



GAHC010146522021

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5220/2021

MANABEDRA KUMAR SARMA
(ISO 9001 2015 CERTIFIED CLASS - I CONTRACTOR) S/O LATE
MANORANJAN SARMA, BELTOLA COLLEGE ROAD, GUWAHATI 781028,
DIST. KAMRUP (M), ASSAM.

VERSUS

BOARD OF CONTROL FOR CRICKET IN INDIA AND 3 ORS.
REPRESENTED BY ITS CHAIRMAN, 4TH FLOOR, CRICKET CENTRE,
WANKHEDE STADIUM ROAD, CHURCH GATE, MUMBAI 400020,
MAHARASHTRA, INDIA

2:THE ASSAM CRICKET ASSOCIATION

REPRESENTED BY ITS SECY.
ASSAM
BARSAPARA
GUWAHATI 781018
ASSAM.

3:THE TREASURER

ASSAM CRICKET ASSOCIATION
BARSAPARA
GUWAHATI 781018
ASSAM.

4:THE AUDITOR

ASSAM CRICKET ASSOCIATION
BARSAPARA
GUWAHATI 781018



ASSAM

Linked Case : WP(C)/3891/2020

M/S BANKA CONSTRUCTIONS
REP. BY ITS PROPRIETOR RITU BANKA
THIRD FLOOR
NH CENTRE POINT BUILDING
G.S.ROAD
ULUBARI
OPP. BORA SERVICE
PETROL PUMP
GHY-07
AGED ABOUT 46 YEARS

VERSUS

BOARD OF CONTROL FOR CRICKET IN INDIA AND 3 ORS.
REP. BY ITS CHAIRMAN
4TH FLOOR
CRICKET CENTRE
WANKHEDE STADIUM ROAD
CHURCHGATE
MUMBAI- 400020
MAHARASHTRA
INDIA

2:THE ASSAM CRICKET ASSOCIATION
REP. BY ITS SECY.

ASSAM
BARSAPARA
GHY-18

ASSAM

3:THE TREASURER

ASSAM CRICKET ASSOCIATION
BARSAPARA

GHY-18

ASSAM

4:THE AUDITOR

ASSAM CRICKET ASSOCIATION
BARSAPARA

GHY-18

ASSAM

ASSAM CRICKET ASSOCIATION appearing for BOARD OF CONTROL FOR
CRICKET IN INDIA AND 3 ORS.



Linked Case : WP(C)/4834/2020

M/S SURYA CONSTRUCTIONS AND ANR
REPRESENTED BY ITS PARTNERS
DHIRAJ TALUKDAR
AGE 48 YRS S/O LATE SARBESWAR TALUKDAR
R/O HOUSE NO. 65
PUB JYOTINAGAR
NOONMATI
GUWAHATI 781020

2: JYOTI PRASAD MEDHI
S/O LATE PABITRA KUMAR MEDHI
R/O HOUSE NO. 55(A)
ANAND NAGAR
BAMUNIMADAM
GUWAHATI 781021
DIST. KAMRUP
ASSAM.
VERSUS

BOARD OF CONTROL FOR CRICKET IN INDIA AND 5 ORS
REPRESENTED BY ITS CHAIRMAN
4TH FLOOR
CRICKET CENTRE
WANKHEDE STADIUM ROAD
CHURCHGATE
MUMBAI 400020
MAHARASHTRA
INDIA

2: THE ASSAM CRICKET ASSOCIATION
REPRESENTED BY ITS SECY.
ASSAM BARSAPARA
GUWAHATI
PIN 781018
ASSAM.

3: THE TREASURER
ASSAM CRICKET ASSOCIATION
BARSAPARA
GUWAHATI
PIN 781018
ASSAM.
4: THE AUDITOR
ASSAM CRICKET ASSOCIATION



BARSAPARA
PIN 781018
GUWAHATI
ASSAM.
5:ASSTT. ENGINEER
BARSAPARA CRICKET STADIUM
ASSAM CRICKET ASSOCIATION
BARSAPARA
PIN 781018
GUWAHATI
ASSAM.
6:TECHNICAL COMMITTEE BARSAPARA CRICKET STADIUM
REPRESENTED BY ITS CHAIRMAN
BARSAPARA
PIN 781018
GUWAHATI
ASSAM.

Advocate for the Petitioners : Mr. A. C. Borbora, Sr. Advocate
Mr. B. P. Borah, Advocate
Mr. N. K. Kalita, Advocate

Advocate for the respondents: Mr. D. Das, Sr. Advocate
Mr. B. Gogoi, Advocate
Mr. S. Khound, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 18.01.2024

Date of Judgment : 15.02.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. A. C. Borbora, the learned senior counsel assisted by Mr. B. P. Borah, the learned counsel for the petitioners in WP(C) No.4834/2020 and WP(C) No.3891/2020 and Mr. N. K. Kalita, the learned counsel appearing on behalf of the petitioner in WP(C) No.5220/2021. Also heard Mr. D. Das, the learned senior counsel assisted by Mr. B. Gogoi, the learned counsel appearing on behalf of the Assam Cricket Association (ACA) and Mr. S.



