
(2006) 01 DEL CK 0021
In the Delhi High Court
Case No : LPA No. 2618 of 2005

Air Vice Marshal J.S. Kumar

APPELLANT

Vs

Governing Council of Air Force and Another

RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Citation : (2006) 126 DLT 330 : (2006) 86 DRJ 711

Hon'ble Judges : Markandeya Katju, C.J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Chetan Sharma, Kamal Nijhawan and Sanjeev Kumar Tiwari, for the Appellant; Rekha Palli and Punam Singh, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This Letters Patent Appeal has been filed against the impugned judgment of the learned Single Judge dated 12th August 2005 by which he dismissed the petition.

2. Heard the learned counsels for the parties and perused the record.

3. By means of the writ petition, the petitioner/appellant challenged the decision of the Governing Council of the Air Force Sports Complex (AFSC) dated 10th October 2003, annexure 10 to the writ petition, by which the Governing Council decided to terminate the membership of the petitioner/appellant in the AFSC on account of his alleged mis-conduct as mentioned in the CBI Report and other material. The petitioner also prayed for a mandamus to restore his membership.

4. In the writ petition it has been stated that the petitioner retired as an Air Vice Marshal from the Indian Air Force after having served for thirty-three years. He has alleged that during his distinguished career, he was awarded several medals including the Ati Vishisht Seva Medal (AVSM) and participated in the 1965 and 1971 wars. He has worked in several important positions as mentioned in the writ petition.

5. In 1987, the petitioner became a member of the AFSC. The said AFSC has several facilities like Golf Club, Health Club, Swimming Pool, etc. It has been built on the land allotted by the Ministry of defense, Government of India.

6. The petitioner received a letter dated 9th September 2001 from the respondent No. 1, stating that his membership of the AFSC has been cancelled. The petitioner objected to this letter, and when the respondent failed to do anything about it, he filed a writ petition in this Court being writ petition No. 7439/2002. By order dated 8th September 2003, this Court set aside the cancellation order dated 9th September 2001 and directed the respondent to issue a show cause notice to the petitioner within a weeks time, so that he may be given an opportunity to explain as to why his membership should not be terminated. However, the High Court also directed that in the meanwhile the membership of the petitioner shall remain suspended. The show cause notice was issued to the petitioner on 18th September 2003, to which the petitioner sent his reply on 26th September 2003. Thereafter, the order terminating his membership was passed on 10th October 2003. Annexure A to the writ petition, is a copy of the show cause notice dated 18th September 2003 issued to the petitioner by the respondent. A perusal of the same shows that the allegation against the petitioner was that on 26th October 2001, he was taken into custody by the CBI due to his alleged involvement in certain criminal matters, as reported in the print media. Hence he was required to show cause as to why his membership of AFSC should not be terminated to avoid the possibility of his interaction with other serving Air Force Officers utilizing the facilities of the said Sports Complex. The petitioner gave his reply to the said show cause notice, which is Annexure 9, but thereafter his membership was terminated. The letter of termination of his membership is annexure 10.

7. The petitioner alleged in paragraph 5 of the writ petition that throughout his professional career he has worked with utmost sincerity, dedication and is renowned for his integrity. He alleged that cancellation of his membership is wholly arbitrary and illegal.

8. In the counter affidavit filed by the respondent to the writ petition it is alleged that the writ petition is not maintainable as the Air Force Sports Complex is run according to the Rules and Bye-laws laid down by its Governing Council. Under the Rules, the membership of a member can be terminated, and it is alleged that it has been terminated bonafide by the Governing Council of the AFSC after considering all the relevant facts.

9. In paragraph 2 of the counter affidavit, it is stated that the funds of the AFSC are generated through monthly subscription and grants from the Welfare Funds. No funds are sanctioned from the Ministry of defense for running the AFSC. The facilities can be utilized only by those persons who have been extended the privilege of membership and are not open to all Air Force personnel.

