
(2000) 08 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3806, 29998 and 30278 of 1998 and 9339 and 10313 of 2000

Bharat Heavy Electricals Higher Secondary School Staff
Association B.H.E.L. and Others

APPELLANT

Vs

Bharath Heavy Electricals Ltd. and Others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2000) 08 AP CK 0023

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : G.S. Rao, for the Appellant; S.V. Bhatt, E. Kalyanram, S. Ravindranath and G.S. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—All these Writ Petitions can be disposed of by a common judgment.

2. W.P.No. 29998/98 was filed by Bharat Heavy Electricals Higher Secondary School Staff Association and some other teachers of that school seeking writ of mandamus directing the Bharat Heavy Electricals Limited to continue and run the Bharat Heavy Electricals Limited Higher Secondary School with classes from L.K.G. to 12th as a welfare measure in accordance with the objectives of the company memorandum and also the constitutional obligations under Article 45 of Constitution of India. They further seek the declaration that the petitioners No.2 to 9 are the employees of Bharat Heavy Electricals Limited. Further direction was sought to continue the staff and also pay them the emoluments, gratuity etc. as applicable to Bharat Heavy Electricals Limited Employees. They also seek declaration restraining the B.H.E.L. from closing down the classes from 1996 onwards by not admitting the students which as a consequential effect of termination of the services of the teaching staff as discriminatory and violation of

the articles 14, 16 and 21 of the Constitution of India. In W.P.Nos. 30278 of 1998 and 3806 of 1998, similar reliefs were sought. The petitioners have sought for very ambitious relief, but in nut-shell their grievance is that they should be treated as the employees of the B.H.E.L. for the purpose of emoluments and for the purpose of terminal benefits and that the school should be directed to be run by the B.H.E.L. without closing down the school as welfare measure to the employees of the B.H.E.L.

3. Other Writ Petitions are filed challenging the termination Order passed by the B.H.E.L. School Committee by the B.H.E.L. Educational Society and termination Order dated: 25.2.2000 and for consequential relief of reinstatement into service and other benefits.

4. In W.P.No.29998 of 1998, it is the case of the petitioners that the Bharat Heavy Electricals Limited, a Government of India Public Sector Undertaking (hereinafter called as "B.H.E.L."), was established in the year 1964. As a welfare measure, it has established a secondary school in 1964 in pursuance of clause 27 of the Memorandum of Association. The school was built in the township of B.H.E.L. The management of the school initially was entrusted to a school Committee consisted of officials of B.H.E.L. It was functioning under the style of B.H.E.L. Education Committee. Employees both teaching and non-teaching under the school administration were given P.F. account, Income tax was deducted at source, they were given the membership of B.H.E.L. Credit Society and also numbers of the P.F. linked Pension, which is applicable to the B.H.E.L. Employees. The selection of the teaching and non-teaching staff was done by the B.H.E.L. officers only. The salaries of the teaching and non-teaching staff was paid by the B.H.E.L. from its own funds. In fact both administrative and financial affairs of the school committee were being undertaken by the B.H.E.L. management. According to the averments, the curriculum introduced by the school was 10 Plus 2 pattern. The salaries and other service conditions of the employees was on the pattern of Kendriya Vidyalaya pay scales. It has been running the classes from 1st standard to 10th standard. The strength of the school in 1978 was 3,400, in 1986 it was 4,600, in 1996 it was 2,800. The students established merit record in the public examinations. But, however, with the passage of time, apart from the B.H.E.L. secondary school, six more schools were allowed to be established in the township of B.H.E.L. namely Z.P. High School, St. Anns' High School, Bharatiya Vidya Bhavan Public School, Jyothi High School, Geethanjali High School, Vidya Bharathi High School. The admissions in that schools were controlled by the B.H.E.L. and subsidy is also provided to these schools in respect of the children of the employees of the B.H.E.L. It is their case that one Smt. Padmavathi on her voluntary retirement was refused gratuity. Therefore, she filed W.P.No.6301 of 1983 and the said Writ Petition was allowed holding that the school was an integral part of the company and the said Principal was the employee of the company and therefore, she was entitled for gratuity. Against the said Order of the learned single Judge, Writ Appeal no. 5181 of 1997 was preferred by the management of the B.H.E.L. and the Writ Appeal was dismissed.

