

(2000) 04 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1722, 1750, 1766, 1782, 1938 1954, 1960, 1996, 1997, 2022, 2030, 2077, 2263, 2453, 2704, 6584 and 6762 of 1999

Avas Vikas Sansthan Engineering Association and Others

APPELLANT

Vs

Avas Vikas Sansthan and Others

RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 39, 41

Industrial Disputes Act, 1947 — Section 25F

Societies Registration Act, 1860 — Section 13

Citation : (2000) 4 RLW 243 : (2000) 4 WLC 647 : (2007) 3 WLN 226

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The grievance projected by the petitioners in all these petitions is more or less identical. All the petitioners are the employees of the Avas Vikas Sansthan (for short AVS). Before dealing with the controversy raised in the writ petitions few background facts are necessary to be incorporated.

2. In the year 1988 National Housing Policy was placed before the Parliament, where it was recommended to establish building centres in different parts of the country. The decision/guidelines were circulated to all the Chief Secretaries of the States on August 12, 1988. The State of Rajasthan issued a direction to the Rajasthan Housing Board to implement the centrally sponsored scheme for establishment of building centres. A decision was taken in its 139th meeting of the Rajasthan Housing Board (in short the RHB) to set up building centres and it was decided to form a separate society in the name of Avas Vikas Sansthan (AVS). The scheme was formulated by the RHB in collaboration with Housing Urban Development Corporation (in short HUDCO) and AVS came to be registered with the Registrar Societies on November 17, 1988.

3. On June, 13, 1989 a direction was issued by the RHB that it has created a separate body in the name of AVS and land measuring 3 acres will be allotted to

its building centres by the RHB itself. It was stated that AVS was established for fulfilling the objects of the RHB. The Deputy Secretary to Urban Development and Housing Department issued an order on March, 16/17, 1989 wherein administrative sanction of the State Government was conveyed for establishment of building centres at 8 different places.

4. In its 147th meeting the RHB took following four decisions in regard to affairs of AVS:

(1) The expenditure of Secretary of AVS was to be borne by RHB.

(2) The land required for building centres at AVS were to be made available by RHB free of cost.

(3) The financial aid was to be given by the Rajasthan Housing Board to the AVS.

(4) The appointment of two directors of two building centres initially at Jaipur by the RHB.

5. After the establishment of AVS, initially employees of the RHB were sent on deputation and the AVS started making recruitment to the different posts from the year 1989. The AVS published seniority list of all cadres including technical cadre from time to time. In the year 1993 Avas Vikas Sansthan Employees Service Regulations, 1993 (in short the Service Regulations) were promulgated. The AVS further framed Employees Discipline and Appeal Regulations, 1993). Chapter 3 of the said Regulations deals with the appointments and prescribed minimum conditions which are required to be fulfilled by the employees. All the petitioners while working satisfactorily, they came across an order dated March 15, 1999 issued by the Secretary to the Urban Development and Housing to the Housing Commissioner RHB Jaipur that after considering the financial and administrative position of AVS a decision was taken to dissolve it with immediate effect. The said decision as taken in view of Section 60 of the Rajasthan Housing Board Act, 1970 (for short the 1970 Act) by the State Government and direction was issued to RHB. The petitioners came to know that a decision with regard to employees was also taken to adjust/absorb them on priority basis in Municipal Councils, Jaipur Development Authority and other Local Self Government Departments. Thereafter the Special General Body Meeting of AVS was held on March 26, 1999 and a decision to dissolve AVS was taken, The decision taken in the meeting dated March 26, 1999 clearly demonstrates that the services of the petitioners were terminated and a committee was authorized to consider the adjustment of the petitioners in the different departments of the State Government.

6. The petitioners have approached with the common prayer that the RHB be directed to treat the petitioners as its employer and to take them on suitable posts with all consequential benefits. Respondents be restrained from terminating the services of the petitioners and if any adverse order is passed against the petitioners, the same be quashed. Direction has also been sought in

the alternative to declare the condition contained in the order dated March 15, 1999 making absorption of the petitioners conditions as illegal and it has been prayed that respondents be directed to absorb the petitioners on suitable posts with all consequential benefits of their past services and protection of pay etc. Direction be also issued to the respondents to pay the unpaid salary to the petitioners and the respondents be further restrained from liquidating the property of AVS till claim of petitioners about salary, employment and absorption is settled.

