2005 (0) GLHEL-HC 215712

GUJARAT HIGH COURT

Hon'ble Judges:M.R.Shah, J.

K.Pratap Reddy Versus Institute Of Rural Management Anand Society

SPECIAL CIVIL APPLICATION No. 6456 of 2005 ; *J.Date :- AUGUST 30, 2005

- CONSTITUTION OF INDIA Article - 226

CONSTITUTION OF INDIA - Art. 226 - writ petition filed by the petitioner challenging his termination as Director of respondent no. 1-Irma by respondent no. 2-chairman of IRMA - respondent no. 1 is importing education in Rural Management - maintainability of writ petition against IRMA - respondent no. 1 is importing education - respondent no. 1 has been approved by AICTE - it is subject to overall control of AICTE and monitoring by the State Government - held, actions of respondent no. 1 have a touch of public function or discharging of public duty - respondent no. 1 is a private body performing public function - respondent no. 1 is amenable to writ jurisdiction under Art. 226 - whether respondent no. 2 as a chairman of IRMA had authority to appoint and/or remove the direction of the society - appointment order of petitioner was signed by respondent no. 2 - respondent no. 2 had removed the petitioner - held, IRMA Rules clearly stipulate that only the Board of Governors has powers and authority to appoint and/or remove the co-opted member and directors - by the resolution of the Board dated 25/7/2002, Board of Governors had not delegated any power to respondent no. 2 to appoint the director of the IRMA by merely signing the appointment order - respondent no. 2 cannot be said to be the appointing authority - action of respondent no. 2 in removing the petitioner purported to be on behalf of respondent no. 1-IRMA is illegal, arbitrary and without jurisdiction and contrary to IRMA Rules - said action of removal is a nullity, non-est and accordingly non-existent - the conduct of respondent no. 2 appear to be mala fide - whether the said dispute pertaining to a contract of personal service which is exclusively in field of private law is amenable to writ jurisdiction under Art. 226 - earlier the petitioner was engaged as a faculty member - thereafter he came to be appointed as a Director of IRMA by the Board - under the IRMA Rules, the Director is also the ex-officio member, secretary of the respondent no. 1 society and the Board - held, in strict sense, the post held by the petitioner as director of IRMA cannot be equated with routine employer and employee relationship and/or master and servant - petitioner is the administrative head of the respondent no. 1-institute - contention on behalf of respondent no. 1 and respondent no. 2 regarding the dispute pertaining to a contract of personal service is unacceptable - in exceptional cases, writ jurisdiction under Art. 226 can be resorted to - case of the petitioner is an exceptional case.

Whether alleged illegal termination of contract would be vitiated by a subsequent rectification thereof thereof by the Board on 15-4-05 - in absence of any challenge to subsequent notification whether the High Court can grant any relief in favour of the petitioner - held, there would be no effect to the right of the petitioner to seek relief as the termination itself was void ab initio nullity and non-est - petitioner is entitled to the

relief prayed for in the extraordinary prerogative writ petition under Art. 226 - action of respondent no. 2 is unsustainable in the eyes of law - removal of the petitioner as a Director of IRMA Institute is quashed and set aside - it is declared that petitioner is continued as a Director of respondent no. 1-IRMA - petition allowed.

Imp.Para: [165] [168] [170] [173] [174] [180] [185] [186] [187]

Cases REFERRED TO :

1. Shri Anandi Mukta V/s. V.R.Rudani, AIR 1989 SC 1607
   (Note :-2005\215712 to be read from printed book and RCG : RC to be re-decided)
2. Anadi Mukta Sadguru Shri Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust And Ors. V/s. V.R. Rudani And Ors., 1989 2 SCC 691
3. Director Of Settlements, Ap V/s. Mr Appa Rao, 2002 4 SCC 638
4. Federal Bank V/s. Sugar Thomas, AIR 2003 SC 4345
5. Federal Bank Limited Vs. Sugar Thomas And Ors., 2003 10 SCC 733
6. G.Basi Reddy Etc. V/s. International Crops Research Institute And Anr., 2003 2 JT 180
7. Iim Vs. Umakant Srivastav, 2002 1 GLH 330 : 2001 GLHEL_HC 205058
8. Konaseema Co.Op.Central Bank Ltd. V/s. N.Seetharama Raju, AIR 1990 AP 171
9. Kumari Regina Vs. St.Aloysius Higher Elementary School And Anr., 1972 4 SCC 188
10. Life Insurance Corporation Of India V/s. Sunil Kumar Mukherjee, AIR 1964 SC 847
11. Mcclelland V/s. Northern Ireland General Health Service Board, 1957 1 WLR 594
12. Miscellanrous Mazdoor Sabha V/s. State Of Gujarat And Ors., 1992 2 GLR 1065 : 1992 (1) GLH 309 : 1993 (1) LLJ 695 : 1992 (2) CLR 754 : 1993 (4) SCT 475
13. Privy Council In High Commissioner For India V/s. I.M.Lall, AIR 1948 PC 121
14. State Of Gujarat And Ors. V/s. Mp Shah Charitable Trust, 1994 3 SCC 552 : 1994 (2) GLH 188 : 1994 (2) GLR 1247 : 1994 (2) GCD 842 : 1994 (2) Scale 374
15. The Institute Of Rural Kulchindar Singh V/s. Hardayal Singh, AIR 1976 SC 2216
16. The Praga Tools Corpn. V/s. Shri C.A. Imanual & Ors., 1969 1 SCC 585
17. Union Of India And Anr. Vs. Sb Vora & Ors., 2004 2 SCC 150
18. Vst Industries V/s. Vst Industries Workers Union And Anr., 2001 1 SCC 298
19. Zee Telefilms Ltd. V/s. Union Of India, 2005 4 SCC 649

Equivalent Citation(s):

2005 JX(Guj) 527 : 2005 GLHEL_HC 215712
JUDGMENT :-

1 It is very unfortunate that a "TEMPLE" where education is being imparted, is converted into a political battle to retain power / control of the management of the premier institute - Indian Institute of Rural Management (hereinafter referred to as " the IRMA"). This is an unique example to demonstrate up to what level a gentleman who is the Founder Member of the institute can act arbitrarily and unfairly to retain the power /control over others in the institute. When this Court was considering the brochure of the IRMA to consider its status, on the first page of the same, there is a "message" to the students and the public at large. By indulging into such type of infightings, groupism and politics, what message the management wants to send? IRMA is the premier and the only institute in the entire country which is

imparting education in Rural Management and offering Degree Course. In this petition under Article 226 of the Constitution of India, the petitioner who was earlier engaged as Faculty Member of respondent No.1 - Institute of Rural Management, Anand (hereinafter referred to as " IRMA" for short came to be appointed as a Director of IRMA by order dtd.9/8/2002 and the said order was signed by respondent No. 2 as Chairman of IRMA. The petitioner has prayed for writ of Mandamus and/or any other appropriate writ, order and/or directions commanding respondent No. 2 to annul the action in terminating his services as Director of the said institute - IRMA and thereupon further commanding the respondent No. 2 as well as respondent No.1 society to continue to recognize him as a Director of the said institute and hence as a Member Secretary of the Board of Governors of IRMA. Before dealing with the present petition on merits, it is required to be considered the status of the respondent no.1 - IRMA. The respondent No.1 - IRMA is a society constituted for the purpose of developing an academic institute to meet with the need of substantial number of trained managerial personnel required to efficiently manage the resources and activities in increasingly being made in rural India to combat the poverty and the said society was established in the year 1979 and is registered under the provisions of the Societies Registration Act, 1860 and is also a trust registered under the provisions of the Bombay Public Trust also. It appears from the record that IRMA has been established with the main object to provide educational research training and consultancy services for cooperative and other agencies enacted in economic and social development of the rural communities, with special reference to rural poor and the basic objectives of the IRMA seems to be as follows:-

[A] Impart education and training to young men for managing the income generating and developmental activities for and on behalf of rural producers;

[B] Offer short term training courses for policy makers, Directors, General Managers and those in charge of specific managerial functions in rural enterprises and projects;

[C] Conduct research on operating problems in order to help improve the management of rural enterprises and projects;

[D] Undertake basic research into the process of rural management to augment the existing body of knowledge; and

[E] Provide consultancy services to rural enterprises and projects in order to improve their operational efficiency and effectiveness. According to the IRMA their mission as mentioned in the Broacher is as under:

2 The Institute of Rural Management Anand (IRMA) was established in 1979 at Anand, Gujarat with the support of the Swiss Agency for Development and co-operation (SDC), Government of India, the Government of Gujarat, the erstwhile Indian Diary Corporation and the National Dairy Development Board (NDDB) to provide management education, training, research and consultancy in support to cooperatives and rural development organizations in India. Based on the successful experience of the dairy farmers of Gujarat, milk producers in many other States were being organized into dairy cooperatives, known as Anand Pattern Cooperatives (APCs). Over the years, as some of the basic principles of APCs began to be applied to other commodity sectors, such a oilseeds, fruits and vegetables, forestry, and fisheries, IRMA's clientate and activities also diversified to include other forms of organizations and other sub sectors. In this process, IRMA has brought within its ambit several non-government development organizations, government development programmes,

international development organisations, and funding agencies which address the issue of rural development. IRMA's mission is to promote sustainable, eco-friendly and equitable socio-economic development of rural people through professional management of their institutions and organisations. The core of IRMA's operating philosophy is to build and sustain a partnership between rural people and committed professional managers. Through this, IRMA strives to contribute to the processes of promoting sustainable development and social justice in India's rural society. IRMA strives to a?hieve this mission by. Educating a new breed of professional rural managers having appropriate values and ethos to help rural organisations and institutions in professionalizing their management and empower rural people through self-sustaining processes; Training policy makers, directors, general managers, and those in charge of specific managerial functions in such enterprises and projects; Building new rural management knowledge and theories through action oriented and problem solving research and consultancy; and Influencing public policies through policy oriented research and consultancy.

3 IRMA is providing Post-graduate Management Programme known as Post-Graduate Diploma in Rural Management which is 2 years' course and the said institution is granted approval by All India Council for Technical Education (hereinafter referred to as "the AICTE" for convenience) and the respondent No.1 institute is granted approval for conducting management programme with intake capacity of 60 students and the approval is renewed and/or extended after every four years and the said approval has been accorded subject to fulfillment of certain conditions listed at Annexure-1 to the approval and norms and standards of general conditions as stipulated by Council of AICTE. The following are some of the conditions which are required to be fulfilled and complied with by the respondent No.1 institution:-

> No new course(2) shall be started or an ongoing course(2) shall be discontinued without the prior approval of AICTE. The intake capacity in any of the approved course(2) shall not be increased or varied without the prior approval of the AICTE. Adequate funds shall be available with the Institution to meet the financial obligations of recurring and non-recurring nature as prescribed by the AICTE, from time to time.
>
> All infrastructural, instructional and other facilities shall be provided as per the AICTE norms prescribed from time to time. Teaching and other staff shall be selected according to the procedure, qualifications, experience and pay scale as prescribed by AICTE from time to time, and they shall be paid full salaries and allowances regularly and in time.

4 The tuition and other fees shall be charged as prescribed by the State Government within the overall criteria/limits as may be laid down by the AICTE from time to time. Admissions shall be made according to the regulations and directions of the AICTE for such admissions in the respective technical institution or university.

> The State Government policies for admissions of SC/ST, other weaker sections of Society etc., shall be followed by the Institutions. Institution by virtue of the approval by AICTE shall not automatically become eligible to receive financial grants or assistance from the Central or State Governments.

5 Institution shall maintain records and books of accounts as prescribed by the Competent Authority.

Shri K. S. Nanavati
Sr. Advocate

6 The accounts of the constitution shall be audited by Chartered Accountant or any agency authorized by the Competent Authority and shall be open for inspection by the AICTE or any body authorized by it. The Institution shall be subject to a Special Audit and inspection as prescribed by the AICTE.

Institution shall furnish requisite returns as prescribed by Competent Authority/AICTE for ensuing maintenance of standards. The Institution may be visited by an officer or a Committee of the AICTE or of its Regional Office from time to time to review the progress made by the Institution in fulfilling the conditions as aid down by the AICTE. Additional conditions for Pvt. and Grant-in-Aid technical institutions; The Governing Body of the institution shall be constituted and its Chairman shall be appointed as per the guidelines of AICTE. ? The institution shall not charge any Capitation Fee or donation for admission or other higher charges from the students/guardian of the students in any form.

7 The institution shall constitute a Planning and Monitoring Board (PBM) for the continuous monitoring of implementation of norms and standards of AICTE. There shall be an evaluation of the institution in a plan period by the AICTE. The Institution should create an Endowment fund jointly in the name of the institution and the concerned State Authority to the tune of 30% of the projected peak annual recurring expenditure or as prescribed by the State Govt./UT or Rs.10 Lakhs, which ever is more.

The respondent No.1 is required to give admission to the students for the aforesaid Post-Graduate Management Programme / Course in accordance with the regulations notified by AICTE vide GRS 476(E)dtd.20th May, 1994. based on the Supreme Court judgement dtd.4th February, 1993 in the case of Unntii Krishnan and ors. Vs. State of A.P. And ors., in the latter judgement and the said institute cannot announce admission directly under any circumstances and any action contrary to the said provisions taken by the institute while making it liable to be de-recognise. It is also stated in the said approval letter of AICTE that in the event of infringement or perverse or non-compliance of norms and standard prescribed by the AICTE during the last approved academic year, the Council is empowered to take further action to withdraw approval and for admission during the subsequent academic year and by virtue of the approval granted by AICTE, Secretary Higher and Technical Education Department of Education, State of Gujarat is to monitor the progress made by the respondent institute for fulfillment of the norms and standard of the Council and keep the concerned Regional Committee and AICTE informed. Thus, considering the approval of the AICTE and conditions imposed while granting approval by AICTE, it emerges that the respondent institute is subject to overall control of AICTE with respect to conducting course, granting admission, intact capacity, teaching and other staff to be selected according to the procedure, qualification, experience and pay scale as prescribed by AICTE from time to time, tuition and other fees to be charged as prescribed by the State Government. The State Government policy for admission of SC/ST, institution shall maintain record and Books of Accounts as prescribed by the competent authority, the institution shall be subject to a Special Audit and inspection as prescribed by AICTE. The governing body of the institution shall be constituted and its Chairman shall be appointed as per the guidelines of the AICTE.

8 It is also the case of the petitioner as per the pleadings in the present petition that the Government of Gujarat provided about 60 Acres of land at a token rent of Rs.1 only for 50

years therefrom to IRMA with a view to accepting them to establish thereupon an educational institute for the field of rural management. It is also the case of the petitioner that the Government of India also provided financial assistance in the form of grant to the tune of Rs.10.50 crores for the purpose of setting-up the said educational institution by respondent No.1 society. It is also the case of the petitioner that even the National Dairy development Board (NDDB) which is a statutory body also renders from time to time such assistance as may be required by the respondent No. 1 society in respect of the said educational institute.

9 According to the petitioner as per the rules of the respondent No. 1 society approved by the office of the Assistant Commissioner under the provisions of the Bombay Public Trust Act, entire administration of the respondent No. 1 society vests in the Board of Governors of the respon?ent No.1 society and the said Board of Governors of the respondent No. 1 is vested with the powers of general superintendence, directions and control the affairs of the society. Thus, according to the petitioner, the Board of Governors of respondent No.1 society is supreme authority for the entire functioning of the respondent No. 1 society with respect of each and every sphere of activity undertaken by the respondent No.1 society. The relevant rules for the purpose of determining and considering the present petition being Rule Nos.2, 4,5,6,7,8,9,10,11, 13,15,16,17,18,19 and 24 of IRMA Rules read as follows;-

> Membership of the Society; The society shall consist of the following members; (1) The Chairman
>
> (2) One representative of the Government of India not below the rank of Joint Secretary to the Government of India, Ex-officio.
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> (3)One representative of the Government of Gujarat not below the rank of Secretary to the Government of Gujarat, Ex-Officio.
>
> (4) The Chief Executive or his nominee (not below the rank of General Manager) of such Cooperative Unions or Federations or agro-based industry or institution concerned with rural development, admitted by the Board of Governors to the membership of the Society and contributing a Society membership endowment fee of Rs.2 lakh or contributing Society membership fee of Rs.50,000.00 and An yearly subscription of Rs.15,000.00
>
> (5)One representative of NDDB (not below the rank of Senior General Manager, Ex-Officio.
>
> (6)Two representatives of research, education and training institutes who are co-opted on the Board of Governors and whose term as members of the Society will be co-terminus with that of the Board.
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> (7)Three outstanding person whom the Board of Governors of the Institute consider eminently capable of contributing to the development of the Institute and who are co-opted b the Board and whose term as members of the Society will be co-terminus with that of the Board.
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> (8) Two faculty members of the Institute nominated by the Chairman for a term of two years.

(9) Director of the Institute (ex-officio Member-Secretary). Board of Governors.

10 The general superintendence, direction and control of the affairs of the society and its income and property shall be vested in the Governing Body of the Society, which shall be called the Board of Governors. Institute of Rural management hereinafter referred to as "The Board. The Board shall be composed of the following members;

(1) The Chairman (2) One representative of NDB (not below the rank of Senior General Manager), Ex-Officio. (3)One representative of the Government of India not below the rank of Joint Secretary to the Government of India, Ex-Officio. (4) One representative of Government of Gujarat not below the rank of Secretary to the Government of Gujarat, Ex-Officio. (5-7) Three representatives to be elected every two years from Co-operative Unions or Federations or agro-based industries or Institutions concerned with rural development who are members of the Society. (8-9)Two persons co-opted by the Board for a period of two years representing research, education and training institutions whom it considers as capable of contributing to the development and growth of the Institute. (10-12)Three outstanding persons co-opted by the Board for a period of two years whom it considers eminently capable of contributing to the development and growth of the Institute. (13-14)Two faculty members of the Instit?te to be nominated by the Chairman of the Board for a term of two years. (15) Director of the Institute (ex-officio Member-Secretary) Officers of the Society

11 The officers of the society shall be the Chairman and Director and other office bearers who may be designated as such by the Society. The Director of the Institute will work as ex-officio Member Secretary of the Society and the Board. Chairman of the Board and Society.

(1)When office of the Chairman (held by the first Chairman who is the founder Chairman) falls vacant by resignation or otherwise, the Board shall; (a) elect the successor by converting itself into a commerce of the whole or (b) appoint a sub-committee of the Board to suggest a panel of not more than three names for consideration of the Board and select one of them as the successor.

(2) The term of the successive Chairmen shall be five years.

(3)The Board shall appoint the sub-committee at least six months before the vacancy in the office of the Chairman is expected to arise, or six months before the expiry of the term of the incumbent, or within a month of the office of the Chairman falling vacant, as the case may be.

12 Director of the Institute. The Director of the Institute shall be appointed by the Board on such terms and conditions as may be agreed upon. He shall be the Ex-officio Member Secretary of the Society and the Board.

Cessation/Termination of Membership (1) A member of the Society or of the Board shall cease to be such a member if he (a) dies, (b)resign his membership, or (c) becomes of unsound mind, or (d) becomes insolvent, or (e)is convicted of criminal of fence involving moral turpitude, or (f) expect in the cases of the Director and faculty nominees of the Institute accepts a full time appointment in the Institute, or (g) fails to attend three consecutive meetings of the Society or the Board without the leave of

absence being granted by the Chairman, or (h)the Co-operative Union or Federation or agro-based industry or institution which the member represents defaults in the payment of Society membership for a annual subscription and such default continues for a period of two months or more.

(2) When a person becomes a member o the Society or Board by reason of the office or post he holds, his membership of the Society or of the Board shall terminate when he ceases to hold the office or post and his successor shall automatically replace him on the Society or the Board.

(3) Unless the membership of a member is otherwise terminated, the members appointed for a term shall cease to be such members on expiry of their term, but shall be eligible for reappointment, and every such member shall continue until his successor is elected, nominated or co-opted, as the case may be, provided that such continuation shall not extend beyond six months from the date of expiry of his term.

(4) Should the membership of any member get terminated due to default in the payment of annual subscription, such person/institution may, at the discretion of the Board, be readmitted to membership of the Society on payment of arrears of subscription in full. However, any member who defaults in payment of annual subscription consecutively for a period of five years may be considered at the discretion of the Board for readmission as a new member provided such person/institution makes a fresh application for membership and pays the membership fee of Rs.50,000 and annual subscriptions of Rs.15,000.00 . Resigning Chairmanship/Membership.

(1)The Chairman of IRMA Society/Board may resign his offi?e by a letter addressed to the Board and his resignation shall take effect from the date of resignation or from such later date, if any, as may be specified therein.

(2)Before resigning or remitting his office, Chairman of IRMA Society/Board may call for a Board meeting to select/elect an Interim Chairman, who will continue as Chairman of IRMA Society and Board until the new Chairman is selected and appointed as per Rule 7.

(3)A member o the Society or the Board (Other than ex-officio member) may resign his office by a letter addressed to the Chairman and such resignation shall take effect from the date of resignation or from such later date, as may be specified therein. Casual Vacancies.

13 Any casual vacancy in the society or the Board shall be filled by the appointment or nomination of a member by the appropriate authority entitled to make such appointment or nomination, and the member appointed or nominated to fill such casual vacancy shall hold office for the remainder of the term of the member in whose place he has been appointed or nominated.

14 Society/Board to function notwithstanding any vacancy/defect in appointment. The Society or the Board shall function notwithstanding any vacancy therein and notwithstanding any defect in the appointment, election, nomination or co-option of any of its members, and no act or proceedings of the Society or of the Board shall be called not question merely by

reason of the existence of any vacancy therein or of any defect in the appointment, election, nomination or co-option of any of its members.

15 Meeting of the Society. The society shall meet once in a year Additionally, upon a written requisition of not less than six members, the Chairman shall call a meeting of the Society at any time other time. For every meeting of the Society not less than fifteen days' notice shall be given to the members.

16 Powers and functions of the Board Governors. Subject to the provisions of the Memorandum, the Board shall have the powers; to prepare and execute detailed plans and programmes for the establishment of the Institute and to carry on its administration and management after such establishment; to receive grants and contributions and to have custody of the funds of the institute; to prepare, revise and amend the budget estimates of the Institute each year, and to sanction the expenditure; to prescribe and conduct courses of study, training and research in rural management allied subjects; to determine policy and prescribe rules and regulations for the admission of candidates to the various courses of study; to law down standards of proficiency to be demonstrated for the awards of degrees, diplomas, certificates and other distinctions in respect of courses offered by the institute; to institute and award fellowships, scholarships, prizes and medals; to provide for and supervise the residence, health discipline and the well-being of the students of the institute; to cooperate with any other organization in the matter of education and training in rural management and allied subjects; to enter into arrangements for and on behalf of the institute to exercise the powers delegated to it; to sue and defend all legal proceedings on behalf of the Institute; to appoint a Committee or Committees for the disposal of any business of the Institute or for tendering advice in any matter pertaining to the Institute; to delegate to such extent as it may deem necessary, any of its ? powers to any member or Committee of the Board; to consider and pass such resolution on the annual report, the annual accounts and the financial estimates of the Institute as it thinks fit; to make, adopt, amend, vary or rescind from time to time rules and regulations for any purpose connected with the management and administration of the affairs of the Institute and for the furtherance of its objects; to make, adopt, amend, vary or rescind from time to tile rules (a) for the conduct of the business of the Board and the Committees to be appointed by it,(b) for delegation of its powers of (c) for fixing the quorum; and to create administrative, technical and other posts under the Institute in the cadres and scales of pay as approved by the Board from time to time. However, to meet emergent needs, in anticipation of approval of the Board, Chairman or Director with the approval of the Chairman shall have the powers for creation of any post for a period not exceeding one year. Such creation of emergent posts shall be placed before the Board for its approval at its next meeting;

17 Meeting of the Board.

> (1) The Board shall meet at least once in every three months. The Chairman may call additional meetings whenever he thinks fit or on a written requisition of not less than six members of the Board. Not less than fifteen days' notice shall be given for every meeting of the Board.
>
> (2)One third of the local members of the Board ignoring the fraction, if any, including the Chairman, shall constitute a quorum for any meeting of the Board.

