

(2003) 07 AP CK 0093
In the Andhra Pradesh High Court
Case No : WA No. 1534 of 2001

Andhra Pradesh Paper Mills Limited and Another	APPELLANT
Vs	
Ch. Seetharamaiah and Others	RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2003) 4 ALD 693 : (2003) 4 ALT 529 : (2004) 1 LLJ 22

Hon'ble Judges : C.V. Ramulu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : S. Ravi, for the Appellant; S. Venkat Reddy, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—Respondents 1 and 2 in Writ Petition No. 16860 of 1998 are the appellants in this writ appeal. This appeal is directed against the order dated 5-9-2001 in Writ Petition No. 16860 of 1998 passed by the learned Single Judge of this Court whereunder the learned Single Judge quashed order No. CPD/ESTT/97 dated 30-9-1997 accepting the resignation of the 1st respondent-writ petitioner and the order dated 15-10-1997 terminating the services of the respondent-writ petitioner as General Manager (Finance).

2. The facts leading to the filing of the writ petition have been noticed in detail by the learned Single Judge. It is not necessary to restate all the facts in detail for the purposes of disposal of this writ appeal. However, we shall notice briefly, the relevant facts in order to appreciate the questions that arise for our consideration.

3. The respondent-writ petitioner at the relevant point of time was serving as Vice-President (Finance) in the establishment of the appellant-M/s. Andhra Pradesh Paper Mills Limited. He is a qualified Chartered Accountant with vast experience to his credit. He was selected as a Deputy General Manager (Finance) to serve in the appellant's Company in September, 1988 through All India open advertisement and selection and he joined the Company in the month of January,

1989. That after satisfactory completion of the probationary period, the respondent-writ petitioner was confirmed as General Manager (Finance) in early 1989. He later became the Vice-President (Finance) in November, 1996.

4. It is the case of the respondent-writ petitioner, set up in the writ petition, that the 2nd appellant-Executive Director joined the Company in May, 1997 and he without assigning any reasons demanded his resignation on 30-9-1997 and threatened termination of service forthwith if he did not submit resignation immediately. The respondent-writ petitioner in order to buy peace and time to deal with the matter in a more tranquil atmosphere handed over a letter giving three months notice expressing his desire to resign from the post and the same was delivered at the residence of the 2nd appellant in the evening of 30-9-1997 which was accepted and the respondent-writ petitioner was relieved on 1-10-1997. The respondent-writ petitioner coming to know of the action taken by the 2nd appellant sent him a letter dated 3-10-1997 informing the 2nd appellant that there was no resignation at all and that was a notice of resignation obtained from him under threat and coercion and accordingly, requested the 2nd appellant to revoke the impugned office order dated 30-9-1997 and permit him to resume duty in the Office of the Vice-President (Finance). The 2nd appellant did not reply to the letter of the respondent-writ petitioner dated 3-10-1997. The 2nd appellant passed order dated 15-10-1997 terminating the services of the respondent-writ petitioner with effect from 16-10-1997 in terms of Clause (13) of the Letter of appointment dated 24-9-1998. The 2nd appellant also sent a cheque for Rs. 59,100/- dated 15-10-1997 and another cheque for Rs. 2,707/- dated 16-10-1997 purported to be towards notice pay and pay for the period from 1-10-1997 to 15-10-1997 respectively. The respondent-writ petitioner, however, returned both the cheques to the 2nd appellant.

5. It is the case of the respondent-writ petitioner that he came to know that his services were terminated due to evil design planned by the 2nd appellant with the connivance of respondents 3 and 4 namely Mr, P.C. Parakh, IAS, Director of the appellant-Company and Mr. P.N. Jhawan, Senior Manager (Secretarial Services) of the Company to remove him from service as the Vice-President (Finance) and the outcome of the evil design resulted in the order made by the 2nd appellant on 15-10-1997.