7. The State of Rajasthan in the reply raised preliminary objections. It was averred that AVS is a society registered under the Rajasthan Societies Registration Act. The AVS is not a State within the meaning of Article 12 of the Constitution and the writ petition on behalf of the employees is not maintainable. The petitioners have an efficacious alternative remedy available u/s 76 of the Rajasthan Cooperative Societies Act. The writ petitions involve disputed questions of fact, which cannot be adjudicated upon by this Court in its extra ordinary jurisdiction. Service conditions of the petitioners are governed by the Rajasthan Avas Vikas (Conditions of Employees) Rules, 1993. As AVS was completely closed the services of the petitioners stood terminated. The petitioners are not the surplus employees. Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 and Rajasthan Service Rules, 1951 are not applicable to them and they cannot be absorbed in the Government Departments. However, the Government of Rajasthan took a benevolent decision purely on humanitarian ground to adjust the terminated employees of the dissolved AVS in Jaipur Development Authority, Municipal Councils, Municipal Corporations and other Local Bodies. This policy decision of the Government cannot be a subject matter of writ petition. It was further pleaded that the decision to establish the AVS was not a decision of the State Government. The AVS was basically a training centre for the qualified engineers and was performing the work of construction in various projects awarded by the different institutions. The AVS began running in losses and lost its object, hence the State Government in its General Supervisory capacity asked that the AVS may be dissolved so that the public money may not go waste and may be utilised in better manner. The recommendations of the Government were made on March 15, 1999.

The AVS in its Special General Body Meeting dated March 26, 1999 took independent decision to dissolve the AVS. On March 15, 1999 when the State Government made recommendations to dissolve the AVS, a beneficial decision was taken keeping in view of the larger interest of the society that the employees of the dissolved AVS who were permanent/substantive may be adjusted in JDA/Municipal Councils/Municipal Corporations and other Local Bodies on the lowest posts of direct recruitment against the vacancies which would become available on account of retirement after March, 31, 1999. This benefit of the policy decision was not extended to the temporary/adhoc casuals and daily wages employees. The employees of AVS have no legal and fundamental right to

be appointed on preferential basis in the other departments. The decision of the State Government does not create any right to the petitioners and the writ petitions are not maintainable against the compassionate policy decision of the State Government.

It was also stated in the reply that on June 1, 1999 the State Government took further decision to accommodate the employees of the AVS as per their financial conditions and requirements but they shall not get any pay protection and consequential benefits such as seniority etc. The State Government never took the decision to absorb the petitioners. The decision dated March 15, 1999 does not provide that the employees of AVS shall be treated as surplus. The petitioners have no right to claim salary from the State Government. It was further pleaded that screening in respect of the employees working in the AVS has already been made and orders to appoint them in the various departments have also been issued and number of employees have accepted the reasonable offer. The offer of appointment and the undertaking that the writ petitions filed by such employees shall be withdrawn is in consonance with the principles of fair policy. The decision dated March 15, 1999 is just and reasonable and free from any extraneous consideration. It is in the larger interest and to save the agony of unemployment of the permanent/substantive employees working in the dissolved AVS.

8. Reply has also been submitted on behalf of the respondent Housing Board with the averments that by letter dated March 15, 1999 issued by the Deputy Secretary, Urban Development and Housing Department (for short UDH) to the Housing Commissioner, Rajasthan Housing Board, a decision of the Government of Rajasthan was conveyed to the effect that since financial and administrative conditions of AVS is not good the Government has decided to close it down, hence directions has decided to close it down, hence directions u/s 60 of the 1970 Act were issued to close AVS with immediate effect. In the same letter it was further stated that after closing the AVS, it shall be the responsibility of RHB to dispose of the property of AVS and the employees working in AVS shall be absorbed after March 31, 1999 in Municipal Councils, Municipal Corporation, Jaipur Development Authority and other Local Self Governments against the posts which shall fall vacant on account of retirement of the employees working in those institutions on preferential basis. Thereafter a decision was taken by the General Body of the AVS on March 26, 1999 to dissolve it. In the General Body meeting of the AVS, the members of the Board of Directors of AVS were present. The Managing Director of AVS apprised to the Board of Directors that in the proceeding year no work has been entrusted to AVS by any of the Institutions and in the near future there is no possibility of entrusting any work. The AVS was mainly dependent upon the work given to it by the State Government and in the absence of availability of work the amount which was earned by the AVS had already been spend and every day debts were increasing. In view of the existing circumstances the State Government had also issued an order that in near future no work will be allotted to AVS and no advance money will be paid to it,

