



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/LETTERS PATENT APPEAL NO. 1404 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 7232 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV Sd/-

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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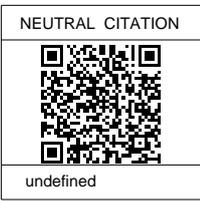
YUVRAJSINH RATANSINH RATHOD
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR DG SHUKLA(1998) for the Appellant(s) No. 1
 MR HARSHEEL D SHUKLA(6158) for the Appellant(s) No. 1
 MR.ROHAN SHAH, AGP for the Respondent(s) No. 1
 MR. S. I. NANAVATI, SENIOR ADVOCATE WITH MR VANDAN K BAXI(5863) for the Respondent(s) No. 2,4
 NANAVATI & NANAVATI(1933) for the Respondent(s) No. 2,4
 VIKAS V NAIR(7444) for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 09/05/2024

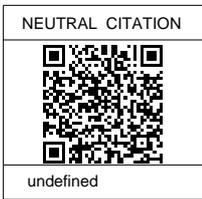
CAV ORDER

(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

[1] The present Letters Patent Appeal under Clause 15 of the Letters Patent is filed by the appellant - original petitioner assailing the correctness and validity of the order dated 05.05.2023 passed by the learned Single Judge in Special Civil Application No.7232 of 2023.

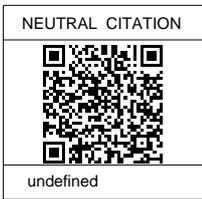
[2] The prayers made by the appellant - original petitioner in the writ petition before the learned Single Judge was to pass direction / Writ of *Quo-Warranto* to quash and set aside the appointment order issued by the respondent No.2 - Institution, appointing respondent No.4 as the Professor as well as the Director of the Institution.

[3] The learned Single Judge after considering the arguments of both the parties came to a conclusion that the writ petition was not maintainable, as the respondent - Gujarat Cancer and



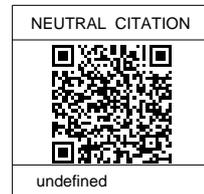
Research Institute (hereinafter referred as “the respondent”) was not a State within the meaning of Article 12 of the Constitution of India. The present appeal is preferred assailing the said order.

[4] The factual matrix which has led to filing of the writ petition is that the petitioner was a Social Activist as well as R.T.I Activist - Whistle Blower residing at Ahmedabad. It was the case of the petitioner that the respondent had issued advertisement in the local Newspaper, namely, The Times of India for the post of the Director. It was stipulated in the advertisement that a candidate should be Oncology Specialist with a Post Graduate Degree or a Higher Qualification and a minimum work experience of 15-20 years in a reputed Cancer Institute in India or abroad. It was the case of the petitioner that the educational qualifications, experience etc. stipulated in the advertisement were not at par with the educational qualifications and experience prescribed by the Gujarat University as well as the Medical Council of India.



[4.1] It was the case of the petitioner that respondent is attached with B. J. Medical College for Post Graduate and Super Specialty Medical Courses and is affiliated to the Gujarat University. As per norms of the Gujarat University, any appointment of teaching faculty or Principal i.e. Head of the Institute in recognized teaching institute is to be done by the procedure prescribed under Ordinance 97. Therefore, appointment was in violation of Section 14 of the Gujarat University Tribunal Act as well as with regards to Ordinance 97. Such appointment had to be *null and void* was the grievance raised by the petitioner. It was also the case of the petitioner that Dr. Sashank Pandya was appointed as Director, had submitted that he has never applied for the position of the Director of respondent. Raising such grievance, the petitioner had preferred writ petition before the learned Single Judge.

[4.2] Opposing the writ petition, the respondent had taken a stand that the petition itself was not maintainable as the respondent would not fall within the purview of State as defined Article 12 of the Constitution of India and therefore, writ

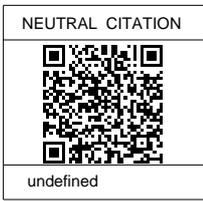


petition against the respondent would not be maintainable. Learned Single Judge after considering arguments, canvassed by both the sides, came to a conclusion that the writ petition was not maintainable. This order has adjudged the original petition which has culminated into assailing the correctness of the order the present appeal.

[5] We have heard Mr. D. G. Shukla, learned advocate appearing for the appellant and Mr. S. I. Nanavati, learned senior advocate appearing with Mr. Vandan Baxi, learned advocate appearing for the respondents.