6. We do not propose to go into the details of those allegations. Suffice it to notice, the respondent-writ petitioner made certain serious allegations against the Director and the Senior Officials of the Company alleging that they have threatened and blackmailed him and when he resisted, the 2nd appellant had chosen to invoke the clause in the original appointment letter to remove him from his position illegally and without authority. It is also the case set up by the respondent-writ petitioner that the allegations that were levelled against him by the company are serious in their nature and it was not open to the Company to brush aside such allegations and merely satisfy itself by removing him from service. They were bound to make appropriate enquiry and if such an enquiry

was held, he would have proved his innocence in the matter.

7. It appears that the 2nd respondent herein Mr. P.C. Parahh, IAS sent a letter to the Government of Andhra Pradesh to the effect that the respondent-writ petitioner had visited him and left behind a bag containing bundles of currency notes of Rs. 100/-denomination and that on enquiry indicated that this is a part amount of the kickbacks for the Government Directors, similar amounts have been paid to the Promoter Directors and he was greatly concerned about the malfunctioning of the Company and the practice of kickbacks being taken by the Officers of the Company at various levels from its spheres etc., and accordingly requested the Government to order for an enquiry into the matter. That according to the respondent-writ petitioner these allegations were engineered against him. It is not necessary to notice the further details.

8. The appellant-Company as well as the 2nd appellant and the 2nd respondent herein filed detailed counter-affidavits denying the allegations and opposing the claim and the relief sought for by the respondent-writ petitioner. We do not propose to go into the details of the averments made in the counter-affidavit except to notice that the appellant-Company and all other officials including the Director representing the Government in the Company, specifically denied the allegations levelled against them.

9. In the counter-affidavit filed by the Company, it is averred that the allegations levelled by the respondent-writ petitioner are not only reckless but made with a view to embarrass and tarnish the image of the management of the Company. The Company and its management never ever asked the respondent-writ petitioner to handover any amount to any Director as alleged. The respondent-writ petitioner had undertaken the said venture on his own with a view to "malign the image of the Company. It is further stated that "the Company and the Management had thought it fit, having regard to the position held by the petitioner, that he should have an untroubled exit from the Company".

10. The Company in its counter-affidavit in categorical terms stated that the respondent-writ petitioner had tendered resignation. Even otherwise, the Company has decided to terminate his services. It was for this reason that the respondent-writ petitioner was offered the pay for notice period, as the Company was not desirous of having his services any longer. The Executive Director is competent to terminate his services since he was appointed as the authority for the purposes of enforcement of Service Rules for Senior Members of the Staff. The allegations of mala fides levelled against the management of the Company are specifically denied. That, according to the Company, it is a case of simple termination of contract of employment in terms of the letter of appointment and in accordance with the procedure prescribed under "Service Rules for Staff Members of the Staff.

11. The 1st respondent in its counter stated that the writ petition is not maintainable against the Company and accordingly, requested the Court to

decide the maintainability of the writ petition as a preliminary issue.

12. In view of the preliminary objection taken by the appellant-Company in its counter-affidavit contending that the Company is not a Government company and, therefore, the writ petition is not maintainable, the respondent-writ petitioner filed an additional affidavit dated 6-9-1998 maintaining that the appellant-Company is an instrumentality or agency of the State of Andhra Pradesh and the dispute brought before the Court by way of the present writ petition arose due to the direct intervention of the State and therefore, the Company is amenable to writ jurisdiction of the Court under Article 226 of the Constitution of India.

13. The appellant-Company filed an additional counter-affidavit inter alia reiterating its contention that the writ petition is not maintainable against the Company and the Company cannot be treated to be an instrumentality or agency of the State.

14. Having heard the learned Counsel for the parties, and having taken into consideration the nature of pleadings and the controversy raised, the learned single Judge framed the following two questions for the decision of the Court:

(1) Whether the writ petition is maintainable against the 1st respondent-Company?

(2) Whether the order of the 2nd respondent dated 30-9-1997 accepting the resignation of the petitioner with effect from 1-10-1997 and the subsequent order of the 2nd respondent dated 15-10-1997 in terminating the services of the petitioner with effect from 16-10-1997 are valid and legal?

15. The learned Single Judge after an elaborate consideration of the matter held that the 1st appellant-Company is an instrumentality and agency of the State Government and therefore, an "authority" within the meaning of the term under Article 12 of the Constitution and therefore, the writ petition is maintainable.

