2025 INSC 749

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10899 OF 2013

Dileep Kumar Pandey **... Appellant**

versus

Union of India & Ors. **... Respondents**

with

CIVIL APPEAL NO.11378 OF 2013

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The issue involved in these two appeals is whether the Air Force School, Bamrauli, in District Allahabad, is a 'state or authority' within the meaning of Article 12 of the Constitution of India.

2. Air Force Schools were established in the year 1966 for imparting education to the children of the personnel of the Indian Air Force (IAF). Indian Air Force Educational and Cultural Society (for short, 'the Society')

was registered under the Societies Registration Act, 1860. It was registered on 10th November 1987. It was established to manage Air Force Schools. The Air Force Schools at Bamrauli (for short, 'the said school') applied for affiliation with the Central Board of Secondary Education (CBSE) in 1985.

FACTS IN CIVIL APPEAL NO.10899 OF 2013

3. According to the case of the appellant (Dileep Kumar Pandey) in Civil Appeal No.10899 of 2013, pursuant to a public advertisement and selection process conducted by the officers of the IAF, on 1st July 2005, he was appointed as a trained graduate teacher in the subject of physical education in the said school. According to his case, he was appointed on probation, and the probation period was extended from time to time. On 28th June 2007, an order was served upon the appellant stating that he was rendered surplus as the said school decided to appoint a more qualified teacher. An option was given to the appellant either to remain employed in the said school on contractual basis on a fixed salary from 1st July 2007 to May 2008 or to remain employed under the existing arrangement under which his service would come to an end on 3rd July 2007. Therefore, the appellant filed a writ petition before the Single Judge of the High Court, *inter alia*, praying for a declaration that the appellant is a

confirmed teacher in the said school. The writ petition was allowed by order dated 13th January 2010 by a learned Single Judge by holding that the said school was a 'State' within the meaning of Article 12 of the Constitution of India and was amenable to the jurisdiction of the High Court. The learned Single Judge, after setting aside the impugned orders, observed that it will be open to the Society to consider the claim of the appellant for confirmation in accordance with the law. An appeal was preferred before the Division Bench essentially on behalf of the management of the said school, which was allowed by the impugned judgment dated 12th July 2010. The Division Bench held that the said school was not a state within the meaning of Article 12, and as a result, a writ petition under Article 226 could not be entertained. Hence, the judgment of the learned Single Judge was set aside.

FACTS IN CIVIL APPEAL NO.11378 OF 2013

4. The appellant Sanjay Kumar Sharma was appointed as a post-graduate teacher (Commerce) on 19th June 1993 and was later on confirmed by the Officer-in-Charge of the said school. The Officer-in-Charge was an officer of the IAF. On 3rd March 2003, he was appointed as the officiating Principal of the said school by Wing

Commander Ajay Kumar, Officer-in-Charge. According to the case of the appellant, the 6th respondent, Smt. Shalini Kaul has started acting as the principal without taking over charge of the post. Disciplinary proceedings were initiated against him by the 6th respondent. Later on, at the instigation of the 6th respondent, girl students filed a complaint against the appellant. On the basis of various allegations, a show cause notice dated 19th December 2005 was issued to the appellant. On 23rd February 2006, a charge sheet was filed against the appellant. There were two writ petitions filed by the appellant. First was the writ petition No.12437 of 2006, wherein the appellant sought to challenge the appointment of the 6th respondent as the principal. Writ petition No.19915 of 2006 was filed by the appellant for challenging the charge sheet dated 23rd February 2006. By the order dated 5th July 2006, though the learned Single Judge held that petitions were maintainable, it was observed that as disciplinary proceedings were pending against the appellant, no interference should be made.

5. There were two special appeals preferred by the appellant for challenging the judgment dated 5th July 2006 of the learned Single Judge. By order dated 11th September 2006, the order of remand was passed by the Division Bench of the High Court to the Single Judge.

Learned Single Judge by his order dated 16th September 2010 dismissed the writ petitions by relying upon the judgment impugned in Civil Appeal No.10899 of 2013. Thereafter, the appellant was terminated from service. A special Appeal was preferred by the appellant against the judgment and order dated 16th September 2010 in Writ Petition No.19915 of 2006. By the impugned judgment and order dated 2nd November 2010, the Division Bench dismissed the appeal on the ground that the writ petition was not maintainable.