(3)In case of difference of opinion amongst the members, the opinion of the majority shall prevail.

(4) Each member of the Board, including the Chairman, shall have one vote and if there be an quality of votes on any question to be determined by the Board, the Chairman of the meeting shall, in addition, have and may exercise casting vote.

(5) Every meeting of the Board shall be presided over by the Chairman, and, in his absence from any meeting, by a member chosen from amongst themselves by the members present t the meeting.

18 Board may pass Resolutions by Circulation. Any resolution, except such as may be placed before the meeting of the Board, may be adopted by circulation amongst all its members and any resolution so circulated and adopted by a majority of the members who have signified their approval or disapproval of such resolution shall be as effective and binding as if such resolution had been passed at a meeting of the Board, provided that in every such case at least six members of the Board shall have recorded their response to the resolution. The resolution so adopted shall be presented in the next meeting of the Board for information.

19 Delegation of Powers by the Board. The Board shall by resolution delegate the Chairman, Director, and other officers as specified in Rule 6 such of its power for the conduct of the affairs of the institute as it may consider necessary or desirable.

20 Director responsible for administration of the Institute. The Director shall be responsible to the Board for the proper administration of the Institute.

21 Members of Society/Board/Committee not entitled to remuneration. The members of the Society, Board or of any Committee appointed by the society or the Board shall not be entitled to any remuneration from the Society or the Board. However, non-official members of the Society, the Board or any committee appointed by either of ?hem shall be paid by the Institute such traveling and daily allowance as may be provided for in the Rules to be made in this behalf in respect of any journeys undertaken by them for attending the meetings of the Society, the Board or the Committee. Traveling and daily allowances, in respect of official members for the journeys undertaken by them for similar purpose, initially born by the central and the State Governments concerned shall be reimbursed by the Institute to the Central or State Government as the case may be.

Secretary of the Society to sue be sued. For the purpose of sec. 6 of the Societies Registration Act, 1860 the person in whose name the Society may sue or be sued shall be the Secretary of the Society."

In the back ground of the aforesaid facts, status of the IRMA and its Rules, the case of the petitioner is required to be considered which is as under; It is the case of the petitioner that he was engaged earlier as a Faculty Member of IRMA and he came to be appointed as Director of IRMA vide order dtd.9/8/2002 which was signed by the respondent No.2 herein as the Chairman of the respondent No.1 society i.e. IRMA. It is the case of the petitioner that the said letter dtd. 9/8/2002 was issued by the respondent No.2 pursuant to the resolution passed by the Board of Governors being Resolution No.5 in its meeting dtd.25/7/2002. In the said resolution, it was decided that after considering all different options, it was proposed that Dr.Kurian -

respondent No.2 herein would like to contact one Dr.Johar Shah to find out his availability and willingness to the post of Director of IRMA. If he agrees then he may be appointed as Director and if he does not, then the Professor Mr.K.Pratap Raddy - petitioner herein, may be appointed as Director on relinquishing of authority of Dr.Katarsing until further orders and accordingly as Dr.Johar Shah who was not available and shown unwillingness to the post of IRMA, pursuant to the aforesaid resolution, he was appointed on 9/8/2002 as Director of respondent No.1 IRMA.

Chronological events supplied by the petitioner on the basis of pleadings in the petition which has led to file the present petition reads as under;-

25/7/2002 Board of IRMA passed a resolution appointing the petitioner as Director of the Institute if Dr.Jahar Soha was not prepared to accept the office of the Director.

As per the Rule 8 of IRMA Rules, the appointing authority for the Director of the Institute is the Board and the Director is the ex-officio member Secretary of the Board as well as the IRMA as a society. As per Rule 19, the Director of the Institute shall be responsible only to the Board for the proper administration of the Institute.

9/8/2002 Dr.V.Kurien, respondent No.2 herein, in his capacity as Chairman of the Board addressed a communication to the petitioner evidencing the factum of his appointment as Director by the Board.

14/12/2004 Respondent No.2 Dr.V.Kurien as chairman of the Board moved a circular resolution seeking power to himself from the Board for replacing the petitioner as Director of the Institute. However, the same was denied to respondent No.1 and even after the said grievance of respondent No.2 as chairman of the Board was considered by the Board in its meeting of 28/2/2005 as item No.6 on the agenda and thereupon, it was decided to refer the matter to the sub-committee of the Board so that further action, if warranted as desired by respondent No.2 can be taken by the Board against the petitioner only after studying the report of the sub-committee.

25/2/2005 Asst. Charity Commissioner, Anand passed an order under Sec.22 of the Bombay Public Trusts act, 1950 in Change Report No.146 of 2004 whereby amendment in the Rules of IRMA, as proposed was duly approved save and exc?pt amendment therein in the shape of Rule 7 thereof referable to the indefinite tenure of Dr.V.Kurien as Chairman of IRMA.

28/2/2005 The aforesaid order of Asst. Charity Commissioner was tabled before the Board in its meeting and apropos the same unanimously a decision was taken to refer the matter to a Sub-Committee of the Board which was already constituted earlier for the purpose of looking into the Governors issues of the Institute.

28/2/2005 In the aforesaid meeting, Dr.Bakul Dholakia, Mr. V.Ramachandran, Mr. Hasmukh Shah, Mr. Vijay Mahajan and Fr E Abraham, Respondent Nos.8 to 12 herein came to be co-opted once again as members of the Board.

28/2/2005 Though respondent No.2 Dr.V.Kurien claims that in the meeting of 28/2/2005 the aforesaid five co-opted members ought not to have been invited as their tenure had expired on 15/2/2005, he forgets the fact that agenda for the said meeting

was corrected by himself and hence, even he was aware about the agenda for the said meeting decided to be sent to them. Besides this, Rule 9(3) of IRMA Rules requires that such members shall continue for further period of six months if their vacancies are not filled in by co-opted afresh in meantime.

22 28/2/2005 In addition to the above, respondent No.2 requested the petitioner for necessary arrangement for transport and accommodation of respondent No.10 for the said meeting 28/2/2005.

23 28/2/2005 The respondent No.2 preferred not to object to the presence respondent Nos.13 and 14 in the meeting of 28/2/2005 despite the fact that even their term had expired like the above mentioned five co-opted members.

24 16/3/2005 Based upon the requisitions received in writing by the Petitioner as Member Secretary of the Board from in all six members, a notice convening the meeting of the Board on 1st April, 2005 was issued by the petitioner. The said meting was for the purpose of discussing he consequences arising out of the said decision have the Assistant Charity Commissioner as well as recommendations of the said committee thereon.

25 31/3/2005 Jt.Charity Commissioner, Vadodara passed two separate ordered dtd.31/3/2005 in Appeal No.2/2005 as well as in application No.3/2005 preferred by Mr.BM Vyas, respondent No.7 herein in the company of others, challenging the aforesaid decision of the Asst.Charity Commissioner under sec.22 of the Bombay Public Trust Act, 1950 in not approving the amendment in the shape of Rule 7 of IRMA Rules referable to the indefinite tenure of Dr.V.Kurien as Chairman of the Board as well as the aforesaid act on the part of the respondent No.1 in convening the meeting of the Board on 1-4-2005 respectively. Vide the said judgments; the Jt.Charity Commissioner rejected the said appeal and also the said application.

26 31/3/2005. After pronouncement of the aforesaid orders by Jt.Charity Commissioner at 11.30 a.m. On 31/3/2005, Special Civil Suit No.48/2005 was instituted by Mr.S.R. Chaudhary as member of the Board at 4.30 pm in the Civil Court at Anand seeking relief similar in nature to that of one prayed for by the said Mr.B.M. Vyas, respondent No.7 in the aforesaid application under sec. 41A of the BPT Act for cancellation of the meeting of 1.4.2005. In the said suit, vide an application for temporary injunction at Exh.5, the said Mr.SR Chaudhary also prayed for stay of the said meeting of 1.4.2005 along with the further relief that aforesaid five persons who were co-opted as members of the Board need not be permitted to attend the said meeting of 1.4.2005.

27 1.4.2005 At about 10.20 am. The Civil Court at Anand passed an order in the aforesaid suit by virtue of which, only a status quo with regard to the composition of the Board was granted and thereupon the stay as prayed for against the meting of 1.4.2005 was declined along with the prayers for restraining the af?resaid five coopted members from attending the said meeting of 1.4.2005.

28 1/4/2005 The meeting of the Board was convened as scheduled in the said meeting, after overruling the objections raised earlier by Dr.V.Kurien as well as few other members of the Board with regard to the holding of the said meeting of 1.4.2005, it was unanimously decided to appoint a Search Committee for selection and appointment of Chairman of Board pursuant to the observations in this regard by the Asst.Charity Commissioner in the aforesaid order. As

per the then Rule 5(2) of IRMA Rules, which would stand renumbered as Rule 7 in view of the aforesaid order Asst.Charity Commissioner, a Sub-committee of the Board was required to be appointed for the selection and appointment of the Chairman of the Board by the Board. In the said meeting, the petitioner as member secretary to the Board was also authorized to take appropriate measures, as advised, against the aforesaid order of Civil Court in the said Suit of Mr.S.R. Chaudhary.

29 1.4.2005. Mr.SR Chaudhary resigned as member of the Board.

> 4.4.2005 Based upon the aforesaid decision of the Board in its meeting of 1.4.2005, the petitioner as Member Secretary of the Board filed an appeal for and on behalf of IRMA , before this Hon ble Court being Appeal From Order No.148 of 2005 against the aforesaid order of the Civil Court in the said Suit of Mr.SR Chaudhary. This Hon ble Court issued a notice in the s aid Appeal on 5.4.2005 by making the same returnable on 8.4.2005. This appeal was disposed of on 13.5.2005 as having become redundant on account of withdrawal of the suit by Mr.S.R. Chaudhry following his resignation as member of the Board.

30 4.4.2005 Mr.Haribandhu Panda, respondent No.14 as member of the Board nominated by respondent N.2 moved an application before the Civil Court at Anand in the said Suit of Mr.SR Chaudhary seeking impleadment as Plaintiff No.2.

31 6.4.2005 Dr.V. Kurien, respondent No.2 herein, filed a suit in the Court of Civil Judge (SD), Anand being Special Civil Suit No.50 of 2005 seeking relief similar in nature to the one prayed for in the aforesaid suits of Mr.SR Chaudhary. No orders were passed by the Court in respect of the application for temporary injunction moved therein for the purpose of restraining the aforesaid five co-opted members from participating in the future meeting of the Board as well as for the purpose of restraining the Board from implementing the decision taken in the meeting of 1st April 2005 for selecting and appointing a new Chairman.

32 7.4.2005 While the petitioner was in the midst of instructing the concerned Advocate at Ahmedabad in respects of the aforesaid appeal from Order before this Court which was to come up for hearing on 8th April, 2005, at about 8.23 pm, a fax message was received by the concerned advocate of the petitioner under the signature of respondent No.15 informing him that the petitioner has been removed as Director w.e.f. 7th April, 2005 in the afternoon and hence, the concerned advocate should seek further instructions from respondent No.15 in the said appeal from Order as respondent No.15 has been appointed by Dr.V.Kurien, respondent No.2 herein, as Acting Director and thereupon the concerned advocate should seek an adjournment in the said appeal from Order on 8th April, 2005.

33 7/4/2005 The aforesaid was followed by the another fax message dated 7/4/2005 received by the concerned advocate at 9.10 pm, under the signature of Dr.V.Kurien as Chairman conveying the same thing with regard to the termination of the appointment of the petitioner as Director of the Institute and appointment of Respondent No.15 as Acting Director.

34 7/4/2005 Subsequent to the above, the petitioner received a telephonic message from his Secretary that the petitioner's office was locked under the instructions o? respondent No.15 by applying an additional lock over and above the lock applied thereon by the petitioner.

35 8/4/2005 The petitioner moved the present writ petition being Special Civil Application No.6456 of 2005 challenging the aforesaid course of action on the part of the appellant Dr.V.Kurien, respondent No.2 herein in purporting to terminate his appointment as Director.

36 8/4/2005 In the aforesaid Appeal from Order, the above developments were brought to the notice of learned Judge. Thereafter, the learned Judge passed an order admitting the said appeal from order and staying the said order of status quo granted by the Civil Court, Anand in the said Suit of Mr.S.R. Chaudhary being Special Civil Application No.48/2005.

37 8/4/2005 The petitioner when entered his residence at about 9.40 pm, noticed a packet lying on the entrance of his house containing a communicate dated 7/4/2005 under the signature of Dr.V.Kurien, respondent No.2 herein as Chair of the Board conveying that the appointment of the petitioner as Director of the Institute stands terminated with effect from the afternoon of 7/4/2005 as respondent No.2 has lost confidence in the petitioner as Director of the Institute. Petitioner replied to the same on 11.4.2005 by addressing a communication to respondent No.2.

38 9/4/2005 Respondent No.11, as one of the Board Members, moved a circular resolution against the aforesaid act on the part of respondent No.2 Dr.V.Kurien in unilaterally purporting to terminate the appointment of the petitioner as Director and appointing respondent No. 15 as Acting Director. The said Circular resolution was passed with the majority of as many as eight members of the Board out of 14 members of the Board.

39 9/4/2005 Thus, out of 14 members of the Board, in all eight members of the Board including the representatives of Government of India as well as the representative of Government of Gujarat endorsed fully the view expressed in the s aid circular resolution to the effect that under Rules of IRMA, it is the Board which is having the authority to terminate the appointment of Director and not the Chairman of the Board. Here it is pertinent to mention that the petitioner, though served with the circular resolution as Member Secretary of the Board declined to vote on the ground of propriety and hence the said figure of eight members supporting the said circular resolution is without the petitioner. As against this, the other five members, who opened the said circular resolution are namely, (1) Appellant, Dr.V.Kurien, whose own action was subject matter of the said circular resolution, (2) Mr.B.M. Vyas, who moved the said proceedings before the Jt.Charity Commissioner supporting Dr.V.Kurien on the aspect of his indefinite tenure as Chairman of the Board (3) Prof.H.Panda, who was nominated by Dr.V.Kurien on the ground and who attempted to join as plaintiff No.2 in the said suit of Mr.S.R. Chaudhary (4) Prof.V.Ballabh, who was also nominated on the Board by Dr.V.Kurien, (5) Fr.E.Abraham, who was preferred to adopt the stand taken by Dr.V.Kurien against his own co-option by the Board.

40 13/4/2005 The hearing before the learned Single Judge of this Court commenced in the aforesaid writ petition of the petitioner.

41 14/4/2005 Respondent No.7 Mr.BM Vyas filed SCA No. 6785 of 2005 challenging the aforesaid order of Jt.Charity Commissioner dated 31/3/2005 in Misc. Application No.3 of 2005 by virtue of which relief against the holding of meeting of 1.4.2005 as well as relief against the aforesaid five co-opted members for preventing them from attempting any of the Board Meeting were declined. The said writ petition was moved for urgent circulation on 14/4/2005 by making a mention before the learned Single Judge of this Court at 1.30 pm, despite the fact that the copy of the order implemented therein was made av?ilable o the

respondent No.7 as petitioner therein on 31/3/2005 itself. No interim relief was granted by the learned single judge of this Court in the said matter and hereupon the same was kept on 15/4/2005.

42 15/4/2005 Prof.Bakul Dholakia, Director, Indian Institute of Management, Ahmedabad, Mr.Hasmukh Shah, Chairman, National Institute of Design, Ahmedabad and Mr.Vijay Mahajan, MD, BASIX, a renowned NGO, respondents Nos.9,11 and 12 herein were restrained forcibly by the security people at the entrance gate of IRMA under the instructions of respondent No.2 Dr.V.Kurien as Chairman of the Board for the purpose of preventing them as co-opted members from the Board from attending the meeting of the Board scheduled at 9.30 am, on 15/4/2005. Along with this, the petitioner who was inside IRMA campus was also not permitted to enter the venue of the meeting of the Board by the security people under the instructions of respondent No.2 ignoring the aforesaid circular resolution by majority of the Board by virtue of which the petitioner was declared as continuing as Director of the Institute.

43 15/4/2005 In all, four Board Members, namely Dr.Amrita Patel, Chairperson, NDDB, Ms.Neelima Khetan, Chief Executive, Seva Mandir, a renowned NGO in Rajasthan, Mr.Vipul Mittra, Secretary Government of Gujarat and Mr.JK Mohapatra, Jt.Secretary, Govt. of India respondent Nos.3, 6, 5 and 4 respectively, who were permitted to enter the venue of the meeting of the Board on 154/2005 objected to the presence of respondent No. 15 at the venue of the said meeting, before the meeting could commence and thereupon also requested the, Dr.V.Kurien to permit the aforesaid three co-opted members whom they noticed as forcibly prevented at the entrance gate from entering the campus of IRMA as well as the petitioner to attend the meeting. However, the said request was not acceded to by respondent No.2 Dr.V.Kurien and hence the said members walked out from the venue of the meeting before the meeting could actually commence.

44 15/4/2005 In all six members of the Board, namely, Dr.Amrita Patel, Ms.Neelima Khetan, Prof.Bakul Dholakia, Mr.Hasmukh Shah, Mr.Vijay Mahajan, respondent Nos.3,6,9,11,12 respectively and the petitioner assembled outside the campus of IRMA and thereupon convened the meeting of the Board in the campus of NDDB at about 10 am. In the said meeting, the aforesaid circular resolution was also endorsed.

45 15/4/2005 It is claimed by respondent No.2 Dr.V.Kurien in the company of Mr.BM Vyas, Prof.VBallabh and Prof.H.Panda,respondent Nos.7,13 sand 14 respectively, that a meeting of the Board was convened at 9.30 am as scheduled wherein in addition tot he said four members including respondent No.2 Dr.V.Kurien, the above mentioned four members, namely Dr.Amrita Patel, Ms.Neelima Khetan, Mr.Vipul Mittra and Mr.JK Mahapatra remained present and participated in the meeting.

46 The said meeting, as claimed, cannot be said to be possible for want of quorum under Rule 16(2) of IRMA Rules, as the aforesaid four members walked out before the meeting could actually commence. Besides this, when three co-opted members, as mentioned above and the petitioner were prevented from attending the meeting, the said alleged meeting cannot be said to be validly held. When the minutes of the said alleged meeting were sought to be served upon the said four members, they objected to the same by addressing appropriate communications.

47 15/4/2005 In the aforesaid alleged meeting, respondent No.2 Dr.V.Kurien is claiming to have ratified the purported termination of the petitioner as Director of the Institute and the appointment of respondent No.15 as Acting Director of the Institute. For this purpose, respondent No.2 Dr.V.Kurien is claiming to have voted twice as there was a tie.

48 15/4/2005 The petitioner was prevented from attending the co?vocation of the institute ignoring the fact that even if the respondent No.2 Dr.V.Kurien is presumed, on hypothesis, to be right in not recognizing the petitioner as Director of the Institute, the petitioner is nonetheless, the faculty member of the institute.

49 16/4/2005 In view of the above stalemate, as decided by the meeting of the Board convened by the aforesaid six members on 15/4/2005, no meeting of the Board took place on 16/4/2005 as originally scheduled, wherein one of the items for discussion would have been considering the recommendations of the Search Committee for selection and appointment of the new Chairman by the Board.

50 19/20-4-2005 The learned Single Judge of this Court delivered the judgement and order in the aforesaid writ petition of the petitioner by virtue of which the said writ petition came to be admitted along with the interim relief in favour of the petitioner as prayed for in terms of para 28B of the petition and the final hearing of the matter came to be fixed on 29/6/2005.

51 Thereafter, the present petition came up for final hearing before the learned Single Judge of this Court who vide order dtd.19-20/4/2005 granted interim relief as prayed for in terms of para 28(b) while admitting the present petition which reads as under;-

> "28(B). That pending admission haring and final disposal of the present writ petition, this Honourable Court be pleased to restrain Respondent No.2 from precipitating any course of action in not recognizing the Petitioner as Director of the said Institute and hence, Member Secretary of the Board of Governors of Respondent No. 1-Society and, thereupon, be pleased to restrain respondent No.15 acting as Acting Director of the said Institute and hence, Member Secretary of the Board of Governors of Respondent No.1-Society in place of the petitioner."

52 The aforesaid interim order dtd. 19-20/4/2005 came to be challenged by filing Letters Patent Appeal No.608 of 2005 the Division Bench of this Court wherein the Division Bench of this Court initially granted stay against the interim order granted by the learned Single Judge of this Court dtd.19-20/4/2005 and thereafter, vide judgement and order dtd.......... allowed the said LPA by quashing and setting aside the interim order passed by the learned Single Judge of this Court dtd.19-20/4/2005 and directed the main petition to be heard finally without being influenced by the observations made by the Division Bench in the order and that is why this court is deciding the present petition on merits.

53 It is required to be noted that the term of the petitioner is to come to an end on and from 1/9/2005 and therefore urgency is shown on behalf of the petitioner requesting to decide and dispose of the present petition as early as possible by submitting that even if the petition is allowed after 1/9/2005, the petitioner may not enjoy the fruit and therefore, the present petition is heard and decided at the earliest in view of the urgency and considering the facts and circumstances of the case.

54 Mr.KB Trivedi, learned Additional Advocate General appearing with Mr.BC Dave, learned advocate appearing on behalf of the petitioner has submitted that in the present petition, the petitioner has challenged the unilateral action on the part of the respondent no.2 purportedly for and on behalf of the respondent no.1 as a Chairman of the Board of Governor of IRMA in terminating the appointment of the petitioner as a Director of Institute of IRMA. He has further submitted that by terminating / removing the petitioner as a Director of the Institute, the petitioner is also deprived of the status of the Member Secretary of the Board of Governors of IRMA as under the Rules, Director of Institute is ex-officio Member Secretary of the Board of Governors and the Institu?e /Society.

55 He has also further submitted that thus, accordingly the petitioner has prayed for a writ of Mandamus and/or any other appropriate writ, order and/or directions against the respondent No. 1 society as well as the respondent No.2 in his capacity as a Chairman of the Board of Governors of IRMA.