16. The learned Judge held the impugned action of the 2nd appellant dated 30-9-1997 accepting the resignation of the 1st respondent-writ petitioner and his further action dated 15-10-1997 terminating his services with effect from 16-10-1997 are totally unreasonable, arbitrary and opposite to public policy and suffers from error of law apparent on the face of the record. The learned Judge further held that the respondent-writ petitioner is entitled to all the benefits and advantages, pecuniary and otherwise.

17. In this writ appeal, Sri S. Ravi, learned Counsel for the appellants submitted that the 1st appellant was only a public limited company incorporated under the provisions of the Companies Act, 1956 (for short "the Act") and was not a Government Company and therefore, the same cannot be held to be an instrumentality or agency of the State Government within the meaning of Article 12 of the Constitution. It was contended that the learned Judge committed a serious error in taking the financial assistance provided by various public

financial institutions into consideration for declaring the company to be an instrumentality and agency of the State. It is not a relevant test to be applied while considering as to whether a company is an instrumentality or agency of the State. It was also contended that mere presence of the nominees of the Government of Andhra Pradesh and nominees of the financial institutions would not make a public limited company, a State or "other authority" within the meaning of Article 12 of the Constitution of India. The writ petition is not maintainable against a public limited company incorporated under the provisions of the Act, is the submission.

18. Sri S. Venkat Reddy, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner reiterated the submissions made by him before the learned Single Judge. It was mainly contended by Sri Reddy that the appellant-Company though not a Government Company mainly discharges public law duties and therefore, a Writ of Mandamus lies against the appellant-Company. The public law remedies as against the appellant-Company are available to an aggrieved individual. It was contended that the State Government continues to have a deep and pervasive managerial control over the affairs of the Company and therefore, for all practical purposes, the Company is an instrumentality and agency of the State. The learned Senior Counsel justified the finding recorded by the learned single Judge that the appellant-Company is entrusted with the duties of "public importance closely related to governmental functions".

19. We have given our anxious consideration to the rival submissions made. We shall first take up the contention relating to the maintainability of the writ petition against the appellant-Company.

20. That in order to consider the said question, it is but necessary to have a look at the factual foundation, if any, laid in the pleadings in support of the maintainability of the writ petition. In the affidavit filed in support of the writ petition, it is stated thus:

"I submit that the respondent-company is a Govt. Company in which the Govt of Andhra Pradesh and the financial institutions have been holding the majority of shares even after 27% of the share capital has been divested in favour of a Private sector promoters, who agreed to participate in the day-to-day management with the Government representatives providing the policy guidelines and major inputs in the working of the Company. The agreement which provided for restrictive rights of transfer, the first offer having to be made to the Govt. is itself contrary to the provisions of the Companies Act and there was no occasion to test it's validity vis-a-vis the provisions of the Companies Act so far....

I submit that the respondent-Company being under complete control of the State Government to the extent of even participating in the routine decisions on purchases and award of works, becomes state in terms of Article 12 of the Constitution and is thus amenable to the writ jurisdiction of this Hon''ble Court,

specially in the light of the action of the Director representing the Govt. of A.P."

21. That is all what has been stated in the affidavit filed in support of the writ petition. In the counter-affidavit filed by the respondent-Company, it is stated in specific terms that the Government of Andhra Pradesh holds only 27% of the share capital. As per the definition in Section 617 of the Act, a Government Company means a company in which either the Central Government, State Government(s) or partly the Central and partly by one or more State Governments, hold not less than 51% of the shareholding. It is only a public limited company. It is further stated in the counter that "there is no pervasive Government control. The finances of Respondent No. 1 are not controlled by any Government. The funds of the Respondent No. 1 are at the disposal of the Company and its Board of Directors. The shareholding in the Company by Government is marginal as compared to the total share holding. Respondent No. 1 does not have any statutory function nor does it discharge any such function. Consequently, this writ petition is misconceived".

