
(2006) 01 AHC CK 0151
In the Allahabad High Court
Case No : Special Appeal No.1075 of 2005

Chitra Srivastava and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 01 AHC CK 0151

Hon'ble Judges : Jagdish Bhalla, J and Dharam Veer Sharma, J

Final Decision : Disposed Of

Judgement

Dharam Veer Sharma, J.

1. Aggrieved by the order dated 7.10.2005 passed in Writ Petition No.1649 (S/S)/2005 and Writ Petition No.1645 (S/S)/2005 the appellants have filed this Special Appeal. The order dated 7.10.2005 passed in the aforesaid writ petitions by the learned Single Judge reads as under:

?In view of the decision referred to above, it is established that for maintainability of the writ petition under Article 226 of the Constitution of India, it is to be established that the institution run by the opposite parties No.3 to 5 is financially, functionally or administratively dominated by or is under the control of the Government. These elements are not established in this case. The applicability of the Intermediate Education Act, 1921 and the regulations made thereunder have also ceased to apply after the affiliation of the institution run by the opposite parties from Central Board of Secondary Education. Moreover, the petitioners were not given any appointment on any post sanctioned by the concerned authority during the period of affiliation with the U.P. Board of High School and Intermediate Education and after recognition under the Intermediate Education Act, 1921. Therefore, the petitioners have no right to hold the post. But question whether the petitioners appeared in the selection in response to the advertisement or not being a disputed question, need not be decided in this writ petition because of the simple reason that the writ petition against a private

educational institution which is not financially, functionally or administratively controlled by the Government, is not maintainable.

Therefore in view of the reasons given above, writ petition are dismissed.?

2. The aforesaid order has been challenged on the ground that respondents comes within the purview an authority as defined under Article 12 of the Constitution of India; the appellants rightly invoked the jurisdiction under Article 226 of the Constitution of India and the learned Single Judge had not rightly dismissed the writ petition on the ground of nonmaintainability.

3. Briefly stated the facts are as below:

4. According to the petitioners they are appointed as Assistant Teacher on ad hoc basis on various dates in Kamla Nehru Balika Sikshan Sansthan, Lal Diggi, Sultanpur. Subsequently, the name of the school was changed as Kamla Nehru Institute of Child Education. It imparts education upto Intermediate level. It was established in the eyar 1984 and consequently was affiliated to the U.P. Board of High School and Intermediate Education, the affiliation upto the year 31.3.2002. Thereafter from 1.4.2002, the Central Board of Secondary Education has granted the affiliation for Senior Secondary School Examination of the Board. It is complained that opposite party No.3, Manager of the Kamla Nehru Institute of Child Education, restrained all the petitioners from discharging their duties by his oral order.

5. It is alleged that junior to the petitioners have been allowed to work as Assistant Teacher but the petitioners are not being allowed to work and opposite parties are trying to make appointment of the teachers of their own choice.

6. The opposite parties Nos.3 to 5 filed written statement stating that since no post of teachers were sanctioned by the authorities concerned, during the period, school was affiliated and recognized by the U.P. Board of High School and Intermediate Education, formal recruitment of teachers could not be made by the management. The teachers were engaged to run institution and the payment to them were made by the Management itself. The school was not on list of grant in aid. It is further alleged that consequent upon the affiliation of the institution with the Central Board of Secondary Education, the Management advertised number of vacancies as per the requirement between 11.8.2004 and 17.8.2004. In response to the advertisement 542 candidates applied and after scrutiny 220 candidates including the petitioners were called for interview. Petitioners after appearing in the examination found unsuitable and could not be selected. Thus the petitioners deliberately concealed materials facts at the time of filing the petition. It is further averred that the petitioners were never appointed under the written orders and no service conditions were ever prescribed for appointment of these teachers. Writ petition is not maintainable against a private institution which is not receiving any financial aid from the Government.