therefore it was felt that it is impossible to carry out the functions of AVS and a decision was taken in the General meeting to dissolve the AVS unanimously and the AVS was dissolved with effect from March 26, 1999. A committee was formed to give effect to the proceedings of closure which includes discharge of debts and absorption of employees. It was decided that all the employees working in the AVS on deputation shall be repatriated to their parent departments with immediate effect. The services of the employees of AVS shall stand terminated in accordance with the laws applicable to them and after terminating the services of the employees of AVS, the committee had to assist for their absorption in other departments as per assurance given by the State Government. It was further stated in the reply that decision in respect of absorption of the employees of the AVS was a compassionate decision as AVS was not responsible for making arrangements of absorption of the employees. Prompted by the fact that the AVS was mainly working for the Government or its institutions, the decision to absorb the services of the employees was taken. Compassionate decision taken by the Government cannot be challenged in the writ petition. Since the AVS is a society registered under the Societies Registration Act, hence the Board of Directors was competent to take a decision for dissolution of the society and adjustment of affairs. The AVS is not a sister concern of RHB. The AVS was independent institution having no dependence with the Housing Board. For convenience the Chairman of the RHB was ex-officio Chairman of the AVS and the State Government was competent enough to take decision for suggesting to dissolve as the huge amount of the Government and the Housing Board was involved in the AVS and the AVS was not running in profit. The AVS was independent institution having no dependence upon the Housing Board. The process of recruitment of employees of AVS was separately initiated and appointments were made by a separate agency belonging to AVS. The decision of the Government to permit absorption of the employees of AVS is based on humanitarian ground and the petitioners do not have any legal right to claim their absorption. The AVS is not even a public enterprise of the Government, hence the Rajasthan Absorption of Surplus Employees Rules are not applicable on the petitioners.

9. I have reflected over the rival submissions and carefully scanned the material on record.

10. Before proceeding further, it would be useful to take stock of relevant statutory provisions. 1970 Act was enacted to provide for measures to be taken and to deal with and satisfy the need of housing accommodation in the State of Rajasthan. For the purpose of 1970 Act the State Government established RHB u/s 4 of the said Act. In addition to Chairman, Financial Commissioner, Secretary to Government. Town Planning Department Chief Town Planner and Architectural Advisor and Housing Commissioner of the Board are the ex-officio members and six non official members have been appointed by the State of Rajasthan. Section 60 of the 1970 Act provides thus:

60. Government's power to give directions to the Board--The State Government

may give the Board such directions in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Board to comply with such directions.

11. Section 13 of the Societies Registration Act, 1860 reads as under:

13. Any number not less than three fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Assent required. Provided that no society shall be dissolved unless three fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general convened meeting for the purpose:

Government consent. Provided that whenever any Government is a member of or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government of the State of registration.

12. Now I proceed to examine the letter dated March 15, 1999 through which process of dissolving AVS was initiated. This letter was issued by the Deputy Secretary UDH and addressed to the Housing Commissioner. It was stated in the said letter that the Government after considering the financial and administrative of the AVS has decided to dissolve it with immediate effect. The RHB was directed u/s 60 of the 1970 Act to dissolve the Avas Vikas Sanathan. The letter further says that after dissolution of the AVS the responsibility of dealing with the assets will be of RHB. The decision was also communicated to adjust the employees of AVS after March 31, 1999 in Municipalities, Municipal Corporation, Jaipur Development Authority and in other Local Self Government against the vacancies being made available from superannuated employees on preferential basis.

13. It is thus evident that after receiving the aforesaid letter, General Body Meeting of the AVS was held on March 26, 1999 where a decision to dissolve the AVS was taken.

14. Mr. Sagar Mai Mehta, learned Advocate General placed reliance on Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . In the said case the workmen who were employed on daily wages filed a petition for their absorption as regular employees in the Development

Department of the Delhi Administration and for injunction prohibiting the termination of their services and also for the difference in wages paid to them and those paid to the regular employees. The petitions were resisted on behalf of the respondents contending that there is no scope for absorption of the petitioners as they were employees on daily wages with a clear understanding that the schemes under which they were employed had no provision for regularization of any workman. It was held that the "object of the scheme was not to provide the right to work as such even to the rural poor-much less to the unemployed in general. No fault can be found with the limited object of the scheme given the limited resource at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation is to frustrate the scheme itself. No court can be a party to such exercise. The most that can be done for them is to direct the respondents to keep them on a panel and if they are registered with the Employment Exchange and qualified to be appointed on the relevant post, give them a preference in employment whenever there occurs a vacancy in the regular posts" which directions we give hereby.?

15. The learned Advocate General vociferously canvassed that writ petitions are not maintainable as AVS is not authority under Article 12 of the Constitution and the State Government took a benevolent decision purely on humanitarian ground to adjust the terminated employees of the dissolved AVS in various departments. The decision to establish the AVS was not a decision of the State Government. The AVS began running in losses and lost its object, hence the State Government in its general supervisory capacity asked to dissolve the AVS so that the public money may not go waste. The decision by the AVS in its Special General Body meeting dated March 26, 1999 was independent decision and the employees of the AVS have no right to take employment from the State Government. Still the State Government took a decision to accommodate the substantive employees of the AVS in various departments.