Thereafter contempt case was filed against the officers of B.H.E.L. for violation of Orders of the High Court. To overcome this adverse Order and as a retaliatory measure, the management of B.H.E.L. which was running the higher secondary school under the management of B.H.E.L. School Committee established the B.H.E.L. Education Society registered under the A.P. (Telangana) Public Societies Act of 1360 Fasli. All the assets held by the School committee were transferred to Education Society. When the Society was registered, its registration was challenged in W.P.No.8428 of 1983 by some teachers and the same was disposed of with a direction to the B.H.E.L. to ensure continuity of service, gratuity, seniority etc. But, against the Orders of the learned Single Judge, the matter was carried in Writ Appeal Nos. 18905/1998 and 1828/1998 and there was a settlement between the parties. In view of this, Writ Appeals were disposed of in view of the settlement. However, it is the case of the petitioners that the B.H.E.L. has been adopting the revengeful attitude. They developed an evil design by closing down the entire institution as the contempt proceedings were initiated against the highest officers of the company alleging that the Orders of this Court were not complied with. Therefore, the management deliberately and intentionally started closing down the classes. In 1996-97, 1st class was closed, in 1997-98 2nd class was closed and in 1998-99 3rd class was also closed. The admissions for class XI and XII for 1996-97 were closed. Thus the management has been closing down the classes with a principal aim of eliminating all the teachers and to close down the school once for all. The petitioners state that the ground of closing down the classes was deliberate and the assertions of the management that the students are not coming for admissions and that there is no required strength to maintain the classes was absolutely incorrect and it was only brought out for the purpose of terminating the services of the teachers. In fact there is heavy demand. In spite of this, the management introduced voluntary retirement scheme which was accepted by some of the staff under various pressures, but there is no warrant for declaring the staff as surplus staff. It is the case of the B.H.E.L. education Society that the children are not coming for admissions, but at the same time, the children are being admitted to various other schools in B.H.E.L. complex. Therefore, the action of the respondents in closing down the classes is illegal and unwarranted.

5. The Writ Petition 9339 of 1999 and other Writ Petitions were filed by the teachers including the staff association challenging the Orders of termination of various teachers. Apart from the averments which are made in W.P.No.29998 of 1998, it is stated that the action of the management in terminating the services is wholly arbitrary and offends Articles 14 and 21 of the Constitution of India. In effect, there is no depletion of strength and it has been intentionally caused by the management to see that the teachers are terminated on the ground of surplus staff. In a calculated move to close the school, such a step has been taken and therefore, the Orders of termination are liable to be set aside and they are entitled for reinstatement with other benefits.

6. Separate counters have been filed by the B.H.E.L. and also the Education

Society.

7. It is the case of the B.H.E.L. management that the termination Orders were passed by the Educational Society, a Society registered under the provisions of the Hyderabad Public Societies Registration Act and the management and administration of higher secondary school has been vested in the hands of the managing committee of the Education Society ever since 1985. Therefore, it is not a State nor instrumentality of the State under Article 12 of the Constitution of India and therefore, the Writ Petition itself is not maintainable. It is stated that when the project was established at Ramachandra Puram, there is no educational facility to the children of B.H.E.L. employees and therefore, a Committee was constituted to look after the education of children. It was the policy of the company to provide and to secure to all its employees and families all possible facilities. As a welfare measure the company has established the school in the township of B.H.E.L. to provide education both in Central(C.B.S.E.) and State pattern. Since from 1965, there was study increase of the employees and consequently there was demand for schools. Initially, the school was managed by the committee and the entire short-fall between the expenditure and income was borne by the management of B.H.E.L. The alleged ill will on account of Smt. Y.Padmavathi filing Writ Petition was wholly misconceived and not relevant. When the Society was constituted, a Writ Petition was filed and the same was disposed of with the directions against which the Writ Appeals were filed and there was a compromise between the petitioners and the Society. Therefore, it was closed. Hence, it is not open for them to contend that they are the employees of the B.H.E.L. It is stated that the children of B.H.E.L. employees are at liberty to seek admission in any of the schools either in the township of B.H.E.L. or anywhere. The declining students strength is applicable to all the campus schools and it is a fact that in recent years, the availability of employees children for admission has been declining mainly due to the reason that there is no recruitment. It is also stated that large number of employees crossed the reproductivity age of 50 and most of the children are in colleges or married away apart from that number of employees have also taken voluntary retirement scheme, which worked out to 23%. Thus, there is a decline in the school going children.

8. On behalf of the B.H.E.L. Education Committee, in the counter it is stated that the Society was functioning for the last 15 years. The existence of surplus staff was absolutely factual and real and this fact is very well known to the surplus staff. Most of the surplus teachers are idle for most of the time. Thus, they are not rendering any service. Even the voluntary retirement scheme was refused by the staff. It is stated that the students strength in school during 1995-96 was 1,852, in 1996-92 it was 1,200, the admissions during 1991-92 are 201 and it came down to 85 in 1995-96 and it steeply declined to 6 in 1996. In 1996-97, admissions were practically nil. Under those circumstances, the voluntary retirement scheme was introduced in 1996-97. The 1st circular on 27.6.1996. The school was not being controlled by the B.H.E.L. committee and it was an independent entity. It was registered under the provisions of the Act and there is

no connection whatsoever between the B.H.E.L. management and the school. The entire administration is run by the Society itself. Since the strength of the students steeply declined, there is no alternative for the school to closing down some sections as it was not possible to run even one Section. It is stated that on closing down the 1st class no request was made by the B.H.E.L. parents for running the classes or not to close the classes. The management of the B.H.E.L. gives subsidy to the employees children for other schools by way of difference of tuition fee. The cost of subsidy for every child during the last year was worked out to Rs. 18,000/- in respect of the B.H.E.L. school. The details of expenditure incurred by the school were as follows:

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EXPENDITURE ON SALARIES STAFF STRENGTH. INCLUDING VRS AND OTHER										
TERMINAL BENEFITS (Rs. LAKHS)										
-----										1995-96
95.60	135	1996-97	145.00	115	1997-98	211.65	87	1998-99	221.00	70
105.00	69	-----								1999-00

9. The details of admissions and total strength are as follows:

YEAR	ADMISSIONS	TOTAL	STRENGTH	TOTAL	STAFF	1991-92	210	3060	176
1992-93	164	2745	155	1993-94	112	2432	149	1994-95	97
2228	140	1995-96	84	1852	135	1996-97	6	1200	115
1997-98	2	1050	87	1998-99	2	670	70	1999-00	3
505	69	2000-01	-	361	45	(Till date)			

10. In view of this, there is no other go except to terminate the services. Therefore, prayed to dismiss the Writ Petitions.

11. Though the Writ Petition is brimming with prolixity and when the chaff is cleared the following points would emerge for consideration of this Court.

1) Whether the B.H.E.L. Education Society is a part of B.H.E.L. Organisation, if so, writ can be issued against the management of the Society?

2) Whether the termination of the services of the teachers working in B.H.E.L. higher secondary school was legal and valid?

12. The learned counsel for the petitioners, however submits that various averments made in the Writ Petition and the documents filed would clinchingly established that it is an integral part of B.H.E.L. Organisation and therefore, the Writ Petition is maintainable. On the other hand, the learned counsel for the B.H.E.L. submits that it is an independent body constituted under the provisions of the Act. The B.H.E.L. has no supervision and control over the management of the Society. Except to the extent of financial replenishment, no other benefit is extended to the school and hence a mere financial assistance would not make the Education Society as a instrumentality of the State or as an integral part of B.H.E.L. Organisation. The learned counsel appearing for the Education Society submits that no writ is maintainable against the Society, it is a creature under the statute and having independent management body and it has no public duty

to discharge. The school was established as a welfare measure to the employees, who would be able to join their children in the school and the school was being run under the management constituted under the registered bye-laws of the Society.

13. Some of the facts which are not in dispute can be separated before going to the intricacies of the case.

14. The B.H.E.L. is an Government of Undertaking registered under the Companies Act. It was established at Ramachandra Puram, Medak District in or around 1960. It is engaged in the manufacture of Steam Turbines, Generators, Gas Turbines, Heat Exchanges, Condensers, Oil Rigs etc. In the initial stages when the project was established, there were no education facilities to the children of the B.H.E.L. employees and therefore, it was decided to start the educational institution as a welfare measure to the employees of B.H.E.L. and accordingly B.H.E.L. higher secondary school was started. The management of the school was entrusted to an independent body not connected with any of the department of the B.H.E.L. The company had taken number of welfare measure including the education of the children in B.H.E.L. town ship. It has also permitted number of other schools to establish for providing both Central(C.B.S.E.) and State syllabus. There was study increase in the employees from 1965 onwards and hence the school established by the B.H.E.L. was running with full students complement.

15. The management of the B.H.E.L. has provided infrastructure facilities namely building, furniture to the institution. The B.H.E.L. Education Society was registered in the year 1985 under the Hyderabad Public Societies Registration Act and after its registration, the management and administration of the B.H.E.L. Higher Secondary School which was vested in the hands of the Managing Committee of the B.H.E.L. Higher Secondary School vested with the Managing Committee of the B.H.E.L. Education Society. Ever since 1985 all the employees have been working under the 2nd respondent. It is also admitted that B.H.E.L. company has been reimbursing the entire shortfall between the income and expenditure of the school and the members of the school were admitted to various benefits such as Provident Fund, Transportation, Quarters Etc. It is the case of the petitioners that it is an integral part of the B.H.E.L. and they took the assistance of the decision of this Court in W.P.No.6301 of 1993. In the said Writ Petition, one Smt. Padmavathi, who was working as Head Mistress laid a claim for gratuity on par with the rules applicable to the employees. The learned Single Judge of this Court held that the school is an integral part of B.H.E.L. and therefore, the staff employees in the school are entitled for gratuity on par with the gratuity scheme applicable to the B.H.E.L. employees. Against the said Order, the management of B.H.E.L. filed W.A.No.517 of 1984. However, the Writ Appeal was dismissed by the Division Bench observing that the appellants including the school committee had stated that the Gratuity scheme has been extended to all its employees. Further, the school was made over to a registered Society and the

B.H.E.L. management is no longer connected with the management of the school. The following is the extract from the Order of the Division Bench:

"We are not inclined to go into the merits of the Writ Appeal for more than one reason. The first and foremost is that since the filing of the Writ Appeal the appellant Corporation has extended the gratuity scheme to all its employees. Therefore, today similar question may not arise. The second is, Mr. Venkatrami Reddi statement that the school has been made over to a Society registered under the Societies registration Act and that the Corporation is no longer connected with the management of the school. Be that as it may, having regard to the facts and circumstances of the case and also in view of the extension of the said benefit by the Corporation itself since the filing of the Writ Petition, the question raised in this Writ Appeal is more or less of academic interest. Similar question may not arise again. Having regard to the facts and circumstances of the case, we also think that the relief granted is a just one.