7. It is not disputed that Kamla Nehru Institute of Child Education is a private

educational institution. Admittedly, it was recognized by the Board of High School and Intermediate Education and at present is affiliated with Central Board of Secondary Education. This institution is not on the grantinaid. It is also not admitted that no appointment letters was ever issued to the petitioners. It is also not disputed that the petitioner were engaged for teaching work from different duration without any service conditions, without any sanction of the post by the concerned authorities during the period it was remained affiliated with U.P. Board of High School and Intemediate Education. It is also admitted between the parties that the advertisement was issued inviting the applications after the affiliation from Central Board of Secondary Education and certain new teachers have been selected through the selection process. The petitioners have come forward with the case that they have never appeared for interview. On the contrary the opposite parties stated the petitioners applied and they were interviewed and found unsuitable and could not be selected by the Selection Committee. Thus, this is a fact in dispute whether the petitioners have applied for the same or not or whether they appeared in interview or not.

8. On behalf of the respondents the objection was raised on the ground of maintainability, the learned Single Judge considered this aspect and found the writ petition was not maintainable, hence the appeal.

9. We have heard the parties at length and perused the record.

10. Learned counsel for the appellants has placed reliance on decision of a Division Bench in Sandeep Chauhan and Others v. State of U.P. and Others; (2001) 3 UPLBEC 2259, in which this Court after referring the decision in K. Krishnamacgar yulu and Others v. Shri Venkateshwar Hindu College and another; AIR 1988 SC 295, has held that the writ petition against the private recognized institution is maintainable.

11. Learned counsel appearing on behalf of the respondents has placed reliance on decision of another Divisiion Bench of this Court in Army School, Kundri Ghat, Gorakhpur v. Smt. Shilpi Paul; 2005 (2) LBSER 457 (Allahabad), has held that every school imparting education cannot be regarded as State under Article 12 of the Constitution of India and a writ petition will not lie against a purely private educational institution not receiving funds from the Government or government agency as it cannot be deemed to be an instrumentality of the State. In this case, the Division Bench has placed reliance on a decision of the Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd. v. Shatrughan Nishad; (2003) 8 SCC 639. In this case the Supreme Court has held that the State has no control at all in the functioning of the mill much less a deep and pervasive one. Hence, it was held that Kisan Sahkari Chini Mill was not a State under Article 12 of the Constitution of India. The Supreme Court in Kishan Sahakari Chini Mills case (supra) has referred an earlier decision in Ajay Hasla v. Khalid Muzeed Sehera Wardi: (1981) 1 SCC 722.

12. Both the learned counsel for the parties have referred the latest decision of

the Supreme Court in *Zee Telefilms Ltd. and another v. Union of India and Others*: (2005) 4 SCC 649. The relevant portion of this judgment is as follows:

¶ Thereafter the larger Bench of this Court in *Pradeep Kumar Biswas*: (2002) 5 SCC 111 after discussing the various case laws laid down the following parameters for gauging whether a particular body could be termed as State for the purpose of Article 12.

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

13. Learned counsel for the appellants has vehemently urged that in view of process of judicial interpretation of Article 12 of the Constitution of India respondents have to be treated as an authority.

Let us read Article 12:

¶ Definition ¶ In this part, unless the context otherwise requires, ¶ the State? includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.?

14. Before advertng to the core issues at some length after looking at Article 12 of the Constitution of India, it appears that in this Article State has not been defined. It is merely an inclusive definition. It includes all other authorities within the territory of India or under the control of the State Government of India. It does not say that such other authorities must be under the control of the Government of India. The word "or" is disjunctive.

15. A literal reading of the definition of State under Article 12 would bring the Board under the term ¶ other authorities? for the purpose of Article 12. However, the process of judicial interpretation has expanded the scope of the term ¶ other authorities? in its various judgments. It is on this basis that the petitioners contend that the Board would come under the expanded meaning of the term ¶ other authorities? in Article 12 because of its activities which is that of a public body discharging public function.