10. In paragraph 4 of the counter affidavit, it is stated that the petitioner was

given a show cause notice dated 18th September 2003 to which he replied on 26th September 2003. The reply was placed before the Governing Council meeting held at the AFSC. The Governing Council after having duly examined the entire facts and circumstances of the case decided to terminate the petitioners membership under Rule 8 of the Rules and Bye-laws of the AFSC on account of the CBI Report dated 13th August 2001 and the confidential report dated 31st December 2002, submitted by the SP, CBI, New Delhi.

11. In paragraph 6 of the counter affidavit, it is denied that the petitioners membership was terminated illegally or mala fide. In the month of August 2001, the print media published the names of certain Air Force Officers, including the petitioner, for their involvement in various offences and they were taken into custody by the CBI. Inputs were received from the Directorate of Intelligence and a report from the CBI was also received regarding various corrupt practices by these officers. As per the said information, these retired officers were also found in possession of various incriminating documents. Since the allegations against the petitioner and other retired officers were of a very serious nature, their continuous interaction with serving officers was not thought desirable. The presence of retired officers facing serious charges of corruption was also embarrassing to other members and the administration of the Sports Complex. Hence, in the meeting of the Governing Council held on 8th September 2001, it was decided to terminate the membership of the petitioner and other officers involved in the alleged corrupt practices.

12. It is stated in the counter affidavit that as per Rule 8 of the Rules and Bye-laws of the AFSC, membership can be terminated by the Chairman/Governing Council inter alia for any act likely to affect the reputation of the AFSC, and the membership can also be terminated without assigning any reason by the Chairman/Governing Council.

13. A rejoinder affidavit was also filed by the petitioner in the writ petition and we have perused the same. It is denied therein that the petitioner committed any mis-conduct. It is alleged that cognizance under the alleged charge sheet filed by the CBI is yet to be taken by the Court. It is alleged that a person accused is deemed to be innocent unless proved guilty. As yet there is no verdict of the criminal court against the petitioner. It is alleged that the allegations against the petitioner are false. It is also alleged that the rules and regulations have been violated. It is alleged that the petitioner has been falsely implicated in the case and it is denied that he indulged in any corrupt practices or anti-national activities.

14. In our opinion, the writ petition should have been dismissed on the short ground that it has been filed against a private body not performing any public functions, and ordinarily no writ lies against a private body except a writ of Habeas Corpus.

15. In our opinion the AFSC cannot be regarded as State under Article 12 of the

Constitution. As mentioned in the Counter affidavit, it runs in accordance with its own rules and bye-laws laid down by its Governing Council. Its funds are generated through monthly subscription and grants from the Welfare Funds and no funds are sanctioned from the Ministry of defense to it.

16. Mr. Chetan Sharma, learned counsel for the appellant submitted that the AFSC should be regarded State under Article 12 of the Constitution, since its golf club is run on Government allotted land, the liquor served in the AFSC is subsidized by the Government and the Members of the Governing body are Air Force officials. In our opinion, these factors would not make the AFSC State under Article 12 of the Constitution.

17. In our opinion, the respondent is neither performing any public function nor is it discharging any public duty. It is only providing some recreation to Air Force personnel, both serving and retired. This, in our opinion, would not make it State under Article 12 of the Constitution. Merely because the Government has provided some land to the AFSC, would also not make the AFSC State under Article 12 of the Constitution. The Government can give some facilities or benefits even to private bodies, but that, in our opinion, would not make that body State under Article 12 of the Constitution. In the present case, the Government may have granted some facilities like land, subsidized liquor, etc. for providing recreation facilities to the defense personnel, both serving and retired, but that is only as a kind of benefit or facility.

18. Mr. Chetan Sharma, learned counsel for the appellant stated that the Air Force Officers requires recreation for their mental equilibrium and this is part and parcel of the activities of the Air Force. It is true that the Air Force Officers require some recreation and mental equilibrium but in our opinion, this is not the core activity of the Air Force. The core activity of the Air Force is to defend the country in a war. Providing recreation to its members is only incidental and not the main function of the Air Force.