56 The learned advocate appearing on behalf of the petitioner has also submitted that the petitioner came to be removed / terminated as Director of IRMA pursuant to the order passed by the respondent No.2 dtd. 7/4/2005 and the respondent No.2 as a Chairman of the Board of Governors of IRMA has no authority to terminate and/or remove the petitioner as a Director of the Institute and as a Member Secretary of the Board of Governors of IRMA and thereupon to cause appointment of respondent No.15 as Acting Director in lieu of the petitioner. He has further submitted that as per Rule 8 of the IRMA Rules i.e. The Rules which have been duly approved by the Assistant Charity Commissioner under sec.22 of the Bombay Public Trust Act, 1959, appointing authority for the post of the Director of the Institute is the Board of Governors and accordingly, based upon the same the appointment of the petitioner as a Director of the Institute has been made by the Board of Governors of IRMA. It is also further submitted by him that there is no provision in the said rules conferring any power of any nature upon the Chairman of the Board of Governors qua the Director of the IRMS institute much less a disciplinary authority power to cause termination of appointment of the Director of the institute. According to him, therefore, save and except the Board of Governors of IRMA, no other body / person/ authority can be said to have any authority to cause termination of appointment of the Director of IRMA. It is also further submitted that the entire superintendence and control of IRMA vests in the Board of Governors as per Rule 4 of IRMA Rules and as per Rule 19 of the IRMA Rules, the Director is responsible to the Board for proper administration of the institute, as oppose to the Chairman of the Board. Therefore, it is submitted that the impugned action on the part of the respondent which he claims to be as a Chairman and for an on behalf of the Board of Governors thereof is not only patently without authority but the same is also by usurping the powers of the Board of Governors and the same is non-est and void ab-initio. He has also further submitted that in fact by circular resolution dtd.9/4/2005 passed by the majority of 8 members of the Board out of in all 14 members of the Board, declared that they do not subscribe to action on the part of the respondent No.2 in removing the petitioner as a Director of IRMA. In support of his above contention with regard to powers of respondent N.2, Mr.Trivedi has relied upon the events which took place on 14/12/2004, where the respondent No. 2 specifically sought power from the Board of Governors to take actions against the petitioner as a Director of the institute, but the same was denied to hi by the Board. Relying upon the said event, it is submitted that if the Chairman was having the powers as alleged to terminate the appointment of the petitioner as a Director of the Institute, the respondent No.2 would not have gone before the Board of Governors seeking powers to take action against the petitioner as a Director of the Institute and straightway he could have taken actions. However,

the respondent No.2 was quite aware of the fact that he has no such powers and it is only the Board of Governors who can take actions against the petitioner as a Director of the Institute. Mr.Trivedi has further submitted that the action of the respondent No.2 purported to be for and on b?half of the respondent No. 2 is absolutely malafide, apart from lack of authority and conduct on his part starting from 14/12/2004 till 15/4/2005 clearly shows that it is most arbitrary and not befitting to the post which the respondent No.2 was occupying i.e. The Chairman of the only a institute in Rural Management providing management, education, training, research and consultancy in support to Cooperative stand Rural Development Association in India. It is further submitted by him that the respondent No.2 has acted as a Chairman of the society as if he was running the affairs of his private establishment, for which Mr.Trivedi has relied upon the events which are stated hereinafter, more particularly the events which took place on 7/4/2005 and on 15/4/2004. He has further submitted that the petitioner has challenged the action of the respondent No. 2 purported to be for and on behalf of the respondent No.1 dtd. 74/2005 by way of the present petition contending iner-alia that the respondent No. 2 has no authority and power to act on behalf of the Board of Governors unless such powers are delegated by the Board with respect to the post of Director of IRMA, the respondent in the alleged meeting dtd.15/4/2005 and during the pendency of the present petition tried to get his action dt.7/5/2005 ratified by the Board of Governors and has tried to make a show with regard to the alleged ratification by the Board of Governors, his action therefor, according to Mr.Trivedi this is nothing but overreaching the court process which is required to be strongly deprecated.

57 Mr.KS Nanavati, learned senior advocate appearing on behalf of the respondent No.1 IRMA opposing the present petition has submitted that IRMA has been registered and incorporated under the societies Registration Act, as a society and the Public rust under the Bombay Public Trust Act, in the year 1979 and as per clause 7 of the Memorandum of Association, the respondent No. 2 Dr.Kurien came to be nominated as the Chairman of the IRMA by NDDB for a period of 5 years which came to be subsequently extended for a further period of 3 years. It is also further submitted by him that after the expiry of 8 years, a new Board was constituted on 29/10/1987 and the respondent No.2 Dr.Kurien came to be again elected as the Chairman by the New Board as per Rule 5 of IRMA Rules and according to him the Rules do not provide for any fixed term of the Chairman. According to Mr.Nanavati, the Board of Governors passed resolution dtd.25/7/2002 (at page Nos.150 and 158) delegating the powers to respondent No.2 - Dr.Kurien to appoint the Director of the institute on vacancy arising and thereafter as per the said delegate powers, the respondent No. 2 appointed the petitioner as a Director of the institute for a period of 3 years w.e.f. 2/9/2002 expiring on 31/8/2005 (at page 137). According to Mr.Nanavati the contract is terminable by giving 3 months notice. According to the respondent No.1 the appointment of the petitioner as a Director of IRMA was noted by the Governor in its meeting held on 15/11/2002 (page No.143). Mr.Nanavati further submitted that on 14/12/2004 (at page 286) the respondent No. 2 Chairman issued letters to all the Board Members proposing termination of the petitioner, Prof.KP Reddy as a Director of IRMA and according to Mr.Nanavati in view of the aforesaid proposed actions, the petitioner started maneuvering to throw out the Chairman -respondent No.2 and started organizing support of some members of the Board. According to Mr.Nanavati, the term of 5 coopted members of the Board i.e. Father E.Abraham, Dr.Bakul Dholakiya, Mr. V.Ramchandranan, Mr.Hasmukh Shah, and Mr.VJ Mahajan and 2 nominated members' term expired in term of Rule 7 of IRMA Rules on 15?2/2005 and according to him, they ceased to be the member of the society and the Board of Governors of IRMA w.e.f.16/2/2005 and according to him, the strength of the Board was reduced from 15 to 8 members only. Mr.Nanavati has further submitted that in spite of the fact that the term of the

aforesaid 5 members expired w.e.f.16/2/2005, the petitioner issued an Agenda to the said Board members and called them to attend meeting of the Board of Directors which was to be held on 28/2/2005. According to Mr.Manavati, the same was done because the most of these 7 persons wanted to continue as Board Members and they colluded with the petitioner to get themselves re-coopted and pushed into abeyance the issue of termination of the petitioner. It is further submitted that on 28/2/2005 the proposed termination of the petitioner was also to be considered along with the reconstitution of the Board because of the vacancy and whether to re-co-opt the said persons to the Board was also to be considered in the said meeting dtd.28/2/2005. Mr.Nanavati has further submitted that though the term of the aforesaid 7 persons expired on 16/2/2005, they attended the meeting on 28/2/2005 and thereby vitiated the proceedings of the said meeting. It is further submitted that the fact that the term of those 7 members had expired and therefore, they ceased to be the members w.e.f. 16/2/2005 was not disclosed and a show was made that under the amended rules there term continued till the next meeting and said 7 members got themselves in illegally re-co-opted and also succeeded in pushing into abeyance the issue regarding the termination of the petitioner. Mr.Nanavati has further submitted that thereafter the petitioner without approval of the Chairman circulated false and incorrect Draft Minutes of the proceedings of the Meeting dtd.28/2/2005 creating a show as if the said 5 re-co-opted members were unanimously co-opted. It is further submitted by Mr.Nanavati that thereafter the respondent No. 2 Chairman in exercise of his powers under Rule 5 nominated two faculty members, Prof.H.Panda and Prof.V.Pallabh, as members of the Board of Governors on 11/3/2005. It is also further submitted by him that the respondent No. 2 by letter dtd.21/3/2?5 informed the aforesaid 5 members that their term had expired on 15/2/2005 and thereafter the respondent No.2 Chairman vide its letter dtd.1/4/2005 informed the existing members of the Board that the meeting of the Board was fixed on 15/4/2005 at 9.30 a.m. For approval of the list of Graduating Students as convocation of the institute was to be held on 15/4/2005 and despite the fact that the term of 5 co-opted members expired on 15/2/2005, the petitioner in his capacity as a Director issued Agenda invited them in the meeting dtd.15/4/2005. According to Mr.Nanavati, as the action of the petitioner was threatening the very existence of the society and was causing a grave damage to the society, the respondent No.2 Chairman as the appointing authority terminated the petitioner as a Director of IRMA vide communication dtd.7/4/2005 and appointed one Mr.L.K. Vasvani - respondent No. 15 herein as Acting Director. According to Mr.Nanavati Prof.LK Vasvani took the charge as an Acting Director of the IRMA on 7/4/2005 itself. According to Mr.Nanavati, the petitioner challenged his termination by way of present petition on 8/4/2005 and the respondent No.11 whose term as Board of member had expired on 16/2/2005 moved circular resolution against the action of termination of the petitioner and the said circular resolution is allegedly approved by 8 members. According to Mr.Nanavati 4 out of 8 persons were not members of the Board w.e.f.16/2/2005 and the aforesaid circular resolution was moved by a person who was not member of the Board and therefore, the decision and the resolution which came to be passed on 9/4/2005, is illegal and void. Thus, according to him, the said resolution can be said to have been approved by only four existing members of the Board as against the requirement of six prescribed vide the rule and therefore also the said circular resolution is of no value. It is further submitted that eve the said resolution was also not approved in the subsequent meeting of the Board as required under the Rules. It is further submitted that on 15/4/2005 3 out of 5 members who were ceased to be the member of the Board w.e.f. 16/2/2005 insisted that they should be permitted to attend the Board Meeting but were not permitted else the meeting would be illegal and the Board in its meeting held on 15/4/2005 by majority of 5:4 ratified the termination of the petitioner and also ratified the appointment of Prof.L.K. Vasvani - respondent No.15 herein as Acting Director and the Board did not approve the Minutes of the Meeting of the meeting

dtd.28/2/2005 and declared the proceedings of the said meeting illegal. According to Mr.Nanavati, her respondent No.6 along with respondent Nos.,3,4 and 5 the existing members of the Board finding themselves in minority stage a walkout at 9.55 a.m., and refused to sign the Attendance Registers despite the fact that they had participated in the meeting for 25 minutes. Mr.Nanavati submitted that the resolution passed in the meeting dtd.15/4/2005 are not challenged by any body not only that a change report under sec.22 A of the Bombay Public Trust Act stating that 5 co-opted members ceased to be board members w.e.f. 15/2/2005 has been filed. It is submitted that the learned Single Judge of this Court passed interim order on 19-20/4/2005 on the ground that though the respondent No. 1 is not "State" it is discharging the public duty and public function and therefore, amenable to the writ jurisdiction of this Court and stayed the termination of the petitioner. It is submitted by Mr.Nanavati that the aforesaid interim order came to be challenged before the Division Bench of this Court and the Division Bench vide its judgement and order dtd.24/6/2005 allowed the said LPA quashing and setting aside the order of the learned Single Judge granting interim relief staying the termination of the petitioner.

58 Mr.Nanavati, learned senior advocate while opposing the present petition and the reliefs sought in the petition has opposed the same by raising the following contentions and submissions;-

> [i]The respondent society is not a "State" within the meaning of Article 12 of the Constitution. If not, whether the petition under Article 226 of the Constitution of India still maintainable against the respondent society. Is the society performing any public duty or public functions ?
>
> [ii] Whether the petition under Article 226 of the Constitution of India would be maintainable challenging the termination of contract of service by the society which is engaged in the activity of training personnel in rural management and is voluntarily set up for that purpose as a fully autonomous private institution?
>
> [iii] Whether the said activity undertaken voluntarily by the respondent society of giving training in rural management can amount to discharging public duty or performing public function so as to attract jurisdiction of this Hon ble Court under Article 226 though such duty is not imposed on the society under any statutory provision or by any outside agency? It is submitted that Article 38 has no relevance to the question whether the activity undertaken by the Society partakes the character of public duty or function?
>
> [iv] Assuming that the respondent society is engaged in an activity, which partakes the character of public duty or function, whe?her termination of contract of service, on the facts and circumstances of the case, can amount to breach of any legal right of the petitioner and breach of a corresponding public duty or public function which could be enforced by a writ petition under Article 226.
>
> [v] Assuming without admitting that the activity voluntarily undertaken can be construed o be a public duty imposed and therefore its performance can be commanded by a writ of mandamus, whether a dispute originating from a contract of service and pertaining to alleged illegal termination thereof between the society and its employee be a subject matter of writ petition under Article 226?

[vi] If the society is not a State (and this Hon ble Court has so held), whether a dispute pertaining to a contract of personnel service which is exclusively in the field of private law is amenable to writ jurisdiction of this Hon ble Court under Article 226?

[vii] When there is an alternative remedy available by way of suit should the Hon ble Court intervene under its extraordinary constitutional jurisdiction?

[viii] Whether this Hon ble Court under Article 226 can examine the legality or otherwise of the proceedings of the meeting of 15/4/2005 in absence of specific challenge in the memo of petition and without examining on merits the justification for not allowing three persons to attend the meeting of the Board which was contained in the minutes of the meeting held on 15/4/2005?

[ix] Whether the alleged illegal termination of contract of service would be validated by a subsequent ratification thereof by the Board in its meeting held on 15/4/2005?

[x] In view of the well settled principle that the contract of service cannot be enforced, whether the Hon ble Court in its extraordinary jurisdiction under Article 226 would entertain a petition challenging such termination.

[xi] When the petitioner admittedly is not enjoying any status statutorily conferred or statutorily protected and has no right to continue on the post, whether the relief as claimed for can be granted?

[xii] When relations between the parties are strictly governed by the provisions of Contract Act, whether the Chairman who entered into a contract be not competent to terminate ?

[xiii] Assuming that the appointment of the petitioner by the Chairman was made pursuant to the resolution dated 25/7/2002 passed by the Board of Governors, whether termination of service would be void ab initio because the Board of Governors have not passed a resolution to terminate the service? It is submitted that such a order would not be void ab-initio because the society has not treated the said termination void. Whether the decision to terminate the service is properly ratified by the Board of Governors or not or its ratification b the Board of governors is valid or not is the matter of internal management of the Institute and would not render the termination void.

59 Dealing with the contention with regard to non-maintainability of writ petition against the respondent No. 1 IRMA under article 226 of the Constitution of India, Mr.Nanavati has submitted that IRMA is a society registered under the Societies Registration Act as well as the Public Trust registered under the Bombay Public Trust Act, 1950 and it is not instrumentality and agency of the State and therefore, not "State" within the meaning of Article 12 of the Constitution of India. It is also further submitted that since IRMA is not "State", its action cannot be challenged on the ground of Article 14 and/or on the ground of violation of fundamental rights. He has further submitted that the petition under Article 226 of the Constitution of India is not maintainable against IRMA as it is not the case of the petitioner that IRMA is an "Authority" within the meaning of Article 226 of the C?nstitution of India, the present petition is not for enforcement of any fundamental rights of the petitioner against IRMA. IRMA is a private body registered as a society as well as Public Trust

governed by its Memorandum and Articles of Association and it is a academic institute which has voluntarily undertaken the function of providing education, research and consultancy services for cooperative and other agencies engaged in economic and social development of rural communities and other training course. IRMA is neither performing any public duty or public functions and the function which it is performing is not imposed upon it but is voluntarily undertaken by it and therefore, its action is not amenable to judicial review under Article 226 of the Constitution of India. Dealing with the contention on behalf of IRMA that the writ petition under Article 226 of the Constitution of India is not maintainable for enforcement of a contract of personal service, Mr.Nanavati has submitted that the relation between the parties are governed by the law of contract and the petitioner is neither public servant having protection of Article 311 nor a workman governed by the Central Laws nor any employee of a statutory body. He has further submitted that it is not the case of the petitioner that the termination is in breach of violation of the mandatory provisions of the statute and the relation between the petitioner and the respondent No.1 society are thus governed only bylaw of contract.

60 Mr.Nanavati learned senior advocate as further submitted that since the appointment was made by the Chairman - respondent No.2, he had implied power to terminate the contract of service. He has also submitted that even the actions of the respondent No. 2 Chairman dtd.7/4/2005 in terminating the services of the petitioner as a Director of IRMA has been subsequently ratified by the respondent No. 1 i.e. Board of Governors of the respondent no.1 in its meeting held on 15/4/2005 and in that view of the matter and the ratification, it cannot be said that the termination of the petitioner as a Director of the Board is without any authority and/or which requires to be quashed and set aside. He has further submitted that so far as the contention on behalf of the petitioner that subsequent ratification in the meeting held on 15/4/2005 is overreaching the court process, has no substance. He has further submitted that the Board was having all the powers to ratify any action which was taken for and on behalf of the Board and therefore, merely because during the pendency of the present petition, it is ratified, it should not be construed as overreaching the court process. According to Mr.Nanavati the meeting dtd.15/4/2005 is legal and valid and the resolution which is passed in the meeting held on 15/4/2005 is illegal and there is no change to the said Resolution which is passed on 15/4/2005 and therefore, it is requested to dismiss the present petition.

61 Mr.S.N.Shelat, learned Advocate General appearing on behalf of the respondent no.2 Chairman of he respondent no.1 - IRMA has opposed the present petition and the relief sought for in the present petition by submitting that the petitioner has challenged the order of termination dtd.7/4/2005 passed by the respondent N.2 Chairman and has also sought for declaration that he continues in service. Thus, he seeks declaration for enforcement of the contract of his service which is purely a civil action at law and the petitioner has remedy under the Contract Act and Specific Relief Act in the competent Court of civil jurisdiction and therefore, it is requested that this Court may not exercise its extraordinary jurisdiction when the alternative remedy is available at law. Mr.Shelat has also further submitted that the present petitio? is required to be dismissed on the ground that it raises a disputed question of facts which may not be answered by this Court in exercise of the powers under Article 226 of the Constitution of India and according to him, the following are the disputed questions;-

[i] Whether the termination of contract of service is in breach of the terms and conditions of service?

[ii] Whether the subsequent circular resolution passed by the some of the members who claim to be the members is void?

[iii] Whether co-opted members continue on the Trust Board or not?

[iv] Whether the resolution ratifying termination has been validly passed at a quorum meeting? How many members were present. Nature of the proceedings undertaken, Quorum?

All these questions are the disputed questions of facts and therefore it is submitted that this Court, therefore, should relegate the petitioner to the ordinary civil jurisdiction.

62 It is further submitted by him that the order of termination dtd.7/4/2005 is passed by the respondent no.2 and therefore, no relief can be claimed against the respondent No. 2 in public law remedy i.e., under Article 226 of the Constitution of India as the respondent No.2 is not "State" within the meaning of Article 12 of the Constitution of India and "Authority" within the meaning of Article 226 of the Constitution of India. It is further submitted that the respondent No. 1 IRMA is the society registered under the Societies Registration Act and is also a deemed public trust registered under the provisions of the Bombay Public Trust Act. According to him the rules framed by the society are the rules for internal management of the society and they have o statutory force and no enforceable rights flows from the said rules. According to him, the rules are like Article of Association of the Companies. It is further submitted by him that the conditions of service of the petitioners is, therefore, contractual in character and any contract of employment with the society, therefore, is into protected by any other statutory law or regulations and the law of contract governs such relationship between the parties. He has further submitted that the petitioner has not established any breach of statutory law or regulations framed by the AICTE. According to Mr.Shelat, there is no obligation of public character which flows from the contract of employment, because the concept of the public duty flows from [i] either constitutional obligation and [ii] statutory obligation. He has further submitted that the concept of public duty cannot be dehors the constitutional or statutory obligation against the citizen and there is contract between the parties, the obligation is not of a public character. Mr.Shelat has submitted that the aggrieved party could have a remedy for violation of he right of citizen or violation of constitutional or statutory obligation or rights of other citizens and if a private body exercising its public functions, the aggrieved person has a remedy under the law, if there is breach of any constitutional obligation, statutory obligation or breach of any right. He has further submitted that even the declaration is nullity cannot be granted in case of contractual service. Therefore, it is requested to dismiss the present petition. He has submitted that a contract entered into may be void but the decision to terminate the contract can never be void. He has further submitted that the decision may be contrary to the contract and it may not be justified under the contract. However, the same cannot be given any higher status like the breach of statutory law. He has also further submitted that in the matter of contract of employment the court could not direct the performance of the contract. According to ?r.Shelat, there is no public law element in a matter of termination of contract of employment of a member of the Board of Director which can give rise to any entitlement to administration law remedies. He has further submitted that for the above reasons, the declaration that the contract still subsists would rarely be made when there is purported termination of service contract. It is further submitted by Mr.Shelat that the petitioner has not challenged the resolution ratified order of termination dtd.15/4/2005 and unless the said resolution is set aside, it cannot be possible for

this court to grant any relief when the respondents assert that it is legal and valid. He has further submitted that it is competent for the body if it is bonafide of the opinion that the alleged defect can be remedied to pass appropriate resolution and it was open to the petitioner to challenge the resolution dtd.15/4/2005 which is not challenged and therefore, it is requested to dismiss the present petition.

63 Dealing with the objections raised on behalf of the respondents with regard to maintainability of the petition under Article 226 of the Constitution of India, Mr.KB Trivedi, learned Additional Advocate General has submitted that the respondent society IRMA is a "State" within the meaning of Article 12 of the Constitution of India inasmuch as it owes its existence to the State Government, Central Government and statutory body and name of NDDB and further it has been established for the objects which are aimed at imparting education in the field of rural management and development with added emphasis on cooperative movement. To substantiate his proposition, he has relied upon the observations of the Hon ble Supreme Court in the case of Rajasthan Electricity Board Vs. Mohanlal, reported in AIR 1967 SC 1857 (relevant para 6) which reads as under;-

> "State" as defined in Article 12 is thus comprehended to include bodies created for the purpose of promoting educational and economic interest of the people".

64 He has also submitted that the aforesaid observations also figures with an approval for the decision of the Hon ble Supreme Court in the case of Pradipkumar Biswas Vs. Indian Institute of Chemical Biology, reported in 2002 (5) SCC 111 (relevant para 45). It is, therefore, submitted that the objects as referred to therein for which Indian Institute of Chemical Biology was established, are by and large para-materia with the objects of respondent No.1 society and therefore according to him when the respondent No.1 society is "State" within the meaning of Article 12 of the Constitution of India, it would not be amenable to the jurisdiction of this Hon ble Court under Article 226 of the Constitution of India.

65 In the alternate and without prejudice to the aforesaid contentions, it is submitted by him that even if the respondent No.1 society is presumed to be not a "State", it would be amenable to the jurisdiction of this Court under Article 226 of the Constitution of India inasmuch as it discharge its public function of imparting education and it is recognized by the Indian Council for Technical Education. In support of his above submission, he has relied upon the following passage from the judgement of the Hon ble Supreme Court in the case of Unit Krishnan J.P., reported in AIR 1993 SC 2178 :-

> "81.As a sequel to this, an important question arises: what is the nature of functions discharged by these institutions? They discharge a public duty. If a student desires to acquire a degree, for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain the qualification. If, therefore, what is discharged by the educational institution, is a public d?ty that requires to act fairly.
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> 82.In such a case, it will be subject to Article 14. Shri Anandi Mukta Sadguru Shri Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust V/s. V.R.Rudani, (1989)2 SCC 691 : (AIR 1989 SC 1607) is an interesting case where a writ of mandamus was issued to a private college."

66 In support of his above submissions with regard to maintainability of the petition under Article 226 of the Constitution of India, he has relied upon the following judgments of the Hon ble Supreme Court;-

> [i] AIR 1989 SC 1607 : [1989] 2 SCC 691. (Shri Anandi Mukta... Vs. V.R.Rudani) (relevant para 18 to 20) [ii] AIR 1999 SC 753 : [1999] 1 SCC 741. (U.P. State Cooperative Land Development Bank Vs. Chandra Bhan Dubey). [iii] AIR 2003 SC 4345. (Federal Bank Vs. Sugar Thomas) (relevant para 17 and 30) [iv] (2005) 4 SCC 649 ; JT 2005 (2) SC 8. (Zee Telefilms Ltd. Vs.Union of India and ors.(relevant para 31 to 33).