16. Mr. R.N. Mathur, Addl. Advocate General appearing for the Housing Board contended that merely by providing the money and facilities under a policy does not make an institution as a Governmental institution or an authority under Article 12 of the Constitution of India. Reliance was placed on *S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others*, *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*, *K.M. Khanna v. N.C.E.R.T.* (1991) 4 SCC 578; *Tekraj Basundhi v. Union of India* 1992 (1) WLC 700. It was further averred that RHB is a creation of statute established by 1970 Act and it cannot create another statutory institution and AVS was not a statutory institution. It was also averred that AVS was merely a society and resolution was passed by the Board because it invested the money in it and send persons on deputation. The employees were appointed by the AVS. Separate seniority lists were

published and the employees were promoted on the basis of seniority list prepared in AVS. They had no link with the RHB earlier. It was further argued that in none of the writ petitions, decision to dissolve AVS has been challenged. In few of the writ petitions only conditional challenge has been made. Since dissolution has not been challenged, the AVS stands dissolved and the employees of the dissolved AVS have no right whatsoever to be absorbed or adjusted in RHB or State Government. The decision to adjust/absorb does not come in the Absorption of Surplus Employees Rules. In a special policy decision employees of the AVS are to be adjusted in the lowest post of the direct recruitment against the vacancies which shall be caused due to retirement. This policy decision of the State Government cannot be challenged. Reliance was placed on M.P. Oil Extraction and Another Vs. State of M.P. and Others, It was further urged that there is no automatic absorption or adjustment after dissolution. Reliance was placed on A.K. Pradhan Vs. State of Bihar and Others, Placing reliance on Gajraj Singh Vs. The State of Madhya Pradesh and Another, it was argued that once the society has been dissolved, retrenchment is automatic. On the basis of ratio of Joyachan M. Sebastian Vs. Director General and Others, it was contended that with dissolution the post stands abolished, hence right to continue does not exist. It was further argued on the basis of ratio propounded in 1994 (3) SCC 750 and Bakhtawar Singh and Another Vs. Union of India (UOI) and Another, that the decision to dissolve cannot be challenged before the High Court. Placing reliance on Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others, it was contended that AVS employees have no right to be adjusted or absorbed.

17. On the other hand, learned Counsel appearing for the petitioners Sarvashri Ram Shanker Asopa, Sr. Advocate, Alok Sharma, Ajay Rastogi, Ashok Gaur, Manish Bhandari, Ajaya Gupta, N.K. Maloo and S.L. Sharma, in support of the writ petitions placed reliance on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , Dr Chittaranjan Sharma and Others Vs. State of H.P. and Another, ,B.L. Mandawat v. Union of India 1993 (5) SLR 29 , MAMC Employees Unity Centre v. MAMC Ltd. 1991 (3) SLR 766 and Bijay Kumar Agarwal and Others Vs. Ratan Lal Bagaria and Others, , Life Insurance Corporation of India Vs. Escorts Ltd. and Others, V.M. Chandra Vs. Union of India and Others,

18. It would be appropriate at this juncture to consider the case law cited by the learned Counsel for the parties.

19. In Management of Dandakaranya Project, Koreput Vs. Workmen through Rehabilitation Employees Union and other, , the project had been wound up and there were no employment facilities for the employees for regular absorption. The assets and liabilities of the project stood transferred to the States of Orissa and M.P. Yet on account of interim order of the Court 425 workers while sitting idle were getting wages to the tune of Rs. 1.50 lakhs per month. Under those circumstances, it was observed by the Hon"ble Supreme Court that directions

issued by the Tribunal to find out work for the workers were erroneous.

20. In *Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others*, an scheme was sponsored by the ICAR and the posts stood, abolished with the abolition of the scheme. It was therefore, held that right to regularise the services could not be claimed.

21. Their Lordships of the Supreme Court in *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, indicated thus- (Para 41)

The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and not being informed by any reason whatsoever can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functions arises thereby offending Article 14 of the Constitution or such policy offends others constitutional provisions or comes into conflict with any statutory provision, the court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State.

22. In *Managing Director, Haryana Seeds Development Corpn., Ltd. Vs. Presiding Officer and Another, etc.*, employees were appointed in the Haryana Seeds Development Corporation for distributing the certified varieties of the crop seeds to the farmers during Rabi and Kharif sowing seasons. Due to heavy flood, a number of units including seeds sale counter were closed. As a consequence the services of the employees had been dispensed with. Under those circumstances it was held that rigor of giving notice or salary in lieu thereof imposed by Section 25F of the Industrial Disputes Act, 1947 was not attracted.