Khound, the learned counsel appearing on behalf of the Board of Control for Cricket in India ('BCCI')

2. Briefly stated, all the three writ petitions are filed claiming a writ in the nature of mandamus directing the concerned respondents to pay their contractual dues. For the purpose of deciding the dispute, this Court would like to state briefly the facts involved in each of the writ petition.

WP(C) No.3891/2020

3. This writ petition was filed by the petitioner which is a proprietorship firm claiming an amount of Rs.3,67,15,187.30p along with interest for the works done in the interior section of Barsapara Cricket Stadium pursuant to work orders issued by the ACA. It is the case of the petitioner that three work orders were issued by the Secretary of the ACA on 28.11.2013, 17.01.2014 and 04.09.2017 respectively. The said work orders have been enclosed as Annexure Nos. A, B and C to the writ petition. From a perusal of the writ petition, it reveals that the ACA had awarded a contract work for construction of the North and South Stand of Barsapara Stadium-Interior Work of a value of Rs.6,37,38,782/-. In terms with Annexure-B, the Secretary of the ACA informed the petitioner that the petitioner was awarded the work for construction of the North Stand and South Stand finishing work for President Lounge, Commentator Room/Lounge, Police Control Room, TV Control Room, Media work Station etc. at Barsapara Stadium of the ACA for an amount of Rs.5,77,21,945/-. In terms with Annexure-C, the Secretary of the ACA had issued another work order for construction of the Anti-doping Room, Umpire Entry to Ground Corridor, RC Box, ACA Box, Acoustical Room at Broadcast Rook, fittings with toughened glass, frosted films and carpet for T20 Cricket Match between India vs. Australia on 10th of October, 2017 at ACA Stadium, Barsapara of an approximate value of Rs.75,52,500/-. It has been claimed by the petitioner that the petitioner duly completed the various works and out of the total amount due of Rs.12,34,65,187/- against the three work orders, an amount of Rs.8,67,50,000/- was paid

and an amount of Rs.3,67,15,187.30p remain pending. It was also stated that the petitioner is entitled for refund of the security deposit to the tune of Rs.17,50,809/- against the three work orders. It is the case of the petitioner that various representations were submitted and the last one being on 29.08.2020, but no payments were made for which the instant writ petition was filed on 03.09.2020.

4. This Court vide an order dated 06.10.2020 issued notice. The record reveals that an affidavit was filed by the respondent Nos.2 & 3 stating inter-alia that only copies of the work orders were found and there were no relevant documents relating to calling of tenders as well as documents justifying the work done or completed were found. It was also stated that there was no sufficient documents or materials available to justify the purported work claimed to have been executed by the petitioner. Further to that it was mentioned that an FIR was lodged by the ACA alleging misappropriation of funds during the period from 2016 to 2018 which was registered and numbered as Fatasi Ambari PS Case No. 817/2021, under Sections 120B/406/409/420/469/34 of the IPC. Further to that, the documents of the ACA were seized by the Assam Police on 26.07.2015 in connection with PIL No.47/2015, and accordingly, as per the Seizure Memo received from the Assam Police, the File bearing Sl. No.234 in the name of “Banka Constructions, interim work of North Stand of 2013” was found. In addition to that, an additional affidavit was filed by the respondent Nos.2, 3 & 4 on 10.01.2024 whereby a preliminary objection was raised as regards the maintainability of the writ petition on the ground that the lis involved in the instant proceedings is purely a private dispute relating to a contract entered into between the ACA and the writ petitioner and public law remedy by way of the writ petition ought not to be entertained. In addition to that it was also mentioned that considering the nature of lis involved, both the BCCI and the ACA would not be amenable to the writ jurisdiction. Further to that the claim made by the petitioner was also denied and the petitioner was put to the strictest proof.



WP(C) No.4834/2020

5. The instant writ petition is filed by the petitioner claiming an amount of Rs.11,50,14,230/- which corresponds to Rs.1,75,75,279/- from the Ledger Account and Rs.9,74,38,951/- from the Measurement Book along with interest.

6. The claim of the petitioners is based upon four work orders issued by the ACA, i.e. (i) for constructions of the Barsapara Cricket Stadium; (ii) for construction of permanent interior road around the Stands with connected drainage arrangement of Cricket Stadium at Barsapara, Guwahati; (iii) for construction of balance work of North Stand of the Cricket Stadium at Barsapara and (iv) for electrical wiring including supply of materials of members room at ACA Stadium. The work orders however are not brought on record. It is the case of the petitioner that the petitioner is entitled to Rs.1,75,75,279/- as would appear from the Ledger Account after deduction of tax and further an amount of Rs.9,74,38,951/- on the basis of the updated Measurement Book against the works done. The petitioners submitted representation and the respondent ACA having not paid the amount, the instant writ petition was filed on 12.10.2020.