16. Therefore, to understand the expanded meaning of the term ¶ other authorities? in Article 12, it is necessary to trace the origin and scope of Article 12 in this Indian Constitution. Present Article 12 was introduced in the Draft Constitution as Article 7. While initiating a debate on this Article in the Draft

Constitution in the Constituent Assembly, Dr. Ambedkar described the scope of this Article and the reasons why this Article was placed in the Chapter on fundamental rights as follows:

?The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority I shall presently explain what the word "authority" means upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, infact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make byelaws.?

"If that proposition is accepted and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as the "the State", as we have done in Article 7; or, to keep on repeating every time, the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any "other authority". It seems to me not only most cumbersome but stupid to keep repeating this phraseology every time authority. The wisest course is to have this comprehensive phrase and to economise in words.?" (1948 (vol.II) CAD 610.?)

17. From the above, it is seen that the intention of the Constitution framers in incorporating this Article was to treat such authority which has been created by law and which has got certain powers to make laws to make rules and regulations to be included in term ?other authorities? as found presently in Article 12.

18. Admittedly, our Constitution is on going document and it has to be interpreted liberally. The Constitution, its trite, should be interpreted in the light of various pronouncements of the Hon"ble Apex Court and not merely in that what was the State of law at the commencement of the Constitution.

19. Furthermore, even when public duties are conferred by statute, powers and duties do not thereunder limit the ambit of a statute as there are instances when the conferment of powers involves the imposition of duty to exercise it, or to perform some other incidental act, such as obedience to the principles of natural justice. Many public duties are implied by the Courts rather than commanded by the legislature; some can even be said to be assumed voluntarily. Some statutory public duties are "prescriptive patterns of conduct" in the sense that they are treated as duties to act reasonably so that the prescription in these

cases is indeed provided by the Courts, not merely recognized by them.

20. In this context, it is expedient to look to the 7th Scheduled to the Constitution of India. List 3 concurrent list Entry 25 deals with the education. It reads, thus, "the education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I". State Government or the Union Government in the concurrent list can exercise legislative power in dealing with the education. Thus every educational institution gets State patronage.

21. The expression "Authority" has a definite connotation. It has different dimensions and, thus, must receive a liberal interpretation. To arrive at a conclusion, as to which "other authorities" could come within the purview of Article 12, we may notice the meaning of the word "authority". The word "Other Authorities" contained in Article 12 is not to be treated as ejusdam generis.

22. Broadly, there are three different concepts which exist for determining the question which fall within the expression "other authorities".

(i) The Corporations and the Societies created by the State for carrying on its trading activities in terms of Article 298 of the Constitution wherefor the capital, infrastructure, initial investment and financial aid etc. are provided by the State and it also exercises regulation and control thereover.

(ii) Bodies created for research and other developmental works which is otherwise a governmental function but may or may not be a part of the sovereign function.

(iii) A private body is allowed to discharge public duty or positive obligation of public nature and furthermore is allowed to perform regulatory and controlling functions and activities which were otherwise the job of the Government.

23. What is necessary is to notice the functions of the Body concerned. A "State" has different meanings in different context. In a traditional sense, it can be a body politic but in modern international practice, a State is an organization which receives the general recognition accorded to it by the existing group of other States. Union of India recognizes the Board as its representative. The expression "other authorities" in Article 12 of the Constitution of India is "State" within the territory of India as contra distinguished from a State within the control of the Government of India. The concept of State under Article 12 is in relation to the fundamental rights guaranteed by Part III of the Constitution and Directive Principles of the State Policy contained in Part IV thereof. The contents of these two parts manifest that Article 12 is not confined to its ordinary or constitutional sense of an independent or sovereign meaning so as to include within its fold whatever comes within the purview thereof so as to instill the public confidence in it.

24. The Constitution Bench judgment of Hon'ble Supreme Court in Sukhdev Singh and Others v. Bhagatram Sardar Singh, (1975) 1 SCC 421, leaves no room

for doubt that not only the Government to any other body which performs governmental functions or quasigovernmental functions would be covered within the definition of other authorities. Other authorities?, inter alia, would be there which inter alia function within the territory of India and the same need not necessarily be the Government of India or Government of any State.