23. *Joyachan M. Sebastian Vs. Director General and Others*, was the case wherein their Lordships of the Supreme Court observed thus-(para7)

It is now settled legal position that on abolition of the post, the holder of the post has no right to continue on the post. Instead of retrenching him as surplus, the Government have accommodated him in the available vacancy and therefore, it must be deemed to be a fresh appointment for the purposes of the seniority.

24. Ratio of *A.K. Pradhan Vs. State of Bihar and Others*, is that an employee has no right to be automatically absorbed as a Government servant in case of an unrecognised school being taken over by the Government.

25. In *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED]*, , it was held that Article 12 should not be stretched so as to bring in every autonomous body which has nexus with the Government within the sweep of the expression "State" and the NCERT which is an autonomous body does not fall within the definition of "State" under Article 12.

26. This Court in *Ram Avtar and another v. VIFF Cooperative Ltd. 1992 WLC (Raj.) 700* held that society is not a State or Authority under Article 12 and writ

petition against the society is not maintainable.

27. Three Judge Bench of the Hon"ble Supreme Court in GB. Govinda Rajulu v. APSC Ltd. 1986 SCC 651 indicated thus -

We direct that the employees of the Andhra Pradesh State Construction Corporation Ltd. whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the Government departments or in the Government corporations.

28. In B.L. Mandawat v. U.O.L 1993 (5) SLR 29, the Central Government desired that the RAPP School which was run by the Department of Atomic Energy should be transferred to AEE Society so as to enable the later to run it independently of the Department of Atomic Energy with its readiness to meet the whole expenditure to be incurred by the AEE Society in running that school. Their Lordships of the Supreme Court directed AEE Society to absorb the petitioner as a Trained Graduate Teacher in its school at Rajasthan Atomic Energy Project site and if there is no school therein any other of its schools by protecting her designation, grade, pay and allowances retrospectively from the date of her termination as a Trained Graduate Teacher of the RAPP School, if unavoidable, by creating a supernumerary post for the purpose.

29. Calcutta High Court in Bijay Kumar Agarwal and Others Vs. Ratan Lal Bagaria and Others, observed that though broadly speaking the principle of lifting of corporate veil will be available in the Statute like Companies Act and other financial and taxing statutes but this principle can be used by the court to prevent the abuse of process of court of law. If the situation are falling under the following categories such tool of judiciary can be used

- (a) Depend upon the relevant statutory or other provisions;
- (b) The object sought to be achieved;
- (c) The impugned conduct;
- (d) The involvement of the element of the public interest;
- (e) The effect on parties who may be affected.

30. Calcutta High Court in M.A.M.C. Employees v. Mining & Allied Machinery (1991 (3) SLR 766 observed that if a Government Company is incorporated at least partly for the purpose of doing project work then the uncertainty in the availability of volume of such work cannot be conceived as an excuse for not keeping a permanent staff. All business ventures are fraught with such uncertainties. A manufacturing unit may face even closure owing to a fall in demand of its project. This is the vagary of all the enterprises and this cannot be used as a shield against the obligation to employ a regular work force. That apart, a Government *Company should not, at least normally, be permitted to take shelter under the technicalities of law and it is one of the solemn and sacred

duties of such Government Company to see that the workmen are provided security of jobs.

31. Their Lordships of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, indicated that for the purposes of Article 12, Court must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State.

32. I will now get on to the preliminary objections raised on behalf of the respondents. On behalf of the respondents it was canvassed that AVS is neither a State nor any other authority within the meaning of Article 12 of the Constitution and is not amenable to writ jurisdiction. Admittedly the AVS is a society registered under the Societies Registration Act, 1958. In *Chander Mohan Khanna's case* (supra) it was held that NCERT an autonomous body does not fall within the definition of "State" under Article 12. An autonomous body even if it has some nexus with the Government has to pass through exhaustive tests before comes in the definition of instrumentality or agency of the Government. There is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. If Government operates behind a corporate veil carrying at government activity and functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution. The AVS stands dissolved with effect from March 26, 1999 and its assets and liabilities now shall be dealt with in the manner determined by the RHB as indicated in Clause 17 of the Memorandum of Association of AVS. The petitioners in the instant writ petitions sought reliefs against the State of Rajasthan and RHB and RHB is the State within the meaning of Article 12 and is amenable to the writ jurisdiction of this Court. The other argument that the petitioners have an efficacious alternative remedy u/s 76 of the Rajasthan Cooperative Societies Act, is also fallacious as the relief sought in the writ petition cannot be granted under the said provision.

