Court under Article 226 of the Constitution.

13. The Writ Petition stands disposed of and the interim order passed by this Court on 8.10.200.3 and continued thereafter by this Court is vacated. There shall be, however, no order as to costs.

M.M. Das, J.

14. I agree.

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