19. Learned counsel for the appellant relies on the decision of the Supreme Court in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, . In our opinion that decision is clearly distinguishable. In paragraph 31 of the said decision, the Supreme Court observed that the Board (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. These activities can be said to be akin to public duties or State function, and hence a writ petition under Article 226 of the Constitution may lie against the BCCI.

20. In the present case, the petitioner/appellant does not discharge any such duty of selecting a national team for any game. Hence, in our opinion, the decision in Zee Telefilms Ltd. and Anr. v. Union of India and Ors. (supra) has no application to the facts of the present case.

21. It must be remembered in this context that a case is only an authority for what it actually decides. As observed by the Supreme Court in The State of

Orissa Vs. Sudhansu Sekhar Misra and Others, :-

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leatham* 1901 AC 495:

Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

22. In *Ambalal Manibhai Patel Vs. State of Gujarat*, the Supreme Court observed:-

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

23. In *Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd.* (2003) 2 SC 111 the Supreme Court observed:-

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

24. As held in *Bharat Petroleum Corporation Ltd. and Anr. v. N. R. Vairamani and Anr.* AIR 2004 SC 4778, a decision cannot be relied on without disclosing the factual situation.

25. In the same judgment the Supreme court also observed:-

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. judgment of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgment. They interpret words of statutes; their words are not to be interpreted as statutes.

26. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737, Lord Mac Dermot observed:-

The matter cannot, of course, be settled merely by treating the ipsissima ventral of Wiles, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to distract from the great weight to be given to the language actually used by that most distinguished judge.

27. In *Home Office v. Dorset Yacht Co.* (1970) 2 AER 294 Lord Reid said, Lord Atkins speech is not to be treated as if it was a statute definition. It will require qualification in new circumstances. Megarry, J in (1971) 1 WLR 189 observed: One must not, of course, construe even a reserved judgment of Russell L. J as if it were an Act of Parliament. And in *Herrington v. British Railways Boards* 1972 (2) WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.

28. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide Therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

Hence, in our opinion, the ratio in *Zee Telefilms Ltd. and Anr. v. Union of India and Ors.* (Supra) is confined to the facts of that particular case.

29. Article 226(1) of the Constitution states:

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

other purpose.

30. The language of Article 226 is no doubt very wide. It states that a writ can be issued ``to any person or authority'' and ``for enforcement of any of the rights conferred by Part III and for any other purpose.'' However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can even be issued to any private person or to settle even private disputes. If we interpret the word ``for any other purpose'' literally it will mean that a writ can be issued for any purpose whatsoever, e. g., for deciding private property disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words ``to any person'' literally it will mean that a writ can even be issued to private persons. However, this would not be the correct meaning in view of various decisions of the Supreme Court in which it was held that a writ will ordinarily lie only against the State or instrumentality of the State vide *Chander Mohan Khanna Vs. The National Council of Educational Research and Training* and other[OVERRULED], , *Tekraj Vasandhi v. Union of India* AIR 1988 SC 496, *Federal Bank Ltd. Vs. Sagar Thomas and Others*, , *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others*, , *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, . In *Binny Ltd. and Another Vs. V. Sadasivan and Others*, , the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. In our opinion the AFSC is not performing a public function nor discharging a public duty. Hence, no writ lies against it.

31. The correct interpretation of the aforesaid words in Article 226 is that a writ can ordinarily be issued to a person to whom writs were traditionally issued by British Courts on well established principles. Similarly, the words, ``for any other purpose'' have to be interpreted in the narrower sense to mean that a writ can ordinarily be issued for the purpose for which writs were traditionally issued by British Courts on well established principles. The British Courts did not ordinarily issue writs to private persons except a writ of habeas corpus.