The Writ Appeal accordingly fails and is dismissed. No costs."

16. Therefore, the Division Bench did not go to the aspect whether the judgment of the learned Single Judge was correct since the benefit of Gratuity Rules were extended to the employees of the school and the school is entrusted to a registered Society. The matter became academic. Hence, the Writ Appeal was dismissed with the aforesaid observations. By this judgment, it cannot be said that the judgment of the learned Single Judge became final on merits. The Writ Appeal was dismissed on the ground that the matter did not require further enquiry in view of the extension of the gratuity scheme to the staff engaged in the school. Hence, the contention of the learned counsel for the petitioners that itself an integral part of B.H.E.L. management as held by the learned Single Judge has become final is misconceive and liable to be rejected. He also relied on the decision of this Court reported in W.P.No.8428 of 1985. The said Writ Petition was filed by the staff of the school seeking writ of mandamus declaring that they are employees of the B.H.E.L. and restraining the respondents from compelling them to serve as employees of the Education Society by striking down the B.H.E.L. Education Society. As already referred above, the B.H.E.L. Society was registered in 1985 when the management of the school committee was came to be vested in the ands of the Society. At that point of time, the employees were not inclined to go into the folds of the Society and therefore, they filed the Writ Petition. It was the case of the Education Society that the school was being run by the Committee constituted by the B.H.E.L. company for proper administration and management of the school. The curriculum followed by the school was on the standard and pattern of Kendriya Vidyalaya Sanghatan(Central schools). Staff of the school have been treated separately from that of the employees of B.H.E.L. The object of the school was prepared by the school. The deficit is made good by the B.H.E.L. management. Similarly, subsidy is also given by the B.H.E.L. to the schools managed by the private managements. The conditions of service of the staff are different from the B.H.E.L. employees. The staff are being

paid the scale and other allowances on par with the Kendriya Vidyalaya Sangathan. The bye-laws framed by the Society provided contributory provident fund and gratuity as per the rules of the Education Society. One of the contentions put-forth by the petitioners in the said Writ Petition was that they were compelled to option the working under the Society and such an option can be followed and binding. It was brought out before this Court that out of 173 employees of the Society 117 gave options to become members of the Society. Therefore, that contention was repelled. Further contention was raised that the teachers and staff of the school run by the school to the formation of the Society was employees of B.H.E.L. which was disputed by the management of the B.H.E.L. But, however, the learned Single Judge having regard to the fact that 117 employees out of 173 have given option to become the employees of the so the commitment was made that the teaching and non-teaching staff will have the benefits as enjoyed under the school committee and it would not be reduced in any way. The learned Single Judge found that it is not necessary to go into the question that whether the petitioners are employees of the B.H.E.L. or not. Therefore, the Writ Petition was disposed of with a direction to ensure continuity of service, gratuity, seniority and provident fund to constitute and trust with regard to the provident fund as early as possible. Not satisfied with the judgment of the learned Single Judge, the petitioners carried the matter in W.A.Nos. 1805 and 1828 of 1998. It appears that during the pendency of the Writ Appeal, the discussions took place between the petitioners of the Education Society and the same was reported to the Division Bench. Therefore, they were disposed of in terms of the minutes of the meeting. The following is the extract:

" Both these Writ Appeals arise out of the Order dated: 13.10.1988 passed in W.P.No.8428 of 1985 disposing of the Writ Petition. The petitioners in the Writ Petition and some others have filed these Writ Appeals. The relief sought for in the Writ Petition is the issuance of writ of Mandamus declaring that the petitioners are the employees of the B.H.E.L. and restrain the respondents in the Writ Petition from compelling the petitioners to serve as employees of B.H.E.L. Education Society.

During the pendency of these Writ Appeals, the B.H.E.L. Higher Secondary School Staff Association submitted a charter of its problems to the B.H.E.L. Education Society. Negotiations were held between the representatives of the employees and the Education Society on all the problems of the employees and the Minutes of the meeting were recorded on 18.12.93. A copy of the Minutes of the meeting discloses that some of the demands made on behalf of the employees have been conceded and some other demands have been rejected. In view of the understanding arrived at between the employees and the management of the B.H.E.L. Higher Secondary School regarding the conditions of service of the employees, no further Orders need be passed in these Writ Appeals. They are accordingly disposed of. There shall be no Order as to costs"