SUBMISSIONS OF THE APPELANTS

6. The learned senior counsel appearing for the appellants submitted that the primary function of the Air Force schools is the promotion of education, fine arts and culture, mainly amongst the past and present employees of the IAF, their families and children. The learned senior counsel submitted that the documents on record clearly show that the Air Force headquarters exercises dominant control over the administration and functioning of the Air Force schools. Learned senior counsel relied upon an application made by the said school to CBSE for affiliation, in which the said school claimed that it was fully financed by the IAF. He submitted that all Air Force school buildings have been constructed using Public

Funds under the authorisation of the Ministry of Defence. He submitted that the pay scales of the school staff are fixed by the Air Force headquarters, which is the appropriate authority. The Command Schools Management Committee has to conform to the pay scales as issued/recommended by the Directorate of Education, Air Force Headquarters. He also pointed out that the Command Schools Management Committee has been constituted to run Air Force Schools in accordance with the rules and regulations specified in the Education Code of Air Force Schools of 2005 (for short, "the Education Code").

7. Inviting our attention to the findings recorded by the Division Bench of the High Court, he submitted that the High Court had committed an error in holding that there was no material on record to show that the said school had been set up by using government funds and that it was not established that the institution is not governed by any statutory regulations. He submitted that there is enough material on record to show that the IAF exercises deep and pervasive control over the said school and, in fact, over all Air Force Schools. He submitted that the IAF provides financial assistance to Air Force Schools. He also pointed out that the Society is funded through

regimental funds and has received grant-in-aid. He pointed out that Regimental Funds belong to the IAF.

8. Learned senior counsel has relied upon the following decisions of this Court: -

(i) ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.***[1]

(ii) ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors.***[2]

(iii) ***Raj Soni v. Air Officer Incharge Administration & Anr.***[3]

(iv) ***All India Sainik Schools Employees' Association v. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi & Ors.***[4] and

(v) ***Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.***[5]

9. Learned senior counsel submitted that IAF has functional and administrative control over the said Society and the said school. Therefore, he submitted that Air Force Schools are "authority" within the meaning of Article 12 of the Constitution of India and thus, are

1 1989(2) SCC 691
2 2002 (5) SCC 111
3 1990(3) SCC 261
4 (1989) Supp (1) SCC 205
5 (1981) 1 SCC 722

amenable to writ jurisdiction under Article 226 of the Constitution of India.

SUBMISSIONS OF ADDITIONAL SOLICITOR GENERAL OF INDIA

10. Learned ASG pointed out that the IAF was established in the year 1932. Subsequently, Regimental Schools were established. The Ministry of Defence allocated funds for establishing schools for Air Force Officers. However, ownership and tenancy of buildings for schools, as well as issues related to the land, remained with the local military administration. She submitted that the Regulations for the Air Force (hereinafter referred to as "the Regulations") define "Non-Public Funds," which are also known as "Regimental Funds." Learned ASG pointed out that the Regulations explain the meaning of "Non-Public Funds Accounts". She submitted that Air Force Schools are governed by Non-Public Funds of the Forces. She submitted that the schools have sources of income that come from Tuition fees, Interest, Activity fees, Admission fees, Development fees, Computer fees, and miscellaneous fees. Learned ASG relied upon the decision of this Court in the case of ***Union of India & Anr. v. Chotelal & Ors.***[6]. She submitted that the said decision is squarely applicable to

6 1999(1) SCC 554

the facts of the case. Learned ASG also relied upon a decision of this Court in ***R.R. Pillai (Dead) through LRs. v. Commanding Officer, Headquarters Southern Air Command (U) and Ors.***[7].

11. Learned ASG submitted that the entire issue is covered against the appellants by the decision of this Court in the case of ***Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma & Ors. etc.***[8] She submitted that this decision relied upon the earlier decision of this Court in the case of ***St.Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.***[9]**.**

12. By way of rejoinder, learned counsel appearing for the appellants submitted that the cases of ***Army Welfare Education Society***[8] and ***St.Mary's Education Society & Ors.***[9] stand on a different footing. He tried to distinguish the decisions in the cases of ***Army Welfare Education Society***[8] and ***St.Mary's Education Society & Ors.***[9] and submitted that the said decisions will not apply.