67 It is further submitted that even otherwise the objects for which the respondent N.1 society has been established also finds their births in the directive principle of State policy vide Article 38 of the Constitution of India and therefore, even on t his counts also it would qualify as a body discharging public functions.

68 Dealing with the submissions on behalf of the respondent Nos.1 and 2 that the dispute is in the rhyme of contract of personal service and is basically for specific performance of the personal service and therefore, the petitioner is not maintainable and therefore, this court would not like to grant such a declaration and/or decree for the specific performance of the contract of personal service. Mr.KB Trivedi learned Additional Advocate General has submitted that as such the appointment of the petitioner as a Director o the institute by the Board of governors of IRMA would not fall in the rhyme of contract of personal service. According to him when a persons appointed to the office of the Director of the institute of national importance and thereupon made Ex-officio Member Secretary of the very appointing authority, it would be absolutely improper to equate such an appointment with that of an employee of personal service, for which he has relied upon the concurrenting decision and judgement of Hon ble Justice in the Vaish Degree College Vs.Laxmi Narian, reported in AIR 1976 SC 888 : [1976] 2 SCC 58 and has submitted that even if it is assumed on hypothesis that the appointment of the petitioner will fall within the domine for contract of personal service, even then also, relief prayed for by the petitioner will not amount to specific performance of the contract of personal service, which is ordinarily not granted. He has relied upon para 17 of the judgement of the Hon ble Supreme Court in the case of Vaish Degree College (Supra);-

> "17.On a considersation of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot be ordinarily be specified enforced and a Court normally would not give a declaration that the contract subsists and the employees, even after having been removed from service can be deemed to be in service against the will and consent of the employer."

69 Relying upon the aforesaid decision, Mr.Trivedi has submitted that as held by the Hon ble Supreme Court ordinarily court would not like to enforce the contract of personal service if the same is against the wish of the employer. In other words the court would not ordinarily prefer to thrust upon the employer and employees whose personal service the employer does not want to avail. According to him the rational behind the principle is that it is prerogative of the employer to decide as to who should serve the employer persona?ly. Thus, according to him if the contract of personal service is to be enforced against the wish of the employer, the Court would prefer to avoid the same even if the termination is even otherwise found to be wrongful in nature and there upon would prefer to compensate the employee byway of

damages .According to him in order to invoke application of this principle, it is required toe established that the termination is by the person none other than the employer and further that the employer does not want the employee in any event. He has further submitted that in the present case, the purported termination of the appointment of the petitioner as a Director of the Institute is not by and appointing authority of the petitioner is Board and hence as the Board has not terminated the appointment of the petitioner as Director and as the purported termination is respondent No. 2 as the chairman of the Board who is undoubtedly under the appointing authority of the petitioner. Thus, according to him when the purported termination of the petitioner is not by the appointing authority, the question of enforcing contract of personal service against the wish of the employer / appointing authority does not arise at all, and the fore, when the petitioner has prayed for a relief of the nature which is sought for in the present petition questioning the unilateral action on the part of the respondent No.2 on the premise that the same is non-est and ab-initio, it cannot be said that the petitioner is trying to enforce the contract of personal service against the wish of the employer. According to him, this is more so when the Board by majority of 8 members passed a Circular Resolution on 7/4/2005 declaring the said action on the part of the respondent No.2 as unauthorized in nature. Mr.Trivedi has submitted that all cases where the relief was denied to the employees on the preemies that the same would amount to specific performance of the contract of personal service, the factum of termination of the employer along with the authority of the employer / appointing authority to terminate was not in dispute and in all such cases, the dispute was with regard to the procedure followed by the employer for termination. It is further submitted by Mr.Trivedi that even if it is presumed on hypothesis that the respondent No.2 was having an authority to terminate the appointment of the petitioner as Director, in that case also, the word "ordinarily" figuring in the above quoted passage of the Hon ble supreme court in the case of Vaishya Degree College (Supra) clearly connotes that the rule against the enforcement of the contract of personal service is not absolute in nature and in given case where the facts warrant enforcement of the contract of personal service, the Court can grant the same and considering the facts of the present case, this is a case in which the said relief is required to be granted.

70 Mr.Trivedi learned Additional Advocate General has submitted that in the decision of Vaishya Degree College (Supra), the Hon ble Supreme Court has carved out 3 exceptions with regard to granting the relief for enforcement of contract of personal service. However, according to him the said list of exceptions not exhaustive. Mr.Trivedi has submitted that the same was based upon the proposition of law prevailing at that point of time and according to him when the case of Vaishya Degree College (Supra) came to be decided, none statutory bodies discharging public functions like respondent No.1 society were considered as amenable to jurisdiction under Article 226 of Constitution of India. According to him when the exception came to be carved out to the general rule against the specific performance of the contract of personal service in the afo?esaid decision, no reference was made to the non-statutory bodies discharging public functions. Mr.Trivedi has submitted that as such the concept of embracing non-statutory o bodies discharging public functions to purview of jurisdiction under Article 226 gained momentamonly after the decision of the Hon ble Supreme Court in the case of Anadi Mukta (Supra),.Therefore according to him, in view of the subsequent judgement of the Hon ble Supreme Court which are referred to herein above, the reason for which the specific performance of the contract of personal service is held to be permissible with respect of an employee of a authority which is a "State" within the meaning of Article 12 of the Constitution of India, for the same reason the same deserves to be construed as permissible by way of an exception with respect of a body discharging public function. According to him, even otherwise, the very purpose of subjecting a body t the

jurisdiction of Article 226 and the mandate of Article 14 loses its significance. He has further submitted that in the subsequent judgement in the case of Nandganj Sihori Sugar Co.Ltd, reported in AIR 1991 SC 1525, the Hon ble Supreme in para 10 of the judgement while enumerating the exception carved out in Vaishya Degree College (Supra) added the word "like" at the end of suggesting that list is not exhaustive.

71 He has also relied upon the decision of the Hon ble supreme court in the case of Bank of India Vs. O.P. Swarankar, reported in AIR 2003 SC 858 (relevant para 49 and 121).

72 Dealing with the issue / question and the alleged ratification of the actions of the respondent No. 2 dtd.7/4/2005 in the subsequent meeting held on 15/4/2005 will disentitle the petitioner for any relief. Mr.Trivedi has submitted that the alleged meeting dtd.15/4/2005 relied upon by the respondent No.2 has no consequences for the following reasons;-

[a] There was no quorum for the same.

[b] In all three members of the Board and the petitioner were forcibly prevented from attending the said meeting and hence, even if the quorum was to be there, the entire meeting was illegal in nature.

[c] The alleged ratification of the impugned action of the respondent No.2 in the said alleged meeting is by the casting vote of the respondent No. 2 against all the norms of propriety.

[d] The alleged meeting was having an element of overreaching the process of law in as much as on that very day the present matter was kept for hearing by the learned Single Judge.

73 Mr.Trivedi has further submitted that irrespective of the aforesaid, even if the aid alleged meeting on 15/4/2005 is presumed to be there with quorum and when being vitiated by the absence in all 3 members who were forcibly prevented from entering the venue of the said meeting along with the petitioner, the said meeting couldn't be ratified the impugned action of the respondent No.2 inasmuch as there cannot be ratification of an illegal act which is void in nature. In support of his submissions he has relied upon the following judgement of the Hon ble Supreme Court.

[1] AIR 1972 SC 1767 (relevant para 26) [2] AIR 2004 SC 1377(relevant para 30) [3] AIR 2004 SC 4504 (relevant para 41) [4] AIR 2004 SC 4639(relevant para 8) [5] AIR 2004 SC 3693 (relevant para 11 & 12) [6] AIR 2000 SC 1953 (relevant para 14) [7] AIR 1989 SC 1582 (relevant para 26)

74 Meeting with the contentions and submissions made on behalf of the respondent Nos.1 and 2 to the effect that the matter falls in the realm of contract and there is no breach of any statutory duty in terminating the appointment of the petitioner and at the most the breach could of Rules of IRMA or the terms of appointment of the petitioner and for such non-s?atutory breach no writ would lie, Mr.Trivedi has submitted that the above contention runs counter to the following decisions;-

[1] AIR 2003 SC 858 [2] [2004] 3 SC 553 [3] (1989) 2 SCC 691

75 Meeting with the submissions and contentions on behalf of the respondent Nos.1 and 2 that as the respondent No.1 society has undertaken the activities in the field of education voluntarily, it cannot be said to be public duty, making the respondent Nos.1 amenable to the jurisdiction under Article 226 of the Constitution of India, relying upon the decision of the Hon ble Supreme Court in the case of G.Basi Raddi Vs. International Group Research Institute, reported in AIR 2003 SC 1764, Mr.Trivedi has submitted that the above case is distinguishable on facts and according to him in that case, on facts it was found that the benefit from the activities of the concerned institute which was not to give to the Indian Public alone and, therefore, no helping hands of Government in establishing the same, and according to him in that context, in the said decision, it was observed that the activities undertaken voluntarily would not assume shape of public duty. It is also further submitted that all affiliated and recognized educational institutions, when they commence the activity of imparting education, they invariably do so on their own without being mandated by anybody and therefore, if the proposition sought to be made by the other side is to be accepted, it would lead to a situation whereby it would be impossible to have a writ petition under Article 226 of the Constitution of India against any educational institution. He has further submitted that as held by the Hon ble Supreme Court in the aforesaid three decisions namely [1]AIR 2003 SC 858 [2](2004) 3 SCC 553, and [3] AIR 1989 SC 1607, even the bodies imparting education are amenable to the mandate of Article 14 as well as jurisdiction under Article 226 of the Constitution of India.

76 Dealing with the submissions and contentions made on behalf of the respondents to the effect that there is no public duty imposed upon the respondent No.1 society qua the petitioner so far as the appointment of the petitioner as a Director of the institute is concerned, and hence in absence of corresponding breach of such public duty while causing termination of the said appointment of the petitioner, a writ of mandamus will not lie and meeting with the decision relied upon by the learned advocate appearing on behalf of the respondent Nos.1 and 2 in the case of Praga Tools (Supra) and Anadi Mukta (Supra), Mr.Trivedi has submitted that in view of the observations made by the Hon ble Supreme Court in the case of Unni Krishnan J.P. (Supra) more particularly in para 81 and 82, there is no room for doubt that a body discharging public function is bound by the mandate of Article 14 which in turn enjoins upon it a duty to act fairly in conduct of its affairs. It is submitted that therefore, it cannot be said that so far as its relationship with the petitioner is concerned, the respondent No. 1 has no duty to act fairly and in consonance with the relevant rules. At this stage, Mr.Trivedi has relied upon para 22 of he judgement of the Supreme Court in the case of Anadi Mukta (Supra) which reads as under;

> "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 charger, common law, custom or even contract."

77 Therefore, it is submitted that as the purported termination of ?he petitioner is dehors the Rules of IRMA, the breach of the public duty to act fairly qua the petitioner warranting the mandamus is established. He has further submitted that besides this, the Director being administrative head of the institute while causing either appointment or termination of the Director, when the IRMA deals with its basic public function of imparting education and

therefore, if there is an element of unfairness in the same, it cannot be disputed that there is a breach of public duty.

78 Meeting with the reliance placed upon the judgement of the Andhra Pradesh High Curt, reported in AIR 1990 SC 171 (more particularly para 51) and the contentions on behalf of the respondent that no mandamus would lie for enforcing of an obligation which is purely contractual in nature as opposed to statutory in nature and with the Rules of IRMA upon which the case of the petitioner is based lack statutory flavor and hence the obligation arising therefrom as well as the infraction thereof would not fall in the domain of public law field warranting issuance of the mandamus which is a public law remedy, Mr.Trivedi has relied upon the judgement of the Hon ble Supreme Court in the case of U.P. State Co.Op.Land development Bank Limited, reported in 1999 (1) SCC 741 more particularly para 25 (Supra), wherein the decision of the aforesaid judgement of the Andhra Pradesh High Court also came to be considered Mr.Trivedi has relied upon para 26 of the said judgement which reads as under;-

> "26. In view of the fact that the control of the State Government on the appellant is all pervasive and the employees had statutory protection and, therefore, the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Primal facie from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under Clause (1) of the Article 367 unless the context otherwise requires, the General Clauses Act, 1879, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Sec. 2 (42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Court to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an indivi?ual Right that is infringed may be under Part-III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Court under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances, High

> Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigations. High Court does not act like a proverbial "bull in china shop" in the exercise of its jurisdiction under Article 226."

79 Mr.Trivedi has also relied upon para 21 of the decision of the Hon ble Supreme Court in the case of Anadi Mukta (Supra), which reads as under;-

> "21. ...Mandamus is a very wide remedy which must be easily available "to reach injustice whenever it is found". Technicalities should not come in the way of granting the relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

80 Dealing with the submissions made behalf of the respondents relying upon the judgement of the Hon ble Supreme Court in the case of Federal Bank reported in (2003) 10 SCC 744 (Supra) to contend that though private bank was bound by the Banking Policy and the Rules framed by the Reserve Bank of India under the Rules, statute, functions discharged by such bank was held to be non-public in nature and thereupon writ petition was held to be not maintainable against such bank under Article 226 of the Constitution of India and therefore, on the same analogy even the respondent No.1 society should be held to be not discharging any public function, Mr.Trivedi has submitted that when the decision in the case of Unni Krishnan (Supra) per-se construes imparting of education as public function, the question of drawing an analogy from the decision in the matter of Federal Bank pales into insignificance. He has submitted that what is observed qua the private bank on the aspect of discharging public function is required to be construed as confined to the facts of the case. According to him the judgement in the case of Federal Bank is clear on the proposition that a writ petition is maintainable against the private body discharging public functions and for which he has relied upon para 17 and 31 of the said decision of the Hon ble Supreme Court.

81 Meeting with the decision of this Court, reported in 1992 (2) GLR 1065, learned advocate appearing for the respondents to contend that unless the act of a private body affects large section of the society, such private body cannot be subjected to jurisdiction under Article 226 of the Constitution of India, Mr.Trivedi has submitted that in the aforesaid case, this Court was concerned with purely private body not discharging any public function. It is submitted that in the above facts, this Court observed that as the actions complained of affects large section of the society, a writ petition would be maintainable and therefore, according to Mr.Trivedi, the said decision cannot be construed as laying down an absolute proposition that unless act of private body affects mass as a whole, no petition would lie under Article 226. It is further submitted by him that in the present case as such the impugned action on the part of the respondent No.2 affects the entire institute and the functions and even applying the ratio laid down by this Court in the aforesaid judgement, the same would not render the present petition as not maintainabl?.

82 So far as the reliance placed by the learned advocate for the respondent Nos.1 and 2 on the judgement of this Court in the case of IIM, reported in 2002 (1) GLH 330 is concerned, Mr.Trivedi has submitted that the said judgement is not no longer good law in view of the subsequent decision of the Hon ble Supreme Court in the case of Pradipkumar Biswas (Supra). Meeting with the judgement of the Hon ble Supreme Court in the case of VST Industries, reported in (2001) 1 SCC 298 relied upon by the learned advocates for the

respondent Nos.1 and 2 which is to explain as to what would qualify as public duty, Mr.Trivedi, has submitted that in view of the direct judgement on the point in the case of Unni Krishnan (Supra) and Anadi Mukta (Supra) holding imparting of education as public function, the reliance placed upon the aforesaid judgement in VST Industries is not proper. It is also submitted that in the case of VST Industries, on facts said companies was found to be in the business of manufacturing Cigarette and hence on the basis of the same, it was held that the statutory duty of providing canteen upon such a company cannot be called a public duty. At the last but not the least, the following judgments of the Hon ble Supreme Court Judgment have been heavily relied upon by Mr.Trivedi.

> [1] Unni Krishnan - 1993 (1) SCC 645. [2] Anadi Mukta.. - (1989) 2 SCC 691. [3] UP State Co.Op.Land Development Bank, (1999) 1 SCC 741. [4] M/s.Zee Telefilms Ltd.- AIR 2005 SCW 2985

83 Dealing with the submissions on behalf of the respondent Nos.1 and 2 that as the term of 5 co-opted members had expired on 15/2/2005 in term of Rule 7 of IRMA Rules and thereby they ceased to be the members of the society and the Board w.e.f.16/2/2005 and therefore, the resolution of the Circular meeting dtd.28/2/2005 was illegal and without quorum and in view of the fact that they ceased to be the members of the society and the Board w.e.f. 16/2/2005, they were rightly denied entry in the meeting held on 15/4/2005 and they were rightly not permitted to take part in the meeting held on 15/4/2005, Mr.Trivedi has submitted that as per Rule 9(3) of IRMA Rules, the said 5 co-opted members were entitled to continue for a further period of six months upon the expiry of their tenure on 15/2/2005. It is submitted that the contention on behalf of the respondent nos.1 and 2 that the Rules of IRMA were amended by the Assistant Charity Commissioner on 25/2/2005 by which Rule 9(3) was amended under which said 5 co-opted members were entitled to continue for a further period of six months upon the expiry of tenure on 15/2/2005 was not in existence on the date of expiry of the tenure and hence the same would not be applicable to them for extending their tenure thereunder so as to make it possible for them to attend the meeting of the Board after 15/2/2005 is concerned, Mr.Trivedi has submitted that the aforesaid submission is factually incorrect and it is incorrect to state that the Rules of IRMA were amended on 25/2/2005. He has submitted that as such the same were amended in the month of June, 2004 by the Board and thereafter, the Change report with respect of the same submitted under sec.22 of the Bombay Public Trust Act was accorded approval by the Assistant Charity Commissioner on 25/2/2005, except in rule 7 thereof referring to indefinite tenure of the respondent No. 2 as Chairman of the Board and therefore, the rules once accorded approval by the Assistant Charity Commissioner under sec.22 relates back to the date of amendment of the Rules by the Board i.e. June 2004 Mr.Trivedi has further submitted that even the conduct of the respondent No.2 is also required to be considered as the respondent No. 2 was quite aware about this aspect an? he did not object to Agenda being sent to them for the meeting of 28/2/2005.

84 Meeting with the submissions made on behalf of the respondent No.1 that when the petitioner has filed affidavit in other matters pertaining to respondent No. 1 society as Director of the institute and has undertaken a stand that the respondent No.1 IRMA is not a "State" and therefore, now the petitioner cannot contend that IRMA is a "State". Mr.Trivedi submitted that the issue as to whether the respondent No.1 is a "State" or not and further as to whether the petition against it is maintainable or not, are the issue of law and there cannot be estopple against law.

85 Meeting with the submissions and contentions made by Mr.S.N. Shelat, learned Additional Advocate General for the respondent No.2 and submissions made on behalf of the respondent No. 2 that the decision in the case of Unni Krishnan (Supra) stands over-ruled in the decision in the case of TMA Pai Foundation (Supra) and hence the same could not have relied upon by the petitioner, is concerned, Mr.Trivedi has submitted that in the matter of TMA Pai Foundation, what is declared as unconstitutional is the scheme framed in the decision of Unni Krishnan (Supra) and not the entire decision, which is very much finding from answer to the question 9 framed vide Para 161 to the decision of the TMA Pai Foundation, reported in (2002) 8 SCC 481 590. It is also further submitted by him that this is made further clear in para 40 and 41 of the judgement rendered in the case of Islamic Academy of Education Vs. State of Karnataka, reported in (2003) 6 SCC 697 = AIR 2003 SC 3724.

86 Dealing with the submissions and contentions made on behalf of the respondent No.2 by Mr.S.N. Shelat, learned Advocate General to the effect that the Rules of IRMA upon which the petitioner has based his case are purely contractual in nature and hence akin to bye laws of a society or Articles of Company which can never be equated with statute and hence no relief can be prayed for in the petition under Article 226 of the Constitution of India on the premise that there is a breach of such rules and the reliance placed on the decision of the Hon ble Supreme Court reported in AIR 1970 SC 245 (relevant para 10) submitted that in view of the decision of the Hon ble Supreme Court in the case of Anadi Mukta, U.P.State Co.Op.Land Development Bank Ltd., Federal Bank and M/s.Zee Telefilms Ltd. (Supra), a writ to enforce obligation arising out of contract is maintainable against non-statutory body discharging a public function. Mr.Trivedi has further submitted that in view of the subsequent judgement of the Hon ble Supreme Court, no reliance can be placed upon the judgement of 1970. According to Mr.Trivedi, even the aforesaid decision reported in AIR 1970 SC 245 supports the case of the petitioner rather than the respondent No.2.

87 Meeting with the contentions made by Mr.Shelat appearing on behalf of the respondent no.2 relying upon the judgement of the Hon ble Supreme Court, reported in (2000) 2 SCC 138 and (2004) 2 SCC 377 para 39 that even if the ratification is void, the same is required to be challenged and till the same is challenged and there upon declared as void, it would operate, Mr.Trivedi has submitted that according to him, the respondent No.2 should not be permitted to take up the aforesaid contention as the same is aimed at overreaching the process of law.

88 It is further submitted that as such the action of the respondent No.2 dtd.7/4/2005 in terminating /removing the petitioner as a Director of IRMA was in fact not approved by the Board wide its circular resolution dtd.9/4/2005 and therefore, on and after 9/4/2005, when the action of the respond?nt no.2 in terminating / removing the petitioner as a Director was not in existence, there was nothing to be ratified by the Board in the meeting alleged to be held on 15/4/2005 and even otherwise the act which was void ab-initio cannot be ratified and therefore, when the alleged act of ratification is nonest even if the said meeting dtd.15/4/2005 is presumed to be there on hypothesis, the question of permitting the respondent to rely upon the same does not arise, inasmuch as the same would amount to perpetuating an illegal and high handed act aimed at overreaching the process of law.

89 He has also relied upon the observations made by the Hon ble Supreme Court reported in AIR 2001 SC 2552, para 21 of which reads as under;-

"21. Thus the expression "void and voidable" have been subject-matter of consideration on innumerable occasions by Courts. The expression "void" has several facets. Once type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceedings or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is voided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable."

90 Therefore, it is requested to allow the present petition and grant the relief as prayed for in the present petition.

Mr.Nanavati learned senior advocate for the respondent No.1 - IRMA has relied upon the following judgments in support of his contention with regard to non-maintainability of the petition against the respondent No. 1 IRMA;-

[1] The Praga Tools Corpn. Vs. Shri C.A. Imanual & ors., reported in 1969 (1) SCC 585 (para 6,7,8 & 9) [2] Anadi Mukta Sadguru Shri Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and ors. Vs. V.R. Rudani and ors., reported in 1989(2) SCC 691. [3] Director of Settlements, AP Vs. MR Appa Rao, reported in 2002 (4) SCC 638. [4] Union of India and anr. Vs. SB Vora & Ors., reported in 2004 (2) SCC 150 (para 12, 13, 20 to 23, 33, 52 and 53). [5] Federal Bank Limited Va. Sugar Thomas and ors., reported in 2003 (10) SCC 733. [6] IIM Vs. Umakant Srivastav, reported in 2002 (1) GLH 330. [7] VST Industries Vs. VST Industries Workers Unon and anr., reported in 2001 (1) SCC 298. [8] G.Basi Reddy etc. Vs. International Crops Research Institute and anr., reported in 2003 (2) JT (SC) 180 (para 25 to 28). [9] State of Gujarat and ors. vs. MP Shah Charitable Trust, 1994 (3) SCC 552 (para 22). [10] Miscellanrous Mazdoor Sabha Vs. State of Gujarat and ors., reported in 1992 (2) GLR 1065 (para 12 and 13). [11] Kumari Regina Vs. St.Aloysius Higher Elementary School and Anr., reported in 1972 (4) SCC 188 (para 23 and 23). [12] K?naseema Co.Op.Central Bank Ltd. Vs. N.Seetharama Raju, reported in AIR 1990 Andhra Pradesh 171 (para 51). [13] The institute of Rural Management and ors. Vs.Prof.K.Pratap Reddy and Ors, reported in LPA No.608 of 2005 page 27. [14] Kulchindar Singh Vs. Hardayal Singh, reported in 1976 SC 2216.