25. Article 12 must receive a purposive interpretation as by reason of Part III of the Constitution a charter of liberties against oppression and arbitrariness of all kinds of repositories of power have been conferred the object being to limit and control power wherever it is found. A body exercising significant functions of public importance would be an authority in respect of these functions. In those respects it would be same as is executive government established under the Constitution and the establishments of organizations funded or controlled by the Government.

26. The development of law in this field is wellknown. At one point of time, the companies, societies etc. registered under the Indian Companies Act and Societies Registration Act were treated as separate corporate entities being governed by its own rules and regulations and, thus, held not to be "States" although they were virtually run as department of the Government, but the situation has completely changed. Statutory authorities and local bodies were held to be States in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal & others*, (1967) 3 SCR 377.

27. The concept that all public sector undertakings incorporated under the Indian Companies Act or Societies Registration Act or any other Act for answering the description of State must be financed by the Central Government and be under its deep and pervasive control has in the past three decades undergone a sea change. The thrust now is not upon the composition of the body but the duties and functions performed by it the primary question which is required to be posed is whether the body in question exercises public function.

28. In *Sukhdev Singh* (supra), a Constitution Bench of this Court opined that the expression "other authority" should not be read on the touchstone of the principle of "ejusdem generis".

29. In *U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey & Others*, AIR 1999 SC 753, the land development bank was held to be a State. The Hon'ble Supreme Court analyzing various provisions of Act and the rules framed thereunder observed:

20. It is not necessary for us to quote various other sections and rules but all these provisions unmistakably show that the affairs of the appellant are controlled by the State Government though it functions as a Cooperative Society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution.?

However, when the law provides for a general control over a business in terms of

a statute and not in respect of the body in question, it would not be a "State".

30. Hon"ble Supreme Court in Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another, (1986) 3 SCC 156 questioned:

?Should then our Courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the Courts sit back and watch supinely while the strong trample underfoot the rights of the weak?

It was opined:

?26. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law can not remain mutable. The early nineteenth century essayist and wit, Sydney Smity, said: ?when I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool.? The law must, therefore, in a changing society march in tune with the changed ideas and ideologies.?

31. Pradeep Kumar Biswas (supra) was recently considered by Hon"ble Supreme Court in Gayatri Devi v. Mousumi Cooperative Housing Society Ltd. and Others, (2004) 5 SCC 90, wherein a mandamus was issued against a Cooperative Society on the ground that the order impugned therein was issued by an ?administrator? appointed by the High Court who had also no statutory role to perform.

32. In Chain Singh v. Mata Vaishno Devi Shrine Board and another, (2004 (8) SCALE 348), it was contended that a religious board was a "State". Although Mata Vaishno Devi Shrine Board was constituted under a statute, it was per se not a State actor. It was observed that the decisions of this Court in Bhuri Nath and Others v. State of J & K and Others, (1977) 2 SCC 745, requires reconsideration in the light of the principles laid down in Pradeep Kumar Biswas (supra).

33. In Virendra Kumar Srivastava v. U.P. Rajya Karamchari Kal. Nigam and another, 2005 (1) SCC 149, a Division Bench of this Hon"ble Court while applying the tests laid down in Pradeep Kumar Biswas (supra) observed that there exists a distinction between a "State" based on its being a statutory body and a one based on the principles propounded in the case of Ajay Hasia & Others v. Khalid Mujib Sehera Wardi and Others, (1981) 1 SCC 722.

34. Rajasthan High Court in Santosh Mittal v. State of Rajasthan and Others (since reported in 2004 (10) SCALE J39), issued a direction to Pepsi Company

and CocaCola and other manufacturers of carbonated beverages or soft drinks to disclose the composition and contents of the product including the presence of the pesticides and chemicals on the bottle, package or container, as the case may be, observing:

?In view of the aforesaid discussion we hold that in consonance with the spirit and content of Article 19 (1)(g) and 21 of the Constitution the manufacturers of beverages namely PepsiCola & CocaCola and other manufacturers of beverages and soft drinks, are bound to clearly specify on the bottle or package containing the carbonated beverages or soft drink, as the case may be, or on a label or a wrapper wrapped around it, the details of its composition and nature and quantity of pesticides and chemicals, if any, present therein.?