32. No doubt the power to issue writs under Article 226 is wider than those of the British Courts vide *Dwarka Nath Vs. Income Tax Officer, Special Circle Dward, Kanpur and Another*, , but in our opinion they are not so wide as to permit Judges to do anything they like in writ jurisdiction. There are well settled principles governing the exercise of jurisdiction under Article 226 as laid down in various decisions of the Supreme Court, and these principles have laid down several limitations to the exercise of such power. For instance, ordinarily a writ will not be issued to a private body except a writ of habeas corpus.

33. In *General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P v. Satrugan Nishad and Ors.* (supra) the Supreme Court observed:-

The point raised is no longer rest integra as the same is concluded by decisions

of this Court. In the case of *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.*, a Constitution Bench of this Court, while approving the tests laid down in the case of *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*, as to when a corporation can be said to be an Instrumentality or agency of the government, observed at page 736-37 which runs thus:-

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the *International Airport Authority* case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression ``other authorities'', it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority* case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor...whether the corporation enjoys monopoly status which is State conferred or State protected,

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government,

(6) ``Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference'' of the corporation being an instrumentality or agency of Government. If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the *International Airport Authority* case, be an "authority" and, Therefore, "State" within the meaning of the expression in Article 12.

34. Ordinarily no writ lies against a private party except a writ of habeas corpus vide *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], , etc.

35. A writ will lie ordinarily only against a State or an instrumentality of the State. vide *Federal Bank Ltd. Vs. Sagar Thomas and Others*, , *Pradeep Kumar bids was v. Indian Institute of Chemical Biology and Ors.* (supra), *General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P v. Satrugan Nishad and Ors.* (supra) etc.

36. There is no averment in the writ petition that the AFSC satisfies the tests of a State under Article 12 of the Constitution of India as laid down in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , etc. There is no allegation that the AFSC is financed by the State Government or that there is deep and pervasive State control over the AFSC.

37. It is true that in some exceptional cases it has been held that a writ lies against a private body, but that is only where it is performing a public duty, vide *Binny Ltd. and Another Vs. V. Sadasivan and Others*, . The question, Therefore, arises as to what is a public duty or public function

38. In *G. Basi Reddy Vs. International Crops Research Instt. and Another*, the Supreme Court observed that although it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. We are satisfied that the AFSC is not discharging or conducting State functions and the Government has no deep or pervasive control over it nor do the funds of the AFSC come from the Government. Hence, in our opinion, the AFSC is not "State" under Article 12 of the Constitution of India and no writ lies against it.

39. The powers of the Supreme Court under Article 32 and High Court under Article 226 have been considered by the Supreme Court in a large number of decisions. In the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Supreme Court considered the writ jurisdiction of the High Court exercisable under Article 226 of the Constitution of India. The following conclusion of Their Lordships are relevant: (vide paras 19 and 21)

19. 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 Court 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.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: ``To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.'' (Judicial Review of Administrative Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226....

40. While considering the maintainability of a writ petition filed under Article 32 of the Constitution of India against Board of Control for Cricket in India (BCCI), the Supreme Court in Writ Petition (C) No. 541/2004 [Zee Telefilms Ltd. and Anr. v. Union of India and Ors.] 2005 (1) SCALE 666 considered the term ``State'' under Article 12 and also considered the scope of interference under Article 32 by the Supreme Court and under Article 226 by the High Court. The main question for consideration before the Supreme Court was whether the "Board" (BCCI) fell within the definition of the "State" as contemplated under Article 12 of the Constitution. It was the argument of the Board that it did not come under the term ``other authorities'', hence it is not a State for the purpose of Article 12. After considering the decision in Sabhajit Tewary Vs. Union of India (UOI) and Others, , and Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, the Court held:(para 16)

16. The distinction to be noticed between the two judgments referred to hereinabove namely Sukhdev Singh and Ors. and Sabhajit Tewary is that in the former the Court held that bodies which were creatures of the statutes having important State functions and where State had pervasive control of activities of those bodies would be State for the purpose of Article 12. While in Sabhajit Tewary's case the Court held a body which was registered under a statute and not performing important State functions and not functioning under the pervasive control of the Government would not be a State for the purpose of Article 12.