7. This Court had issued notice vide an order dated 19.11.2020. It is also seen from the record that an additional affidavit was filed by the petitioners on 19.08.2021 bringing on record the TDS certificates for the year 2017-18 and 2018-19. An agreement between the ACA and the petitioner dated 07.12.2017 regarding the terms of the works between the ACA and the petitioner was also enclosed.

8. On 24.08.2021, a preliminary affidavit-in-opposition was filed by the Secretary of the ACA raising the question of maintainability of the writ petition on the ground that the dispute involved in the present proceedings are private dispute relating to purported contracts entered into between the ACA and the writ petitioner which would come under the ambit of the public law remedy and not amenable under the private law remedy. It was mentioned that though the ACA or the BCCI does discharge some duties like the

selection of the Indian Cricket Team, controlling the activities of the players and others involved in the game of cricket, etc. which are akin to discharging public function but a contract entered into with a contractor for execution of some construction works can by no means be termed as discharging public functions and thus any dispute arising out of the such contract is not amenable under Article 226 of the Constitution.

9. In addition to that, on 2nd June, 2023, an affidavit-in-opposition was filed by the respondent Nos.2 & 3 stating inter-alia that upon verification of the claims of the petitioners as provided in the writ petition, the ACA was able to find out only copies of the work orders that were issued to the petitioners, but no relevant documents relating to calling of tenders and documents justifying the works done or completed including the Ledger Account and the Measurement Book mentioned by the petitioners were found. It was also mentioned that there exists no sufficient document(s) or material(s) available to verify the purported works claimed to have been executed by the petitioners, and as such, it was difficult on the part of the ACA to accept the claims of the petitioners. It was also mentioned that an FIR was lodged by the ACA for alleged misappropriation of funds during the period from 2016-18 being Fatasil Ambari P.S. Case No.817/2021, under Sections 120B/406/409/420/469/34 of the IPC. In addition to that, in PIL No.47/2015, all the documents of the ACA were seized and as per the Seizure Memo received from the Assam Police, there was a File at Sl. No.228 of the Seizure Memo in the name of “Surya Constructions, East and West Stands, Barsapara Stadium”. On 10.01.2024, an additional affidavit-in-opposition was filed by the respondent Nos.2 to 4. The contents of the said affidavit-in-opposition are pari-materia to the affidavit filed by the same respondents in WP(C) No.3891/2020 and for the sake of brevity, this Court is not repeating the same.

10. It is also relevant to take note of that the petitioners had filed an affidavit-in-reply to the addition affidavit-in-opposition filed by the respondent Nos.2 & 4. It was

mentioned that the dispute in the instant case related to contractual works between the petitioner and the respondents in furtherance of the construction of the Stadium. The construction of the Stadium by the respondent ACA is a public function as it is done for the collective benefit of the public and the work is akin to State functions. It was stated that the respondent authorities have not denied the contract in the affidavit received on 01.06.2023, rather, it was admitted. Therefore, there exists a contractual obligation upon the respondents in furtherance of performing a public function. It was further stated that such a contract is not like a contract between two private individual but it is a contract between a citizen and a juristic entity exercising public functions. It was reiterated that the respondents have unreasonably, arbitrarily and unjustly withheld the pending dues of the petitioner despite the work being completed and duly handed over. Further to that, it was stated that the respondents stand was contrary to the records on the aspect that there were no records including the NIT issued for the works in question and vice versa about awarding the work to the petitioners through the tender process in as much as the respondent authorities had sought for xerox copy of the seized File by filing an application being I.A.(C) No.2217/2015 in PIL No.47/2015 and the learned Division Bench of this Court by its order dated 18.11.2015 allowed the respondents to take a xerox copy of the seized documents including the concerned File in question. It was further mentioned that the Measurement Books are records of the respondent authorities and how the signatories were put by the signatories who were in the pay roll of ACA is a matter to be explained by the ACA. Moreover, a five members Committee constituted by the ACA had already verified the works done by the petitioner.