35. Pepsi Company and CocaCola are multinational companies. They are business concerns but despite the same Apex Court in *Hindustan CocaCola Beverages (P) Ltd. v. Santosh Mittal and Others*, 2005 (4) SCC 771, by an order dated 6.12.2004 dismissed the Special Leave Petitions.

36. Thus the expansion in the definition of State is not to be kept confined only to business activities of Union of India or other State Governments in terms of Article 298 of the Constitution of India but must also take within its fold any other activity which has a direct influence on the citizens. The expression ? education? must be given a broader meaning having regard to Directive Principles of the State Policy. There is a need to look into the governing power subject to the fundamental Constitutional limitations which requires an expansion of the concept of the State action.

37. A school can be run by a private body without any State patronage. It is permissible in law because a citizen has fundamental right to do so as his occupation in terms of Articles 19(1)(g) and 26. But once a school receives State patronage, its activities would be State activities and thus would be subject to judicial review. Even otherwise it is subjected to certain restrictions as regard its right to spend its money out of the profit earned. [see: *K.Krishnamachar Yulu and Others v. Shri Venkateshwar Hindu College and another*: AIR 1988 SC 295, *T.M.A. Pai Foundation and Others v. State of Karnataka and Others*, (2002) 8 SCC 48 and *Islamic Academy of Education and another v. State of Karnataka and Others*, (2002) 6 SCC 6971.

38. Thus, public and statutory authority are authorities, but an authority in its etymological need not be a statutory or public authority, but if exercised public functions in that case the power of judicial review can be exercised under Article 226 of the Constitution of India.

39. We find that in *State of Kerala v. Mother Provincial*, AIR 1970 SC 2079, the Hon'ble Supreme Court observed that the right of the State to regulate education, educational standards and allied matters can not be denied. The minority institutions can not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of

managements, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with Others.

40. Again in *Frank Anthony Public School Employees' Association v. Union of India and Others*; AIR 1987 SC 311 the Supreme Court while considering the question regarding scales of pay and other conditions of service of teachers and other employees of the Frank Anthony Public school, New Delhi compared unfavourably with those of their counterparts of the Delhi Administration Schools, said that the management of a minority Educational Institution can not be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee.

41. In *Francis John v. Director of Education*; AIR 1990 SC 423, the petitioner, who was an Head Master in a school and whose services were terminated, challenged the order of the High Court, which has held that the writ petition is not maintainable. The Hon''ble Supreme Court did not agree with the view of the High Court and took a contrary view holding that the writ petition in such matter is maintainable. Paragraph 5 of the report reads as under:

??It is obvious that the Management, in the circumstances could not have terminated the services of the appellant without the communication received by it from the Director of Education. In such circumstances it can not be said that the decision is that of a just private management governed by private law. It is the part of the process of the public law which affects public exchequer.?

42. In *Unni Krishnan's case* (1993) 1 SCC 645, the Hon''ble Supreme Court held that educational institutions discharge public duties and the absence of aid does not detract from the nature of public duties.

43. In *K. Krishnamachar Yulu and other v. Sri Venkateswara Hindu College of Engineering and another*, (1997) 3 SCC 571, while observing that the teachers who impart the education get an element of public interest in the performance of their duties held that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226 of the Constitution.

44. The Hon''ble Supreme Court in *Praga Tool Corporation v. C.V. Imanuel*, AIR 1969 SC 1306, held that ?the writ petition can not be thrown out on the ground of nonmaintainability arising from the fact that it is a private institution which is not receiving financial assistance from the Government.?