91 Mr.Nanavati has relied upon the observation made by the Hon ble Supreme Court in the case of Praga Tools Corpn.(Supra), which reads as under;-

Shri K. S. Nanavati
Sr. Advocate

"Therefore, the condition precedent for the issue of mandamus is that there is anyone claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or a inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is , however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or a official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling the public responsibilities."

"No declaration against a company registered under the Companies Act and not set up under any statute or having any public duties and responsibilities to perform under such a statute could be issued in writ proceedings in respect of an agreement which has essentially of a private character between it and its workmen. The High Court, therefore, was in error in granting the said declaration."

92 To deal with the judgement of the Hon ble Supreme Court in the case of Anadi Mukta (Supra), Mr.Nanavati has submitted that this was a case where a public trust, running educational institution affiliated to the Gujarat University, had decided to close down the college terminating the services of the employees and did not pay terminal benefits payable in terms of directions issued by the Gujarat University to all affiliated colleges. He has further submitted that there was no challenge to termination of service. And the relief prayed was for payment of terminal benefits in terms of the resolution an directions of the University and in the background of the aforesaid facts, the Hon ble Supreme Court examined the issue of maintainability of the petition under Article 226 of the Constitution of India. He has further submitted that on the issue of maintainability after noting the judgement of the Hon ble Supreme Court in the case of Vaishya Degree (Supra and Dipakkumar Biswah (Supra), the Hon ble Supreme Court in para 14 has observed as under;

"But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus?"

93 Mr.Nanavati has submitted that so far as the petition challenging the termination of service is concerned, the Hon ble Supreme Court has clearly held against the maintainability of the petition. He has further submitted that the construing term "authority and maintainability" of the petition, the Hon ble Supreme Court has observed that "petition under Article 226 may lie against any other person or body performing public duty. Mr.Nanavati submitted that the duty must be judged in light of the positive obligation or owed by a person o? authority to the affected party and no matter by what means the duty is imposed, if positive obligation exists, mandamus cannot be denied. "If public duty" is not imposed by statute, but by charter, common law, custom or been contract, petition can lie for the performance of such public duty. Thus, according to Mr.Nanavati, the petition is maintainable for the purpose of public duty owed by the person against whom the

performance is prayed by the petition by a person who has a right to demand performance of such public duty and in the present case the petitioner has failed to establish any such legal right as distinguished from a contractual right, in himself and a corresponding public duty on the part of IRMA to continue him in service.

94 Relying upon the judgement of the Hon ble Supreme Court rendered in the case of Settlement AP (Supra), Mr. Nanavati has submitted that the parties seeking relief has to establish that he has a legal right which is violated by the person against whom relief is sought and such person holds public duty, the purpose of which is sought by the petitioner. He has further submitted that these are the condition precedents for exercise of the powers under Article 226 of the Constitution of India and such public duty should be one which is imposed either by constitution, statute, common law or by rules or orders having force of law.

95 Relying upon the judgement of the Hon ble Supreme Court in the case of Union of India Vs. SB Vora (Supra), Mr.Nanavati has submitted that in the aforesaid case the Hon ble Supreme Court has held that the court will not exercise its jurisdiction wherein the public law element is not involved and that a public law remedy is enforceable under Article 226 of the Constitution of India, the action of the authority need to fall in the realm of public law.

96 Relying upon the judgement of the Hon ble Supreme Court in the case of Federal Bank Limited (Supra), Mr.Nanavati has submitted that in the aforesaid decision, the Hon ble Supreme Court has held that a private body or a person may be amenable to writ jurisdiction only where it may becomes necessary to compel "such body" or Association to enforce under statutory obligations or such obligations of public nature, the casting positive obligation upon it. Mr.Nanavati has submitted that in the aforesaid the Hon ble Supreme Court has dismissed the petition challenging the termination of service by the Federal bank of its employees holding that such petition under Article 226 is not maintainable.

97 Mr.Nanavati has also relied upon the judgement of this Court in the case of IIM (Supra) wherein this Honourable Court has held that IIM is not "State" within the meaning of Article 12 of the Constitution of India and therefore, writ under Article 226 is not maintainable.

98 Relying upon the said judgement, Mr.Nanavati has submitted that the Division Bench of this Court has held that when the question is with regard to the service condition of a staff member or individual action taken against a person, it can be said to be a matter purely of a private character and that IIM is not performing any public function or discharging a public duty in the field of management, education, training and research.

99 Relying upon the judgement of the Hon ble Supreme Court in the case of VST Industries (Supra) Mr.Nanavati has submitted that as held by the Hon ble Supreme Court a writ petition under Article 226 of the Constitution of India is not maintainable against a Company incorporated under the Companies Act, 1956. Relying upon the said judgement, he has submitted that as held the nature of the function of the said company is important factor for determining the companies amenability to writ jurisdiction under Article 226 of the Constitution of India. He has further submitted that in the said decision, the Hon ble Supreme Cour? has considered the decision in the case of Anadi Mukta (Supra). He has further submitted that the Hon ble Supreme Court has held that in Anadi Mukta, the writ under Article 226 of the Constitution of India is held to be maintainable against an authority or a person performing a public function for discharging a public duty and as held in the case the Company was engaged in manufacturing and sale of Cigarette which does not involve any

public function. Incidentally to that activity, there was an obligation under sec.46 of the Act to set up a Canteen when the establishment has more than 250 workmen and it is condition of service in relation to a workman providing better facilities to workman. It is held that such a duty will not be public duty since it is owed to a person or a group of persons and not to the public in general. If the said condition of service is violated, it would not amount to owing any public duty amenable to writ jurisdiction.

100 Mr.Nanavati has relied upon the judgement of the Hon ble Supreme Court in the case of G.Basi Reddy (Supra) wherein the issue involved was with regard to maintainability of the petition challenging the termination of service by ICRISAT "a non-profit research and training center" wherein, it has been held that to constitute public body, enforceable by writ petition, it has to be a duty imposed and not "voluntarily undertaken". According to Mr.Nanavati, in the said judgement it is held by the Hon ble Supreme Court that a writ petition under Article 226 lies only when the petitioner establishes that his or her right or some legal right has been infringed. According to Mr.Nanavati, it is further held that the service voluntarily undertaken cannot be said to be a public duty and primary activity of ICRISAT is to conduct research and training programme in the sphere of agriculture purely on temporary basis.

101 Relying upon the judgement and order passed by this Honourable Court in LPA No.608 of 2005, which was arising out of the interim order passed by the learned Single Judge of this Court in the present petition, has submitted that the Division Bench of this Court while setting aside the order passed by the learned Single Judge of this Court has clearly observed that the contract of service between IRMA and the petitioner herein which is non-statutory in character, cannot be enforced.

102 Relying upon the judgement of the Hon ble Supreme Court in the case of Kulchindar Singh (Supra) and has submitted that as held by the Hon ble Supreme Court, the remedy of Article 226 is unavailable to enforce a contract. Relying upon the aforesaid judgement, Mr.Nanavati has submitted that applying the aforesaid principles, it is clear that so far as IRMA is concerned, it is engaged in the activity of research and imparting education in rural management and whose activities have been voluntarily undertaken and not imposed on it either by the State Government or the Central Government or by under any statutory law or common law or any other body other than IRMA itself. He has further submitted that merely because the public at large takes benefits of the activities, would not make it a public duty or public function. He has further submitted that in the present petition, the petitioner has challenged the termination of service and his service is on contract and the term is prescribed by contract and the petitioner has no legal right to be continued in service and therefore, the termination of such contract cannot be subjected to judicial review under Article 226 of the Constitution of India.

103 Mr.Nanavati has also heavily relied upon the judgement of the Andhra Pradesh High Court in the case of Kona Seema Co.Op. Central Bank Ltd. Vs. N.See Tharama Raju, reported in AIR 1990 A.P. 171 (para 51) and has submitted that as held mandamus and other writs are public law remedies and they are not available to enforce private ?aw rights.

104 In support of his submissions with regard to non-maintainability of writ petition under Article 226 of the Constitution of India for enforcement of a contract of personal service, Mr.Nanavati has relied upon the following judgments;-

[1] AIR 1971 SC 1828 Indian Airlines Corpn. [2] 1972(1) SCC 623 - Shri Vidya Ram Misra Vs. Managing Committee, Jai Narain College. [3] (1973) 1 SCC 409 - Sirsi Municipality Vs. Cecelia Korm Francis Tellis. [4] (1976) 2 SCC 58 : AIR 1976 SC 888 Vaish Degree College. [5] AIR 1976 SC 1073 Arya Vidya Sabha, Kasi Vs.KK Srivastava. [6] AIR 1981 SC 122 - Smt.J.Tiwari Vs. Smt.Jawala Deve Vidya Mandir and others. [7] 1984 Lab.IC 1591 (Allahabad - Agrawal Digambar Jain Samiti, Agra Vs. Badriprasad. [8] 1987 2 SCC 252 = AIR 1987 SC 1422-Dipak Kumar Biswas Vs. Director of Public Instructions and others. [9] 1989 Supplement (2) SCC 732 - Kayastha Pathshala, Allahabad and ors. Vs. Rajendra Prasad and anr. [10] 1991 Vol.3 SCC 54 - Nandganj Sihori Sugar Co.Ltd.Rae Bareli and Anr.Vs. Badri Nath Dixit and Ors. [11] 1995 Suppl.(2) SCC 495 = JT 1995 (3) SC 119 Integreted Rural Development Agency Vs. Ram Pyare Pande. [12](2001) 10 SCC 11 - Shiv Kumar Tiwari Vs. Jagat Narayan Rai. [13] (2004) 3 SCC 172 - Pearllite Liners Pvt.Ltd. Vs.Manorama Sirsi. [14] (1997) 11 SCC 471 - Hindu College Vs. Sadhuram Saini. [15] AIR 1968 SC 292 - Dr.Bool Chand Vs. Chancellor, Kurukshetra University. [16] 1967 (8) GLR 167 - Dayalal Bapalal Vs. Patan Municipality.

105 Mr.Nanavati has mainly relied upon the judgement of the Hon ble Supreme Court in the case of Vaishya Degree College (Supra). Para 14,31 and 32 of the said judgement reads as follow:

"14. Thus in view of the decisions of this Court regarding the circumstances under which the institution can be treated as a statutory body we are unable to agree with the view taken by the Allahabad High Court that the Executive Committee was a statutory body merely because it was affiliated to the university or was regulated by the provisions of the University Act or the statutes made thereunder. We accordingly hold that the decision of the Full Bench of the Allahabad High Court on this point is legally erroneous and must be overruled."

"31. I will first take up the first part of the question. On this part, there was no dispute between the parties that the requirements of Statute 30 were not complied with by the appellant in terminating the service of the first respondent. The controversy merely centered round the question whether the termination of service in breach of the requirement of Statute 30 rendered the termination null and void so as to entitle the first respondent to a declaration that he continues in service or it amounted merely to a breach of contract giving rise to a claim for damages. Let me first examine this question on principle before turning to the decided cases. There are two distinct classes of cases which might arise when we are considering the relationship between the employer and employee. The relationship may be governed by contractor it may be governed by statute or statutory regulations. When it is governed by contract, the question arises whether the general principles of law of contract are applicable to the contract of employment or the law governing the contract of employment is a separate and sui generis body of rules. The crucial question then is as to what is the effect of repudiation of the contract of employment by the employer. If an employer repudiates the contact of employment by dismissing his employee, can the employee refuse to accept the dismissal as terminating the contract and seek to treat the contract as still subsisting? The answer to this question given by general contract principles would seem to be that the repudiation is of no effect unless accepted, in other words, the contracting party faced with a wrongful repudiation may opt to refuse ?o accept the repudiation and may hold the repudiation to a continuance of his contractual

obligation. But does this rule apply to wrongful repudiation of the contract of employment. The trend of the decisions seems to be that it does not. It seems to be generally recognized that the wrongful repudiation the contract of employment by the employer effectively terminates the employment : the terminating being wrongful, entitles the employee to claim damages, but the employee cannot refuse to accept the repudiation and seek to treat the contract of employment as continuing. What is the principle behind his departure from the general rule of law of contract? The reason seems to be that a contract of employment is not ordinarily one which is specifically enforced. If it cannot be specifically enforced, it would be futile to contend that the unaccepted repudiation is of no effect and the contract continues to subsist between the parties. The law in such a case, therefore, adopts a more realistic posture and holds that the repudiation effectively terminates the contract and the employee can only claim damages for wrongful breach of the contract. Now a contract of employment is not specially enforced because ordinarily it is a contract of personal service and, as pointed out in the first illustration to clause (b) of Sec.21 of the Specific Relief Act, 1877, a contract of personal service cannot be specifically enforced. Of course, this illustration has now been omitted in the new Specific Relief Act, 1963 and what would be the effect of such omission may be a point which may require consideration someday by this Court. But for the purpose of this case, I will proceed on the assumption that even under the new Act, the new law is the same and it frowns on specific enforcement of a contract of personal service. Now what is the relation behind this principle? That is found stated in the locus classicus of Fry, L.J. In De Francesco V. Barnum (19890) 45 Ch D 430 : 60 LJ Ch 63 : 6 TLR 463):

106 For my own part, I should be very unwilling to extend decisions the effect of which is to compel persons who are not desirous of maintaining continuous personal relations with one another to continue those personal relations. I have a strong impression and a strong feeling that it is not in the interest of making that the rule of specific performance should be extended to such cases. I think the courts are bound to be jealous, lest they should turn contracts of service into contacts of slavery; and therefore, speaking for myself, I should lean against the extension of the doctrine of specific performance and injunction in such a manner.

107 This rationale obviously can have application only where the contract of employment is a contract of personal service involving personal relations. It can have little relevance to conditions of employment in modern large-scale industry ad enterprise or statutory bodies or public authorities where there is professional management of impersonal nature. It is difficult to regard the contract of employment in such cases as a contract of personal service save in exceptional cases. There is no reason why specific performance would be refused in cases of this kind where the contract of employment does not involve relationship of personal character. It must be noted that all these doctrines of contract of service as personal, non-assignable, unenforceable, and so on, grew up on an age when the contract of service was still frequently a "personal relation" between the owner of a small workshop or trade or business and his servant. The conditions have now vastly changed and these doctrines have to be adjusted and reformulated in order to suit needs of a changing society. We cannot doggedly hold fast to these doctrines which correspond to the social realities of an earlier generation far removed from ours. We must rid the law of these anachronistic doctrines and bring it in accord?"with the felt necessities of the time". It is interesting to note that in Fray's classic work on Specific Performance, contracts of service appear in a small group under the sub-heading "Where enforced performance would be worse than non-performance." We may ask ourselves the question : for whom it would be worse and for whom it would be better. Where,

in a country like ours, large number of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service may have to remain without means of subsistence for a long period of time. Damages equivalent to one or two months' wages would be poor consolation to him they would be wholly insufficient to sustain him during the period of unemployment following upon his discharge. The provision for damages for wrongful termination of service was adequate at a time when an employee could without difficulty find other employment within the period of reasonable notice for which damages were given to him. But in conditions prevailing in our country, damages are a poor substitute for reinstatement ; they fall far short of the redress which the situation requires. To deny reinstatement to an employee by refusing specific performance in such a case would be to throw him to the mercy of the employer; it would enshrine the power of wealth by recognising the right of the employer to fire an employee by paying him damages which the employer can afford to throw away but which would be no recompense to the employee. It is, therefore, necessary and I venture to suggest, quite possible, within the limits of the doctrine that a contract of personal service cannot be specifically enforced, to take the view that in case of employment under a statutory body or public authority where there is ordinarily no element of personal relationship, the employee may refuse to accept the repudiation of the contract of employment by the statutory body or public authority and seek reinstatement on the basis that the repudiation is ineffective and the contract is continuing. That is in effect what happened in the case of McClelland V/s. Northern Ireland General Health Service Board (1957) 1 WLR 594 : (1957) 2 All ER 129). The plaintiff's contract in this case was really one of master and servant, the only special condition being that her post had been advertised as "permanent and pensionable" and it provided specific reasons, such as gross misconduct and inefficiently, for which she might be dismissed. The defendant Board introduced a rule after her appointment that woman employee must resign on marriage and since the plaintiff got married, the respondent terminated her service by giving what they thought was a reasonable notice. The plaintiff contended that the defendant Board was not entitled to terminate her service and claimed a declaration that the purported termination was null and void and she continued in service. The House of Lords held that the contract was exhaustive as regards the reasonable for which the defendant Board could terminate the service of the plaintiff and since none of those reasons admittedly existed, the termination of service of the petitioner by the defendant Board was nullity and the plaintiff continued in service of the defendant Board. This was a case of a pure contract of master and servant and yet the House of Lords held that the termination of employment of the plaintiff by the defendant Board which was not accepted by the plaintiff was ineffective and the plaintiff was entitled to a declaration that she continued in service It should thus be possible to hold that even if a statutory body or public authority terminates the service of an employee in breach of a contractual obligation, the employee could disregard the termination as ineffective and claim a declaration that his service is continuing. But this would be a somewhat novel and unorthodox ground which was not been recognised by any decision of this Court so far the mor?over I do not think that, on facts, this is a proper case in which it would really be applicable and hence I do not propose to finally pronounce upon it."

> "32. The second category of cases are those where the relationship between the employer and the employee is governed by statute or subordinate legislation, and where such is the case, the termination, which is the same thing as repudiation, may, in a given situation, be null and void and in that event, it would not have the effect of putting an end to the contract and the employee would be entitled to a declaration that his service is continuing. The doctrine that the contract of personal service cannot be specifically enforced would not stand in the way of the employee, because the

termination being null and void, there being no repudiation at all in the eye o the law, there would be no question of enforcing specific performance of the contract of employment. What the employee would be claiming in such a case is not enforcement of a contract of personal service but declaration of statutory invalidity of an act done by the employer. The case would be of a kind similar to that decided by the Judicial Committee of the Privy Council in High Commissioner for India V/s. I.M.Lall (715 A 225 : AIR 1948 pc 121), the essential feature of which was aptly and succinctly described by this Court in Dr.S.B. Dutt Vs. University of Delhi (AIR 1958 SC 1050 : 1959 SCR 1236) in these words:

That was not a case based on a contract of personal service...... The declaration did not enforce a contract of personal service but proceeded on the basis that the dismissal could only be effected in terms of the statute and as that had not been done, it was a nullity, from which the result followed that the respondent had continued in service. All that the Judicial Committee id in this case was to make a declaration of a statutory invalidity of an act, which is a thing entirely different from enforcing a contract of personal.

Where, for example, the termination is outside the powers of a statutory body either because the statutory body has not power to terminate the employment or because the termination is effected in breach of a mandatory obligation imposed by law which prescribes that the termination shall be effected only in a particular manner and no other, it would be a nullity and the employee would be entitled to ignore it and ask for being treated as still in service. Such was the case in Life Insurance Corporation of India V. Sunil Kumar Mukherjee (AIR 1964 SC 847) : (1964) 5 SCR 528) where an order of termination of service of Clauses 10(a) and 10(b) of an order passed by the Central Government under Section 11(g) of the Life Insurance Corporation Act, 1956, was held to be null and void on the ground that it was not effected in terms of Clauses 10(a) and 10(b) of the statutory order. So also in Mafatlal Barot Vs Divisional Controller, State Transport, Mehsana (AIR 1966 SC 1364 ; (1966) 3 SCR 40 : (1966) 1 LLJ 437, this court held an order of termination of service passed against the petitioner in contravention of Clause 4(b) of Schedule "A" to the regulation made under Sec. 54 of the Road Transport Corporation Act, 1950 was bad in law and it was quashed by issuing a writ of certiorari. This principle was also approved by this Court in S.R. Tewari V. District Board, Agra (Supra), though it was held there, on facts, that the dismissal of the employee was proper and justified. Shah,J., speaking on behalf of this Court in that case recognised this Principle and treated it as a third exception to the general rule in the following words;

Under the common law the Court will not ordinarily force an employer to retain the service of an employee whom he n longer wishes to employ. But the rule is subject to certain well-recognised exceptions. It is open to the courts in an appropriate case to declare that a public servant who s dismissed from servic? in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker whom he does not desire to employ, is recognized. The courts are also invested with the power to declare invalid the act of statutory body, if by doing the act the body has acted in breach of a mandatory obligation

imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do.

This proposition in law was reiterated by this Court in U.P. State Warehousing Corporation Vs. C.K. Tyagi's case (Supra) where, after referring to Dr.Dutt's case (Supra) and S.R. Tewari's (supra), Vaidialingam, J. observed ; [SCC p.850, para 23].

From the two decisions of this Court referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognize exceptions to this rule and they are : To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311. (2) Retribunals (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute. This statement of law was reaffirmed again by this Court in Indian Airlines Corporation Vs. Sukhdeo Rai (Supra) and Bank of Baroda Vs. Jevan Lal Mehrotra (Supra)."

108 Mr.Nanavati has relied upon the following judgments of the Hon ble Supreme Court in support of his submission with regard to power to appoint ordinarily implies a power to determine the appointment:-

[1] Union of India Vs. Gurbux Singh and another, reported in 1975 (3)SCC 638 (page 9). [2] Dr.Bool Chand Vs.Chancellor, Kurukshetra University, reported in 1968 SC 392.

109 So far as the action of subsequent rectification by the respondent No.2 Chairman is concerned, Mr.Nanavati has placed reliance on the following decisions;

[1] 1974 (2) SCC 543 - Sri Parmeshwari Prasad Gupta Vs. the Union of India. [2] 2003 (4) SCC 239 - High Court of Judicature for Rajasthan. Vs.P.P. Singh. [3 2001 (8) SCC 179 Punjab University Vs. VN Tripathi and anr (Marathwada University cases reported in 1989 3 SCC 132 distinguished) [4] 1989 (3) SCC 132 - Marathwada University Vs. Sesharao Balwantrao Chavan.

110 Mr.Shelat, learned Additional Advocate General appearing on behalf of the respondent No.2 -Chairman has relied upon the provisions of the Societies Registration Act, more particularly sec.2, 2.30, 3, 19, 20,21, 22, 79 and 80 and has taken this Court to the entire scheme of the Societies Registration Act. Relying upon the aforesaid provisions of the Societies Registration Act, Mr.Shelat has submitted that the rules of IRMA are in the nature of Article of Agreement and have no statutory force in law. He has further submitted that the rules in nature of Articles of Agreement of Company have no statutory force and they are in the matter of contract and they are to be treated as the matter of contract between the members.