WP(C) No.5220/2021

11. The instant writ petition has been filed by the petitioner seeking a direction upon the respondents to pay an amount of Rs.1,72,79,560/- along with interest. It is the case of the petitioner that the petitioner was awarded five contract works, i.e. (i) construction of Score Board, side screen and sub-soil at above the drain at new ground for ODI

Cricket Match between India-vs-WI on 21/10/2018 at ACA stadium, Barsapara for Assam Cricket Association, (ii) construction of new ground including wicket (5 no's) and necessary irrigation system at ACA Stadium, (iii) hard Soil at wicket square for main ground for ODI Cricket Match between India-vs-WI on 21/10/2018 at ACA stadium, Barsapara for Assam Cricket Association, (iv) Repairing sanitary Line with chamber at all stand for ODI Cricket match between India-vs-WI on 21/10/2018 at ACA stadium, Barsapara for ACA and (v) construction of steel net frame including foundation at Practice wicket at boundary wall side for ODI Cricket Match between India-vs-WI on 21/10/2018 at ACA stadium, Barsapara for ACA and the total amount which the petitioner is entitled to in respect to the five contract works was Rs.1,72,79,560/-. It is stated by the petitioner that not a single penny has been paid to the petitioner in spite of the petitioner having submitted representations time and again. Under such circumstances, the instant writ petition was filed on 13.09.2021.

12 This Court vide an order dated 04.10.2021 issued notice. The record reveals that an affidavit-in-opposition was filed by the respondent Nos.2, 3 & 5 challenging the maintainability of the writ petition on the similar ground as has been done in WP(C) No.4834/2020. Further to that, it was mentioned that there were no records available with the ACA of any NIT issued in connection with the works in question and also there are no record available with the ACA as regards to any decision of the highest authority for awarding of the said work to the petitioner through a proper tender process. Further to that, the petitioner's claim was denied. Apart from that, a report of the Account Verification Committee of the ACA was enclosed as Annexure-1. From the report, it transpires that the petitioner herein was awarded five works which was duly taken note by the Account Verification Committee. It was also opined by the Account Verification Committee that the detail scrutiny was required to be made by competent engineer for all the works done by the petitioner and two others. Further to that, it was also recommended that the ACA should see whether the liabilities were created with proper

and supporting documents.

13. In the backdrop of the above pleadings, this Court finds it relevant to take note of the relevant submissions made by the learned counsels for the parties.

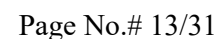
14. Mr. A. C. Borbora, the learned senior counsel and Mr. N. K. Kalita, the learned appearing on behalf of the respective petitioners submitted that the work orders were duly issued and the respondents have not categorically denied the entitlement and as such a writ should be issued directing the respondents to pay the amounts as have been claimed in the writ petitions.

15. Per contra, Mr. D. Das, the learned senior counsel appearing on behalf of the ACA submitted that the writ petition is not maintainable in as much as though the respondent ACA exercises public functions in certain aspects, but the contracts which have been purportedly claimed to have been made, are purely private dispute between the petitioners and the respondents for which the writ petitions are not maintainable. The learned senior counsel further submitted that even otherwise also the question of issuing directions on the claims made by the petitioners do not arise as the amounts which have been claimed are disputed. He, therefore, submitted that such factually determination involving serious disputed questions of fact ought not to be adjudicated by this Court under Article 226 of the Constitution. In that regard, the learned senior counsel referred to the judgments of the Supreme Court in the case of *Ramakrishna Mission & Another vs. Kago Kunya & Others*, reported in (2019) 16 SCC 303 and *St. Mary's Education Society and Another vs. Rajendra Prasad Bhargava and Others*, reported in (2023) 4 SCC 498.

16. Mr. A. C. Borbora, the learned senior counsel for the petitioners replying to the question of maintainability submitted that though the Constitution Bench of the Supreme Court in the case of *Zee Telefilms Ltd. & Another vs. union of India & Others*, reported in (2005) 4 SCC 649 held that the BCCI is not a 'State' within the meaning of Article 12 of the Constitution but at the same time opined that when a private entity exercises public

functions even if it is not a State, the aggrieved person has remedies not only under the ordinary law but also under the Constitution by way of a writ petition under Article 226 of the Constitution. In that regard, the learned senior counsel for the petitioners referred to paragraph Nos.31 to 34 of the said judgment. The learned senior counsel for the petitioners further referred to the judgment of the Supreme Court in the case of *Board of Control for Cricket in India vs. Cricket Association of Bihar & Others*, reported in (2015) 3 SCC 251 and submitted that it was opined that though the BCCI may not be a State under Article 12 of the Constitution, but certainly it is amenable to the writ jurisdiction of the Court under [Article 226](#) of the Constitution of India as the BCCI clearly discharges public functions and in that regard referred to paragraph Nos.33 to 35 of the said judgment. The learned senior counsel for the petitioners further drew the attention of this Court to another judgment of the Supreme Court in the case of *Board of Control for Cricket in India vs. Cricket Association of Bihar & Others*, reported in (2018) 9 SCC 624 wherein also it was duly accepted that the BCCI discharges public functions and was amenable to the writ jurisdiction. The learned senior counsel for the petitioners, therefore, submitted that as the BCCI as well as the ACA, both discharge public functions, they would be amenable to the writ jurisdiction and accordingly, the instant writ petition is maintainable.