33. It was next contended by the learned Counsel for the respondents that Government of Rajasthan took a benevolent decision to adjust the substantive employees of AVS to adjust them in other departments. These terminated employees can not be termed as surplus employees and Absorption of Surplus Personnel Rules and Rajasthan Civil Services Rules are not applicable on them. The policy decision of the Government cannot be a subject matter of writ jurisdiction. The employees of AVS have no legal and fundamental right to be appointed on preferential basis in other departments. The petitioners have no right to claim salary from the Government of Rajasthan or RHB.

34. In order to appreciate the submissions, a cursory look at the horoscope of AVS is necessary. National Housing Policy which was placed before the Parliament in May 1988, is the mother of AVS. The Nirmithi Kendra at Quilon in Kerala State demonstrated that one of the effective methods is of training local artisans in

handling low cost building technologies. Spurred by the success of the Quilon experiment, the Government of India decided to launch a national programme of setting up of a network of building centres in all the districts of the country. Accordingly a centrally sponsored scheme for establishment of Building Centres was sanctioned by the Central Government- which was to be implemented and operated through the HUDCO. The scheme aimed at promoting gainful employment to young men and women from urban and rural areas by training them in the use of low cost building materials and technologies, thereby giving an impetus to low cost constructions. To ensure freedom and flexibility in its working, each centre had to be managed by setting up of an organisation in the form of registered society under the Societies Registration Act 1980. Ministry of Urban Development Government of India wrote a letter dated August 12, 1988 in this regard to the Chief Secretaries of all the States. A request was made in the last para of the said letter as under-

The State/UT Governments are requested to give wide publicity to this scheme through various local media. Individual projects for setting up of Building Centres in different districts may be drawn up by enlisting the involvement of various local authorities, Housing Boards, Development Authorities/Agencies reputed nongovernmental bodies, Cooperative Organisations and potential entrepreneurs. The projects once drawn up may be sent to the Housing and Urban Development Corporation which will scrutinise the same for the purpose of release of financial assistance in the form of grant in aid will be released to the Centre through HUDCO.

In pursuance to the directions of the Government of Rajasthan the RHB took a decision to set up building centres and to form a society in the name of AVS which was registered with the Registrar on November 17, 1988. This is how the AVS was born.

As already stated land measuring 3 acres was allotted to AVS by the RHB and the Deputy Secretary to Urban and Housing Department in the month of March 1989 issued administrative sanction of the State Government for establishment of building centres at 8 different places. It was decided by the RHB in its 147 Meeting that land required for building centres by AVS shall be made available by RHB free of cost and the financial aid shall be given by RHB to AVS. Entire expenditure of Secretary of AVS shall also be borne by RHB.

35. It is thus evident that AVS has its roots in the National Housing Policy and pursuant to the directions of the Central Government, it was established and registered. It was created with the object to provide gainful employment to young men and women from urban and rural areas by training them in the use of low cost building materials and technologies thereby giving an impetus to low cost construction. It is with this object the petitioners came to be appointed in the AVS. Service Regulations of employees were framed and guiding principles for deciding the staffing pattern were approved in 1993. From the material on record it does not appear that there was any problem within the AVS but on

March 15, 1999 the Secretary Urban Development Government of Rajasthan directed Housing Commissioner RHB u/s 60 of the 1970 Act to dissolve AVS. The decision appeared to have been taken in view of financial and administrative condition of AVS. The order of the State Government was honoured in the Special General Body meeting of AVS on March 26, 1999.

36. A look at Section 60 of the 1970 Act demonstrates that for carrying out the purposes of this Act the State Government may give directions to the RHB and the RHB is duty bound to comply with such directions. As the petitioners have not challenged the decision to dissolve the AVS it is not required to examine whether directions to dissolve AVS could be legally issued or not. The questions that require consideration are (1) as to what are the legal rights of the employees of the dissolved AVS who were employed in pursuance to the National Housing Policy implemented and operated through HUDCO and adopted by the Government of Rajasthan? (2) Whether benevolent policy decision of the Government can be assailed in the writ petition?