45. In *Andi Mukta Sadguru Shree Muktajeevandas Swami Suvarna Jayanti Mahotse Smarak Trust and Others v. V.R. Rudani and Others*, (1989) 2 SCC 691, the writ petition filed by a member of the academic staff whose services were terminated by a trust which did not have statutory origin. The trust resisted the writ petition on the ground that it was not a statutory body and, therefore, it was

not amenable to writ jurisdiction under Article 226 of the Constitution. The plea of the trust was negated by Apex Court holding that the words 'any person or authority' used in Article 226 should not be confined only to statutory authorities and instrumentalities of the State but should cover any other person or body performing public duty.

46. Learned counsel for the appellants has urged that the respondents" come within the purview of Article 12 of the Constitution of India and, therefore, amenable to writ jurisdiction under Article 226 of the Constitution. We find following factor fulfils the requirement within the ambit of Article 12 of the Constitution of India; Kamla (Nehru) Institute of Child Education was recognized by Board of High School and Intermediate Education. Now it is affiliated with the Central Board of Secondary Education. Respondents are engaged for teaching and teaching work and they receive all instructions from Central Board of Secondary Education. Central Board of Secondary Education exercise regulatory and functional control over the institution and the deep and pervasive control is apparent.

47. In addition to above, it appears that in view of T.M.A. Pai Foundation v. State of Karnataka, 2002 (1) ESC 1 (SC), Board comes within the ambit of Article 12 of the Constitution of India. Thus, the functions of the respondents leave no room for doubt that they are administered and dominated and are controlled by the agencies. It is not disputed that the State would include not only the Executive and Legislative organs of the Union and State but also local bodies and 'other authorities'. What is an 'other authority' came up for interpretation in the case of R.D. Shetty v. International Airport Authority of India, AIR 1979 SC 1628, the Apex Court therein laid down the parameters and principles to ascertain whether the body or the authority is "the State". These parameters or tests can be summed up thus; (i) When the authority is fully financed by Government and its share capital is held by Government; (ii) All pervasive control of the State (iii) Monopoly status of a Corporation (iv) If it was Department of the Government and even after registering as Society or Corporation it remains attached to the Government or adjunct of the Government. In Ajay Hasia v. Khalid Mujib Sehra Wardi, AIR 1981 SC 487, the Supreme Court observed that Government may act through natural or judicial person to carry out its function and it is not necessary that it is a creation of a statute. The observation made in Ajay Hasia's case (supra) were reiterated by the Apex Court in the case of M.C. Mehta v. Union of India, AIR 1987 SC 1096 wherein it has been held that:

'The Corporation may be a statutory Corporation creation 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 State. What is really to be determined for whether a body is or not 'other authority' is who created the body and why what are its aims and objects, how is it running, the extent of Government financial aid or grant to it and its dependency on the Government and the latter's control over it.'

48. In *Pradeep Kumar Biswas v. Indian Institute of Chemical, Biology*, (2002) 5 SCC 111, Supreme Court, after considering the above referred cases observed as under:

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

49. Nature of duty imposed on the body is a relevant factor to determine whether a writ under Article 226 of the Constitution can be issued or not? No doubt, if the rights are purely of a private character, no mandamus can be issued but at the same time to determine whether a Society is an authority within the meaning of Article 12, the basic requirement is to know how it was created, then the composition of management and control of the State including the functions which are discharged by such society. In order to determine as to the whether Board comes within the ambit of the words "other authority" occurring in Article 226 of the Constitution, it is to be tested keeping in the mind the guidelines formulated by the Apex Court in *Ajay Hasia*, (1981) 4 SCC 722, *M.C. Mehta*, AIR 1987 SC 1086, *B.S. Minhas v. Indian Statistical Institute*, (1983) 4 SCC 582, *Pradeep Kumar Biswas*, (2002) 5 SCC III.