17. Thus, it is seen that even though the petitioners have claiming the status of

B.H.E.L. employees and also claiming consequential benefits on par with B.H.E.L. employees there was no final verdict on this issue. As already stated, originally the school came under the management of school Managing Committee constituted by the B.H.E.L. management. The members of the Managing Committee were none-else than the officers of the B.H.E.L. But, since it was stated before the Division Bench that the gratuity scheme has since been made applicable to the staff working in the B.H.E.L. school no further adjudication was found necessary. Even when the formation of the Society had taken place, similar issue was urged by the staff, the learned Single Judge has clearly found that they became the employees of the Society with a different set up of service conditions. May be they were treated on par with the employees of the B.H.E.L. Since, it was accepted before the learned Single Judge that the employees of the Society gave an option to come under the Society and the benefits which they were enjoying while the school was under the school Managing Committee were continued, the finding whether they are employees of B.H.E.L. was not recorded. Thus, the Writ Petition was only disposed of directing the respondents to grant continuity of service, gratuity, provident fund etc. When the matter was brought before the Division Bench by way of Writ Appeal, it was reported that the settlement took place between the staff and the management of the Education Society and therefore, the Writ Appeal was not disposed of on merits. Therefore, from this itself it clearly emerges that though the school was formed as a welfare measure by the B.H.E.L. initially, it was in the hands of the school Managing Committee and subsequently it came to the fold of the registered Society, may be it was established by the management of B.H.E.L. But, consequent on the registration of the Society all the employees working in the school committee came to the fold of the registered society and the registered Society has framed its own bye-laws including those relating to the service conditions of both teaching and non-teaching. It was also assured that consequent on the vesting of the administration under the B.H.E.L. Education Society there will not be any break of service and the benefits which are being enjoyed by the staff under the school committee were being continued without any interruption. Therefore, sequence of events as narrated and which cannot be disputed would clearly reveal that the Education Society was being treated as a separate entity. It was governed by the Bye-laws framed by it for the proper administration of the Education Society. Further, the deficit funds are being replenished by the management of the B.H.E.L. Even today also that is the situation. The learned counsel for the petitioners, however, submits that the management of the Education Society composed of the officers of the B.H.E.L. and therefore, in effect the off-shoot of the B.H.E.L. administration. This contention cannot be accepted as the school was established as a welfare measure and it is not in the statutory requirement under the Factories Act, unlike canteen etc. It is only a non-statutory measure, which is being extended by the B.H.E.L. management in the interest of the employees. The management has entrusted to an independent committee initially and subsequently, it was placed at the disposal of the registered Society. Of course, the Society is discharging the duties analogous to

public duty. But, none-the-less, can it be called an integral part of B.H.E.L. if it is held that it is an integral part, any command issued to B.H.E.L. would to be a command to the Education Society. But, if it is held that the Education Society has a separate entity still it has to be considered, whether the Education Society is an instrumentality of the state and whether it is amenable to writ jurisdiction of this Court. As already narrated, there is no finding that the staff working in the Education Society are the employees of B.H.E.L. and the events that took place from the establishment of the institution it is managed by a separate committee. May be the committee was composed by the officers of the B.H.E.L., the memorandum of association of the company includes that it is also under obligation to provide welfare measure to the employees. But, it cannot be said that any welfare measure provided would form an integral part of B.H.E.L. management and the persons employed in that process will be treated as employees of B.H.E.L. The appointment of the teachers is done by the school committee, the salaries are paid by the school committee and the service conditions are framed by the school committee and the supervision and control is also done by the school committee, except the financial flow which is given from the B.H.E.L. management. Even after the registration of the Society, the same system was followed and it is not the case that all the actions or decisions taken by the Education Society are subject to the ratification by the management of the B.H.E.L. For all practical purposes, the Education Society is an independent establishment except the financial autonomy. Even the B.H.E.L. management accepted that the finance are being arranged by the B.H.E.L. management as a welfare measure for the children of employees. The fact that separate conditions of service have been framed and they opted to become the employees of the Education Society, it is too late in the day to contend that the petitioners are the employees of B.H.E.L. Organisation. Mere financial flow from the B.H.E.L. to the welfare activities would not be construed that the Society is an integral part of B.H.E.L. Organisation. Hence, I have to reject the contention that the Education Society is a part of B.H.E.L. Organisation.

18. The question that falls for consideration is whether B.H.E.L. Education Society is an instrumentality of the State or an Agency of the Government. Whether a particular Corporation or a Society or a Company falls under the definition of "instrumentality of the State" has been the subject matter of number of cases before Supreme Court. I need not refer to all these cases for the purpose of deciding the case on hand. The learned Counsel for the petitioner, however, strenuously relied on *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, to say that a society registered under the Societies Registration Act is an "authority" within the meaning of Article 12 of the Constitution of India and, therefore, writ lies against the said Education Society. But before reaching *Ajay Hasia's* case (1st cited supra), let University also consider other decisions rendered by the Supreme Court previous to this case. In *Sabhajit Tewary Vs. Union of India (UOI) and Others*, the question that arose was whether the Council of Scientific and Industrial Research (CSIR), a Society registered under