41. After referring to the decisions in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , their Lordships concluded thus:

24. To these facts if we apply the principles laid down by seven Judge Bench in Pradeep Kumar bids was (supra), it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus

the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

25. Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the parameters laid down by this Court in Pradeep Kumar Biswas's case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions even then as per the judgment of this Court in Pradeep Kumar bids was (supra) that by itself would not suffice for bringing the Board within the net of ``other authorities`` for the purpose of Article 12.

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29...Assuming that the above mentioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies" own volition (self arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions The answer should be No.

30...But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board.

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 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 by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.

42. In General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrugan Nishad (supra) the Supreme Court had an occasion to consider the expression ``other authority`` referred to in Article 12. In that case, the appellant-Mill was a

cooperative society registered as under the U.P. Cooperative Societies Act, 1965. The contesting respondents filed writ petitions in the High Court alleging therein that they had worked on Class III and IV posts in the Mill for a period ranging from 5 to 12 years. The services of the surplus workmen were dispensed with without giving any notice and paying retrenchment compensation as required u/s 6-N of the U.P. Industrial Disputes Act, 1947 in spite of the fact that they had worked for more than 240 days which necessitated filing of writ applications in the High Court. The said writ petitions were contested by the Mill on the grounds, inter alia, that the Mill, which is a cooperative society, was neither a "State" nor an "instrumentality" or "agency of the State" within the meaning of Article 12 of the Constitution; hence the writ jurisdiction of the High Court could not be invoked. The learned Single Judge of the High Court over-ruled the preliminary objection raised on behalf of the Mill and came to the conclusion that the Mill which is a Society is "State" within the meaning of Article 12 of the Constitution as it was an instrumentality of the State and there was infraction of the provisions of Section 6-N of the Act. Accordingly, the writ applications were allowed. The said order was affirmed by the Division Bench on appeals being preferred by the Mill, hence the Mill approached the Supreme Court by way of special leave. An argument was advanced before the Supreme Court stating that the contesting respondents could not have been allowed to invoke the writ jurisdiction of the High Court as the Mill, which is a registered cooperative society, was not State within the meaning of Article 12 of the Constitution as it was neither an instrumentality nor an agency of the Government of Uttar Pradesh. On the other hand, counsel appearing on behalf of the contesting respondents submitted that the Mill was an instrumentality of the Government, as such it was an authority within the meaning of Article 12 of the Constitution. In this connection the Supreme Court observed:-

6. The point raised is no longer rest integra as the same is concluded by decisions of this Court. In the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, a Constitution Bench of this Court, while approving the tests laid down in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, as to when a corporation can be said to be an instrumentality or agency of the Government, observed at pp.736-37 which runs thus: (SCC para 9)

9. The tests for determination as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority* case (supra) These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the

International Airport Authority case as follows:

- (1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. (SCC p.507, para 14)
- (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p.508, para 15)
- (3) It may also be a relevant factor...whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p.508, para 15)
- (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)
- (5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p.509, para 16)
- (6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SC p.510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case (*supra*), be an "authority" and, Therefore, "State" within the meaning of the expression in Article 12.

7. In the case of *Pradeep Kumar bids was v. Indian Institute of Chemical Biology* (2002) SCC 111 , a Bench of Seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case and approved in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, for determining as to when a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12 of the Constitution. There the Bench referred to the case of *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this Court in *The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers' Association and Another*, where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially

financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government.

After saying so, Their Lordships further remarked:

8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution.

Considering the ratio of the nominees of the State Government and the Management of the committee, Their Lordships held: (para 8)

8...Under the bye-laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less a deep and pervasive one....

At the end, an argument was advanced on behalf of the contesting respondents that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, a writ petition can be entertained against it as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. On the other hand, learned counsel appearing on behalf of the appellant submitted that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty. In this connection the Court held (vide para 9):

9...Reference in this connection may be made to the decisions of this Court in *Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani* in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of *K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering and VST Industries Ltd. Vs. VST Industries Workers' Union and Another*, the same principle has been reiterated. Further, in the case of *VST Industries Ltd.*, it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that

the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.