22. In the reply affidavit, the petitioner made some improvements and inter alia stated thus:

"I submit that M/s. APPM Ltd., is a joint sector company of Govt. of A.P. (27%), Central Financial Institutions (27%) and private participants in management, M/s. Bangur's (27%) balance with the public, and I had approached this Hon"ble Court under Article 226 seeking a direction to the Government to order an enquiry into allegations of corruption and malfunctioning of the Company (WP) and to set aside the orders terminating my services from the Company dated 16-10-1997..... The claim that there is no pervasive Government control is again false as a Director representing the Government could even seek withdrawal of a letter of intent and even the agreement with private participants provided for participation of the Government in the management of the Company. The Company itself has been started to exploit the forest resources of the state and thus renders a public service".

23. The petitioner filed another additional affidavit, in which it is inter alia stated thus:

"I submit that apart from the holding in the paid up share capital of the Company which as on 31-3-1998 stood at 5.62 crores by the Govt. and Financial Institutions at 27% each 27% with West Coast Paper Mills (Bangur's) 27% with Central Financial Institutions and the rest with Public, the Company has also outstanding of over Rs. 56 crores to Central Financial Institutions/ Banks as secured loans, thus establishing that the Company mainly functions with the funds of the Government and Central Financial Institutions. Further considering the restrictions placed on transfer of shares, the private party is no more than an agent of the State, inducted for participation in day-to-day management. Even for this purpose, Committees of Directors have been constituted consisting of equal numbers -two each on behalf of the Government and Bangurs, one for deciding

on acquisition of capital goods, another for deciding on purchases and a third to deal with Finance and other matters, without the approval of which no action can be taken by or on behalf of the Company, and it would thus be seen that it is no more or no less than a department of the Government given a corporate garb. Even at the time of formation of the Company, the vested rights of the employees were protected except that they ceased to be civil servants for the purpose of Article 311 of the Constitution".

24. In the additional counter-affidavit, the Company stated in specific terms that as on the date of writ petition, and as on the date of the alleged cause of action it was a pure and simple public limited company under the Act. Paper is in a de-licensed sector. The Government of Andhra Pradesh as on the date of cause of action or as on the date of writ petition does not own a single paper manufacturing company in the State of Andhra Pradesh. However, there are large number of public limited companies in the State of Andhra Pradesh which are in the business of manufacture of papers. These are ITC, Bhadrachalam Paperboards Limited, Sirpur Paper Mills Limited, Sree Rayataseema Paper Mills Limited, Coastal Paper Mills Limited, Delta Paper Mills Limited and number of small Companies. None of these Companies are controlled by the Government of Andhra Pradesh.

25. It is further stated that as on 31-3-1998, the Government of Andhra Pradesh was holding only 26.67% of the share capital. The financial institutions and banks were holding 14.88% of the capital. These are independent holdings without any cross linking or interrelation.

26. While rebutting the allegation that the company's only source of supply of bamboo is from the forests owned by the State Government, the Company states that only 15% bamboo is used as input raw material by the Company for manufacture of paper and the rest of 85% of the input raw material is hard wood which is procured from private sources. That all business enterprises manufacturing the paper are provided the facility of supply of bamboo from the forest area. That factor by itself does not make the Company an instrument and agency of the State Government.

27. The question as to when private bodies like a Company or a Corporation or a society could be considered to be an instrumentality or agency of the State had arisen for decision before the Apex Court in more than one case. It is unnecessary to widen this judgment with various pronouncements of the Apex Court. The test laid down for determining as to when a Company or a Corporation or a society can be said to be an instrumentality or agency of the State Government may be culled out from various pronouncements of the Supreme Court. The tests are not conclusive or clinching but they are merely indicative indicia. The Supreme Court administered caution in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , thus:

"while stressing the necessity of a wide meaning to be placed on the expression

"other authorities", it must be realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation".

28. In the said decision, the following broad tests are culled out from the decisions earlier rendered:

(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 the 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 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.