111 Mr.Shelat has relied upon the judgement in the case of Co-Op. Central Bank Ltd. Vs. Addl. Industrial Tribunal, AP, reported in AIR 1970 SC 245, more particularly para 10. He has submitted that in the said decision, the Hon ble Supreme Court was concerned with the by-laws of he cooperative society and has submitted that as held by the Hon ble Supreme Court, the membership in cooperative society can only bring contractual relationship amongst the members that form subject of the rules and the rules framed by the society are rules for

internal management of the society and they have no statutory force and no enforceable right flows from the said ru?es.

112 Mr.Shelat has also relied upon the recent judgement of the Hon ble Supreme Court reported in 2005 (4) JT 337. He has relied upon the judgement of the Bombay High Court in the case of Mahadv-Rao Gulab-Rao Bhuihar Vs. State of Maharashtra, reported in 1996 (2) Bombay Civil report 96. 13.20 Relying upon the said judgments, Mr.Shelat has submitted that the rules and regulations do not provide source of any enforceable rights so far as the petitioner is concerned and the petitioner is governed by the rules by way of contract that does not give statutory rights to be protected by Court of law.

113 Relying upon the judgement of the Hon ble Bombay High Court reported in 1996 (2) Bombay Civil Report 96, Mr.Shelat has submitted that in the said case the question involved was about the educational institution which was registered under the Bombay Public Trust as well as the Societies Registration Act, wherein writ of quo warranto was asked and the question was whether the Chairman of the said educational institute was holding a public office or not. Mr.Shelat has submitted that the Bombay High Court has held that it is not the authority of a public character. Mr.Shehat has submitted that so far as AICTE Act, UGC Act and Medical Council of India are concerned, those institutions maintain the standard of higher education. According to Mr.Shelat merely because AICTE approved the course that does not entitle to character of the State or Public Authority.

114 So far as his contention with regard to maintainability of the petition and the public duty, Mr.Shelat has relied upon the following judgments;-

> [1] AIR 2000 SC 2573 - Kerala State Electricity Board and anr. Vs. Kurien E. Kalathil and ors. [2] AIR 2002 SC 1598 - Director of Settlements, AP and Ors. Vs. MR Apparao and anr. [3] 2004(9) SCC 786 - NTC Ltd. Vs. Haribox Swalram. [4] 2005 (JT) Vol.2 page 8. - Zee Telefilms Ltd and Another Vs. Union of India and anr.

115 Mr.Shelat has also relied upon para 31 of the judgement of M/s.Zee Telefilms which reads as follows;-

> "31. Be that as it may, it cannot be denied the Board does discharge some duties like the selection of an Indian Cricket team, controlling the activities of the players and other 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 any of a petition under Article 32. But that does not mean that he violator of such right would to scot-free merely because it or he is not a State. Under the Indian Jurisprudence there is always a just remedy for 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 writ petition under Article 226 of the Constitution which is must wider than Article 32.

116 Relying upon the judgement of the Hon ble Supreme Court in the case of Zee Telefilms Ltd. (Supra), Mr.Shelat has submitted that as held by the Hon ble Supreme Court, the aggrieved party could have a remedy for the violation of the right of a citizen or violation of the constitutional or statutory obligation or right of other citizens. He has submitted that the aforesaid judgement reiterates that if a private body exercises the public function, aggrieved

person has a remedy under the law, if there is breach of any constitutional obligation, statutory obligation or breach of any right. It is submitted that there is no positive obligation of public character towards the petitioner and he cannot claim that there is a breach of any public duty towards him or that there is any positive obligation towards him apart from contractual obligation.

117 Mr.Shelat has relied upon th? judgement of this Court in the case of TATA Chemicals Ltd. Vs. Kailash C.Adhvaryu,reported in AIR 1964 (Gujarat) 265, more particularly para 4 which reads as under;-

> "4. Now in cases of this kind relating termination of a contract of master and servant, a distinction must be made between breach of contractual obligation and a breach of a statutory obligation. This distinction is one of the principle and is general application in respect of all contracts. But it assumes particular significance in its application to contracts of matter and servants for it is in this latter class of cases that the occasion for its non-recognitions and application arises most often if here is a breach of contractual obligation committed by a party to contract, the other party has ordinarily two remedies available to him. He may, either treat the contract as broken and sue for damages or he may refuse to accept the repudiation of the contractual obligation as a breach discharging the contract and keeping the contract alive for performance, he may sue for specific enforcement of the contract is permissible under the Specific Relief Act. If a contract is a contract of master and servant, this latter remedy would obviously not to be available for their can be no specific enforcement of a contract of personal service under sec.21(b) of the Specific Relief Act and the only remedy available would be the remedy by way of damages. Whereon the other hand, an obligation is imposed by a statute which provides that the contract shall be terminable only in the matter provided by the statute, there can be no valid or effective termination of the contract unless the procedure provided by the statute is complied with the party intending to terminate the contract. In such a case, if the procedure prescribed by the statute is not complied with, there would be no valid and effective termination of contract. The contract would continue to subsists between the parties for the action of terminating the contract being in violation of the statutory obligation would be null and void. When a suit is filed by the aggrieved party contending that the termination of the contract is nullity since it has not been effected in the manner required by the statute, the relief sought by the aggrieved party would not be a relief for specific performance of the contract, but would be a right rarely for a declaration of the statutory invalidity of the act of termination. There being no breach of the contractual obligation, a question would arise of claiming damages for breach of contract or of enforcing specific performance of the contract. Specific performance of the contract would be necessary only if the some contractual obligation is required to enforce and that in its turn would be necessary only if the contract obligation is broken, but where the complaint is not regarding the breach of any contractual obligation but only regarding the breach of the statutory obligation on the fulfillment of the which alone the termination or the contract can take place, there would be no occasion or need to ask for specific enforcement of the contract but what the aggrieved party would be required to claim would be a declaration that the termination of the contract is null and void and that the contract continues to subsists between the parties. Applying this proposition to a contract of master and servant, which is sought to be terminated by the master in breach of a statutory obligation which declares that the contract shall not be terminable except in a particular manner,

the relief claimable by the aggrieved servant would be a declaration that his dismissal is null and void and that he continues in the employment of the master. In such a case, Sec.21(b) of the Specific Relief Act would not apply and the bar contained in that section would not be attracted..."

118 Mr.Shelat has further submitted that so far as the reliance placed upon the decision of the ?on'ble Justice Bhagwati in Vaish Degree College is concerned, according to Mr.Shelat the decision of the Hon ble Justice Bhavwati in the said case is dissenting opinion and therefore, the petitioner is not justified in relying upon the same.

119 In support of his submission with regard to the fact that in the matter of contract of employment, the court should not direct performance of the contract, Mr.Shelat has placed reliance on the following judgments;-

[1]AIR 1976 SC 888 -Executive Committee of Vaish College, Shamli Vs. Laxmi Narain & Ors.. [2]AIR 1976 SC 1073 -Arya Vidya Sabha Vs. Krishna Kumar Srivastava. [3]AIR 1981 SC 122 - Smt.J.Tiwari Vs. Smt.Jawala Devi Vidya Mandir. [4]AIR 1989 SC 1607 -Shri Anadi Mukta Sadguru Shree Mukhtajee Vandasjeeswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. Vs. V.R. Rudani and Ors. [5]AIR 1991 SC 1525 - Nandganj Sihori Sugar Company Limited Vs. Badrinath Dixit and ors. [6]AIR 1995 SC 1368 - Bank of Maharashtra Vs. Race Shipping and Transport Co. [7](2001) 10 SCC 11 - Shivkumar Tiwari Vs. Jagat Narayan Rai. [8](2004) 3 SCC 172 - Pearlite Lines Pvt.Ltd. Vs. Manorama Sirsi.

13.28 Relying upon the judgement of the Hon ble Supreme Court in the case of Velumuri Vankata Sivaprasad (dead) by Lrs Vs. Kothari Venkateswarlu (dead) by Lrs and ors., reported in 2000 (2) SCC 139 and [2] State of Punjab and ors. Vs. Gurdeve Singh and Ashok Kumar, reported in 1992 SC 111, Mr.Shelat has submitted that the petitioner has not challenged the Resolution dtd.15/4/2005 ratifying the order of termination and unless the said resolution is set aside, it may not be possible for this Court to grant any relief when the respondent asserts that it is a legal and valid. Consequently, Mr.Shelat has requested to dismiss the present petition.

120 Heard Mr.K.B. Trivedi, learned Additional advocate General with Shri D.C. Dave, learned Advocate appearing on behalf of the petitioner, Mr.S.N. Shelat, learned Additional Advocate General appearing on behalf of the respondent No.2 Chairman of IRMA, Mr.KS Nanavati, learned senior counsel appearing on behalf of the respondent No.1 -IRMA, Mr.Biren Vaishnav, learned advocate appearing on behalf of respondent Nos.3, 6, 9 & 12.

121 Considering the rival submissions and contentions which are stated hereinabove, the following issues arise for determination by this Court;

[1] Whether in the facts of the case can it be said that the respondent No.1 society is a "State" within the meaning of Article 12 of the Constitution of India ? and whether the petition under Article 226 of the Constitution of India is maintainable against the respondent No. 2.

[2] Whether the respondent No.1 society is performing any public duty or public function? And whether the petition under Article 226 of the Constitution of India is maintainable against the respondent No.1?

[3] Whether the petition under Article 226 of the Constitution of India would be maintainable challenging the termination the Contract of service?

[4] Whether a dispute pertaining to a contract of personal service which is exclusively in the field of private law is amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India?

[5] Whether the alleged illegal termination of the contract of service would be vitiated by a subsequent ratification thereof by the Board in its meeting held on 15/4/2005?

[6] Whether in absence of any challenge to the subsequent ratification of the action of the respondent No. 2 in terminating and/or removing the petitioner as a Director in its meeting held on 15/4/2005, can this Court grant any relief in favour of the petitioner and grant declaration as prayed for?

[7] Whether the action of the respondent No.2 in terminating and/r removing the petitioner as Director purported to be on behalf of the respondent no.1 is legal a?d valid or not? And/or whether the respondent No.2 - Chairman was having authority to remove / terminate the petitioner as a Director of the respondent No.1 Society or not?

122 Before answering the above issues, the following factual matrix are required to be considered:-

The petitioner was earlier engaged as a Faculty Member of the respondent No. 1 - IRMA. He came to be appointed as a Director of IRMA by order dtd.9/8/2002. As per IRMA Rules, the Director is also the Ex-Officio Member Secretary of the Board of Governors and the Director is administrative head of the respondent No. 1 institution. The respondent No.1 institution / society is constituted for the purpose of developing an economic institute to meet the need of substantial number trained managerial personnel required to efficiently managed the resources and activities that were increasingly being made in Rural India to combat the poverty. The respondent No.1 society is registered under the provisions of the Societies Registration Act, 1860 and is also a trust registered under the provisions of the Bombay Public Trust Act. Rules of IRMA are approved by the competent authority. The main object for the establishment of the society is to provide educational research, training and consultancy services for cooperative and other agencies enacted in Economic and Social Development of Rural Communities. It specially refer to rural poor.

Even as per IRMA itself, the institute is established in 1979 with the support of Swiss agency for the Development and Cooperation, Govt. of India, Govt. of Gujarat, erstwhile Indian Dairy Corporation and National Dairy Development Board to provide management education, training, research, consultancy in support to Cooperative and Rural Development Organization in India.

IRMA is offering Post-graduate Management Programm popularly known as Post-graduate Diploma. The Rural management is 2 years course and the said course is approved by AICTE, an authority constituted under the AICTE Act and the respondent no.1 society / institution is granted approval for conducting the management programme with intake capacity of 60 students and initially the said curse was approved for 4 years and thereafter the same has been extended for a period

of four years time and again by the AICTE. The respondent No.1 institute is subject to the conditions imposed by the AICTE while granting approval with regard to intake capacity granting admission, educational course, staff etc. The conditions which are imposed by the AICTE while granting approval and which are required to be complied with by the respondent nO.1 institute are already stated hereinabove and from the above it emerges that the respondent No.1 institute is subject to overall control of AICTE. The institution is required to maintain the records and Books of Accounts as prescribed by the competent authority and the accounts of the institution is required to be audited by the Chartered Accountant or any other agency authorized by the competent authority and shall be opened for inspection of AICTE or any authority authorized by it. The institute is subject to special audit and inspection as prescribed by AICTE. The institute is required to furnish requisite Returns as prescribed by the competent authority / AICTE for ensuring maintenance of standards. The institution is subject to visit by an officer or Committee of the AICTE or Regional Office from time to time to review the progress made by the institution in fulfilling the condition as laid down by AICTE.

As per the condition of the approval in the event of infringement / contravention or non-compliance of the norms and standards prescribed by the AICTE, the Council is authorized to take furth?r action to withdraw the approval and as per the approval order of the AICTE, the Principal Secretary, Higher and Technical Education Department of Education, State of Gujarat is required to monitor the progress made by the institution for fulfillment of the norms and standard of the Council and keep the concerned Committee and AICTE informed.

The IRMA is the only institute of its kind in the entire country providing management education, training, research and consultancy in support to cooperative and rural management organization in India and is the only institute offering Post-graduate diploma in rural management course in the entire country and therefore, the respondent No.1 institute is not an ordinary institute but is a premier institute in the field of Rural Management and said institute is class by itself.

As per the Rules of IRMA approved by the office of the Assistant Charity Commissioner under the provisions of the Bombay Public Trust Act, the entire administration of the respondent No.1 society vests in the Board of Governors and the respondent No.1 society runs by and through the Board of Governors. The society is consisted of Chairman, one representative of the Government of India, not below the rank of Joint Secretary to the Government of India, Ex-Officio, one representative of the Government of Gujarat, not below the rank of Secretary to the Govt. of Gujarat, Chief Executive or his nominee of such Cooperative Union or Federation or Agro-based Industry or Institution concerned with Rural Development, one representative of NDDB, 2 representative of research, education and training institute who are coopted of the Board of Governors, three each standing person whom Board of Governors of the institute consider eminently capable of contributing to the development of institute who are coopted by the Board, two faculty members of the institute nominated by the Chairman for a term of 2 years, Director of Institute (Ex-officio Member Secretary), General Superintendence, direction and control of the affairs of the society and its income and property. Is vested in the governing body of the society which shall be called as Board of Governors - IRMA. The Board of Governors is consisted of Chairman, one representative of NDDB, one representative

of Govt. of India, one representative of Govt. of Gujarat, 2 representative to be elected for a period of 2 years fro the cooperative unions or federations or Agro-based Industries or institutions concerned with rural development who are members of the society, 2 persons representing the representative research, education and training institutions, whom it considers it capable of contributing to development and growth of the institute, 3 outstanding persons coopted by the Board for a period of 2 years whom it considers eminently capable of contributing to the development and growth of the institute, 2 faculty members of the institute, to be nominated by the Chairman of the Board for a period of term of 2 years and director of institute (Ex-officio Member Secretary)

123 Considering the aforesaid background and the status of the respondent no.1 institute, the question and issue with regard to maintainability of the petition under Article 226 of the Constitution of India against the respondent no.1 institute and whether the respondent no.1 institute is performing any public duty or public function or not and whether the respondent no.1 society / institute is amenable to writ jurisdiction under article 226 of the Constitution of India or not, are required to be considered. As issues and questions Nos.1 and 3 inter-connected, the same are being considered, decided and dealt with jointly.

Before considering the rival contentions and the judgme?ts cited at bar on behalf of the respective parties with regard to the public function, public duty, "State" under Article 12 of the Constitution of India, maintainability of the petition under Article 226 of the Constitution of India against private body performing public function / public duty, one has to consider how the law is developed with regard to maintainability of a petition under Article 226 of the Constitution of India against a private body performing public duty / public function is maintainable and when even for enforcement of a contractual right is maintainable against the private body performing public function and public duty under Article 226 of the Constitution of India is required to be considered.

124 The first judgement which is required to be considered is the judgement of the Hon ble Supreme Court in the case of Vaish Degree College (Supra) the relevant chart showing how the law has been developed by the Supreme Court, as under;-

[1] Rajasthan State Electricity Board Vs.Mohanlal, reported in AIR 1967 SC 1857.

[2] Executive Committee of Vaish Degree College, Shamli ∧ Ors. Vs. Lakshmi Narain & Ors., reported in (1976) 2 SCC 58

[3] Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. Vs. VR Rudani, & ors., reported(1989) 2 SCC 691

[4] Nandganj Sihori Sugar Company Limited Vs. Badrinath Dixit and Ors., reported in 1991 (3) SCC 54

[5] Unni Krishnan J.P. & Ors. Vs. State of Andhra Pradesh & Ors., reported in 1993 (1) SCC 645

[6] UP State Co.Op.Land Devp.Bank Ltd. Vs. Chandrabhan Dubey, reported in (1999) 1 SCC 741.

[7] Pradipkumar Biswas Vs. Indian Institute of Chemical Biology & Ors., reported in (2002) 5 SCC 111

[8] ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India & Ors., reported in(2004) 3 SCC 553

[9] M/s.Zee Telefilms Ltd.Vs Union of India, reported in AIR 2005 SCW 2985.

125 The relevant para 6 of the Rajasthan State Electricity Board (Supra) reads as follows;-

"6. In Smt.Ujjam Bai Vs. State of Utter Pradesh 1963 1 SCR 778 : (AIR 1962 SC 1621) Iaangar J. interpreting the word "other authorities" in Article 12, held ;

"Again, Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territories of India which cannot obviously be read as ajusdem generis with either the government and the legislatures or the local authorities, the words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India. There is no charactorism of the nature of the "authority" in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the parliament or by the State including those vested with the duty to make decision in order to implement those laws".

126 In K.S. Ramamukti Reddiar Vs. the Chief Commissioner, Pondicheri, 1961 1 SCR 656(= AIR 1963 SC 1464), this court, dealing with Article 12 held;

"Further, all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Government of various states and even autonomous authorities which may not be under the control of the government at all."

127 This decision of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial ?ctivities. Under the constitution, the State is itself envisaged as having right to carry on trade or business as mentioned in Article 19(1)(g). In part IV the State has been given the same meaning as in Article 12 and one of directive principle laid down in Article 46 is that the State shall promote with special care the educational and economic interest of the weaker sections of the people. The State, as defined in Article 12 is thus, comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution is further specifically empowered under Article 298 to carry on any trade or business. The circumstances that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as word in Article 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. In these circumstances, we do not consider it at all necessary to examine the cases cited by Mr.Desai to urge before us that the

Board cannot be held to be an agent or instrument of the Government. The Board was clearly an authority to which the provisions of Part-III of the Constitution were applicable."

128 Relevant Para 17, 20 and 22 of the Anadi Mukta Sadguru Shree Mak Tajee Vandas Sewami Smarak Trust (1989) 2 SCC 691 reads as follow;

> "17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them mean everybody which is created by the statute and whose powers and duties are defined by statute. So government departments, local authorities, police authorities and statutory undertakings and corporations, are all "public authorities" but there is no such limitation for our High Court to issue a writ "in nature of writ mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law under Article 226 writ can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose."
>
> "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 duty. The duty must be judged in the light of the positive obligation owed by 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. 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, Prof.de Smith states; "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by the statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should n?t be put into water tight compartment. It should remain flexible to meet the requirement 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 appellant on the maintainability of the writ petition.

129 Relevant para 8 to 11 of Nandganj Sihori Sugar Co.Ltd., reported in (1991) 3 SCC 54 reads as under;-

> "8. In Halsbury's Law of England (4th edn., Volume 44, at para 407) it is stated: "407. Contracts for personal work or services, -A judgement for specific performance of a contract for personal work or service is not pronounced, either at the suit of the employer or the employee. The court does not seek to compel persons against their will to maintain continuous personal and confidential relations. However, this rule is not absolute and without exception It has been held that an employer may be

restrained from dismissing an employee in breach of contract if there is no loss of confidence between employer and employee or if (at least in a contract of employment to carry out a public duty) the employee has been dismissed in a manner which does not comply with statutory or contractual regulations governing dismissal. No court may, whether by way of an injunction restraining a breach or threatened breach of such a contract, compel an employee to do any work or attend at any place for the doing of any work. This principle applies not merely to contracts of employment, which involve the rendering of continuous services by one person to another, such as a contract to work a railway lines...."

130 As stated by this Court in Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain (SCC page 71 para 18).

> "....a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service again the will and consent of the employer. This rule, however, is subject to three well recognised exceptions (i) where a public servant is sought to be removed from service in contraventions of the provisions of Article 311 of the Constitution of India (ii)where a worker is sought to be reinstated on being dismissed under the industrial law and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

131 A contract of employment cannot ordinarily be enforced by or against any employer. The remedy is to sue for damages. (see sec.14 read with sec.41 of the Specific Relief Act, see Indian Contract & Specific Relief Acts by Polloc and Mulla, 10th Edn. Page 983). The grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirements, court do nor ordinarily forced an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public service dismissed from service in contravention of Article 311 of the Constitution, reinstatement of a dismissed worker under the Industrial Law, a statutory body acting in breach of statutory obligation, and the like (S.R. Tewari Vs. District Board, Agra, Executive Committee of UP State Warehousing Corpn. Vs.CK Tyagi, Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain, see Halsburys Laws of England, 4th Edn.Vol.44 para 405 to 420].

132 on the facts of these case, the High Court was clearly wrong in issuing a mandatory injunction to appoint the plaintiff. Even if there was a c?ntract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages and particularly so in the case of personal contracts. Assuming that a contractual relationship arose consequent upon the letters addressed by the deft.No.3 to deft.No.1, the plaintiff was a total stranger to any such relationship, for, on the facts of this case no relationship of a fiduciary character existed between the plaintiff and the deft.3 and other defendants. Neither on principle of law or equity, nor under any statute did the plaintiff acquire an enforceable right by reason of the letters exchanged between deft.1 and 3. The plaintiff had no privity of any kind to the relationship. No co-lateral contract to which the plaintiff was a party did arise on the facts of this case. At no time was deft.3 acting as an agent of the plaintiff. There is no

express or implied contract which is enforceable by the plaintiff (see Halsbury's Laws of England 4th Ed.Vol.9 para 334 to 342).

133 Relevant para 76 and 77 of Unni Krishnan J.P, reported in 1993 (1) SCC 645 reads as follow;-

> 76. Applying these tests, we find it impossible to hold that a private educational institutions either by recognisation or affiliation to the University could ever be called and instrumentality of State. Recognisation is for the purposes of confirming to the standards laid down by the State. Affiliation is with regard to the syllabi and the courses of study. Unless and until they are in accordance with the prescription of the University, degrees would not be conferred. The educational institutions prepared the students for the examination conducted by the University. Therefore, they are obliged to follow the syllabi and the courses of the study.
>
> 77. As a sequel to this, an important question arises; what is the nature of functions discharged by this institutions? They discharged a public duty. If a student desires to acquire a degree for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain the qualification. If, therefore, what is discharged by the educational institution is a public duty, that requires duty to act fairly. In such a case, it will be subject to Article 14."

