
(1983) 04 CAL CK 0019
In the Calcutta High Court
In Re: M.L. Shaw and Another

Date of Decision : 19-04-1983

Acts Referred:

Companies Act, 1956 — Section 25
Constitution of India, 1950 — Article 12, 226

Citation : AIR 1984 Cal 22 : (1986) 59 CompCas 312 : 87 CWN 682 : (1983) 2 LLJ 305

Hon'ble Judges : B.C. Ray, J

Bench : Single Bench

Advocate : A.K. Dutt and P.L. Shome, for the Appellant; Saktinath Mukherji and Sadananda Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Ray, J.—This application is only at the instance of two petitioners of whom the petitioner No. 1 is the authorised representative of M/s. Metal Smelting Company and the petitioner No. 2 is the authorised representative of M/s. Hindusthan Lead Alloys, who have challenged in this writ application the second set of nomination papers that has been filed or attempted to be filed on behalf of the outgoing Managing Committee and also for a declaration that the nomination papers that have been filed namely for the post of four office-bearers and twenty ordinary members should be declared as ipso facto elected to the Executive Committee of the Bengal National Chamber of Commerce. There was a further prayer for issuance of an order or writ or direction in the nature of mandamus directing the respondent to hold the annual General Meeting of the Bengal Chamber of Commerce declaring the four office-bearers and twenty ordinary members, as mentioned in this petition, as duly elected to the Executive Committee in terms of Article 34 (i) and (ii) of the Articles of the Chamber.

2. It has been submitted in support of this application by Mr. Dutt. learned Advocate appearing on behalf of the petitioners, that this Chamber of Commerce is a local authority and a State within the meaning of Article 12 of the Constitution of India inasmuch as it has been granted a licence u/s 25 of the Companies Act, 1956 and the activities in which it is engaged are non-profit

making activities. It has further been submitted that this Bengal Chamber of Commerce also is an autonomous body and in para 11 of the petition it has been stated that it has been authorised to send its representative to the Central and Bengal Legislatures under the previous Government of India Act, 1919 as well as the Government of India Act, 1935 and it continued to have the right of electing two representatives on the Bengal Legislative Assembly, up to the date of the enforcement of the Constitution of India in 1950. It has also been stated in para 12 of the petition that the Chamber achieved a position of eminence in the commercial, industrial as well as particularly in the economic field of the country much beyond the direct interest of its group of members. As such it is a State being one of the other authorities within the meaning of Article 12 of the Constitution.

3. This submission of Mr. Dutt, after examination closely, cannot be accepted for the reasons stated hereinbelow. Article 12 of the Constitution does not define the word State but it gives an inclusive definition, namely, the State includes Government, Parliament of India and the Government and Legislature of each of the State and all local and other authorities within the territory of India or under the control of the Government of India. So in order to be a State within the meaning of Article 12 of the Constitution it must be an authority. The word authority is very significant. It means and includes only those whose orders are to be obeyed by the citizens of the State. By the very word authority it excludes voluntary association, association created under a general statute just like the Companies Act but it includes statutory authorities, authorities which are brought into being by an Act are vested with governmental duties, namely, the Steel Authority of India, Life Insurance Corporation of India, Oil & Natural Gas Commission, Indian Airlines Authority as well as the Bharat Petroleum, to cite some of the instances of the statutory (authorities. This point has been made (clear by a recent pronouncement of the Supreme Court reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, where Bhagwati, J. after considering the earlier decision where Mathew, J. has observed that authority exercising governmental functions will be treated as a statutory authority, in *Indian Airlines case*, has held in very clear and lucid terms that all statutory authorities which are vested with governmental functions are to be treated as governmental agency and undoubtedly such agency does fall within the definition of Article 12 of the Constitution has been pronounced in the said judgment and they are States. Of course it meant that they are States only for the purpose of Article 12 of the Constitution, and not for the purpose of Article 311 of the Constitution. It is very pertinent to mention in this connection that in the case of *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, it has been held (at p. 1862) :

"The dictionary meaning of the word "authority" is a public administrative agency or corporation having quasi governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on

which powers are conferred to carry out governmental or quasi governmental functions. The expression "other authorities" is thus wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India, and there is no reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution."

A Company brought into being under the Companies Act as in the present case the Bengal Chamber of Commerce which has been granted licence u/s 25 of the Companies Act cannot under any circumstances be treated as a local authority, whatever may its autonomous position and whatever may be the background that it was, getting privilege to send representatives to the Legislative Assembly, because under no circumstances it can be conceived that it is a public administrative agency or a Corporation having been vested with quasi governmental powers and authorised to administer revenue producing public enterprise. In that view of the matter I am unable to accept the contention tried to be advanced by Mr. Dutt.

4. In these circumstances as the petitioners are challenging the action of the Bengal Chamber of Commerce, such a challenge is not maintainable in this forum as I have already held that the Bengal Chamber of Commerce is not a State within the meaning of Article 12 of the Constitution. In that view of the matter this application is summarily dismissed on the ground as not maintainable in this forum. There will be no order as to costs.