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7 (2009) 13 SCC 311
8 (2024) SCC Online SC 1683
9 (2023) 4 SCC 498

CONSIDERATION OF SUBMISSIONS

13. By the impugned judgments, the Division Bench of the Allahabad High Court held that the Society is not a 'state' within the meaning of Article 12 of the Constitution. We must refer to the assertions made by the appellant in the writ petition filed before the Single Judge of the High Court on this aspect. In the writ petition that is the subject matter of Civil Appeal No. 10899 of 2013, in paragraphs 5 to 7, the appellant has stated thus:

> "5. That for the effective management and administration of the Air Force School at various units, the Society has framed an Education Code Air Force Schools 2005. The Code aforesaid is identical to Education Code framed for the managing to Kendriya Vidyalay.
>
> 6. That the Air Force Schools are financed by the Central Government, through Indian Air Force School, controlled by the officers of the Indian Air Force and the purposes is to impart education to the children of officers and employees of the Indian Air Force. The Air Force Schools come within the meaning of the word

"State" under Article 12 of the Constitution of India.

7. That the Air Force School, Bamrauli, Allahabad, is a school established by the aforesaid Society and the said school comes under the definition of "State" under Article 12 of the Constitution of India."

14. In the counter filed before the High Court, the respondents contended that the Society is a non-profit making welfare association and the said school is a non-public fund school. The finance is arranged from the fees collected from students under various heads, and the air force personnel make a contribution through their welfare fund. It is specifically pleaded that neither in the welfare fund nor in the school finances is any money of the Central Government involved. Moreover, there is no control by the Central Government or the Ministry of Defence over the running or management of the school. While addressing the contents of paragraph 5 of the petition, it is specifically pleaded that the Education Code issued by the Society is not identical to the Education Code issued by the CBSE or Kendriya Vidyalaya. It is reiterated, while dealing with paragraph 6 of the writ petition, that the said school does not receive any grant from any agency having a link to any of the governments.

15. Now, we will refer to the law laid down on this aspect. Paragraphs 15 and 20 of the decision of this Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust***[1] read thus:

> **"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 The Evolving Indian Administrative Law by M.P. Jain (1983), p. 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.

.. ..

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.**
>
> (emphasis added)

16. In the case of ***Pradeep Kumar Biswas*[2]*,*** this Court dealt with the aspect of control over the institution. This Court relied upon the decision in the case of ***Ajay Hasia*[5]**. In paragraph 40, this Court held thus:

> **"40.** The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. **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."
>
> (emphasis added)

17. In the case of ***All India Sainik Schools Employees Association***[4], as a matter of fact, it was found that the entire funding for running the school was provided by the State and Central Governments. Even the overall control was found vested in governmental authority.

18. In the case of ***Raj Soni***[3], this Court, as can be seen from paragraph 10, found that it was not necessary to decide whether or not the school is a 'state' or 'authority' under Article 12 of the Constitution of India.

19. Now, we turn to the decision of this Court in the case of ***St.Mary's Education Society***[9]. It is true that this Court did not consider the decision of this Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust***[1] of this Court. However, this Court has discussed all relevant principles. The principles laid down in the said decision in the case of ***St.Mary's Education***

Society & Ors. are in paragraphs 75.1 to 75.5, which read thus:

> **"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.**
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> **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."
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> (emphasis added)

20. The law laid down in this decision was followed by this Court in the case of ***Army Welfare Education Society***[8]. In that case, ***this*** Court dealt with a school taken over by the Army Welfare Education Society, which required existing teachers to requalify under new conditions. The High Court held that the school could not impose service conditions to the teachers' disadvantage. In the said decision, this Court was concerned with a case where a school was taken over by the petitioner - the Army Welfare Education Society**.** A letter was sent to the

teachers in the school run by St. Gabriel's Academy indicating that those among the teachers who are eligible in terms of CBSE guidelines would be considered for appointment on *ad hoc* basis for one year and thereafter, they will have to appear and qualify written test conducted by the Army Welfare Education Society. The teachers approached the High Court. Learned Single Judge held that the school cannot impose the service conditions on the teaching staff to their disadvantage. The issue before this Court in the said case was whether the Army Welfare Education Society was a "state" or "authority" within the meaning of Article 12 of the Constitution. This Court found that the Society was a purely unaided private Society established for the purpose of imparting education to the children of the army personnel. This Court applied the law laid down in the case of ***St.Mary's Education Society & Ors.***[9] and held that though the Society was imparting education, which involves public duty, the relationship between the respondents and the Army 'Welfare Education Society was that of an employee and private employer arising out of a private contract. Therefore, a breach of contract does not touch any public law element, and the school cannot be said to be discharging any public duty in connection with the employment of the teachers.