50. At this juncture it would be apt to refer the Full Bench of this Court in the case of *Vijay Behari Srivastava v. U.P. Postal Primary Cooperation Limited*, 2003(1) UPLBEC page 1. In this case, petitioner was working as Secretary in U.P. Postal Primary Cooperative Bank Ltd. a society which is a Primary Cooperative Society. When the petitioner was reverted, he filed a writ petition seeking for quashing of the decision taken by the Committee of Management of the bank and also sought a writ in the nature of mandamus. The opposite party to the said writ petition raised a preliminary objection regarding maintainability of writ petition as the service condition are not regulated by the notification. This matter was ultimately referred to a Full Bench of this Court. The learned Full Bench while answering the question laid down following guidelines and made observations as under:

?The writ petition in the nature of certiorari will lie against a Cooperative Society only when such Society has ingredient of an "authority" within the meaning of Article 226 of the Constitution and not otherwise. The following guidelines are called out from the various decisions of the Supreme Court, referred to above:

1. The constitution of the Managing Body/Committee constitutes the

functionaries of the Government.

2. There is an existence of deep and pervasive control of the management and policies of the Cooperative Society by the Government.

3. The function of the Cooperative Society is of public importance and closely related to the Governmental functions.

4. The financial control is by the Government or it provides financial aid controlling its affairs.

5. The violation of statutory rules applicable to the Society in regard to the service matters of its employees, and statutory violations or noncompliance of it by an authority under the Act.

6. Statutory violations or noncompliance of it by an authority under the Act.

51. The question again arose before the Supreme Court in *Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam and another*, (2005) 1 SCC 149, as to whether U.P. Rajya Karmachari Kalyan Nigam is covered by the definition of 'State' under Article 12 of the Constitution and is amenable to the writ jurisdiction under Article 226 of the Constitution as this Court dismissed the writ petition as not being maintainable. The Supreme Court after taking into account the composition administrative and financial status held that 'Nigam' is an agency of the State.

52. At this place, we may add that in *B.S. Minhas* (supra) the Apex Court held that the Indian Statistical Institute, a registered society is an instrumentality of the Central Government and as such is an 'authority' within the meaning of Article 12 of the Constitution. The basis was that the representatives appointed by the Central Government dominate the composition of respondent No.1. The money required for running the institute is provided entirely by the Central Government and even if any other money are to be received by the Institute, it can be done only with the approval of the Central Government and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction. The society has to comply with all such directions as may be issued by the Central Government. It was held that the control of the Central Government is deep and pervasive.

53. Learned counsel for the appellants has invited our attention towards a Division Bench judgment of this Court passed in Writ petition No.394 (MB) of 1988, *Harold James v. Union of India and Others*. The relevant extract of the judgment is reproduced as below:

'Law always is in a process of evolution. Laws, which were considered to be of much significance at the relevant time, by the efflux of time, became ineffective due to modernization, development and changing needs of the public. Earlier, the Courts used to issue directions that have all the necessary ingredients of being coined as an Instrumentality or Agency of the State but of late the Hon'ble

Supreme Court has laid down certain requirements to achieve ends of justice, which earlier could not be done under the prerogative writ of mandamus. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. Needless to mention that the Courts will lose its efficacy if it can not possibly respond to the need of the society.?

54. In the premises we hold as stated above that respondents are state within the meaning of Article 12 of the Constitution of India a writ in the certiorari is maintainable against them under Article 226 of the Constitution of India. We are of the opinion that the appeal deserves to be allowed and order under appeal is liable to be quashed at this stage. We may point out that the learned Single Judge has not recorded any findings whether the appellants were appointed as Assistant Teacher on ad hoc basis on various dates in Kamla Nehru Institute of Child Education or not. There is also no finding to this effect that junior to the petitioners have been allowed to work as Assistant Teacher, but the petitioners are not being allowed to work and respondents are trying to make appointment of their own choice. The matter has to be remanded for recording the finding on the issues referred above.

55. Accordingly the appeal is allowed and the Judgment and Order dated 7.10.2005 passed by learned Single Judge is hereby set aside and the matter is remanded for disposal according to law.

56. No order as to costs.

(Appeal allowed)