the Societies Registration Act, was a "State" or "other authority". It was held by the Supreme Court that it was neither a "State" nor "other authority" within the meaning of Article 12 of the Constitution of India and according to the Supreme Court, writ petition Writ Petition was not maintainable against it. This decision has been distinguished in number of subsequent decisions stating that merely because it was a Society registered under the Societies Registration Act, it cannot be said that it is not a "State" or "other authority" within the meaning of Article 12 of the Constitution of India as various functions that are being discharged by a particular institution are to be taken into consideration. Thus, the ratio laid down in *Sabhajit Tewary's* case (2nd cited supra) was explained in *Ajay Hasia's* case (1st cited supra). The Supreme Court held that the decision in *Sabhajit Tewary's* case (2nd cited supra) was not an authority for the proposition that a Society registered under the Societies Registration Act, 1860 can never be regarded as an authority within the meaning of Article 12 of the Constitution of India. The Supreme Court further observed that having regard to the various features enumerated in the judgment in *Sabhajit Tewary's* case (2nd cited supra), the conclusion was reached that the CSIR was not an agency of the Government, but the Court did not rest its conclusion on the sole ground that CSIR was a Society registered under the Societies Registration Act, 1860.

19. In *Ajay Hasia's* case (1st cited supra) the matter related to the admissions to Engineering College. Regional Engineering College, Srinagar, was one of the fifteen Engineering Colleges in the country sponsored by the Government of India. The college was established and its administration and management were carried on by the Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. Having regard to the Memorandum of Association and the Rules of the Society, it was held that the Society was an instrumentality of the State and the Central Government and, therefore, it was an "authority" within the meaning of Article 12 of the Constitution of India. While reaching to the conclusion, the Supreme Court has considered the composition of the Society which was dominated by the representatives by the Central Government and the Governments of Jammu and Kashmir, Punjab, Rajasthan and Utter Pradesh with the approval of the Central Government. The monies were provided by the Central Government and the State Government. The accounts are subject to the audit by the Central Government and the State Government. The Central Government and the State Government have power even to appoint any other person as members of the Society and it has got the power to remove any member from the membership of the Society. The Board of Governors are incharge of general superintendence, direction and control of the affairs of Society. Under these circumstances, it was held that it is amenable for writ jurisdiction. While referring to the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, with reference to the essential features to determine whether it is a "State" or "Instrumentality of the State", the Supreme Court observed at para 9 as follows:

"The test for determining as to when a corporation can be said to be an

instrumentality or agency of Government can be culled out from the judgment in the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities",

it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tampered, by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority's* case as follows:

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

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

(3) "It may also be a relevant factor...whether the corporation enjoys monopoly status which is 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".

20. It was held by the Supreme Court that the real test is not as to how a particular institution was created, but why it has been brought into existence. The Supreme Court in this regard observed in para 11 as follows:

"We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided

on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society, and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12"

21. There are other cases where the Corporations were registered under the Companies Act. In *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, the issue was whether Indian Council of Agricultural Research (ICAR) an instrumentality of or the agency of the State. The Supreme Court held that the ICAR falls under the category of "authority" on the ground that prior to constitution of ICAR, it was a department of the Government and after the constitution, it continued to discharge the same functions as that were discharged when it was a part of the Government. On this analogy, it was held that it was a "State". It was held that the authorities were constituted under the provisions of the Statute and that such Corporations and the authorities would fall under the definition of "State". But here in this case, we are only concerned with the Statutes of the society registered under the provisions of the Societies Registration Act.

22. In *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, the issue arose whether the Institute of Constitutional and Parliamentary Studies (ICPS) was State under Article 12. It was a registered Society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the Society was the then Speaker of the Lok Sabha. Out of the five Vice-Presidents three were the then Central Ministers; the other two were the then Chief Justice of India and the Attorney General. The objects of the Society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of the legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Supreme Court found that the ICPS was born as a voluntary organisation and though it receive substantial financial contribution from the State Government, but its objects were not governmental business. Thus, it was held that it was not a "State".

23. In *Sheela Barse Vs. Secretary, Children's Aid Society and others*, the question arose was whether the Children Aid Society is a "State" within the meaning of Article 12 of the Constitution of India. The Supreme Court observed that it is a Society registered under the Societies Registration Act and is treated as a public trust. It receives grants from the State and it was held that it falls within the meaning of Article 12 of the Constitution of India as it was undoubtedly an instrumentality of the State on the basis of the test laid down in various cases. It was also observed that the Society has to regulate its activities

not only in accordance with the statutory requirements but also act in a manner satisfying the requirements of the Constitutional provisions in Articles 21 and 24 as also the Directive Principles of the State Policy. In ALL INDIA SAINIK SCHOOLS EMPLOYEES ASSOCIATION vs. DEFENCE MINISTER CUM CHAIRMAN, B.O.G., S.S.SOCY, AIR 1989 SC 88 the issue came up for consideration was whether the Sainik Schools Society was a "State". The Supreme Court observed that the Sainik Schools Society was entirely funded by the State and the Central Governments and the over all control vested with the Governmental authority. The main object of the Society was to run schools and prepare students for the purpose of feeding the National Defence Academy. The defence of the country was one of the regal functions of the State. Therefore, it was held that the Society was a "State" within the meaning of Article 12 of the Constitution of India and Article 14 of the Constitution of India was attracted.