134 Relevant para 27 of UP State Co.Op.Bank Ltd.(1999) 1 SCC 741 reads as under;-

> "27. In view of the fact that the control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore, the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the Article, it is not necessary for us to rely on the decision of the English Courts as rightly cautioned by the earlier benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between the public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition quo warranto and certiorari. They are certainly founded on the English System of jurisprudence. Article 226 of the Constitution also speaks of direction and orders which can be issued to any person or authority including the appropriate cases, any government. Under clause(1) of Article 367 unless the context otherwise required the General Clauses Act, 1897 shall subject to a?y adoptions and monitions that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the dominion of India. "Person" under Sec.2(42) of the General Clauses Act shall include any company or association or body of individual, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statute. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step into protect him, be that wrong done

by the State and instrumentality of the State, a company or a cooperative society or association or body of individual whether incorporated or not, or even an individual. Right that is infringed may be under Part-III of the Constitution or any other right which the law validly made might confer upon it. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self imposed limitations have been put their subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High court does not interfere when an equally efficacious remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

135 Relevant para 59 to 61 of the Pradipkumar Biswas Vs.Indian Institute of Biology (2002) 5 SCC 111 reads as follows;

"59. From whichever perspective the facts are considered, there can be no doubt that the conclusion reached in Sabhajit Tewary was erroneous. If the decision of Sabhajit Tewary had sought to lay down as a legal principle that a society registered under the Societies Registration Act or a Company incorporated under the Companies Act is, by that reason alone, excluded from the concept of State under Article 12, it is a principle which has long since been discredited. "Judges have made worthy if shamefaced, efforts, while giving lip service to the rule, to riddle it with exception and by distinction reduced it to a shadow.

136 In the assessment of the facts the Court had assumed certain principles, and sought presidential support from decision which were irrelevant and had "fallowed a groove chased amidst a context which has long since crumbled". Had the facts been closely scrutinized in the proper perspective, it could have laid and can only lead to the conclusion that CSIR is a State within the meaning of Article 12.

Should Sabhajit Tewary still stand as an authority even on the facts merely because it has stood for 25 years? We think not. Parallel may be drawn even on the facts leading to an untenable interpretation of Article 12 and a consequential denial of the benefits of fundamental rights to individuals who would otherwise be entitled to them and "there is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interest of the public (AIR p.672 para 15). Since on a re-examination of the question we have come to the conclusion that the decision was plainly erroneous, it is our duty to say so and not perpetuate our mistake."

137 Relevant para 22 to 24 and 27 of ABL International Ltd. And Anr. Vs. Export Credit Guarantee Corporation of India & Ors., reported in (2004) 3 SCC 553 reads as under ;

"22. We do not think the above judgement VST Ind?stries Limited supports the arguments of the learned counsel on the question of maintainability of the present writ petition. It is to be noted that VST Industries Ltd. against whom the writ petition was filed was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence in the normal course no writ could have been issued against the said industries. But it was the contention of the writ petitioner in that case that the

said industry was obligated under the statute concerned to perform certain public functions failure to do so would give rise to a complaint under Article 226 against a private body. While considering such arguments, this court held that when an authority has to perform a public function or a public duty, if there is a failure, a writ petition under Article 226 of the Constitution is maintainable. In the instant case, as to the fact that the respondent is an instrumentality of a State, there is not dispute but the question is what the first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract? Answer to this question, in our opinion is found, in the judgement of this Court in case of Kumari Shrilekha Vidyarthi Vs. State of U.P. wherein this Court held (SCC pp.236-37 para 22 and 24).

> "The impact of every State action is also on public interest .... It is really the nature of its personality as State which is significant and must charactorise all its actions in whatever field, and not the nature of function, contractual or otherwise which is decisive of the nature of the scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters".

138 It is clear from the above observations of this court, once the State or an instrumentality of the State is a party of the contract it has an obligation in law to act fairly, justly and reasonably which is there requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants, the first respondents has an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have not hesitation in holding that a writ court can issue suitable directions to set right the arbitrary action of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribe share capital of this Company is 2,50,000 share out of which 2,49,998 shares are by the President of India, while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and officers on special duty, Ministry of Commerce and industry respectively. The objects enumerated in the Memorandum of Association of the first respondent at para 10 read;

> "To undertake such function as may be entrusted to it by the Government from time to time including grant of credits and guarantees in foreign currencies for the purpose of facilitating the import of the raw materials and semi-finished goods for manufacture or processing goods for export."

139 Para 11 of the said object reads thus;

> "To act as agent of the Government, or with the sanction of the Government on its own account, to give guarantees, undertake such responsibilities and discharge such function as are considered by the government as necessary in national interest."

140 It is clear from the above two objects of the company that apart from the fact that the company is?wholly a government owned company, it discharges the functions of the government and acts as an agent of the Government even when it gives guarantee and it has responsibility to discharge such functions in the national interest. In this background, it will be futile to contend that the actions of the first respondent impugned in the writ petition do

not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail."

> "27. From the above discussion of ours, the following legal principle emerge as to the maintainability of a writ petition
>
> (a) in an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable
>
> (b) merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule
>
> (c) a writ petition involving a consequential relief of monitory claim is also maintainable.
>
> 21.9 Relevant para 30 to 32 and 75 to 98 of M/s. Zee Telefilms Ltd. (Supra) reads as under;- "30. However it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organizing cricket matches and travel of the Indian Team abroad as also granting of permission to allow the foreign team to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At the best this is purely regulatory in nature and the same according to this court in Pradip kumar Biswas' case (Supra) is not a factor indicating a pervasive State control of the Board.

141 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 other involved in the games of cricket. These activities can be said to be akin to public duty or State function 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 violation of a writ of a citizen. Though the remedy under Auricle 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.

142 This Court in case of Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R. Rudani and ors. [(1989) 2 SCC 691] has held ;

> "Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". The term "authority" used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of the fundamental rights under Article 32. Article 226 confers powers 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 body. 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 the positive obligation owned by the person or the authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists ?andamus cannot be denied.

143 The feature that the Board has been allowed to exercise the powers enabling it to trespass across the fundamental rights of a citizen is of great significance. In terms of the memorandum of association even the States are required to approach the Board for its direction. If the constitution bench judgement of this Court in Sukhdevsingh and Ors. Vs. Bhagatram Sardarsingh (1975 (1) SCC 421) and development of law made therefrom is to be given full effect it is not only the functions of the Government alone which would enable a body to become a State. But also when a body performs governmental functions or quasi-governmental functions as also when its business is of public importance and is fundamental for the lifes of the people. For the said purpose, we must notice that this Court in expanding the definition of State did not advisedly confined itself to the debates of Constitutional Assembly. It considered each case on its own merits. In Sukhdevsingh (supra), Methew J., stated that even big industrial houses and big trade union would come in the purview thereof. While doing so, the courts did not lose sight of the difference between the State activity and the individual activity. This Court took into consideration the fact that new rights in the citizens have been created and if any such right is violated, they must have assessed to justice which is human right. No doubt, there is an ongoing debate as regards the effect of the globalisation and/or opening up of market by reason of liberalization policy of the government as to whether the notion of sovereignty of the State is being thereby eroded or not but we are not concerned with the said question in this case. "Other authorities", inter-alia would be there which inter-alia function within the territory of India and the same need not necessarily be the Government of India, the Parliament of India, the Government of each of the State which constitute the Union of India or the legislation of the States.

144 Article 12 must receive a purposive interpretation as by reason of Part-III of the Constitution a charter of liberties against oppression and arbitrariness of all kind of repositories of power have been conferred - the object being to limit and control power wherever it is found. A body exercising significant functions of public important would be an authority in respect of this functions. In those respects it would be same as is executive government establish under the constitution and the establishment of organization funded or controlled by the Government. A traffic constable remains an authority even if his salary is paid from the Parking Charges inasmuch as he still would have the right to control the traffic and anybody violating the traffic rules may be prosecuted at his instance.

145 It is not that everybody or association which is regulated in its private functions becomes a "State". What matters is the quality and the character of functions discharged by the body and the State control flowing therefrom. In Daniel Lee (Supra) it was held ;

"The OAC's functionally exclusive regulation of free speech within .... a public forum is a traditional and exclusive function of the State".

DEVELOPMENT OF LAW;

146 The development of law in this field is well-known. At one point of time, the companies, societies, etc. registered under the Indian Companies Act and Societies Registration Act were treated as separate corporate entities being governed by its own rules and regulations and, thus, held not to be "State" although they were virtually run as department of the

Governm?nt, but the situation has completely changed. Statutory authorities and local bodies were held to be State in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal & Ors.--(1967) 3 SCR 377.

147 This court, however, did not stop their end newer and newer principles where evolved as a result whereof different categories of bodies came to be held as State.

148 The concept that all public sector undertakings incorporated under the Indian Companies Act or Societies Registration Act or any other Act for answering the description of State must be financed by the Central Government and be under its deep and pervasive control has in the past three decades undergone a sea-change. The thrust now is not upon the composition of the body but the duties and functions performed by it. The primary question which is required to be posed is whether the body in question exercises public function.

149 In Sukhdevsingh (supra) a Constitution Bench of this Court opined that the expression "other authorities" should not be read on the touchstone of the principle of "ejusdem generis".

> 82. Mathew J., in his concurring but separate judgement raised a separate judgement as to for whose benefit the Corporations were carrying on the business and in answering the same, came to the conclusion that the respondents therein were "States" within the meaning of Article 12 of the Constitution of India (SCC para 109).

150 It was observed that even big companies and trade unions would answer the said description as they exercise enormous powers.

151 In U.P. State Cooperative Land Development Bank Vs. Chandrabhan Dubey and others (AIR 1999 SC 753), the Land Development Bank held to be a "State". This Court upon analysing various provisions of the Act and the Rules framed thereuner observed;

> "20....It is not necessary for us to quote various other sections and rules but all these provisions unmistakenly show that the affairs of the appellant are controlled by the State Government though it functions as a cooperative society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution" However, when the law provides for a general control over a business in terms of a statute and not in respect of the body in question, it would not be a "State" [(see Federal Bank Ltd. (supra) KR Anitha and ors. Vs. Regional Director, ESI Corpn. & Anr.) (2003 (10) SCC 303) and Bassi Reddy (supra).
>
> Madon J., in Central Inland Water Transport Corporation Limited and anr. vs. Brojonath Ganguli and Ors. (1986 (3) SCC 156 questioned--
>
> "Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the faction of the day? Should all jurisprudential development passed us by, leaving us foundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride rough shod over the weak ? Should the Court should sit back and watch supinely while the strong trample underfoot the rights of the weak? It was opined ;

"26. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideology of that society. It must keep time with the heart-beats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The early Nineteen Century essayist and wit, Sydney Smith, said when I hear any man talk of and unalterable law, I am convinced that he is an unalterable fool." The la? must, therefore, in a changing society march in tune with the changed ideas and ideologies....".

152 Pradip kumar Biswas (supra) and Bassi Reddy (Supra) where recently considered in Gayatri DE Vs.Mausmi Co.Op.Ho.So.Ltd. and ors. [(2004) 5 SCC 90] wherein a mandamus was issued against a cooperative society on the ground that the order impugned therein was issued by an "administrator" appointed by the High Court who had also no statutory role to perform.

153 In Chainsingh Vs. Mata Vaishno Devi Sharine Board & Anr. [2004 (8) Scale 348] it was contended that a religious board was a "State". Although Mata Vaishno Devi Sharine Board was constituted under a statute, it was per-se not a State actor. It was observed that the decision in this Court in Bhurinath and Ors. Vs. State of J&K & Ors. [(1997) 2 SCC 745] requires reconsideration in the light of the principles laid down in Pradipkumar Biswas (supra).

154 In Virendrakumar Srivastava Vs. U.P.Rajya Karmachari Kal. Nigam and Anr.[2004 (9) Scale 623], a Division Bench of this Court while applying the tests laid down in Pradipkumar Biswas (supra) observed that there exists distinction between a "State" based on its being a statutory body and a one based on the principles propounded in the case of Ajay Hasia & Ors. Vs. Khalid Mujib Sehra Vardi and Ors.[(1981) 1 SCC 722].

155 Recently a Division Bench of the Rajasthan High Court in Santosh Mittal Vs. State of Rajasthan and Ors. [since reported in 2004 (10) Scale J. - 39] issued a direction to Pepsi Company and Coca cola and other manufacturers of carbonated beverages or soft-drinks to disclose the composition and contents of the products including the presence of the pesticides and chemicals on the bottle, package or container, as the case may be observed "in view of the aforesaid discussion we hold that in consonance with the spirit and content of Article 19(1)(g) and of the Constitution, the manufacturers of beverages namely Pepsi -Cola and Coca cola and other manufacturers of beverages and soft drinks are bound to clearly specify on the bottle or package containing the carbonated beverages or soft drink, as the case may be, or a wrapper wrapped around it, the details of its composition and nature and quantity of pesticides and chemicals if any, present therein."

156 Pepsi Company and Cocacola are multinational companies. They are business concerns but despite the same, this Court in Hindustan Cocacola beverages(p) Ltd. Vs. Santosh Mittal and Anr. [2004 (10) Scale 360] by an order dtd.6/12/2004 dismissed the Special Leave Petitions stating ;

"Mr.Harsih N. Salve learned senior counsel appearing for the petitioner in SLP (c) No.24266 - 24268 /2004 and Mr.Arun Jetly, learned senior counsel appearing for the petitioner in SLP (C) No.24413 of 2004 and 24661 - 24663 / 2004 state that the petitioner will be advised to approach the High Court to seek clarification of exactly what kind of disclosure the High Court requires them to make. We record the

statement and dismissed the Special Leave Petition giving liberty to the petitioners to approach the High Court for that purpose. In case the petitioners feel aggrieved by the order passed by the High Court on the clarification application, the dismissal of this Special Leave Petitions will not in their way in challenging the said order.

We may, however, place on record that the learned senior counsel for the petitioners intended to argue larger constitutional issue touching Articles 19 and 21 of the Constitution which have not been raised on a second thinking and we leave them open to be decided in some other appropriate case.

Though the Special Leave Petitions are dismissed, but the operation of the order dtd.3/11/2004 passed by the High Court suspending the operation of its judgement for six weeks, is extended by another two weeks from today."

158" > 157 ? >THE EXPLANATION IN THE DEFINITION OF STATE IS NOT TO BE KEPT CONFINED ONLY TO BUSINESS ACTIVITIES OF UNION OF INDIA OR OTHER STATE GOVERNMENTS IN TERMS OF ARTICLE 298 OF THE CONSTITUTION OF INDIA BUT MUST ALSO TAKE WITHIN ITS FOLD ANY OTHER ACTIVITY WHICH HAS A DIRECT INFLUENCE ON THE CITIZENS THE EXPRESSION "EDUCATION" MUST BE GIVEN A BORDER MEANING HAVING REGARD TO ARTICLE 21AOF THE CONSTITUTION OF INDIA AS ALSO DIRECTIVE PRINCIPLES OF THE STATE POLICY THERE IS A NEED TO LOOK INTO THE GOVERNING POWER SUBJECT TO THE FUNDAMENTAL CONSTITUTIONAL LIMITATIONS WHICH REQUIRES AN EXPANSION OF THE CONCEPT OF STATE ACTION

158 Constitutions have to evolve the mode for welfare of their citizens. Flexibility is the hallmark of our Constitution. The growth of the Constitution shall be organic, the rate of change glacial. [see R Stevens, the English Judges : Their role in the Changing Constitution (Oxford 2002), P.xiii] [quoted by Lord Woolf in "the rule of law and a Change in the Constitution, 2004 Cambridge Law Journal 317]

159 A school would be a State if it is granted financial aid.

160 An association performing the function of Housing Board would be performing a public function and would be bound to comply with Human Rights Act, 1998. But an old age house run by a private body may not.

161 A school can be run by a private body without any State patronage. It is permissible in law because a citizen has fundamental right to do so as his occupation in terms of Articles 19(1)(g) and 26.

162 But once a school receives State patronage its activities would be State activities and thus would be subject to judicial review. Even otherwise, it is subjected to certain restrictions as regard its right to spend his money out of the profit earned.

163 Tests or the nature thereof would vary depending upon the facts of each case.

164 It is true that what is stated and observed in paragraphs 37 onwards in the decision of M/s.Zee Telefilms Ltd. Is a minority view, still to consider how the law has been developed

with regard to maintainability of the petition under Article 226 of the Constitution of India, against a private body performing public function and public duty and even in sphere of contractual obligation, the said judgement and the observations is worth considering. As rightly held by Mr.Kamal Trivedi, learned Addl. Advocate General, law has progressed and developed right from 1976 even when Justice Bhagwati in his concurring judgement in the case of Vaisya Sabha carved out 4th exception with regard to maintainability to maintainability of a petition under Article 226 of the Constitution of India, in a contractual obligation and contract of service and thereafter, the law has reached to the judgement of Zee Telefilms Ltd.

165 Mr.KS Nanavati, learned senior advocate and Mr.S.N. Shelat learned Additional Advocate General have relied upon many judgments of the Hon ble Supreme Court more particularly in the case of Praga Tools Corpn. (Supra), , Vaisya Degree College (Supra), Director of settlement AP (Supra), Federal Bank Limited (Supra), VST Industries (Supra), G.Basi Reddy (Supra), judgement of the Ful Bench of Andhra Pradesh in the case of Sri Konaseema Cooperative Central Bank Limited (Supra), in support of their submissions that the respondent No. 1 institute is neither performing any public function and/or public duty and?the same is no amenable to writ jurisdiction under Article 226 of the Constitution of India.

166 So far as the decision relied upon in the case of Praga Tools Corpn.(supra), is concerned, that was the view in 1969 and thereafter, the law has been developed. The reliance placed upon the decision of Federal Bank Limited (Supra) is concerned, considering the status of the respondent No.1 institution that the institute is a class by itself and is the only institute in the said field in the entire country and considering the fact that it is the case of the very respondent No.1 in the broacher that the institute of rural management is established in 1979 at Anand (Gujarat) with the support of Swiss Agency for the development, Govt. of India, Govt. of Gujarat, erstwhile Indian Dairy Corporation and National Dairy Development Board and considering the fact that the respondent institute was provided land for the establishment of the institute by the State of Gujarat for a token rent of Rs.1.00 and considering the fact that the respondent No.1 institute is imparting education and the said institution is approved by AICTE and is subject to overall control of AICTE and monitoring by State Government, it cannot be said that the respondent No.1 institute is not performing any public function and/or public duty and is not amenable to writ jurisdiction.

167 So far as the reliance placed upon the judgement of this Honourable Court in the case of VST Industries is concerned, the said judgement is with regard to provide canteen to their own workmen and wherein the canteen was required to be provided under sec.46 of the Act and there it was held by the Hon ble Supreme Court that such a duty will not be a public duty since it is owed to a person or a group of persons and not to the public in general. The facts of that case cannot be equated with the facts of the case on hand. Imparting education and establishment of institution cannot be equated with providing canteen by company who is manufacturing Cigarette, providing education is a public duty and public function which is owed to public in general and therefore, the aforesaid judgments are of no assistance to the respondent No.1.

168 Other judgments cited at bar on behalf of the respondent Nos.1 sand 2 with regard to non-maintainability of the petition under Article 226 of the Constitution of India as well as respondent no.1 not performing any public function or public duty and that the respondent no.1 institute has voluntary accepted imparting education and providing course, are

concerned, the same are distinguishable on facts. It is required to be noted that to provide education and imparting education is basically the State's function and it is public duty to be performed by the State Government and now in view of the changed scenario that establishment of self finance institutions and/or establishment of other institutions imparting education by other private bodies, other than State Government, merely because the education is imparted by the private bodies, it cannot be said that the same is not performing public function and/or public duty. Right from Anadi Mukta (Supra) judgment, consistent view of the Honourable Supreme Court is that imparting of education is a public duty and public function. As held by the Honourable Supreme Court in the latest judgement in the case of M/s.Zee Telefilms Limited (Supra), 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 of India which is much wider than Article 32 of the Constitution of India. Thus, it is held by the Hon ble Supreme Court that the remedy under Article 226 of the Constitution of India is much wider than Article 32 of the Constitution of India.

169 As held by the Hon ble Supreme Court in the case of Unni Krishnan JP (Supra), imparting of education is a public fu?ction and public duty. It is submitted on behalf of the respondent nos.1 and 2 that the said judgement is overruled in TMA Pai Foundation Vs. State of Karnataka, reported in AIR 2003 SC 355. However, it appears that the same is factually not correct. So far as the view of the Hon ble Supreme Court in the case of Unni Krishnan case with regard to imparting education being public duty and public function is concerned, the same is not disturbed by the Honourable Supreme Court in the decision of TMA Pai (Supra), and the same will be clear while considering the question 9 in TMA Pai Judgment. Therefore, considering the development of law right from 1976 till 2005 i.e. From Vaisya Sabha and Anadi Mupta (Supra), to M/s.Zee Telefilms Ltd. and considering the status of the respondent nO.1 institute / society and the activity of the respondent nO.1 institution of imparting education, this Court is of the firm opinion that against the respondent No.1, the petition under Article 226 of the Constitution of India is maintainable as the respondent institute is performing any public duty and/or public function and they are amenable to the writ jurisdiction under Article 226 of the Constitution of India. It is, however, made clear that this court has not gone into the larger question as to whether the respondent nO.1 society can be considered to be a "State" within the meaning of Article 12 of the Constitution of India as on other count being other authorities performing public duty and public function, this court has held that the respondent No. 1 is performing public duty and public function, and therefore, amenable to writ jurisdiction under Article 226 of the Constitution of India.

170 Now the next questions and issues which are required to be considered is as to whether the petitioner is entitled to relief as prayed for which according to the respondent Nos.1 and 2 would be enforcement of contract of a private service and whether the action of the respondent No.2 in removing the petitioner as a Director of the respondent No.1 society is legal and valid and whether the respondent No.2 had any authority to remove the petitioner as a Director of the respondent No.1 society and whether on ratification of the said action by the Board in its subsequent meeting held on 15/4/2005 (as alleged by the respondent Nos.1 and 2) and whether inspite of the fact that the petitioner has not challenged the legality and validity of the Resolution passed on 15/4/2005 ratifying the action of the respondent No.2 whether the petitioner is entitled to any relief or not, are required to be considered. All the aforesaid questions are inter-connected and therefore, the same are decided together.

171 As stated hereinabove, the petitioner was engaged as a Faculty Member of the respondent No.1 society and by order dtd.9/8/2002, he came to be appointed as a Director of

IRMA. The order of appointment was issued by the respondent No. 2 as a Chairman of the respondent No.1 IRMA. It is the contention on behalf of the petitioner that the director o the institute is also the Ex-Officio Member Secretary and General Superintendence, directions and control of the affairs of the society and its income and property vestes in the governing body of the society which shall be called as Board of Governors - IRMA (Rule 4). As per Rule 8 of IRMA Rules, the Director of Institution shall be appointed by the Board on such terms and conditions as may be agreed upon and he will be Ex-officio Member Secretary of the society and Board. It also appears that even the co-opted members in the Board of Governors are also appointed and/or co-opted by the Board. Thus, considering the IRMA Rules, it is only the Board of Governors who has powers and authority to appoint and/or remove the co-opted members and director. It is true that under rule 18 of IRMA Rules, powers of the Board can be delegated by resolution to the Chairman, director and other officers as ?specified in Rule 6, such of his powers for the conduct of the affairs of the institute as it may consider necessary or desirable. In view of the said rules, it is now required to be considered whether the respondent No. 2 as a Chairman had authority to appoint and/or co-opt the members of the Board of Governors and/or to remove the co-opted members and/or appoint and/or t remove the director of the society and the Board of Governors or not.