[6] Before starting arguments of both the sides, a preliminary objection was taken by Mr. S. I. Nanavati, learned senior advocate appearing for the respondents that the writ petition itself was not maintainable and therefore, the appeal would not be maintainable, as the respondent is not a State within the meaning of Article 12 of the Constitution of India.

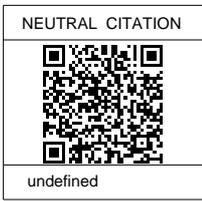
[7] In response to such preliminary objection, Mr. D. G. Shukla, learned advocate appearing for the appellant has submitted that respondent is the joint venture of the



Government of Gujarat and Gujarat Cancer Society. The respondent is a grant-in-aid institute getting 100% grant from the State of Gujarat minus the income of the respondent. It was further submitted that respondent is affiliated to B. J. Medical College, Ahmedabad and therefore, the State of Gujarat is having deep and pervasive control over the respondent. It was further submitted that respondent is a "State Cancer Institute" recognized by Ministry of Health & Family Welfare, Government of India. It was further contended that the respondent has been given grant by the State of Gujarat, which in the last four years as under:-

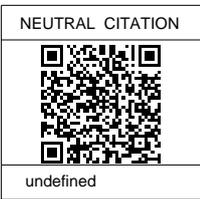
FINANCIAL YEAR	AMOUNT OF GRANT PAID
2018-19	Rs.78.48 Crores
2019-20	Rs.94.55 Crores
2020-21	Rs.108.54 Crores
2021-22	Rs.106.96 Crores

[7.1] Showing such financial control and arguing the issue of deep and pervasive control, Mr. Shukla, learned advocate has submitted that respondent would come in the purview of 'State' or 'Authority' within the meaning of Article 12 of the Constitution of India.



[7.2] Mr. Shukla, learned advocate has further submitted that the State of Gujarat had issued Government Resolutions dated 11.08.2020 and 26.07.2022, which provided for giving benefits as per the 7th Pay Commission Pay-scales to the Professors teaching the medical subjects to the students undergoing various courses at the respondent. If the Condition Nos.2, 3, 5, 6, 10 and 13 of such Government Resolution are perused, then it became clear that the respondent cannot make any appointment or revise the pay-scales without prior approval or permission of the State Government. It was further submitted that total 754 Officers / Employees and Medical professors have been paid Rs.34.34 crores as arrears of 7th pay commission pay-scales for the period from 01.01.2016 to 31.07.2020. This is clearly proves that respondent is a 'State' and an 'Authority' under Article 12 of the Constitution of India.

[7.3] To substantiate his submissions, Mr. Shukla, learned advocate has relied upon following judgments:-



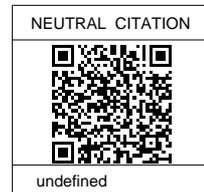
(i) In the case of ***Ajay Hasia and others versus Khauid Mujib Sehravardi and others*** reported in ***(1981) 1 SCC 722***.

(ii) In the case of ***Andi Mukta Sadguru Muktajee versus Swami Suvarna Jayanti Mahotsav Smarak Trust*** reported in ***(1989) 2 SCC 691***.

(iii) In the case of ***M/s. Zee Telefilms Ltd. & Anr. Versus Union of India & Anr.*** reported in ***(2005) 4 SCC 449***.

[7.4] On making such submissions, Mr. Shukla, learned advocate has submitted that the respondent is a State and therefore, the writ petition as well as the appeal would be maintainable.

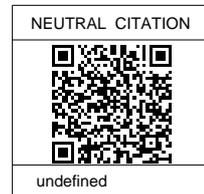
[8] *Per contra*, Mr. S. I. Nanavati, learned senior advocate appearing with Mr. Vandan Baxi, learned advocate appearing for the respondents has submitted that the appeal is not maintainable and should not be entertained and no reliefs ought to be granted, as the issue raised in the appeal was no longer *res integra* by catena of decisions of this Court, which have been upheld by the Hon'ble Supreme Court of India. It was further



submitted that in the case of ***Dr. C. A. Shah versus Gujarat Cancer and Research Institute, Ahmedabad*** reported in ***1999 SCC OnLine GUJ 140***, the Division Bench *vide* its judgment dated 19/20.12.1991 has dealt with the similar issue as to whether or not the Gujarat Cancer and Research Institute was a State within the meaning of Article 12 of the Constitution of India. It was held that the respondent is neither a State nor Other Authority as envisaged by Article 12 of the Constitution of India.