21. We have perused the application made to CBSE for affiliation. The application was made on 22nd August 1985. It was in ***the*** name of the Air Force Primary School. Although it is stated that the school was fully financed by the IAF, there is no evidence to show that the school was actually financed by the IAF. The Education Code, which applies to Air Force Schools, is not a statutory code that has the force of law. It is issued under the authority of the Chairman of the Board of Governors of the IAF Educational and Cultural Society. It provides that all Air Force Schools are administered under the Society. As per the Memorandum of Association of the Society, the members of the Society are IAF officers who hold their posts *ex-officio*. The Command Schools Managing Committees do not have control over the day-to-day running of Air Force Schools. The day-to-day control is with the School Managing Committee. Even if the school building is constructed out of Public funds, there is no record to show that it receives a grant from Public Funds. There is nothing in the Education Code to show that the IAF has control over the said school. The audited accounts of the school for the period from 2019-20 to 2023-24 indicate that no public funds or grants were received by the school. Even if pay scales applicable to all IAF schools are determined by the IAF, that by itself

will not amount to pervasive control by the IAF over the functioning of the schools.

22. It is not shown how the IAF headquarters has any control over the management of the said school. Although some funds may have originated from the Army Welfare Society, it cannot be said that the State or the IAF has any control, let alone all-pervasive control, over the school. Moreover, the said Society is not governed by any statutory rules.

23. In the impugned judgment, the Division Bench recorded the undisputed position that the appellants are employees of the said school, which is not governed by any statutory regulations. The Education Code, which applies to the said school, does not have any statutory sanction or force. A finding of fact was recorded that there is no material to show that the Government or the IAF has any control over the management of the school. It is not possible for us to take a contrary view.

24. In the circumstances, we are unable to find any fault with the view taken by the Division Bench of the High Court. The relationship between the appellants and the said school is in the realm of private contract. Assuming that there was a breach of private contract, the same does not involve any public law element.

25. Therefore, there is no merit in the appeals, and the same are dismissed. We, however, make it clear that other remedies, if any, of the appellants are kept open.

.....J.
(Abhay S. Oka)

.....J.
(Augustine George Masih)

New Delhi;
May 21, 2025.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10899 OF 2013

DILEEP KUMAR PANDEY …APPELLANT

VERSUS

UNION OF INDIA & ORS. …RESPONDENTS

R1: UNION OF INDIA

R2: CHAIRMAN, SCHOOL MANAGEMENT COMMITTEE AIR FORCE SCHOOL

R3: EXECUTIVE DIRECTOR/ WING COMMANDER, AIR FORCE SCHOOL

R4: SHIKSHAK KALYAN SAMITI …INTERVENOR

WITH

CIVIL APPEAL NO.11378 OF 2013

SANJAY KUMAR SHARMA …APPELLANT

VERSUS

CENTRAL BOARD OF SECONDARY EDUCATION & ORS.

…RESPONDENTS

R1: CENTRAL BOARD OF SECONDARY EDUCATION

R2: SCHOOL MANAGEMENT COMMITTEE

R3: OFFICER IN-CHARGE/EDUCATION OFFICER

R4: SQR. LDR. U. S. PABLA ENQUIRY OFFICER

R5: PRINCIPAL, AIR FORCE SCHOOL, BAMRAULI

R6: SMT. SHALINI KAUL

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

I have had the benefit of perusing the erudite view in the judgment penned by my senior, learned Brother Hon'ble Mr. Justice Abhay S. Oka. With great reverence for his scholarly opinion, I am unable to concur therewith, for reasons that follow.

2. When there are allegation(s) of wrong-doing alleged by the appellants-teachers with regard to action taken against them by the respondent-Air Force School, Bamrauli in the district of Allahabad (hereinafter referred to as the 'School'), the moot question which is required to be answered by us is whether the School would be amenable to writ jurisdiction under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution')?

3. For convenience, Articles 12 and 226 of the Constitution are reproduced hereinunder:

> '***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.

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***226. Power of High Courts to issue certain writs**. —(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period

of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.'

4. I do not propose to delve into the entire factual prism and detailed submissions advanced by the respective learned senior counsel and learned counsel for the parties as need therefor has been obviated, having been noted by my esteemed senior colleague. However, some basic but unique facts require to be stated.

5. The School was set up by the Indian Air Force (hereinafter referred to as the 'IAF') as a welfare measure for the officers and personnel of the IAF with regard to the education of their children/wards. Such policy decision was taken at the highest echelons of the IAF, which itself took up the basic work of setting-up of the requisite infrastructure for the School, as also providing for a mechanism to run the School, in future, both administratively and financially. The system envisaged was that every school will have a

School Managing Committee (hereinafter referred to as the 'Committee') of its own, which would also comprise officers of the IAF posted at the local level. Apropos funds, besides fee(s) charged from students, which was different for different categories, some funds would arrive by way of aid, either directly from the IAF unit or through various welfare funds of the IAF, which are contributory funds by the officers and personnel of the IAF. The School's building is on IAF land and has been built entirely by the funds of the IAF.