24. In Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], a similar question arose as to whether the National Council of Educational Research and Training (NCERT) falls under the expression "State" under Article 12 of the Constitution of India. It was held by the Supreme Court NCERT was not a State and thus it was not amenable for writ jurisdiction. Referring to various dicta laid down by the Supreme Court, it observed in paragraphs 2 and 3 as follows:

"These are only general principles but not exhaustive test to determine whether a body is an instrumentality or agency of the Government. Even in general principles, 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. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case. {See (i) 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, ; (II) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; (iii) Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and (iv) Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449: (AIR 1981 Supreme Court 212)".

"Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activity and governmental 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. {See : (i) P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, ; (ii) Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; and (iii) Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, ".

25. The NCERT was a Society registered under the Societies Registration Act. It has Memorandum of Association and Rules of internal management. Under clause 3.1 of the Memorandum of Association, the object of the Council was to assist and advise the Ministry of Education and Social Welfare in the implementation of its policies and major programmes in the field of education particularly school education. For achieving this object, it has to undertake several kinds of programmes and activities including coordination of research extension services and training, etc. Therefore, it was held that the NCERT was only an autonomous body and it does not have the features required to fit in the definition of "Instrumentality of the State.

26. In the instant case, the school was established by the management of B.H.E.L. and it was being run under the supervision of the Managing Committee constituted by the B.H.E.L. School Committee. But, however, in 1985, a Society was registered under the provisions of the Hyderabad Public Societies Registration Act and the entire management and control of the School was entrusted to the Education Society. It was almost an autonomous institution for the purpose of administration. In the counter filed by the Education Society, it is clearly stated in paragraphs 11 and 12 that :

"11. It is submitted that the Managing Committee of the Respondent society is an elected body by the members of the society and they are not nominated by B.H.E.L. management at all. The Society is free to have in its membership any members from B.H.E.L. employees or outside. After the Society formation and take over of the school by the Society, there is absolutely no role played by B.H.E.L. in the affairs of the Society/school. The Society approaches the B.H.E.L. management only for financial aid for running the school. The schools, income

and expenditure statements, balance sheet etc., of the Society were maintained by the Society itself and duly audited and certified by outside auditors whereas B.H.E.L. is subject to audit by Government Audit and Statutory audit etc.

12. The salaries, allowances and benefits for the school staff are paid by this respondent Society only, from its own funds generated by the collection of tuition fees and also grants taken from B.H.E.L. This does not give any administration or management control to B.H.E.L. as all decisions are taken by Society for the school. It is true, however, that the infrastructure, facilities like buildings, land, ground, etc., are provided by B.H.E.L. to this school and also to other schools in the campus, though they belong to various managements. The management of the schools are users of the infrastructure facilities only and not owners".

27. Thus, it has to be seen that the Society was wholly managing and administering the school and taking decisions of its own without getting approval of the B.H.E.L. The only part that is played by the B.H.E.L. management is that it finances the school to the extent of its deficit. The internal management of the Society is run by the Managing Committee. It may be that the Managing Committee consisted of the Officers, but when the Officers are the members of the Society, naturally they form the members of the Managing Committee. But that would not make any difference in the eye of law. The question is whether it falls under "State" or "other authority" within the meaning of Article 12 of the Constitution of India. No material also has been placed by the petitioner to establish that it is under the supervision and control of the B.H.E.L. management or that it is under the purview of any statute so as to have a control of the authorities under the statute. It is as good as any other private Society for the purpose of imparting education to the children of the B.H.E.L. and also the outsiders. Simply because part of funds are being provided by the B.H.E.L., it cannot be termed as "other authority" for the purpose of Article 14 of the Constitution of India. Even if the accommodation and infrastructure facilities are provided by the B.H.E.L., it would not be meant styling the Society as an "other authority". It is in pursuance of one of the welfare measures, which is permissible under the Memorandum of Association of the Company, the institution was established. It is not a statutory requirement under any laws. The B.H.E.L. is a corporate body registered under the provisions of the Indian Companies Act. This Court sitting under Article 226 of the Constitution of India cannot compel the Corporation to enforce its Memorandum of Association or Articles of Association, even assuming that the welfare measures undertaken in pursuance of Memorandum of Association were not carried out. Therefore, if an agency is created to oversee the welfare activity under a state or its instrumentality, that agency cannot become an instrumentality by itself, unless it is clothed the features as observed by the Supreme Court in the cases referred to above. Of course it is engaged in the imparting of education to the students, but by that process, it cannot be said that it is an instrumentality of the State.