43. In *Federal Bank Ltd. Vs. Sagar Thomas and Others*, the question that arose for consideration was, whether the Federal Bank, which is a private bank, is a State or its agency or instrumentality within the meaning of Article 12 of the Constitution of India and whether a writ petition under Article 226 is maintainable against it. After referring all the earlier authorities, the Supreme Court held (vide para 18):

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 (Govt.); (ii) 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; (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."` Ultimately the Court held (vide para 33):

33...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 puts 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. 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. That being the position, the appeal deserves to be allowed.

44. In *G. Basi Reddy Vs. International Crops Research Instt. and Another*, , the appellants were employees of the International Crops Research Institute ("ICRISAT" in short)/first respondent therein. Their services were terminated. They filed Writ Petitions before the High Court of Karnataka against ICRISAT and the Union of India. The Writ Petitions were dismissed on the ground that ICRISAT was not amenable to writ jurisdiction under Article 226 of the Constitution, and that a writ could not be issued to ICRISAT. Against the ruling of the High Court, the petitioners therein appealed to the Supreme Court. After considering the earlier decisions and the scope for issuance of writ under Article 226 of the Constitution by the High Court, Their Lordships observed (vide paras 25 to 29):

25. A writ under Article 226 lies only when the petitioner establishes that his or

her fundamental right or some other legal right has been infringed (The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others,). The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a "State" or authority within the meaning of Article 12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in Pradeep Kumar bids was v. Indian Institute of Chemical Biology and Ors. (2002) SCC 111 in which we said:

The question in each case would be-whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfill any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by not is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot Therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.

27. It is true that a writ under Article 226 also lies against a "person" for "any other purpose". The power of the High Court to issue such a writ to ``any person`` can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words ``and for any other purpose`` must mean ``for any other purpose for which any one of the writs mentioned would according to well established principles issue.

28. A writ under Article 226 can lie against a ``person`` if it is a statutory body or performs a public function or discharges a public or statutory duty (Praga Tools Corporation v. C.V. Imanuel; Andi Mukta Sadguru Trust v. V.R. Rudani; VST Industries Ltd. Vs. VST Industries Workers" Union and Another, . ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it

certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities. In *Praga Tools Corporation v. C.V. Imanuel* AIR 1960 SC 1306, this Court construed Article 226 to hold that the High Court could issue a writ of mandamus ``to secure the performance of the duty or statutory duty`` in the performance of which the one who applies for it has a sufficient legal interest``. The Court also held that:

...an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute (See *Sohanlal Vs. The Union of India (UOI)*,).

29. We are Therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT.

45. In *Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another*, the sole point that arose for decision before the Supreme Court was, whether U.P. Rajya Karmachari Kalyan Nigam (Corporation) was covered by the definition of "State" under Article 12 of the Constitution and was amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. In that case the service of the petitioner had been terminated from the post of salesman in one of the stores of the Corporation, against which he had approached the High Court, Allahabad. A preliminary objection was raised by the Corporation to the maintainability of the writ petition on the ground that the Corporation does not fall in the definition of ``State`` under Article 12 of the Constitution. Relying on decisions of the Lucknow Bench of the same Court in the case of *Vijay Kumar Verma v. U.P. Govt. Employees Welfare Corporation* [W.P. No. 8246 (SS) of 1992, decided on 13-4-1993], the writ petition filed by the petitioner in the High Court was dismissed as not maintainable, against which the petitioner preferred the appeal to the Supreme Court. After analysing the factual materials and various factors, ultimately Their Lordships concluded (vide para 27):