6. The next relevant factors pertinent for deciding the issue are the nature of functions and duties discharged by the School and the manner in which they are discharged.

7. It is not in dispute that the school imparts education to the children and wards, both of IAF personnel and also partly for the non-IAF persons. This assumes significance for the reason that imparting education has been held to be a public function as it affects the public at large. Thus, the School discharges a public function, undoubtedly. Further, the administrative functioning of the School, as mentioned above, is directly under the Committee consisting of IAF personnel posted locally. This, in the view of this Court, indicates that, ultimately, it is the IAF which is in control of the School's

management and has the last word in the administration of the school. This, but obviously and consequentially, would include recruitment of teachers and other officers/employees of the schools and extend to disciplinary control over the teachers/staff/employees, including the right to disengage/terminate/dispense with their services. Examined thus, there cannot be any dispute that the body exercising such dominant control over the matters referred to *supra*, being fully in the hands of the Committee, which itself is made up of serving locally-posted IAF personnel, leaves no scope of ambiguity as to the clear fact that the IAF has full and all-pervasive control over the management of the School, inclusive of disciplinary powers as also the power to terminate employment, by whatever label styled.

8. In ***Pradeep Kumar Biswas v Indian Institute of Chemical Biology*****, (2002) 5 SCC 111**, 7 learned Judges were re-considering the decision rendered by 5 learned Judges in ***Sabhajit Tewary v Union of India*****, (1975) 1 SCC 485**, wherein the Council of Scientific and Industrial Research was held to not be '*State*' under Article 12 of the Constitution. Reversing ***Sabhajit Tewary*** (*supra*), the majority in ***Pradeep Kumar Biswas*** (*supra*), speaking through the learned Ruma Pal, J., held:

> '***40.*** *The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722: 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. 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*.'
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> (emphasis supplied)

9. Additionally, all orders, be they of appointment, extension of probation, fixation of pay, *etcetera* are passed under the authority of the IAF officers. The undersigning of these day-to-day orders compels us to hold that the control exercised by the IAF, and by extension the Government of India, on the working of the School is not merely regulatory in nature but deep and pervasive inasmuch as it is not only concerned with supervision alone, but even involved in the banal and mundane workings/proceedings of the School. This is also apparent from the Notification issued by the Press Information Bureau (Defence Wing) dated 02.03.2009 announcing the appointment of the first Director General (Administration). Here, the

responsibilities delineated for such newly-appointed Director General also included '*looking after the Air Force Schools*'. There are multiple levels of authorities from the IAF overlooking, supervising, administering, and most importantly, controlling the overall working of the School and all other such schools, which discharge a public function i.e., imparting education. As rightly pointed out by the learned senior counsel for the appellant, at the time of seeking affiliation with the Central Board of Secondary Education, the application dated 22.08.1985 filed by the Committee clearly states that the School is '*fully financed by the Air Force*'.[1]

10. In Civil Appeal No.10899 of 2013, learned senior counsel for the appellant took a categoric stand that the School's building(s) were constructed through public funds under the authorization of the Ministry of Defence and the pay-scales of the school staff were fixed by the Air Force Headquarters which is the appropriate/competent authority. The Committee has to conform to the pay-scales recommended by the Directorate of Education, Air Force Headquarters, IAF. It has also been contended that the Committee has been constituted to run Air Force Schools in accordance with the Education Code of Air Force Schools of 2005 (hereinafter referred to

[1] P-11/Civil Appeal No.10899/2013.

as the ‘Code’) which is identical to the Education Code framed for management of Kendriya Vidyalayas. The Code, brought out by the IAF’s Directorate of Education, endeavours to lay down a common and consolidated mechanism for the working of the school administrations. The Code encompasses (a) Scheme of Management, (b) Establishment and Recruitment, (c) Terms and Conditions of service, (d) Discipline, (e) Students, (f) Admission, (g) Code of conduct, (h) Accounting, and (i) General. It has also been submitted that in case of a doubt/ambiguity of any clause/subject contained in the Code, the interpretation of the Directorate of Education will be final and binding. It was also pressed into service that it is the Air Force Headquarters which has established the Indian Air Force Education and Cultural Society (hereinafter referred to as the ‘IAFE&CS’) to administer and manage the Air Force Schools set up all over India. The Board of Governors of the IAFE&CS is the apex body with an IAF officer in-charge of the administration as its Chairman and it lays down the broad framework within which the school functions. Mandatorily, approval of the Air Force Headquarters is needed for establishment/upgradation/downgradation of any Air Force School. It is also the duty of the Command Education Officer to carry out inspection of all Air Force Schools and send a detailed statement to the Directorate of Education for financial assistance