28. The learned Counsel for the petitioners also relied on the decision of the

Rajasthan High Court in RUBY JOYCE CHARLES Vs. AIR FORCE SCHOOL 1999 (2) SLR 111 . That was a case where the Society was running an institution and the said Society was registered under the Societies Registration Act. It was managed by the Air force Officers, who are officers of the Central Government. The functioning of the institution was controlled by the Officers of the Central Government. It was in the list of grant-in-aid by the Central Government. The appointments on the post of Principal and Teachers are made by the Officers of the Central Government and they are authorised to take disciplinary action against the delinquent Principal and Teacher. The Managing Committee is incharge of the general superintendence, direction and control of the affairs of the Society and its income and by the property was largely controlled by the Air force Officers of the Central Government. Therefore, on the basis of that criteria, the learned single Judge of the Rajasthan High Court held that it was the "State". But in the present case, the facts are quite different. The Managing Committee is formed under the registered bye-laws of the Society and the appointments are made by the Society and conditions of service of the staff are framed by the Society. In fact the earlier history of the Society itself reveals that after formation of the society, options were called for and all the members of the Society gave options to become the members of the Society. Therefore, the judgment of the Rajasthan High Court in Ruby Joyce's case (7 supra) has no application to the facts of the present case.

29. The learned Counsel also relied on the judgment of the Supreme Court in VIDYA DHAR PANDE vs. VIDYUT GRIH SIKSHA SAMITI 1998 (5) SLR 709. In that case it was held that the State Higher Secondary School run by a Private Trust receiving 100% grant from the Government is a "State". It was a case where the regulations framed under the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1955 are statutory in character and termination was effected in contravention of regulations. It was held that the termination was illegal. Incidentally the Supreme Court also observed that it was receiving 100% from the Government and, therefore, it was a State within the meaning of Article 12 of the Constitution of India. But the main thrust was the violation of statutory regulations. Para 16 of the judgment is extracted below:

"On a conspectus of these decisions the irresistible conclusion follows that the impugned order of termination of the appellant from the post of Principal of the Higher Secondary School in breach of the Regulation 79 framed under the said Act is illegal and as such the same is liable to be quashed as the Regulations have no statutory force. The appellant is liable to be reinstated in the service as Principal of the said College. We also hold that the Higher Secondary School in question though run by a private trust receive 100% grant from the Government as is evident from the affidavit sworn on behalf of the appellant and as such it is amenable to the writ jurisdiction for violation of the provisions of the said Regulations in passing the impugned order of termination of service of the appellant. We, therefore, set aside the order passed by the High Court which, in our opinion, is unsustainable and direct the respondents to reinstate the

appellant in the service of the said College. Considering the facts and circumstances of the case we are of the opinion that the ends of justice would be met by directing the respondents to pay to the appellant a sum equal to 50% of the salaries and allowances from the date of termination till his reinstatement in service as it appears that the appellant was not in employment during this period. The appeal, therefore, allowed with costs."

30. But the present case stands on a different footing. It is not the case of the petitioners that statutory regulations have been violated. It is the case of the petitioners that the Education Society is a "State".

31. The learned Counsel also relied on the judgment of the Supreme Court in *INDIAN OVERSEAS BANK vs. I.O.B. STAFF CANTEEN WORKERS' UNION* 2000(3) SC 344 wherein Workmen of cooperative canteen run for the staff of Indian Overseas Bank, with the fund of Bank, held to be workmen of Bank. But this decision is of no avail to the petitioners. It was a decision arising under the Industrial Disputes Act and the matter was referred to by the Tribunal and the Tribunal held on the basis of the material produced before it that there exists a relationship of master and servant and, therefore, that decision cannot be invoked by the petitioners in the present case.

32. Thus, from a survey of the decisions of the Supreme Court referred to above, it is clear that the Education Society does not fall within the expression of "State" or "other authority" within the meaning of Article 12 of the Constitution of India. Except for the financial assistance, it has got its own independent existence and its decisions are not subject to the scrutiny by the management of the B.H.E.L. . Further, B.H.E.L. itself is a "State" conforming to Article 12 of the Constitution of India. Therefore, an independent Society constituted by the State cannot be said to fall under the definition of "State" or the "other authority". Under these circumstances, I have to necessarily hold that the Writ Petition is not maintainable against the Education Society. In the Writ Petition the relief was sought against all the respondents including the B.H.E.L. As already stated the role of B.H.E.L. is very limited and the Education Society is autonomous in its character. Hence, no directions can be issued to B.H.E.L. in respect of functions of Education Society. The petitioners in Writ Petition No.29998/98 are, therefore, not entitled to seek any relief under Article 226 of the Constitution of India and accordingly it is dismissed.

33. The other Writ Petitions are filed challenging the termination orders passed by the Education Society. Since I have held that Writ is not maintainable against the Education Society, the petitioners cannot challenge the validity of the termination orders passed by the Education Society in writ proceedings. Therefore, these Writ Petitions are also dismissed. No costs.

34. It is open for the petitioners to seek remedy available under any other law.