17. On the aspect of disputed question of facts, the learned senior counsel for the petitioners submitted that it is no longer res-integra that in appropriate cases, the writ court has jurisdiction to entertain a writ petition involving disputed question of facts and there is no absolute bar in that regard. The learned senior counsel submitted only a writ petition involving serious disputed question of facts which requires consideration of evidence which are not on record would not normally be entertained under Article 226 of the Constitution. In that regard, the learned senior counsel for the petitioners referred to the judgment of the Supreme Court in the case of *Century Spinning and Manufacturing Company Ltd. & Another vs. the Ulhasnagar Municipal Council & Another*, reported in (1970) 1



18. From the pleadings as well as the above submissions, the following points for determination arises for consideration:

- (i) Whether the writ petitions would be maintainable against the respondents in the present facts?
- (ii) Whether this Court in exercise of jurisdiction under Article 226 of the Constitution can adjudicate the dispute?
- (iii) What relief or reliefs, the parties are entitled to?

19. For deciding the first point for determination, this Court finds it relevant to take note of the judgments referred to by the learned counsels for the parties. The judgment in the case of *Zee Telefilms Ltd. & Another* (supra) is a judgment of the Constitution Bench wherein the facts in brief were that a notice inviting tender was issued for grant of exclusive television rights for a period of 4 years by the BCCI. Various entertainment groups submitted their offers. The petitioner therein, i.e. Zee Telefilms Ltd. and the 5th respondent, i.e. ESPN Star Sports were found eligible. The BCCI had carried out

negotiations with the petitioner and the private respondent therein and decided to accept the offer of the petitioner and pursuant to which a sum of Rs.92.50 crores was deposited by the petitioner in the State Bank of Travancore and the petitioner agreed to abide by the terms and conditions of the offer subject to the conditions mentioned therein. The private respondent therein filed a writ petition before the Bombay High Court challenging the grant of the rights to the petitioner therein. While the hearing was going on before the Bombay High Court, on 21.09.2004 the BCCI submitted before the Bombay High Court that the entire tender process was cancelled on the ground that no concluded contract reached between the parties as no letter of intent was issued till then. In view of the said submission made by the BCCI, the writ petition filed before the Bombay High Court was withdrawn and on 21.09.2004 itself, the BCCI terminated the contract with the petitioner therein informing that the entire process of tender was cancelled and the security in the form of bank guarantee and the money deposited would be returned. This termination of the contract was put to challenge by invoking Article 32 of the Constitution before the Supreme Court. When the matter was taken up by a three Judges Bench of the Supreme Court, a reference was made to the Constitution Bench vide an order dated 27.09.2004. In the backdrop of those facts, the majority opinion of the Constitution Bench observed that the BCCI does discharge some duties like selection of the Indian Cricket Team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties of State functions and if there is any violation of Constitutional and statutory obligations or rights of other citizens, the aggrieved parties may not have a relief by way of a writ petition under Article 32 of the Constitution. It was further observed that the said did not mean that the violation of such rights would go scot-free merely because the Board is not a State. It was observed that 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. It was further observed by the Supreme Court that a private body exercises public functions even if it is not a State, the aggrieved person

has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Further to that it was also observed that merely because a non-governmental body exercises some public duty that by itself would not suffice to make such a body or State for the purpose of Article 12. In paragraph No.34 of the said judgment, the Supreme Court opined that why the BCCI is not a State for the purpose of Article 12. Paragraph Nos.31, 32, 33 & 34 of the said judgment are quoted herein below:-

“31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

32. This Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani has held:

“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, 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 fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words ‘any person or authority’ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State.

They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.”

33. *Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case hence there is force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable.*

34. *At this stage, it is relevant to note another contention of Mr Venugopal that the effect of treating the Board as State will have far-reaching consequences inasmuch as nearly 64 other National Sports Federations as well as some other bodies which represent India in the international forum in the field of art, culture, beauty pageants, cultural activities, music and dance, science and technology or other such competitions will also have to be treated as a “State” within the meaning of Article 12, opening the floodgates of litigation under Article 32. We do find sufficient force in this argument. Many of the abovementioned federations or bodies do discharge functions and/or exercise powers which if not identical are at least similar to the functions discharged by the Board. Many of the sportspersons and others who represent their respective bodies make a livelihood out of it (for e.g. football, tennis, golf, beauty pageants, etc.). Therefore, if the Board which controls the game of cricket is to be held to be a State for the purpose of Article 12, there is absolutely no reason why other similarly placed bodies should not be treated as a State. The fact that the game of cricket is very popular in India also cannot be a ground to differentiate these bodies from the Board. Any such differentiation*

dependent upon popularity, finances and public opinion of the body concerned would definitely violate Article 14 of the Constitution, as any discrimination to be valid must be based on hard facts and not mere surmises. (See State of Kerala v. T.P. Roshana) Therefore, the Board in this case cannot be singly identified as an “other authority” for the purpose of Article 12. In our opinion, for the reasons stated above none of the other federations or bodies referred to hereinabove including the Board can be considered as a “State” for the purpose of Article 12.”