from the Central Welfare Fund. It was further submitted that the Air Force Order No.132 dated 11.12.1998 provides for annual grants by the Air Headquarters to all Air Force Schools and under Air Force Order No.9 dated 08.06.1985, the Committee is to make efforts to procure grants from various sources and funds, including but not limited to, the AFWWA Fund, SI Fund, IAF CWF, Command Welfare Fund, State Governments etc.

11. It is also mandated that all the Air Force School buildings should be constructed out of public funds only and the Ministry of Defence authorizes the construction of the building only from public funds on defence-owned lands. These schools are at liberty to accept financial assistance and grants. The existing Air Force Schools are allowed to continue with and avail of rent-free accommodation and allied concessions.

12. In the aforesaid background, we find that for all practical purposes, in every sphere of activity relating to the School, the funding consists substantially of funds which are ultimately traceable to the public exchequer. My learned senior colleague has referred to a 2-Judge Bench decision in ***St. Mary's Education Society v Rajendra Prasad Bhargava*****, (2023) 4 SCC 498**, followed by 2

learned Judges in ***Army Welfare Education Society v Sunil Kumar Sharma*, 2024 SCC OnLine SC 1683**. Let us take a look at Paragraphs 75.1 to 75.5 of ***St. Mary's Education Society*** (*supra*):

> '***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.*'

(emphasis supplied)

13. The Court in ***St. Mary's Educational Society*** (*supra*) held that 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 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. Further, it has been held that 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 of the Constitution 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 of the Constitution.

14. ***St. Mary's Educational Society*** (*supra*) further holds that even if it be perceived that imparting education by private unaided schools is a public duty within the expanded expression of the term, an employee/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 the person is employed by the 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 as an inseparable part of the obligation to impart education.

15. In the present cases, both appellants were teachers. The teacher is the vital person who is responsible for actually imparting education, which is a public duty, being performed for the wards/children of the officers, staff and personnel of the IAF and of persons who may not be associated with the IAF. The Committee, which has administrative and disciplinary control over teachers engaged in discharging the public duty of imparting education, cannot be said to be a duty unconnected in the discharge of a public duty cast upon it.

16. This Court in ***Janet Jeyapaul v SRM University*****, (2015) 16 SCC 530** held:

> '***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.*'
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> (emphasis supplied)

17. At the cost of repetition, the School has been established primarily to impart education which is a 'public function'. This, juxtaposed with the dominant and all-pervasive control exercised on the School, through the Committee by serving officers of the IAF, is enough to bring the Committee and the School within the extraordinary and prerogative writ jurisdiction of the High Courts under Article 226 of the Constitution. The decisions in ***Raj Soni v Air***

Officer Incharge Administration*, (1990) 3 SCC 261** and ***All India Sainik Schools Employees' Association v Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi*, (1989) Supp (1) SCC 205**, relied upon by the appellants, have rightly been distinguished by esteemed brother Hon'ble Oka, J. The decision in ***Ajay Hasia v Khalid Mujib Sehravardi*, (1981) 1 SCC 722** need not detain us in view of ***Pradeep Kumar Biswas (*supra*). Furthermore, as the ultimate ownership of the entire land is with the IAF, the contention of Ms. Bhati, learned Additional Solicitor General[2] that because there is no direct funding or aid given by the Government of India, or the Ministry of Defence, the decision of the Committee would not be amenable to writ jurisdiction under Article 226 of the Constitution, cannot be accepted, primarily for the reason that there is overwhelming material on record, of public funds being utilized by the School/Committee, coupled with the fact that the School is performing a public duty.

18. In ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v V R Rudani*, (1989) 2 SCC 691**, the question before the Court was whether a *mandamus* can be issued at the instance of a teacher against a Trust which

[2] Hereinafter abbreviated to ASG.

was running the educational institution. While upholding the maintainability of the writ petition, the Court held thus:

> '***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 The Evolving Indian Administrative Law by M.P. Jain (1983), p. 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.

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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*.'