37. Learned Counsel for the respondents attempted to justify that there were valid reasons behind the dissolution of AVS and in view of the financial and administrative condition of AVS its dissolution was necessary. I closely scrutinise the record to test the truth of the argument but I could not get success in finding any material in this regard. It was incumbent upon the State Government to justify as to on what basis it issued letter dated March 15, 1999 ordering dissolution of AVS but from the material on record it failed to establish that financial and administrative position of AVS was not good. It appears from the material on record that there was no financial emergency within the AVS. As said before that under National Housing Policy, a centrally sponsored scheme for establishment of Building Centres was sanctioned by the Central Government to be implemented and operated through HUDCO. It was aimed at providing gainful employment to young generation of the country. Pursuant to this scheme of the Central Government, the Government of Rajasthan" with the help of RHB created AVS and provided employment to the petitioners but suddenly snatched the work from them and pushed them out of employment. It is well settled that "State actions including action of the instrumentalities and agencies of the State, must not only be in conformity with the Fundamental Rights guaranteed by Part HI but must also be in accordance with the Directive Principles of State Policy prescribed by Part IV." Their Lordships of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, propounded thus-

Clause (a) of Article 39 provides that the State shall in particular, direct its policy towards "securing that the citizens, men and women, equally have the right to adequate means of livelihood." Article 41 requires the State within the limits of its economic capacity and development to "make-effective provisions for securing the right to work." An adequate means of livelihood cannot be secured to the citizens by taking away without any reason the means of livelihood. The mode of

making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment.

38. Letter issued by the Secretary UDH of Government of Rajasthan on March 15, 1999 directing Housing Commissioner RHB to dissolve AVS reminds me "the Henry VIII Clause". Henry VIII is regarded popularly as the impersonation of executive autocracy. Provision in Legislation giving the delegate the power to amend the delegating Act and at times giving power to modify the provisions of other Acts also was given nickname "the Henry VIII Clause" by the Committee-in its report on Ministers submitted in 1932 in Parliament of the United Kingdom. As the aforequoted provision conferred power of executive autocracy it was called "the Henry VIII Clause." The Government of Rajasthan issued the letter dated March, 15, 1999 u/s 60 of the Rajasthan Housing Board Act, 1970. Section 60 gives power to State Government to issue directions to the Rajasthan Housing Board for carrying out the purposes of the Act. The 1970 Act was enacted to provide for measures to be taken to deal with and satisfy the need of housing accommodation in the State of Rajasthan. No purpose of the 1970 Act was served in ordering dissolution of AVS and no direction could be issued by the Government of Rajasthan to dissolve AVS u/s 60. The AVS could only be dissolved u/s 13 of the Societies Registration Act; 1860 by the members of the AVS only. The Government of Rajasthan has taken a stand now in reply that it in its General Supervisory capacity asked that AVS be dissolved so that the public money may not go waste and may be utilised in better manner. This shows that there was no dearth of money in the AVS and it was dissolved in order to utilise its money in a better manner. Section 60 of 1970 Act does not give power to the State Government to act in "General Supervisory Capacity". The expression "to act in General Supervisory Capacity" can be equated with "the Henry VIII Clause."

39. Be that as it may after the members of AVS in its Special General Body Meeting held on March 26, 1999 decided to dissolve AVS, it stood dissolved legally and in view of Clause 17 of the Memorandum of Association of AVS, the debts and liabilities of AVS shall now be dealt in the manner determined by the RHB.

40. Now comes the humanitarian policy decision of the Government of Rajasthan. As said before, the State Government in its reply averred that on March 15, 1999 when it made recommendation to dissolve the AVS, a beneficial decision was taken keeping in view of the larger interest of the society that the employees of the dissolved AVS who were permanent/substantive may be adjusted in JDA/Municipal Councils/Municipal Corporations and other Local Bodies on the lowest posts of direct recruitment against the vacancies which would become available on account of retirement after March 31, 1999. This benefit of policy decision was not extended to the temporary/adhoc, casuals and daily wages employees. The employees shall not be appointed on preferential basis.

This police decision according to the reply of the State Government was arrived at on compassionate grounds and it does not create any right to the petitioners. It was further pleaded that on June 1, 1999 a further decision was taken that accommodated employees shall not get any pay protection and consequential benefits. Number of employees have been screened and they have accepted reasonable offer and filed undertaking. Orders of appointment have also been issued. The undertaking to withdraw writ petition is in consonance with the principles of fair policy.

At the cost of repetition it may again be recalled that the petitioners came to be appointed in the AVS under a centrally sponsored scheme introduced by the Central Government for establishment of Building Centres with the help of HUDCO. There is no material on record which could suggest that the Central Government discontinued the scheme. National programme of setting up of a network of building centres in all the districts of the country is still in existence and the scheme is still implemented and operated by the HUDCO. The scheme was introduced with the object to provide gainful employment to young men and women from urban and rural areas by training them in the use of low-cost building materials and technologies thereby giving an impetus to low-cost construction. The petitioners who are trained in the use of low cost building materials and technologies have been thrown out of employment without any just reason. The State Government has turned its so called humanitarian face only towards the permanent/substantive employees of dissolved AVS by providing them charity of fresh appointment as if they for the last many years were not serving the AVS but playing the game of "Snakes and Ladders" and that is why from "number - 99" they have to come back to "number-2" and they shall have to start fresh inning of their life again. And the temporary/adhoc, casual and daily wage employees? They are out of the job. No matter whether they are over-age or hand to mouth? What a charity? What a compassionate policy?

