

(2006) 02 CAL CK 0056

In the Calcutta High Court

Case No : A.P.O.T. No. 274 of 2002, A.P.O. No. 258 of 2002, G.A. No. 2029 of 2002 and W.P. No. 4312 of 1993

Kelvin Jute Company Limited

APPELLANT

Vs

Krishna Kumar Agarwal and Others

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 7
Contract Act, 1872 — Section 41
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14A, 14C, 17, 17(1A), 2
Provincial Insolvency Act, 1920 — Section 2, 28(2), 56(3)
Trusts Act, 1882 — Section 48

Citation : (2006) 2 CHN 358

Hon'ble Judges : S.P. Talukdar, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Anil Kumar Gupta, in APOT Nos. 255 and 274/02, Balai Chandra Ray, General of W.B., Tapas Kumar Chowdhury and K.M. Sinha, in APOT No. 274/02, Anindya Kumar Mitra, M.C. Das and Soumya Kanti Chatterjee, in APOT No. 255/02, Bikash Ranjan Bhattacharjee and Tarak Nath Saha, in APOT No. 255/02, for the Appellant; Samaraditya Pal, P.S. Sengupta, Utpal Majumdar, Sanjoy Bose and Pushan Kar for Respondent No. 1 in APOT Nos. 255 and 274/02, Joy Saha and Bidyut Kumar Banerjee for Respondent Nos. 2, 4, 5, 6, 12, 13 and 14 in APOT Nos. 255 and 274/02, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Talukdar, J.—Consistent indifference, if not painful inaction, over a protracted period of time on the part of Provident Fund authorities and other respondents, left the petitioner, Krishna Kumar Agarwal, with no choice but to approach the Court for necessary redress.

2. The petitioner, as President of the Waverley Jute Mills Workers' Provident Fund, filed an application under Article 226 of the Constitution with the following grievances.

3. Kelvin Jute Mills Company Limited had two units namely, Kelvin Jute Mills and Waverly Jute Mills Company which was known as Kelvin Broad Loom Division. Hooghly Mills Company Limited took over the Kelvin Broad Loom Division with effect from 30.06.1986.

4. Prior to such transfer, the Provident Fund used to be managed by Kelvin Jute Mills Company Ltd. Workers' Provident Fund Trust. It was a fund exempted u/s 17 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It consisted of P. F. Accounts of all the workers employed in the said two units. After being taken over by Hooghly Mills, an exempted fund of the workers including those who came along with the transfer of the transferred unit was formed in the same of Waverly Jute Mills Workers' Provident Fund.

5. In terms of the condition of transfer certain amount of P.F. arrear dues in respect of the workers of the transferred unit, was paid by Hooghly Mills to the newly formed Trust, hereinafter referred as to the Waverly Trust. The P. F. account of the workers of the Waverly unit, as maintained by the earlier Trust, remained with it and may be referred to as the Kelvin Trust.

6. Regional Provident Fund Commissioner by letter dated 01.09.1988 requested Kelvin Trust to transfer P. F. accumulation in respect of the employees of the transferred unit i.e., Broadloom Division, to the Waverly Trust. But letter dated 15.11.1989, Regional Provident Fund Commissioner asked Kelvin Trust to explain why such transfer was not made. On 01.04.1991, Kelvin Trust was again asked by the P.F. authority to give effect to the said transfer in favour of Waverley Trust. But the P. F. accumulation in respect of the employees of Waverly who were earlier members of the Kelvin Trust was not transferred

7. On 05.07.1991, Regional Commissioner, P. F., requested the Chairman Kelvin Trust to attend a meeting on 24.07.1991. Further request was made by the letter dated 01.08.1991 for taking steps in the matter for transfer. A meeting was convened on 09.09.1991 for reviewing the progress. But Kelvin Trust did not attend the meeting. This was followed by the further request for transfer on 03.10.1991 and then again, on 01.06.1992.