(emphasis supplied)

19. The public duty imparting of education has to be done through teachers. Teachers form the most vital cog of the educational system and act as the link between a school and the students. Any matter

affecting the service conditions, morale and discipline among the teaching staff would have a direct bearing and nexus with the imparting of education. As far as the facts stand, the grievances of appellant-Sanjay Kumar Sharma regarding disciplinary action against him by the Committee would be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. The concerned parties shall, as agreed, remain bound by and continue to honour the arrangement recorded in our Order dated 28.08.2024, whereunder a lump-sum amount was to be paid to appellant-Sanjay Kumar Sharma and appellant-Dileep Kumar Pandey was reinstated without back wages. Irrespective of the fact that in the above view, no *lis* between the appellants and respondents may actually exist, we have decided the issue of law, as we have been informed that many cases, especially in the High Court of Judicature at Allahabad are pending, awaiting the instant decision.

20. It will not be out of context to refer to the ***Zee Telefilms Limited v Union of India*****, (2005) 4 SCC 649**, where 5 learned Judges stated that the Board of Control for Cricket in India (BCCI), though not amenable to writ jurisdiction under Article 32 of the Constitution, was amenable to writ jurisdiction by the High Court under Article 226 of the Constitution, as the High Court under Article

226 of the Constitution has much wider scope compared to this Court under Article 32 of the Constitution. The law was laid down by Hon. Hegde, J., speaking for the majority, as under:

> '***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. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case [(2002) 5 SCC 111: 2002 SCC (L&S) 633] hence there is force in the contention of Mr Venugopal that this petition under Article 32 of the Constitution is not maintainable.*'
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> (emphasis supplied)

21. When the plain language of Article 226 of the Constitution indicates a wider coverage, this Court would not accord a restrictive meaning thereto as Article 226(1) of the Constitution itself makes it clear that notwithstanding anything contained in Article 32 of the Constitution, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases, any Government within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them for the enforcement of any of the rights conferred by Part III and '***for any other purpose***'. Thus, we have no hesitation to hold that the School/Committee is amenable to writ jurisdiction under Article 226 of the Constitution. It is also of some import to note that, at the time of recruitment of the teachers, the officers of the IAF are also part of the body which decides such recruitment, including interviews for the post of Principal, which would, once again, denote the pervasive control of the IAF in the running of the schools. As a matter of fact, the Court cannot shut its eyes to the claim made by the appellant in Civil Appeal No.11378 of 2013 to the effect that all proceedings against him started when he objected to a candidate who was junior to him being made the in-

charge Principal, the crucial aspect being that the said junior happened to be the sister of the Air Vice Marshal concerned, under whose jurisdiction the School was located. Of course, we may clarify that we are not returning any finding on this point. But, the direct influence of the officers of the IAF in the running of the schools under his/her command, including where his/her subordinates are directly responsible, would lead to the irresistible conclusion that the Committee/School cannot be held to fall outside the purview of Article 226 of the Constitution.

22. Another issue the learned ASG flagged is with regard to funds primarily used for running of the School being '*Non Public Funds*'. In this context, it would be appropriate to reproduce the relevant extract from the IAF Manual of Management and Accounting of Non-Public Funds (IAP 3503 (COMPREHENSIVELY REVISED, 2016), produced as part of the written submissions on behalf of the Respondents:

> '*3. As fighting force it is important for the organization to maintain high motivation, morale and provide good quality of life for its Air warriors and their families. Authorization for incurring expenditure for Undertaking all welfare activities out of Public Funds being limited, the purpose of creating Non Public Funds, is to supplement the scope of Public Funds and to cater for welfare needs of troops which cannot be provided through Public Funds. The primary purpose for creating these Funds is the welfare of troops. The Govt of India has provided certain*

privileges to these funds by allowing some special provisions; Some of these are exemption of the income of these funds from income Tax, allowing use of certain Govt buildings for these ventures on payment of rent/allied charges wherever applicable, allowing the recovery of the dues of Non Public Funds from salary of individuals, making donations to certain NPFs tax free etc.'

(emphasis supplied)

23. In view of the aforesaid, on a deeper probe, it appears that '*Non Public Funds*' is a misnomer inasmuch as while it may not be labelled as '*Public Funds*' but the nature is public for the reason that it includes direct funding from the Air Force Unit/Station and most importantly, it is also supplemented by the Regimental Fund. Another reason is that even the so-termed '*Non Public Funds*' are used for welfare measures for the IAF personnel such as establishment of canteens etc. and are exempt from income tax and other statutory taxes, meaning that the Government foregoes its share by way of taxes on such funds. *Arguendo*, if the funding is not direct, the indirect support of the Government of India/Ministry of Defence through providing land, granting tax exemptions *et al* is clearly borne out from the record.