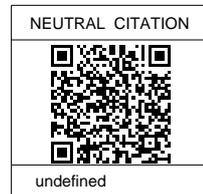
[8.1] Mr. Nanavati, learned Senior advocate has further submitted that this very same judgment of ***Dr. C. A. Shah (supra)*** was relied upon by the Co-ordinate Division Bench of this Court in Letters Patent Appeal No.446 of 2003 and *vide* its judgment dated 21.09.2011, the Division Bench of this Court has once again reiterated that the respondent is neither a State nor the Authority and therefore, had dismissed the appeal.

[8.2] Mr. Nanavati, learned senior advocate has further submitted that the very same issue again came up before this Court in Special Civil Application No.11095 of 2016 along with



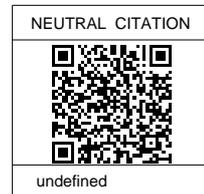
allied matters and this Court has again come to a conclusion that the respondent does not fall within the ambit of Article 12 of the Constitution of India. It was further submitted that the matter, the additional aspect of 5th Pay Commission recommendations being applied to the respondent was into question. Considering such arguments of 5th Pay Commission, this Court held that respondent would not be a State. It was further submitted that this judgment in Special Civil Application No.10095 of 2016 was upheld by the Division Bench of this Court in Letters Patent Appeal No.799 of 2016, wherein despite the issue of 5th Pay Commission and 6th Pay Commission were brought to the notice of this Court, it was held that the respondent would not be a State.

[8.3] Mr. Nanavati, learned senior advocate has further submitted that Misc. Civil Application (for review) No.2880 of 2013, this Court had held that simply because the respondent adopted the 6th Pay Commission report, such fact will not make the respondent is a State for the purpose of resolving the dispute between the employer and the employee. It was further submitted that the order passed in Misc. Civil Application



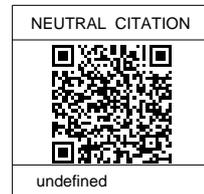
No.2880 of 2013 came to be assailed before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No.11548 of 2014 and the appeal came to be dismissed *vide* order dated 11.08.2014.

[8.4] Mr. Nanavati, learned senior advocate has further submitted that even a Public Interest Litigation was filed before this Court by way of a Writ Petition (PIL) No.74 of 2013, wherein prayers have made seeking directions against the State Government in the nature of increasing the interference / involvement of Government in the respondent. The said Public Interest Litigation also came to be dismissed by the Division Bench of this Court. It was submitted by Mr. Nanavati, learned senior advocate that this Court time and again held and reiterated that the respondent is not a State under Article 12 of the Constitution of India and a Writ is not maintainable against the respondent and has also considered the contention of 5th and 6th Pay Commission. The appellant is relying upon the contention that because the respondent has accepted the 7th Pay Commission, the respondent becomes a State within the ambit of Article 12 of the Constitution of India, is not a proper



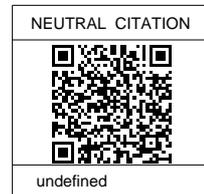
contention. In wake of such oral arguments, Mr. Nanavati, learned senior advocate has urged to dismiss the appeal.

[9] We have considered the arguments canvassed by learned advocates appearing on behalf of both the parties and examining the material on record, the prime area of consideration in the present appeal is with regard to the law of precedent. There is no doubt about the fact that the issue relating to whether the respondent would come within the meaning of State as envisaged under Article 12 of the Constitution of India came up for consideration in catena of decisions before this Court. The law is very clear on the part that the principle with regard to precedent cannot be departed from unless there are extraordinary or special reasons to do so. It would be important to adhere to precedent and not to unsettle things which are settled unless there are extraordinary or special reasons to do so. Therefore, the moot question in the present appeal is whether there any extraordinary or special reasons to unsettled the issue which is already settled. The basic thought process is to maintain consistency and avoid



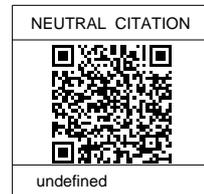
uncertainty. So, it should be examined as to whether in the present matter there are such extraordinary circumstances that could warrant unsettling things which are settled.

[10] The main question raised by Mr. Shukla, learned advocate appearing for the appellant is that the 7th Pay Commission is made applicable to the respondent and the State have a pervasive control over the respondent. However, it should be looked into that even if the revenue expenditure was borne from the finances provided by the State Government then also there was no control of Governmental in functioning, administration and day-to-day management of the respondent. Even, Mr. Shukla, learned advocate appearing for the appellant has not taken a contention that despite grants and finances provided by the Government, the day-to-day management is controlled by the Government. Once, it is established that the Government does not control the day-to-day functioning, then the respondent would be governed by the decision taken by the University, which are binding to the management. Therefore, there cannot be pervasive control by the Government over the respondent.