172 Learned advocates appearing for the respondent Nos.1 and 2 have heavily relied upon the resolutions of the Board of Governors dtd.25/7/2002 copy of which is produced at page No.158 of the compilation. Relying upon the said resolution, it is submitted on behalf of the respondent Nos.1 and 2 that by said resolution, the Board of Governors passed Resolution delegating powers to Dr.Kurien - respondent No. 2 to appoint the director of the institute on a vacancy arising and accordingly the respondent No.2 appointed the petitioner as a Director of the institute for 3 years w.e.f. 2/9/2002 by order dtd.9/8/2002 and, therefore, it is submitted on behalf of the respondent Nos.1 and 2 that as the respondent No.2 has appointed the petitioner, he has authority to remove the petitioner as a Director of the respondent No.1 society also and accordingly order dtd.7/4/2005 removing the petitioner as a Director by the respondent No. 2 is legal and valid.

173 Now therefore, what is required to be considered is whether any powers are delegated by the Board of Governors to the respondent No.2 to appoint Director of the institute, as alleged. The relevant Resolution No.5 dtd.25/7/2002 reads as under;-

> "5. To consider the report of the Search committee for the post of Director, IRMA. The report of the Search Committee was placed before the Board. The Board members were informed by Shri V. Ramachandran that the Committee did not find a suitable outside candidate to succeed Dr.Katarsingh. He, then suggested that Prof.KP Reddy, who is the senior most faculty in IRMA may be considered as appointment as Director, IRMA. Thereafter, he sought the suggestions of the Board Members. One of the Board Members suggested the name of Dr.Jahar Shah who had relinquished charge as Director, IRMA. After discussion and consideration of different options, it was proposed that Dr.Kurien may like to contact Dr.Jahar Shah to find out his availability and willingness to accept the post of Director, IRMA. If he agrees, then he may be appointed as Director. If he does not then Prof.K.Prathap Reddy may be appointed to act as Director, IRMA, on relinquishes of charge by Dr.Katarsingh, until further orders."

174 On perusing and considering the said resolution, it can not be said that the Board of Governors had delegated any power to the respondent No.2 to appoint the Director of the

Institute. The Board of Governors passed resolution appointing one Dr.Jahar Shah and in case of his unwillingness, Prof.KP Reddy - petitioner herein. Dr.Kurien - respondent No.2 was authorized to contact Dr.Jahar Shah to find out his availability and willingness to accept the post of Director IRMA only. If Dr.Jahar Shah agrees then he was appointed as a Director and if he does not then Dr.KP Reddy -petitioner herein was to be appointed as a Director of IRMA. The respondent No.2 was not even having any choice and/or option to appoint Dr.Jahar Shah and or Dr.KP Reddy and/or any other person. The resolution dtd.25/7/2002 is clear and self explanatory and on plain reading of the aforesaid resolution, it cannot be said that the respondent No. 2 was delegated any power by the Board of Governors to appoint director of the institute and therefore, the contention on behalf of the respondent nos.1 and 2 that the Board of Governors passed resolution on 25/7/2002 delegating powers to the respondent no.2 to appoint Director of the Institute cannot be accepted. Merely because the respondent No. 2 has i?sued order of appointment as a Chairman of the respondent No.1 - IRMA pursuant to the aforesaid resolution, it cannot be said that he is appointing authority. As stated hereinabove, powers to appoint director, not only the director but even the co-opted members are also with the Board of Governors. (Rule Nos.5 and 8 of IRMA Rules). Therefore, the contention on behalf of the respondent nos.1 and 2 that the respondent No.2 was appointing authority and, therefore, he had authority to remove the petitioner as a Director of IRMA also cannot be accepted as it is only the Board of Governors who had authority to appoint and remove the Director of the society. Therefore, the action of the respondent No.2 in removing the petitioner as a Director of the respondent No.1 IRMA vide communication /order dtd.7/4/2005 purported to be on behalf of the respondent No.1 is illegal, arbitrary and without any authority of law and without jurisdiction and contrary to the IRMA Rules and the same is a nullity, non-est and accordingly non-existent.

175 Even from the chronology of events which has taken place, after 14/12/2004 which will be dealt with hereinafter, it appears that the respondent No. 2 Chairman of the IRMA has acted in a most arbitrary manner while removing the petitioner as a Director of IRMA and has acted as if he was managing his own personal affairs. His actions and conduct is not befitting to the Chairman of the institute like IRMA and the conduct of the respondent no.2 speaks volumes against him. From the conduct which will be discussed hereinafter, it appears that the respondent No.2 has acted even malafide and his action in removing the petitioner as a director was not bonafide and even subsequent conduct is not befitting to the post of Chairman of any institute like IRMA.

176 Now, the chronology of events are required to be considered so as to appreciate the conduct of the respondent No. 2 by which it will become clear that how the respondent no.2 has acted arbitrarily and without any authority, powers or competence.

177 On 25/5/2002 the Board of IRMA passed resolution selecting Dr.Jahar Shah and/or in case of his unwillingness, the petitioner as a Director and the respondent N.2 was requested to appoint Dr.Jahar Shah to find out his availability and willingness to accept the post of Director of IRMA. It appears that Dr.Jahar Shah show his unwillingness to accept the post of Director, IRMA, and therefore, the petitioner was to be appointed as a Director as per the said resolution and accordingly the respondent no.2 issued appointment order dtd.9/8/202 appointing the petitioner as a Director of the institute for a period of 3 years w.e.f.2/9/2002. In the meeting held on 15/11/2002, the Board of Governors confirmed the minutes of the meeting of the Board of Governors of the meeting held on 15/7/2002 and noted the appointment of the petitioner as a Director, IRMA w.e.f. 2/9/2002. It appears that the Rules of IRMA were proposed to be amended and it was proposed to amend Rule 7 with regard to

tenure of respondent No. 2 as a Chairman of IRMA for indefinite period and on 25/2/2005, the Assistant Charity Commissioner, Anand passed order under sec.22 under the Bombay Public Trust Act, 1950 in Change Report No.146 of 2004, whereby the amendment in the Rules of IRMA as proposed came to be approved except amendment proposed in Rule 7. The aforesaid order of the Assistant Charity Commissioner was placed before the Board Meting held on 28/2/2005 and it appears that a decision was taken to refer the matter to a Sub-Committee of the Board. It is the case on behalf of the petitioner that in the said meeting dtd.28/2/2005, the respondent Nos.8 to 12 came to be re-co-opted by the Board. It also appears that six members of the Board sent requisition in writing to the petitioner as Member Secretary to the Board on 16/3/2005 and a notice convening meeting of the Board dtd. 1-4-2005 was issu?d by the petitioner and according to the petitioner, the said meeting was for the purpose of discussing the consequences arising out of said decision of the Assistant Charity Commissioner. It appears that one Mr.BM Vyas, one of the member of the Board of Governors - respondent No.7 herein, challenged the decision of the Assistant Charity Commissioner in not approving the amendment in Rule 7 of the IRMA Rules, before the Joint Charity Commissioner, Vadodara and the Joint Charity Commissioner Vadodara passed two separate orders dtd.31/3/2005 in an appeal bearing Appeal No.2 of 2005 as well as in Application No.3 of 2005. It appears that by the aforesaid application, Mr.BM Vyas has sought injunction of convening meeting on 1-4-2005 and by order dtd.31/3/2005, the Joint Charity Commissioner rejected the aforesaid Appeal and application. It appears from the record that after the aforesaid order of 31/3/2005 of the Joint Charity Commissioner, one Mr.S.R. Chaudhary, one another member of the Board of Governors by way of filing Civil Suit No. 48 of 2005 in the Civil Court at Anand prayed the same relief which was prayed by Mr.BM Vyas before the Joint Charity Commissioner. It also appears that the application Ex.5 for interim injunction for staying the meeting of 1-4-2005 along with further relief that 5 persons who were re-coopted as members of the Board in the meeting held on 28/2/2005 may not be permitted to attend the said meeting of 1-4-2005 was also sought. It appears that on 1-4-2005 the Civil Court, Anand at 10.20 a.m. Passed an order of granting status-quo with regard to the composition of the board only and stay as prayed for against the meeting of 1-4-2005 was declined and and even interim prayer restraining the respondent Nos. 8 to 12 who were re-coopted member in the meeting held on 28-2-2005 from attending the meeting on 1-4-2005 came to be refused. It appears that in the meantime and before that the respondent No.2 Chairman issued letters to all board members proposing termination of the petitioner as Director and thereafter in the subsequent meeting, the question with regard to removal of he petitioner was deferred and referred to and was referred to the committee. It appears that in the meantime, it is the case of the respondent Nos.1 and 2 that the respondent No.2 nominated two faculty members, Prof.H.Panda and Prof.V.Balabh, as members of the Board of Governors on 11/3/2004 and simultaneously, vide communication dt.21/3/2005 it is the case of the respondent No. 2 that he informed the respondent nos.8 to 12 that their term had already expired on 15/2/2005. It is the contention on behalf of the petitioner that the meeting of the Board of Governors was convened on 1-4-2005 and after overruling the objections raised by the respondent No. 2 as well as few other members of the board with regard to holding of the said meting of 1-4-2005, it is the case on behalf of the petitioner that it was unanimously decided to appoint a search committee for the selection and appointment of the Chairman of the Board, pursuant to the observations made by the Assistant Charity Commissioner in its earlier order and a Sub Committee of the Board was required to be appointed and in the said meeting it was the case of the petitioner that he was also authorized to take appropriate measures, as advised, against the aforesaid order of the Civil Court in the suit filed by Mr.Chaudhari. It appears that on 1-4-2005, Mr.Chaudhry resigned as a Member of the Board. It appears that on 4-5-2005 an appeal from order came to be field by the

petitioner against the order passed by the Civil Court in the suit filed by Mr.S.R. Chaudhry. However, as in the meantime, Mr.Chaudhry resigned, the said appeal from order was disposed of on 13/5/2005.

178 It appears that one another member - respondent no.14 herein preferred an application before the learned Civil Court at Anand for imp leading him as plaintiff No.2 in the suit filed by Mr.Chau?hri. It also appears that thereafter Dr.Kurien -respondent No. 2 filed civil suit in the court of Civil Judge (SD), Anand being Special Civil Suit No.50 of 2003 and an application for interim injunction was also moved by him for the purpose of restraining the respondent Nos.8 to 12 and one another coopted member who were re-coopted on 28/2/2005 from participating future meeting of the Board as well as for the purpose of restraining the Board from implementing the decision taken in the meeting of 1-4-2005 for selecting and appointing a new Chairman but no interim relief was granted by the learned Civil Judge (SD) Anand. It is the case of the petitioner that while he was in the midst of instructing the concerned advocate at Ahmedabad in respect of the aforesaid appeal from order, which was to come for hearing on 8/4/2005, at about 8.23 p.m. A fax message was received by the concerned advocate under the instructions of respondent No. 15 informing him that the petitioner has been removed as a Director w.e.f. 7-4-2005 in the afternoon and that he is appointed as in-charge director and the learned concerned advocate should seek further instructions from the respondent No.15.Thereafer the concerned advocate received fax message from the respondent No.2 Dr.Kurien on 7-4-2005 at night informing him with regard to termination of the petitioner as Director of the institute and appointing respondent No.15 as Acting director. That the petitioner challenged the aforesaid action of the respondent No.2 on 8/4/2005 removing him as a director of the institute as having without any authority and jurisdiction, inter-alia contending that the powers to appoint and to remove the director are vested with the Board of Governors, on 8/4/2005 in an Appeal from Order this Court stayed the order of status-quo granted by the Civil Court, Anand in Civil Suit filed by Mr.S.R. Chaudhry. It is the case on behalf of the petitioner that on 8/4/2005 at about 9.40 p.m. He received a communication dtd.7/4/2005 conveying him that the appointment of the petitioner as a Director of the institute stands terminated w.e.f. 7/4/2005. It appears that thereafter on 9/4/2005 out of 14 members of the Board, 8 members inclusive of respondent Nos.8 to 12 who were re-coopted in the meeting held on 28/2/2005 called a circular meeting and passed a circular resolution, disapproving the action of the respondent no.2 removing the petitioner as a director of the institute on 7/4/2005. A Special Civil Application No.6785 of 2005 came to be filed by the respondent nO.7 herein challenging the order passed by the Charity Commissioner dtd.31/3/2005 in Misc. Application No. 3 of 2005, by which the relief against the holding of meeting on 1-1-4-2005 as well as relief against the aforesaid 5 coopted members for preventing them from attending any of the board meeting were declined and no relief was granted by this Court. It appears that the Board meeting was convened on 15/4/2005 wherein Pro.Bakul Dholakia, Director,IRMA, Ahmedabad, HasmukhShah, National Institute of Design, Ahmedabad and Vijay Mahajan, respondent Nos.4, 11 and 12 were restrained forcibly and they were not permitted to enter the premises and they were prevented from attending the meeting of the Board as coopted members and other four members Dr.Amrita Patel, Chair Person NDDB, Ms.Nilima Kheta, Chief Executive Seva Mandir and representative of State Government as well as Central Government raised an objection with regard to not allowing the aforesaid 4 coopted members in the meeting and the presence of the respondent nO.15 in the meeting and Dr.Kurien respondent no.2 informed them that as their term had already expired on 15/2/2005 and they were illegally recoopted in the meeting dtd.28/2/2005, they are rightly not permitted to attend the meeting and therefore, the aforesaid 4 persons Dr.Amrita and ors. Walked out of the meeting. It is the case of the

respondent Nos.1 and 2 that the resolution came to be passed on 15/?/2005 by casting vote of the respondent No.2, ratifying the action of the respondent No. 2 dtd.7/4/2005 in removing the petitioner as Director and resolution of the Minutes of the meeting dtd.28/2/2005 was not approved. Subsequently, in the present petition respondent Nos.1 and 2 submitted that even the action of the respondent No.2 in terminating / removing the petitioner as director dtd.7/4/2005 has been subsequently ratified by the Board. It is the contention on behalf of the petitioner that the meeting dtd.15/4/2005 was absolutely illegal and it was without any quorum and coopted members were not permitted to attend the meeting and the said resolution came to be passed by only 4 members. It is the contention of the petitioner that subsequent ratification in the alleged meeting on 15/4/2005 is nothing but overreaching the court process.

179 Considering the aforesaid facts and the events, it appears that all the efforts were made to see that the meeting dtd. 1/4/2005 may not be convened and that 5 coopted members who were re-coopted in the meeting held on 28/2/2005 are not permitted to attend the meeting dtd.1-4-2005 and subsequent meetings, and the respondent nos.1 and 2 and his supporters i.e. Shri S.R.Chaudhary & Shri B.M. Vyas, failed to get any injunction which was by contending that meeting dtd.28/2/2005 was illegal as in the said meeting the respondent Nos.8 to 12 whose term had expired on 15/2/2005, attended the meeting and in the said meeting they were re-coopted. However, it is required to be noted that the meeting dtd.28/2/2005 was attended by very respondent No.2 and the minutes was also signed by him. Even otherwise as stated hereinabove, the respondent nO.2 and his supporters failed to get any relief in their favour against the newly re-coopted members and it appears that having realized that the action /order dtd.7/4/2005 of the respondent No. 2 removing the petitioner as a Director is without authority and jurisdiction and illegal, the respondent No. 2 tried to get the said action ratified and that too by restraining the 5 re-coopted members from attending the meeting dtd.15/4/2005 and tried to disapprove the minutes of the meeting held on 25/2/2005 and 9/4/2005. It is required to be noted that in circular meeting held on 9/4/2005, the action of the respondent No.2 removing the petitioner as a director was disapproved. In above facts and circumstances, firstly the alleged ratification is absolutely illegal, nonest and nullity. As rightly contended by the petitioner. The respondent No. 2 has tried to ratified the action dt.7/4/2005 removing the petitioner as Director of IRMA illegally and malade. Firstly the action dtd. 7/4/2005 was itself nullity and non-est and without jurisdiction and that even the said action was disapproved by circular resolution dtd.9/4/2005 Therefore, what is alleged to be ratified in the meeting held on 15/4/2005 was firstly none-st, and nullity and or the same was not in existence and/or disproved vide circular resolution dtd.9/4/2005 and therefore, on the basis of subsequent alleged ratification of the action of the respondent No.2 dtd.7/4/2005, the petitioner cannot be denied the relief as prayed for and the contention on behalf of the respondent Nos.1 sand 2 that the action of the respondent no.2 dtd.7//2005 has been subsequently ratified by the board, cannot be accepted in view of the aforesaid discussion. It is also required to be noted that even representative of Central Government as well as State Government, who can be considered to be the natural members have also not approved the action of the respondent No.2 in removing the Petitioner as a Director and also not allowed the coopted members to take part in the meeting held on 15/4/2005.

180 It is also required to be noted that even the appointment of the respondent No.15 as in-charge Director by the respondent No. 2 is also prima facie seems to be without jurisdiction and even the appo?ntment of even 2 nominated members i.e. Pro.H.Panda and Pro.V.Ballabh dtd. 11/3/2005 is also without any authority and jurisdiction as the powers to appoint, nominate and/or coopt the members of the Board of Governors is vested absolutely with the

Board of Governors and not with the Chairman and therefore, even the respondent No.15 could not have been appointed as an in-charge director. However, the said question is pending before the Charity Commissioner in the Change Report and, therefore, this court is not giving any final opinion. However, the aforesaid prima facie observations have been made only with a view to demonstrate the arbitrariness on the part of the respondent No.2 and the Charity Commissioner shall decide the matter pending before him on its own merits and without prejudice to the prima facie observations made by this court in this judgement for deciding the present petition.

181 Now, dealing with the contention on behalf of the respondent Nos.1 and 2 whether in the facts and circumstances, this court would like to give a relief in favour of the petitioner which would be for enforcement of a contract of personal service and whether this court would like to give a declaration in a petition under Article 226 of the Constitution of India or not. It is required to be noted that the post which was held by the petitioner as Director of IRMA cannot be said to be in stricto senso having employer and employee relationship as one believe in general terms. The petitioner was already engaged as a faculty member and thereafter, he came to be appointed as a Director by the Board, under the rules of IRMA makes the Ex-officio Member Secretary of the society and the Board and he is thus administrative head of the institution and therefore his appointment and the post cannot be equated with the routine employer and employee relationship and/or master and servant. Therefore,the contention on behalf of the respondent Nos.1 and 2 that the same will be in the realm of contract of personal service and this court will not grant any relief which would be enforcement of a contract of personal service, cannot be accepted. It is true that in Vaish Degree College (Supra) the Hon ble Supreme Court has held that the contract of personal service cannot be specifically enforced and the court would not give declaration that contract subsists and the employee even after having removed from service can be deemed to be in service against the will ad concern of the employer. However, it is required to be noted that in the said judgement, the Hon ble Supreme Court has used the term "ordinarily" and "normally". Even the Hon ble Justice Bhagwati in his concurrent judgement has also carved 4th exception and according to this Court, considering the observations made by the Hon ble Supreme Court this case would fall in 4th exception. Even subsequently the Hon ble Supreme Court has considered the above judgment in Nandgej Sihori Sugar Co.Op. (Supra) and law was further developed. Even considering the judgement of the Hon ble Supreme Court in the case of ABL International Limited (Supra) it is clear that the Hon ble Supreme Court has held that even a private contract can be enforced in a writ petition and the writ petition is maintainable and therefore, the contention of the respondent Nos.1 and 2 that the relief in favour of the petitioner which according to them cannot be enforced of a contract of private service may not be granted, cannot be accepted.

182 At this stage it is required to be noted that in the all the decision relied upon by the learned counsel advocates on behalf of the respondent Nos.1 and 2, it is held that "ordinarily and/or normally",, the court in a petition under Article 226 of the constitution of India would not grant a relief for enforcement of contract of personal service. And in none of the decisions the Hon ble Supreme Court has held that under no circumstances such a relief can ? never be granted. Considering the case on hand and the facts, this is a case where such a relief is required to be granted otherwise there will be grave injustice to the Petitioner and not granting of any relief by this court would perpetuate the illegal, arbitrary and unfair action.

183 It is worthwhile to note that the observations made by the Hon ble Supreme Court in the case of Anadi Mukta (Supra), more particularly para 21, wherein it is specifically held by the

Hon ble Supreme Court that "mandamus otis a very wide remedy which must be easily available to reach injustice wherever it is found. The technicalities should not come it he way of grant of that relief under Article 226."

184 Even as observed by the Hon ble Supreme Court in the case of U.P. State Land Devp.Bank Ltd.(Supra) "the Constitution is not a statute. It is a foundation head of all the statutes. When the language of Article 226 is clear, one cannot put shackles on the High Court by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step into protect him, be that wrong be done by the State, an instrumentality of State, a Company or a Co.Op.So. Or Association or body of individuals, whether incorporated or not, or even an individual.

185 Considering the aforesaid facts situation and conduct and arbitrary action on the part of the respondent No.1 purported to be on behalf of the respondent No.2, this court cannot shut its eyes and would not allow the respondent Nos.1 and 2 to go scot-free on so-called technicalities.

186 The next question which is required to be conspired by this court is as to whether non-challenge to the resolution dtd.15/4/2005 by the petitioner would make him disentitled from the relief as prayed for not. It is submitted on behalf of the respondent Nos.1 and 2 that unless the resolution dtd.15-4-2005 is quashed by which there was ratification of action of the respondent No. 2 dtd.7-4-2005,is concerned it is required to be noted that as stated hereinabove, the termination dtd.7-4-2005 itself was void ab-initio, nullity and non-est.

187 Para 21 of the decision of the Hon ble Supreme Court reported in AIR 2001 SC 2552 is worthwhile to consider which reads as follows

> "21. Thus the expression "void and voidable" have been subject-matter of consideration on innumerable occasions by Courts. The expression "void" has several facets. Once type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceedings or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is voided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be trea?ed to be void but would be obviously voidable."

188 Considering the aforesaid facts situation, this court is of the firm view that if this Court will not intervene at this stage, it would amount to tantamount to perpetuate an illegal, arbitrary, high handed and non-est action of the respondent No. 2 purported to be on behalf of respondent nO.1. Considering the overall facts and circumstances, this court is of the opinion that the action of the respondent No. 2 purported to be on behalf of the respondent No.1 IRMA is without any authority, jurisdiction, contrary to IRMA Rules, most arbitrary and with a view to retain the control of the management of the institution with a sole motive and purpose to take over the control of the respondent No.1 -IRMA and hence the same cannot sustain in the eye of law and the same is required to be quashed and set side. Consequently, the petitioner is entitled to the relief prayed in this extraordinary prerogative writ petition under Article 226 of the Constitution of India.

189 This Court is a pains to note the conduct on the part of the respondent No.2 as a Chairman of the institute like IRMA and the way in which a premier education institution has become a part of infightings and groupism, the same is deprecated.

190 For the reasons stated hereinabove, the petition succeeds. It is hereby held and declared that the action of the respondent No.2 purported to be on behalf of the respondent No.1 in removing the petitioner as a Director of the institute - respondent No.1 - IRMA, is illegal and arbitrary and the same is hereby quashed and set aside and it is declared that the petitioner is continued as a Director of the respondent no.1 - IRMA. Rule is made absolute to the aforesaid extent with no order as to costs.

191 After the judgement is pronounced, Mr.K.S. Nanavati, learned senior advocate appearing on behalf of the respondent No.1 institute has requested to stay the execution and operation of the judgement at least till tomorrow.

192 Considering the fact that the petitioner has succeeded before this Court and that his term is likely to be over on 1/9/2004, if the stay as prayed for is granted, then in all probabilities, the petition will become infractuous and the petitioner will not be in a position to enjoy the fruits of the litigation. Under the circumstances, the prayer of the respondent No.1 to stay the execution and operation of the judgement is refused.