41. In M.P. Oil Extraction's case (supra) the Hon'ble Supreme Court has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the court should not embark on the uncharted Ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the Statute or the Constitution of India. It was observed by their Lordships that, "the supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

42. As discussed hereinabove the Government of Rajasthan with the help of RHB created AVS and provided employment to the petitioners but suddenly snatched the work from them and pushed them out of employment. National programme of setting up of a net work of building centres in all the districts of the country is still in existence and the HUDCO is still implementing and operating the scheme yet the Government of Rajasthan took the decision to dissolve AVS and the petitioners who were trained in the use of low-cost building materials and technologies have been thrown out of employment without any just reason. This act of State Government and its instrumentality RHB is violative of Articles 14, 21, 39(1) and 41 of the Constitution of India. So called humanitarian policy of the State Government is arbitrary and discriminatory. It on the one hand does not provide for employment to temporary/adhoc, casual and daily wage employees but on the other hand it deprives the permanent/substantive employees from the benefits of their past services and pay protection. The policy is absolutely capricious and not based on any just reason. It is founded on mere ipse dixit of the executive functionaries of the Government of Rajasthan. The executive authority of the State was not within its competence to frame such an arbitrary policy wrapped in the wrappers of charity and humanity. Such "sugar coated bitter actions" of the State deserve to be struck down.

43. The employees of the dissolved AVS are the liabilities as well as the assets of the AVS. Assets, because they were trained in the use of low-cost building materials and technologies and it is the RHB who has to deal with them in view of Clause 17 of the Memorandum of Association of AVS and Section 13 of the Societies Registration Act, 1860. Section 53 of 1970 Act gives power to RHB to make regulations. The petitioners after dissolution of AVS are the liabilities of the RHB and RHB is duty bound to make regulations in respect of their service conditions. The National Programme of setting up of a net work of building centres in all the districts of Rajasthan owned earlier by the AVS, may now be handled by the RHB. An independent cell in the name of LOW-COST HOUSING CENTRE or any other name may be created in the RHB for this purpose and the petitioners may be continued on the same posts which they held in the AVS before dissolution. This will not affect the rights of the employees already working in the RHB. In view of this the application moved by the existing employees of the RHB does not require consideration.

44. During the pendency of the writ petitions, the Government of Rajasthan provided fresh employment to number of petitioners after they furnished undertakings that they would withdraw writ petitions and would not claim salary, past service etc. Number of petitioners submitted applications that their names be deleted from the writ petitions. I can only say that such petitioners and the Government of Rajasthan are not equal in bargaining power and undertaking furnished by such petitioners can not be termed as fair.

45. In view of what I have discussed hereinabove I dispose of all the writ petitions in the following terms:

(i) All the petitioners are entitled to unpaid salary which they used to get in the AVS and the Rajasthan Housing Board in view of Section 13 of the Societies Registration Act, 1860 read with Clause 17 of Memorandum of Association of the AVS shall arrange payment within 30 days from today.

(ii) The State Government shall call upon the Rajasthan Housing Board to frame necessary regulations under Sub-section (2) of Section 53 of the Rajasthan Housing Board Act for carrying out the purposes of the Act to create an independent cell in the name of LOW COST HOUSING CENTRE or any other name, under the control of RHB for setting up of a net work of building centres in the districts of Rajasthan in accordance with the National Housing Policy of the Central Government. The petitioners shall be continued on the same posts held by them and Service Regulations for them shall be framed. The newly created LOW COST HOUSING CENTRE or any other name, shall have independent status and service conditions of the employees shall not affect the rights of the existing employees of the RHB. Till regulations are framed, the RHB may entrust the necessary work to the petitioners and the petitioners shall be paid salary regularly and their past services shall be maintained. The property of the dissolved AVS shall not be disposed of and attempt shall be made to implement the National Housing Policy effectively with the help of HUDCO. The State Government is expected to provide all necessary help to newly created cell.

(iii) The policy framed by the State Government in order to provide fresh employment to the permanent/substantive employees of the dissolved AVS shall stand quashed. The petitioners who got fresh appointment may if they so choose, continue in the said job and directions issued in this order in that event shall not affect them.

(iv) In the facts and circumstances of the case the parties shall bear their own costs.