[11] It is not the case of the appellant that the Memorandum of Association refers to Government control over the functioning of administration and day-to-day management. Therefore, there cannot be pervasive control by the Government over the respondent. Further, the issue that 7th Pay Commission being made applicable to the respondent does not pertain to the case of appellant, as the issue of 5th Pay Commission and 6th Pay Commission already addressed by this Court. Therefore, the very valuable principle that precedent cannot be departed unless there are extraordinary or special reasons to do so remains applicable.

[12] With the reasons mentioned hereinabove, it is evident that there are no extraordinary or special reasons to unsettle or settle the law and depart from the doctrine of stare decisis. Therefore, present appeal fails. The issue has been categorically dealt with by the Hon'ble Supreme Court in the case ***Ramakrishna Mission and another versus Kago Kunya and others*** reported in **(2019) 16 SCC 303** wherein it was held as follows:-



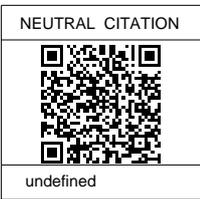
“15. Ramakrishna Mission runs a 263 bedded hospital at Itanagar. The grant in aid which is provided by the State government covers the cost of running 60 beds out of 263 bedded hospital. Relevant factual data in regard to the nature and extent of the grants has been placed on record. About 32.26 per cent of the total income of the hospital for 2014-2015, 23.33 for 2015-16 and 22.53 per cent for 2016-17 was from the grants provided by the State government. The revenue expenditure, the audited balance sheets and accounts of the hospital indicate that 35.23 per cent of the expenditure for 2014-2015, 23.83 per cent for 2015-2016 and 20.57 per cent for 2016-2017 was borne from the finances provided by the State government.

16. In assessing whether the appellants are amenable to the writ jurisdiction under [Article 226](#), we proceed on the basis of the following circumstances which have been pressed in aid both on behalf of the original petitioner before the High Court and, in response to the present appeal, by the State Government:

(i) A portion of the income of the hospital is generated out of the grants which are received from the State; and

(ii) Land has been made available for the construction of the hospital by the State government on a concessional rate.

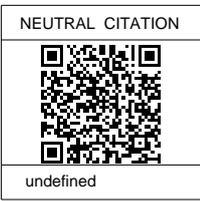
The grant by the State government covers only a portion, namely, 60 beds out of the 263-beds of the hospital at Itanagar. Significantly, the State government does not control the day to day functioning of the



hospital. The management of the hospital is exclusively with the Ramakrishna Mission. Since the State government finances through its grants a portion of the income of the hospital, it requires the audited accounts to be submitted to the State government for scrutiny.

17. *The basic issue before this Court is whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under [Article 226](#) of the Constitution.*

18. *The hospital is a branch of the Ramakrishna Mission and is subject to its control. The Mission was established by Swami Vivekanand, the foremost disciple of Sri Ramakrishna Paramhansa. Service to humanity is for the organisation co-equal with service to God as is reflected in the motto "Atmano Mokshartham Jagad Hitaya Cha". The main object of the Ramakrishna Mission is to impart knowledge in and promote the study of Vedanta and its principles propounded by Sri Ramakrishna Paramahansa and practically illustrated by his own life and of comparative theology in its widest form. Its objects include, inter alia to establish, maintain, carry on and assist schools, colleges, universities, research institutions, libraries, hospitals and take up development and general welfare activities for the benefit of the underprivileged/backward/ tribal people of society without any discrimination. These activities are voluntary, charitable and non-profit making in nature. The activities undertaken by the Mission, a non-profit entity are not closely related to those performed by the state in its sovereign capacity nor do they partake of the nature of a public duty.*



19. *The Governing Body of the Mission is constituted by members of the Board of Trustees of Ramakrishna Math and is vested with the power and authority to manage the organization. The properties and funds of the Mission and its management vest in the Governing Body. Any person can become a member of the Mission if elected by the Governing Body. Members on roll form the quorum of the annual general meetings. The Managing Committee comprises of members appointed by the Governing Body for managing the affairs of the Mission. Under the Memorandum of Association and Rules and Regulations of the Mission, there is no governmental control in the functioning, administration and day to day management of the Mission. The conditions of service of the employees of the hospital are governed by service rules which are framed by the Mission without the intervention of any governmental body.*

[13] On the basis of such observations, the present Letters Patent Appeal being devoid of merits is hereby dismissed. No order as to costs.

Sd/-
(BIREN VAISHNAV, J.)

Sd/-
(PRANAV TRIVEDI, J.)

DHARMENDRA KUMAR