29. In *Central Inland Water Transport Corpn. v. Brojo Nath Ganguly*, upon which strong reliance is placed by the learned Senior Counsel, the Supreme Court made significant observation that a State must have relatively permanent legal organization determining its structure and the relative powers of its major governing bodies or organs. That is to be found in its Constitution. It is further observed thus:

"If there is an instrumentality or agency of the State which has assumed the garb of a Government Company as deined in Section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State. For the purpose of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State..... Merely because it has so far not the monopoly of inland water transportation is not sufficient to divest it of its character of an instrumentality or agency of the State. It is nothing but the Government operating behind a corporate veil, carrying out a governmental activity and governmental functions of vital public importance." (emphasis is of ours).

30. We are required to appreciate that in the said decision, as a matter of fact

Central Inland Water Transport Corporation was found to be a State within the meaning of Article 12 of the Constitution of India. It was held to be a Government Company within the meaning of Section 617 of the Act, jointly and wholly owned by the Central Government and two State Governments and managed by the Chairman and Board of Directors appointed and removable by the Central Government.

31. We have noticed the pleadings in the case on hand. The Andhra Pradesh Paper Mills is not owned by the Government of Andhra Pradesh. That all its shares are not held by the Government of Andhra Pradesh. It is undoubtedly a shareholder having a stake of 27% of shares in the Company. That the Chairman and the Board of Directors are not appointed by the Government of Andhra Pradesh. Nor they are removable by the State Government. Mere presence of one of the Directors representing the State Government on the Board by itself would not enable the State Government to remove the whole of the Board of Directors and the management of the Company. The Company availing financial assistance from public financial institutions like the nationalised banks by itself is of no consequence. It is not unusual of even private limited companies securing financial assistance from the nationalized banks for their business purposes. If the financial assistance given by the public financial institutions alone are taken into consideration for the purposes of deciding and discerning as to whether a Company is an instrumentality or agency of the State Government, many Companies which do not discharge any public duties and public law functions may have to be included in this sweep of expression "other authorities" employed in Article 12 of the Constitution of India. Then the caution administered by the Constitution Bench in *Ajay Hasia's* case (supra) that the expression "other authorities" should not be stretched so far as to bring any autonomous body which has some nexus with the Government within the sweep of expression becomes meaningless. We find it difficult to accept the submission made that the appellant-Company has to be characterized as an instrumentality or agency of the Government on the simple premise of presence of one or two nominees of the State Government as Directors in the Board of Directors. Insignificant 27% of the shareholding of the State Government by itself is not indicia to characterize the appellant-Company as an instrumentality or agency of the State Government. The financial assistance secured by the Company in its usual course of business cannot be added and clubbed together with the shareholding of the State Government so as to conclude that the State Government together with the public financial institutions holds majority of the shares and therefore, the Company acquires the status of an instrumentality or agency of the State. The fact that the Government of Andhra Pradesh nominates equal number of Directors as the co-promoters while the financial institutions nominates two Directors and thus the Government nominees along with the nominees of the financial institutions always outnumber the Directors of the co-promoters is of no consequence. The Directors nominated by the financial institutions are present on the Board in order to safeguard its own advances made to the

Company. Assuming that 26.67% share capital held by the Government of Andhra Pradesh is to be clubbed with 14.88% share capital held by the financial institutions and banks, even then the shareholding of the State and its authorities put together does not exceed 50% of the shareholding. There is nothing on record suggesting deep and pervasive control of the State Government over the affairs of the Company. It does not involve in the day-to-day management and administration of the Company.

32. That the appellant-Company was initially established in 1924 by the then Government of Madras with a capacity of 10 metric tonnes per day at Rajahmundry and the mill was started with a view to exploit the forest produce, to manufacture all kinds of papers and also to provide employment to the local people by itself is not an indicia to characterize the Company as an instrumentality or agency of the State Government. The Company had travelled long way since its formation as a Government Company in the year 1924. That as on the relevant date when the impugned action has been initiated against the respondent-writ petitioner, the Company's character is purely is that of a public limited company under the management of its own Board of Directors in which the State Government holds an insignificant 27% of the share capital.

33. In *Ajay Hasia* 's case (supra), it has been observed that "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". Added to this, the existence of deep and pervasive control may afford an indication that the Corporation is a State agency or an instrumentality. In the case on hand, there is nothing on record suggesting that the assistance of the State is so much as to meet the financial need of the Company so as to make the Company with the governmental character. Nor there is any evidence of deep and pervasive State control over the affairs and management of the Company.