24. At this juncture, we would like to refer the judgments cited by the learned ASG – ***Union of India v Chotelal*, (1999) 1 SCC 554** and ***R R Pillai v Southern Air Command, Indian Air Force*, (2009) 13 SCC 311**. In our considered view, these judgments are not applicable and can be distinguished on facts. ***Chotelal*** (*supra*) dealt with the issue as to whether *dhobis* appointed to wash the clothes of the cadets at the National Defence Academy, Khadakwasla, who are paid from a fund called the 'Regimental Fund' can be said to be holders of civil posts so as to confer jurisdiction on the Central Administrative Tribunal, whereas ***R R Pillai*** (*supra*) dealt with the status of employees of an unit-run canteen in the armed forces. Thus, both relied on cases wherein controversy was pertaining to the status of the concerned employees, whereas herein the subject-matter is completely different, relating to the amenability of the School/Committee, while discharging a public function and performing a public duty, namely of imparting education and discharging public function, to writ jurisdiction under Article 226 of the Constitution. Quite perceptibly, even the terms and conditions of service and nature of duties considered in ***Chotelal*** (*supra*) and ***R R Pillai*** (*supra*) were very different.

25. Hence, upon scrutiny of the facts and circumstances from various angles, we have not the slightest doubt that the Committee/School would come within the ambit of '*authority*' as employed in the said Article. Further, the Committee/School would also be covered under '*other authorities*' in the context of Article 12 of the Constitution.

26. As far as the composition of the Board of Governors of the IAFE&CS, as also the members of the Committee is concerned, the clear majority thereof are IAF officers, holding their posts *ex-officio*. It would suffice to say that by virtue of their posts in the IAF, they are part of the Committee. Membership of the IAFE&CS is linked to serving in the IAF. This reinforces the contention of the appellants that the IAF is officially involved in running of the schools, through its officers. Analogy can be drawn at this stage with similar autonomous bodies of the Governments, both Central and of State, where the core managing body of like institutions, including fully or partly funded by public funds, consists of government officials. Such institutions are distinct entities, autonomous and free to take their decisions, but the persons taking those decisions, even on a daily basis are government officials. Similarly, while the IAFE&CS, the supreme body governing the schools consists of IAF personnel, it is actually the IAF

itself which is in command. In other words, every government official in acting as part of a core managing body referred to above as part of his/her public duty continues to be a government official even if taking decisions individually, as part of the core managing body, is part thereof by reason of the factum of being a government official and not for any other reason. Here comes into play the distinction between a private individual acting totally in a private capacity, as opposed to a government official, in the present case being IAF personnel, in the view of this Court, are actually acting in their official capacity and position, by the mere fact of them being the personnel of the IAF. Thus, it cannot be said that the IAFE&CS or the Committee functions *de hors* the trappings of any official control of the IAF. As discussed in the preceding paragraphs, not just control, but deep, pervasive and effective control on the School, through the Committee, finally rests with the IAFE&CS.

27. As far as the Code which applies to the Air Force Schools not being statutory in nature is concerned, the said factor alone cannot have any determinative effect on the question of law before us. Notably, the Chairman of the Board of Governors of the IAFE&CS is a senior-ranking Air Marshal of the IAF. All the Air Force Schools

register under aegis of the IAFE&CS and as per the Memorandum of Association of the IAFE&CS, members thereof are IAF officers.

28. As far as the application made by the School dated 22.08.1985, in which it was stated that the school was fully financed by the IAF, is concerned, in our view, there need not be any further evidence as it is a statement by the School/its authorities themselves before the CBSE and such documents are not denied before this Court. Stepping further, the School/Committee are estopped from contending to the contrary. The land on which the School building stands belongs to and has been constructed utilising the funds of the IAF. This is enough to establish the financial support enjoyed by the School from the IAF. The corpus and assets of the IAF are traceable to the Central Government, being public in nature.

29. We cannot be oblivious to or unmindful of the purpose behind establishment of the schools – to take care of the need of the IAF personnel who may be posted at far-away places not having educational facilities as also taking into account safety and security. We find that many such schools have been established within the campus of the IAF bases/establishments itself. This, incrementally,

would also exhibit that the School enjoys privileges and facilities on account of its linkage to and control by the IAF.

30. Accordingly for the reasons aforesaid, it is held that the writ petitions filed by the appellants were maintainable. The orders impugned are set aside, clarifying the position of law. The High Court of Judicature at Allahabad will proceed to decide the matters, ostensibly held up due to the present cases, on merits, in expedition having regard to the position of the Board.

31. The appeals stand allowed.

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MAY 21, 2025