27. On detailed examination of the administrative, financial and functional control of the Corporation, we have no manner of doubt that it is nothing but an ``instrumentality`` and agency of the State`` and the control of the State is not only ``regulatory`` but it is ``deep and pervasive`` in the sense that it is formed with the object of catering to the needs of the government employees as a supplement to their salaries and other perks. The top executives of the government department ex officio are members and office-bearers of the Corporation. The Corporation is fully supported financially and administratively by the State and its authorities. Even day-to-day functioning of the Corporation is watched, supervised and controlled by the various departmental authorities of the State particularly the Department of Food and Civil Supplies. The multiple test indicated to be applied both by the majority and minority view in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, is fully satisfied in the present case for recording a conclusion by us that the

Corporation is covered as an ``agency and instrumentality of the State'' in the definition of ``State'' under Article 12 of the Constitution. It is, Therefore, amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

46. In *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, the Constitution Bench of the Supreme Court reconsidered the decision taken in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, and held (vide para 40):

The picture that ultimately emerges is that the tests formulated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

47. By applying the various tests enunciated in the above mentioned decisions and considering the facts relating to Council of Scientific and Industrial Research (CSIR), the Supreme Court found that the same is well within the range of Article 12. It is to be noted that CSIR was set up by the Department of Commerce, Government of India with the broad objective of promoting industrial growth in the country. On 14-11-1941, a Resolution was passed by the Legislative Assembly and accepted by the Government of India. The objects which have been incorporated in the memorandum of association of CSIR demonstrate that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. CSIR was and continues to be a non-profit-making organization and according to clause 4 of CSIR's memorandum of association, all its income and property, however derived shall be applied only towards the promotion of those objects subject nevertheless in respect of the expenditure to such limitations as the Government of India may from time to time impose. The details regarding management and control show the dominant role played by the Government of India in the Governing Body of CSIR is evident. The Prime Minister shall be the ex officio President of CSIR. The Governing Body is required to administer, direct and control the affairs and funds of the Society and shall, under Rule 43, have authority to exercise all the powers of the Society subject nevertheless in respect of expenditure to such limitations as the Government of India may from time to time impose. This is evident that the financial control lies with the Government. After analysing all the relevant aspects, as the majority view, the Supreme Court ruled that CSIR is a State within the meaning of Article 12 of the Constitution.

48. In *Chander Mohan Khanna v. N.C.E.R.T (supra)*, the question that was

considered was, whether the National Council of Educational, Research and Training (NCERT) is "State" as defined under Article 12 of the Constitution. The NCERT was a society registered under the Societies Registration Act. After verifying its object, programmes, activities, funding, and considering the fact that the Government has got limited control only to proper utilisation of the grant, the Court ultimately concluded that NCERT is largely an autonomous body and does not fall within the definition of "State" under Article 12.

49. The N.C.E.R.T was set up as a society with 7 Government officers subscribing to the memorandum of association. The object of the council was to assist and advise the Ministry of Education and Social Welfare in the field of education particularly school education. The income and property was to be applied towards promotion of objects only. The expenditure on grants subject to limitations was placed by the Government of India. The Government could review the work and take action to give effect to reports. The Governing council consisted mainly of Government officials but also included some educationists. The N.C.E.R.T was held to be not a "State" under Article 12 of the Constitution of India.

50. In the case of General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad (supra) the appellant was a cooperative society, 50 per cent of whose shares were held by the State Government. The membership to the Mill was open to cane growers, other societies etc. Its committee of management had 15 members, out of which 5 were nominated by the State Government. The State Government could not issue any direction to the Mill or determine its policy. The manufacture and sale of sugar did not involve any public function. Hence, the Mill was not a "State" within the meaning of Article 12 of the Constitution of India.

51. In Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , a Seven Judge Constitution Bench decision of the Supreme Court observed that the question in each case would be whether on facts the body is financially, functionally and administratively dominated by or under the control of, the Government. Such control must be particular to the body in question and must be pervasive, if this is found then that body is a State under Article 12. On the other hand, when the control is only minimum whether under statute or otherwise, it would not be served to make the body State.