34. In *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], , the Supreme Court had an occasion to consider whether NCERT, a society registered under the Societies Registration Act is a State as defined under Article 12 of the Constitution? Admittedly, the object of NCERT is to assist and advise the Ministry of Education and Social Welfare in the implementation of governmental policies and major programmes in the field of education, particularly school education. It undertakes several kinds of programmes and activities connected with the co-ordination of research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes apart from undertaking preparation and publication of books, materials, periodicals and other literature. To a very large extent, the activities of the NCERT supplement the Governmental functions of imparting education, particularly school education. The Executive Committee comprises of Government Servants and educationists. The funds of the NCERT consist of (a) grants made by the Government (b) contribution from

other sources and (c) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The Government exercises control to oversee the proper utilisation of the grant. The Supreme Court after referring to the various tests laid down for identifying the body as a State within the meaning of Article 12 of the Constitution including the decisions in 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, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; Ajay Hasia's case (supra); Som Prakash Rekhi v. Union of India (1981) 1 SCC 499 : 1981 SCC 200; Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , came to the conclusion that NCERT is largely an autonomous body and does not satisfy the requirements so as to characterize it as an instrumentality or agency of the Government. It was held to be not an authority within the meaning of that expression in Article 12 of the Constitution of India. The Court approvingly referred to its earlier decision in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, , that "in a welfare State, as has been pointed out on more than one occasion by this Court, Governmental control is very pervasive and in fact touches all aspects of social existence.,.....A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion". Governmental control over an institution or establishment or a company or a corporation by itself cannot make them as instrumentalities or agencies of the State. The Government exercises vast control in a welfare State in discharge of its constitutional obligations. It even regulates the life of an individual in various areas of human activity. It exercises large control over business establishments, private companies, factories, shops and establishments through the devise of regulatory mechanism. Everyone is bound by such regulatory mechanism devised by the State and conduct ones own affairs within the framework of the regulatory mechanism. That by itself does not make one department an instrumentality or agency of the State. Mere fact that such restrictions are made compelling to conduct once own affairs in such manner itself is not a determinative test for deciding as to what is an instrumentality or agency of the State.

35. In Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , the Supreme Court reviewed the entire case law including Ajay Hasia's case (supra) and Sabhajit Tewary Vs. Union of India (UOI) and Others, , and held, the tests formulated in Ajay Hasia's case (supra) for determining as to when a corporation is to be said to be an instrumentality or agency of the Government, 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 before the Supreme Court was whether the Council of Scientific and Industrial Research is a State within the meaning of Article 12 of

the Constitution. The Supreme Court held thus:

"The tests to determine whether a body falls within the definition of "State" in Article 12 laid down in *Ramana* with the Constitution Bench imprimatur in *Ajay Hasia* case from the keystone of the subsequent jurisprudential superstructure judicially created on the subject which is apparent from a chronological consideration of the authorities cited".

36. It further held thus:

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

37. On examination of the Constitution, bye-laws of CSIR and the character of the governing body of the Society, the Supreme Court found that the objects which have been incorporated in the Memorandum of Association of CSIR manifestly administered, that it was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. That such function is fundamental to the governance of the country. It was found that the body was created for the purpose of promoting educational and economic interests of the people. The Court noticed that CSIR was and continues to be a non-profit making organization and according to the 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 Court also noticed the dominant role played by the Government of India in the governing body of CSIR as is evident from the bye-laws and Memorandum of Association. The Director-General who is *ex officio* Secretary of the Society is appointed by the Government of India. The members of the governing body who are not there *ex officio* are nominated by the President and their membership can also be terminated by him and the Prime Minister is the *ex officio* President of the CSIR. The control of the Government in CSIR is ubiquitous. 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". The governing body also has the power to frame, amend or repeal the bye-laws of CSIR but only with the sanction of the Government of India. The Court found that every alteration in the bye-laws requires the prior

approval of the Governor-General-in-Council. It was accordingly found that "the will of the Central Government is complete. Even the project estimates of the Society were to be prepared by the governing body keeping in view the instructions issued by the Government of India from time to time in this regard. The accounts of CSIR are required to be audited by the Comptroller and Auditor-General and placed before the both Houses of Parliament".