20. Before moving forward to the next judgment, this Court finds it very pertinent to observe that the majority opinion rendered by the Constitution Bench of the Supreme Court categorically opined that though BCCI is not a State within the meaning of Article 12 of the Constitution, but a private body while exercising public functions even if it is not a State would be amenable under Article 226 of the Constitution. In the case of the first judgment, i.e. ***Board of Control for Cricket in India vs. Cricket Association of Bihar & Others***, reported in ***(2015) 3 SCC 251***, the Supreme Court observed that in paragraph Nos.22 to 35 after taking note of the judgment in the case of ***Zee Telefilms Ltd. & Another*** (supra) and opined that though BCCI may not be a State under Article 12 of the Constitution, the BCCI certainly was amenable to the writ jurisdiction under Article 226 of the Constitution. The rationale behind the said opinion is that the functions of the BCCI are clearly public functions. Paragraph Nos.33 to 35 of the said judgment are quoted herein under:-

“33. The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not “State” within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the “nature of duties and functions” which BCCI performs. It is common ground that the respondent Board has a complete sway over the game of cricket in this country. It regulates and controls the game to the exclusion of all others. It formulates rules, regulations, norms and standards covering all aspects of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a

person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and supporting State associations. It frames pension schemes and incurs expenditure on coaches, trainers, etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board's monopoly in the field of cricket. On the contrary, the Government of India has allowed the Board to select the national team which is then recognised by all concerned and applauded by the entire nation including at times by the highest of the dignitaries when they win tournaments and bring laurels home. Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government. Such is the passion for this game in this country that cricketers are seen as icons by youngsters, middle aged and the old alike. Any organisation or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity.

34. The functions of the Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law take over or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action.

35. Our answer to Question (i), therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be "State" under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India."

21. This Court finds it very pertinent to observe that in the said judgment, the facts involved therein was that two writ petitions were filed in public interest by the Cricket Association of Bihar before the Bombay High Court seeking several reliefs including a writ in the nature of mandamus directing BCCI to recall its order constituting a probe panel comprising of two retired Judges of the Madras High Court to enquire into the allegations of betting and spot fixing in the Indian Premier League made amongst others against one Gurunath Mayappan. The Bombay High Court had by its order dated 30.07.2013 granted that relief but declined a possible reconstitution of the panel. The BCCI being aggrieved assailed the order of the Bombay High Court before the Supreme Court. The Cricket Association of Bihar had also filed a separate civil appeal seeking further consequential orders which according to the said appellant could have been passed by the Bombay High Court for removal of one Mr. N. Srinivashan from the post of the President of the BCCI and cancellation of the franchise favouring Chennai Super Kings and Rajasthan Royals for the IPL matches to be conducted in future. It is relevant to take note of that if the facts in the first judgment of the *Cricket Association of Bihar & Others* (supra) is taken note of and read with the paragraph Nos.33, 34 & 35 it would be seen that the said observations were made by the Supreme Court in the context of the facts involved and held that the BCCI was amenable to Article 226 of the Constitution as it discharges public functions and the allegations of betting and spot fixing in the Indian Premiere League which is organized by the BCCI comes within the purview of public functions.

22. The second case of the *Board of Control for Cricket in India vs. Cricket Association of Bihar & Others*, reported in (2018) 9 SCC 624 is a continuation of the first case wherein the Supreme Court passed consequential direction pursuant to the Lodha Committee report.

23. In the backdrop of the aforesaid judgments which were placed by the learned senior counsel for the petitioners, one aspect is very clear that the BCCI though not a State within the meaning of Article 12 of the Constitution but when the BCCI exercises

public functions it would be amenable to Article 226 of the Constitution.