52. In Ramana Dayaram Shetty, v. The International Airport Authority of India and Ors. the Supreme Court observed:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)

53. Applying the above principles, which have been laid down by the Supreme Court in various decisions (referred to above) to test whether a body is State under Article 12 of the Constitution or not we are of the opinion that the AFSC is clearly not State under Article 12 of the Constitution. There is no deep and pervasive control of the Government over the AFSC. The funds are provided by private contributions. No doubt the Governing body consists of Air Force officers but that, in our opinion, would not make it State under Article 12 of the Constitution. Government Officers may get together and form a club for their recreation but that club will be a private club and will not become State under Article 12 of the Constitution. The AFSC is clearly a private body run by its own Governing Council, which is autonomous, and is not under Government control. Merely because the Government is providing some benefits and facilities like land for the golf course or a concession in liquor would not make it State under Article 12 of the Constitution.

54. In *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, , the question was whether the Institute of Constitutional and Parliamentary studies was State under Article 12 of the Constitution. The first President of the Society was the Speaker of the Lok Sabha and five Vice- Presidents were Ministers in the Central Government, a former Chief Justice of India and a former Attorney General of India. Several other Ministers and Members of the Rajya Sabha, Vice-Chancellor of Rajasthan University and the Secretary of Lok Sabha and Rajya Sabha and the Law Secretary were its Members. The duty of the Society was to promote for Constitutional and Parliamentary studies, to undertake studies of courses and research regarding the development of constitutional law, conventions and practices, Parliamentary Procedure, legislative drafting, etc., to organize inter alias training programmes in Constitutional and Parliamentary matters, to establish and maintain libraries, publish journals, etc. The society was formed as a voluntary organisation mostly consisting of Members of the two Houses of Parliament for acquiring the appropriate democratic ideas and spirit. The Society was initially located in the Parliament House but in due course it was shifted out. The annual contribution

from the Government was substantial and it was perhaps the main source of funding, although some money came from other sources.

55. The Supreme Court held on the facts of the case that the ICPS was not an agency or instrumentality of the State so as to come within the purview of Article 12 of the Constitution.

56. In our opinion, in this case, it cannot be said that the AFSC is State under Article 12 of the Constitution as the Government has no deep and pervasive control over it. The funds of the AFSC mostly come from private contributions. Hence when the Supreme Court regarded the ICPS as not State under Article 12 although most of its funds were coming from the Government, all the less can we regard the AFSC as State under Article 12.

57. It is true that a writ will lie against a private body if it is performing public functions vide *Binny Ltd. v. Sadasivan* (Supra). However, in our opinion, it cannot be said that the AFSC is performing public functions or discharging public duties.

58. As regards the meaning of the expression public function or public duties, that has been explained by the Supreme Court in *G. Bassi Reddys case* (Supra), where it has been held that public function is a function akin to the sovereign functions of the State. In our opinion, providing recreation for Air Force Officers, serving or retired, can certainly not be called sovereign functions of the State. No doubt providing entertainment or sports may be conducive to ones mind or health, but in our opinion, this is not a sovereign function of the State.

59. Up to the 19th Century, the sovereign functions of the State were regarded to be only (1) defense of the country and (2) maintaining law and order within the country. However, with the emergence of the modern welfare State, the State functions now include providing for the welfare of the people. Hence providing for education, health of the people, etc. are nowadays also regarded State functions. However, it cannot be said that the State functions have expanded now to such a large extent that even providing for sports and recreation are to be regarded as sovereign functions. Despite the enlargement of the concept of the State functions in modern times, in our opinion, they are not so large as to include sports and recreation. In our opinion State functions would include those provided in the Directive Principles of State Policy in our Constitution, but these do not include recreation.

60. The AFSC, in our opinion, is a private body only providing recreation to Air Force Officers, and it is not discharging any public function or public duty.

61. In view of the above, we are of the opinion, that it is not necessary to go into the question whether the membership of the appellant was rightly or wrongly terminated, as in either case, no writ petition will lie against it under Article 226 of the Constitution. If the appellant is so advised, he can file a suit against the respondent and if he does so the same will be decided in accordance with law.

62. With the above observations this appeal is dismissed.