38. The Supreme Court having scrutinized the facts closely relating to the constitution and management and financial aspect of CSIR came to the conclusion that it is a State within the meaning of Article 12. The Supreme Court accordingly overruled Sabhajit Tiwaty's case (supra) rendered by a Constitution Bench. It is also observed by the Court that the observations to the contrary in NCERT's case (supra) do not represent the correct legal position.

39. Therefore, we are required to appreciate the ratio in NCERT's (supra) case in the light of the judgment of the Supreme Court in Pradeed Kumar Biswas case (supra).

40. In The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers' Association and Another, , the Supreme Court found that Mysore Paper Mills Limited, a Government Company as envisaged u/s 617 of the Act is nothing but an instrumentality and agency of the State Government. The Supreme Court having referred to its earlier decisions observed thus:

"The concept of instrumentality or agency of the Government is not to be confined to entities created under or which owes its origin to any particular statute or order but would really depend upon a combination of one or more of relevant factors, depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be, piercing the corporate veil of the entity concerned".

41. The said observations were made in the context of the indisputable fact that the Company therein is a Government Company as envisaged in Section 617 of the Act attracting Section 619 of the Act, that more than 97% of the share capital has been contributed by the State Government and the financial institutions controlled and belonging to the Government of India on the security and undertaking of the State Government, that the Memorandum of Association entrusts the appellant-Company with important public duties obligating to undertake, permit, sponsor rural development for social and economic welfare of the people in rural areas by undertaking programmes to assist and promote activities for the growth of national economy which are akin and related to the public duties of the State, that out of 12 Directors 5 are Government and departmental persons, besides other elected Directors also are to be with the concurrence and nomination of the Government, and the various other forms of supervision and control will go to show that the State Government has deep and pervasive control of the appellant-Company and its day-today administration, Thus the company was found to be an instrumentality and agency of the State

Government and the physical formation of the company is merely a cloak or cover for the Government.

42. We have closely scrutinized the Memorandum of Association of the appellant-Company, the averments made in the affidavit and additional affidavit and reply affidavit filed by the respondent-writ petitioner and counter-affidavits filed by the Company. We have already noticed that the State Government as on the relevant date and as at present is holding only 26.67% of the shareholding. The financial institutions and banks were holding 14.88% of the capital. But these are independent holdings without any cross linking or interrelation. The financial assistance provided by various financial institutions controlled and belonging to the Government of India is not on the security and undertakings of the State Government. The memorandum of articles of association does not suggest entrusting the appellant-Company with any public duties. Admittedly, it is not a Government Company. The State Government does not interfere nor there is any provision made in the memorandum of articles of association permitting any such interference of the State Government in the day-to-day affairs of the Company. The Board of Directors are not nominated by the State Government nor can they be terminated by the State Government. The cumulative facts found, the appellant-Company is neither financially nor functionally and administratively dominated by or under the control of the State Government. The regulatory control, if any exercised by the Central as well as the State Government under relevant statutes itself would not make the appellant-Company, a State.

43. Thus, in our considered opinion, the appellant-Company cannot be characterized as an instrumentality or agency of the State. Therefore, it does not come within the meaning of expression "other authorities".

44. Then what remains for our consideration is as to whether the appellant-Company discharges any public or statutory duties?

45. We have already noticed that the appellant-Company has not been set up by any statute nor the State exercises any particular control as such, qua, the appellant-Company. The control exercised by the Central and State Governments is merely regulatory in exercise of their power under various enactments.

46. It is fairly well settled and needs no restatement that 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 (See *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . Therefore, what is important is not the form of the body but what is relevant and important is the nature or duty imposed on that body or person, the duty involved must be a public duty and there must be a public law element involved imposing an obligation. The act complained of must be in the public law realm and there must be a corresponding public duty imposed on the said person and authority to render the same. But invariably difficulties arise to define the boundaries between a public function or public duty on one hand and

private law domain on the other.