24. In the backdrop of the above, let this Court take note of the two other recent judgments of the Supreme Court. The Supreme Court in the case of ***Ramakrishna Mission & Another*** (supra) dealt with the question as to whether proceedings under Article 226 of the Constitution was maintainable against ***Ramakrishna Mission***. The facts involved therein were that one Kago Kuniya, the first respondent before the Supreme Court joined Ramakrishna Mission Hospital at Itanagar on 15-3-1980 as a General Duty Worker. He was regularized with effect from 01.08.1980 by a letter dated 23.07.1980. He was made permanent on 13.04.1984. Subsequently, on 31.12.2005, he was promoted as an Office Assistant with effect from 01.10.2005. On 31.01.2015, the hospital informed the first respondent that he would be retiring from service on 24.03.2015 in accordance with the Service Rules, consequent upon the completion of 35 years of service. It is under such circumstances, the respondent No.1 before the Supreme Court filed a writ petition before this Court challenging the said communication. The coordinate Bench of this Court allowed the writ petition holding that Ramkrishna Mission would be a 'State' within the meaning of Article 12 of the Constitution and on merits appropriate directions were issued. A writ was preferred by the Ramkrishna Mission before the learned Division Bench of this Court. The learned Division Bench of this Court dismissed the Writ Appeal observing that Ramakrishna Mission may not be a State within the meaning of Article 12 of the Constitution in the strict sense of the term but none the less, being a hospital performing public duty and consequently would be amenable to the writ jurisdiction under Article 226 of the Constitution on a liberal interpretation of the expression "authority" in Article 12 of the Constitution. The Supreme Court in the said judgment after taking note of the earlier judgment of the Supreme Court observed that even if the body discharges a public function in wider sense, there is no public law element involved in the enforcement of a private contract of service. The Supreme Court further observed that contract of purely private nature

would not be subject to a writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. In the said judgment, i.e. in the case of ***Ramakrishna Mission & Another*** (supra), the Supreme Court relied upon the judgment in the case of ***Binny Ltd. vs V. Sadasivam***, reported in (2005) 6 SCC 657 wherein it was opined that the scope of mandamus is determined by the nature of the duty to be enforced rather than the nature of identity against whom it is sought. If a private body which discharging a public function denies any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The Supreme Court in the said judgment came to an opinion that Ramkrishna Mission does not discharge a public function. It was opined that for an organization to be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. It was further opined that medical services are provided by both the private as well as the State entities. The character of the organization as a public authority is dependent on the circumstances of the case. Therefore, setting up the hospital, the Mission cannot be construed as having assumed public functions. Further, the hospital of the Appellant therein as observed had no monopoly status conferred or mandated by law. It was also opined that merely because land has been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In addition to the above, it was also opined that the absence of the State control in the management of the hospital had a significant bearing upon the Supreme Court in coming to the conclusion that the hospital of the Appellant therein did not come within the ambit of a public authority. Paragraph Nos.26, 27, 28, 29, 30, 32, 33 & 34 being relevant are quoted herein below:-

“26. In *Federal Bank Ltd. v. Sagar Thomas* this Court analysed the earlier judgements of this Court and provided a classification of entities against whom a writ petition may be

maintainable :

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

(emphasis supplied)

27. In Binny Ltd. v. V. Sadasivan, a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus :)

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

28. The Bench elucidated on the scope of mandamus:

“29. ... However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action ... There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

(emphasis supplied)

29. More recently in *K.K. Saxena v. International Commission on Irrigation & Drainage*, another two-Judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus :

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.”

30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

32. Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide

service of a particular dispensation does not make it an “authority” within the meaning of Article 226. State Governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of State control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

33. *It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act, 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In Federal Bank, while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the Court held thus :*

“33. ... in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through

issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank."

(emphasis supplied)

34. *Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed."*

25. In the recent judgment of the Supreme Court in the Case of *St. Mary's Education Society and Another* (supra), the Supreme Court after dealing with various judgments summed up as to when a writ petition would be maintainable against the person or body discharging public functions. Paragraph No.75 and its sub-paragraphs being relevant are quoted herein under:-

"75. *We may sum up our final conclusions as under:*

75.1. *An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.*

75.2. *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the*

extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference

in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

26. The above quoted paragraphs make it succinctly clear that even if an institution or body is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under [Article 226](#). It was further opined that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by [Article 226](#) of the Constitution in respect of matter relating to service where they are not governed or controlled by the statutory provisions. It was clarified that an educational institution may perform myriad functions touching various facets of public life and in the societal sphere and such functions would fall within the domain of a "public function" or "public duty" and open to challenge under [Article 226](#) of the Constitution But, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognized as being amenable to challenge under [Article 226](#) of the Constitution.

27. Therefore, from the judgments which have been referred herein above, it would clearly show that private bodies which are not State within the meaning of Article 12 of the Constitution, but discharging public duty and public functions would be amenable to the jurisdiction of the Article 226 of the Constitution so far it relates to discharge of the public duty and public functions by the said private body. However, if dispute arises relating to individual wrongs or breach of mutual contracts not being an integral part of

the public duty and public functions performed by the private body would not be amenable to the jurisdiction under Article 226 of the Constitution.

28. In the backdrop of the above analysis of the settled law and applying the same to the facts of the instant case, it would be seen that the respondent ACA purportedly issued work orders in favour of the petitioners for carrying out certain works in a Stadium belonging to the respondent Assam Cricket Association. Some of the petitioners received some amounts against those purported work orders and some did not for which the instant three writ petitions have been filed.