47. It is impossible to draw a line with precision. The question must be decided in each case with reference to the impugned action, the activity in which the person or authority is engaged when performing the action, the public law or private law character of the action and host of other relevant circumstances.

48. In *G. Basi Reddy Vs. International Crops Research Instt. and Another*, , the Supreme Court observed:

"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.....A service voluntarily undertaken cannot be said to be a public duty".

49. In *VST Industries Ltd. v. VST Industries Worker's Union*, (2001) 1 SCC 298, the Supreme Court approvingly referred to the propositions summarized as to when the activities of the private bodies are subject to the standard of public law in *De Smith, Woolf and Jowell* "s *Judicial Review of Administrative Action*, 5th Edition. The following are the propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2) The principles of judicial review *prima facie* govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter, This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic Tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

50. The Court noticed that the appellant-Company therein is engaged in the manufacture and sale of cigarettes and the same will not involve any public function. Incidental to that activity, there is an obligation u/s 46 of the Factories Act to set up a canteen when the establishment has more than 250 workmen.

The obligation is held to be a labour welfare devise for the benefit of its work force. It is not a public duty owed to the public in general and not specifically to any person or group of persons.

51. In *Sri Konaseema Co-op. Central Bank Ltd. v. N. Seetharama Raju* AIR 1990 AP 171, a Full Bench of this Court speaking through Jeevan Reddy, J., (as he then was) while considering the question as to whether a co-operative society can be characterized as a State within the meaning of Article 12 of the Constitution applying the test evolved by the Supreme Court observed thus:

"Even if a Society cannot be characterised as a "State" within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a "person", or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty."

52. In the instant case, the appellant-Company is not entrusted with any statutory duties as such. It does not discharge any public law functions. The Company is in the business of manufacture of paper like many other small Companies. Manufacture of paper is in de-licensed sector. Like any other public or private limited company, the Company has its own memorandum of articles of association and bye-laws and regulates and manages its own affairs. Its activity is purely commercial in nature. It does not enjoy any monopoly in the manufacture of paper. There is no obligation on the part of the Company to supply paper to any of the Government agencies. Like all other manufacturers, its product is to be sold in the open market and it is the market forces which may ultimately decide the destiny of the Company. Its activity of manufacture and sale of paper voluntarily undertaken as a pure and simple commercial venture cannot be characterised and equated to discharge a public duty.

53. In *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , the Supreme Court construed Article 226 to hold that the High Court can issue a writ of mandamus "to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest" (emphasis is of ours).

54. It was further observed thus:

"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".

55. Notwithstanding the origin and history of the Company and the joint venture agreement between the State and the other stake holders, the Company is not different from any other public limited companies and therefore, no Writ of

Mandamus lies.

56. We do not propose to burden this judgment by adding the list of the cases where the principles stated hereinabove have been consistently followed and reiterated. We do not consider it necessary to refer to each case.

57. For the aforesaid reasons, we conclude that the appellant-Company is not an instrumentality or agency of the State Government and, therefore, does not come within the meaning of expression "other authorities" employed in Article 12 of the Constitution of India. We also hold that the appellant-Company is not entrusted with the obligation of discharging any public duties. It does not discharge any statutory or public law functions. Therefore, the writ petition filed by the respondent-writ petitioner is not maintainable in law.

58. We have purposely not adverted to the allegations or mala fides levelled by the respondent-writ petitioner against the appellant-Company and its management. We have also not referred to the facts in detail leading to the alleged resignation of the respondent-writ petitioner and the ultimate order of termination of service of the respondent-writ petitioner by the 2nd appellant-Executive Director since we do not propose to express any opinion whatsoever with regard to the legality and validity of the same. The respondent-writ petitioner shall be at liberty to avail such remedies as may be available to him in law. Needless to observe that in case if the respondent-writ petitioner avails any such remedy, the same may have to be decided in accordance with law uninfluenced by the observations made in the order passed by the learned Single Judge and as well as the observations, if any made in this order. The impugned order of the learned Single Judge under appeal is accordingly set aside.

59. The writ appeal is accordingly allowed. No costs.