29. From a perusal of the pleadings as well as the documents enclosed to the writ petitions, there is no element of any public law requiring adjudication being made out. The allegations primarily relate to the breach of the contract on the part of the respondent ACA in not making payment of the dues to the petitioners. The said grievances of the petitioners at best would be individual wrongs or breach of mutual contract entered into between the petitioners and the respondent ACA having no public element as its integral part and as such it is the opinion of this Court that the three writ petitions are not maintainable under Article 226 of the Constitution.

30. In view of the findings so arrived at in respect to the first point for determination, the second point for determination is not required to be gone into in as much as the writ petitions are not maintainable in the present facts against the respondent ACA and the BCCI. Be that as it may, this Court having heard the matter on merits and having framed the second point for determination finds it relevant to observe that from the perusal of the materials on record, there is no admission on the part of the respondent authorities as regards the payment due to the petitioners. In the case of the writ petitioner in WP(C) No.3891/2020, it transpires from the documents that three work orders were issued. The documents so enclosed in the opinion of this Court are subject to proof by adducing evidence in accordance with law and the said proof has to be given by the petitioner

taking into account that the burden lies upon the petitioner if the petitioner seeks a judgment in its favour. This aspect would require a detailed examination of the evidence both oral and documentary which this Court under Article 226 of the Constitution would not be in a position to do so in as much as such serious disputed question of facts cannot be entertained in a proceedings under Article 226 of the Constitution.

31. In the case of the writ petitioner in WP(C) No.4834/2020, an amount of Rs.1,75,75,279/- was claimed on the basis Ledger Account and Rs.9,74,38,951/- on the basis of the Measurement Book of the works claimed to be completed. The Ledger Account has been enclosed as Annexure-B to the writ petition and from the said, it does not appear as to who had issued the said document as neither there is any signature nor any certificate in terms with Section 65B of the Indian Evidence Act, 1872. As regards the Measurement Book which has been enclosed as Annexure-C, the same is subject to proof by adducing evidence in accordance with law and for proving the same, it would require evidence both oral and documentary to be examined including the cross-examination of the witnesses, if any. The petitioner herein have to prove the said documents in accordance with law in order to get a judgment in its favour and in the opinion of this Court, the normal procedure of proving such documents cannot be dispensed with as the petitioners had approached this Court under Article 226 of the Constitution.

32. As regards the writ petitioner in WP(C) No.5220/2021, though there are documents as regards the issuance of a notice inviting tender, work orders being issued and there are certain work completion certificates, but there is no admission on the part of the respondent authorities as regard the amount to be paid. Therefore, the same would require detail examination of evidence, both oral and documentary which shall be subject to cross-examination. In the opinion of this Court such complicated question of facts cannot be adjudicated in a proceedings under Article 226 of the Constitution.

33. In the backdrop of the above discussion, if this Court refers to the judgments which have been relied upon by the learned senior counsel for the petitioners, it would be seen that the observation made in those judgments would show that the factual disputes involved therein were not serious disputed questions of facts but rather consequential to the main reliefs sought for. It was duly observed by the Supreme Court that the writ petition involving serious disputed question of facts which require consideration of evidence would normally not be entertained under Article 226 of the Constitution.

34. The third point for determination is as to what relief(s) the parties are entitled to. This Court while deciding the earlier points for determination has categorically held that the three writ petitions are not maintainable on the ground that the writ petitions on the present facts cannot be entertained against the respondents BCCI and ACA and secondly, the dispute involved in the writ petitions cannot be decided in a proceedings under Article 226 of the Constitution as they involved serious disputed question of facts.

35. This Court, however, is of the opinion that dismissal of the writ petitions on the ground of maintainability should not prejudice the petitioners to approach the appropriate competent Civil Court for redressal of their grievances if otherwise permissible in law. This Court is of the opinion that the period during which the three writ petitions have been pending before this Court are required to be excluded while computing the limitation in as much as the petitioners on legal advice have been bonafidely and diligently pursuing their remedies before this Court. It is however clarified that this Court has not enlarged the permissible period of limitation. This Court has only directed that the period of the pendency of the writ petitions be excluded while computation of the limitation. The period from the date of filing of the instant writ petitions till the date of the instant judgment be excluded while computing the period of limitation.

36. For the purpose of convenience, this Court makes it clear that in the case of the



writ petitioner in WP(C) No.5220/2021, the period from 13.09.2021 till today; in WP(C) No.3891/2020, the period from 03.09.2020 till today and in WP(C) No.4834/2020, the period from 12.10.2020 till today be excluded while computing the period of limitation.

37. With the above observations and directions, the instant writ petitions stands disposed of. No costs.

JUDGE

Comparing Assistant