8. By letter dated 05.05.1992, Regional Provident Fund Commissioner informed Waverly Trust that steps were being taken for transfer of the fund by initiating action under the provisions of Provident Fund Act. On 24.03.1993, Kelvin Trust requested Waverly Trust to accept the sum of Rs. 2,00,98,363.02 being the amount P.F. accumulation from Kelvin Trust to Waverly Trust as on 30.06.1986. In absence of any concrete results, this was followed by Regional Provident Fund Commissioner's threat of action by letter dated 05.04.1993 as the ground of sickness of Kelvin unit was untenable.

9. Regional Provident Fund Commissioner conducted negotiations on 15.06.1993 but without any fruitful result.

9a. With all doors practically closed, grievances of the unfortunate, helpless

workers were ventilated by filing writ application.

10. Such writ petition was filed by K.K. Agarwal, as President of the Waverly Jute Mills Workers' Provident Fund seeking necessary redress. It was for recovery of the sum of Rs. 2,02,98,353.02 (principal amount) which was admittedly due to the Waverly Fund from Kelvin Fund. Prayer was made for issuance of writ of mandamus directing Regional Passport Commissioner to take steps available under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

11. It was contended before the Id. Single Bench on behalf of the writ petitioner that Kelvin Trust cannot withhold transfer of the said admitted amount to Waverly Trust and is estopped from resisting the transfer.

12. Contesting respondents raised various issues while disputing the claim of the writ petitioner and opposing the said application. Maintainability of the writ petition, locus standi of the petitioner, authority of Regional Provident Fund Commissioner to enforce such transfer of account as sought for, were some of the points taken up on behalf of the respondents.

13. Id. Judge by the impugned judgment and order dated 15.03.2002 allowed the application and while directing payment of Rs. 2,00,98,363.02 in favour of the Waverley Trust issued further directions.

14. Two appeals, one by the Kelvin Jute Company Limited and the other by the Kelvin Jute Company Limited Workers' Provident Fund were filed.

15. The stand taken by the appellant in the two cases was that the Id. Judge was not justified in entertaining the writ application and to allow the same as the writ petitioner did not have the locus standi to initiate such writ proceeding and the application under Article 226 could not, be said to be maintainable. The writ application was resisted on various other grounds as well.

16. It is needless to mention that both the matters were heard together as those are indistinguishably interlinked.

17. Mr. Balai Chandra Ray, Id. Advocate General appearing for one of the appellants and Mr. Anindya Mitra, Id. Senior Counsel for the other emphatically submitted that there had been failure on the part of the Id. Single Judge in appreciation of the matter in its proper perspective.

18. Challenging the locus standi of the writ petitioner it was submitted that the trust in question being a private trust, the writ petitioner could not have had competence to initiate the writ proceeding. This was more so in the backdrop of the fact that he did not even claim that he had been authorised by the Board of Trustees in this regard. It was submitted that though by order dated 31.08.2001 Id. Court allowed three trustees namely, Puran Chandra Tripathi, Joydeb Chatterjee and Md. Khalil to be added as respondents, there could be no question of their transposition in the category of writ petitioners as there had been no such prayer, nor any order. In this context, referring to Section 48 of the

Trusts Act it was submitted that all trustees must jointly file the legal proceeding.

19. It is a fact that trust may be divided, according to their end and purpose, into private and public (or charitable). A private trust is for the benefit of an individual or class, irrespective of any benefit which may be conferred thereby on the public at large. It is public or charitable if the object thereof is to promote the public welfare, even if incidentally it confers a benefit on an individual or class. A private trust may be enforced by any of the beneficiaries.

20. It was also submitted that the writ petitioner could not be said to be a beneficiary either.

21. Referring to the decision in the case of Sheikh Abdul Kayum Vs. Mulla Alibhai, it was submitted that trustees cannot transfer their duties, functions and powers to some other body of men and create them trustees in their place unless this is clearly permitted by the trust deed or agreed to by the entire body of beneficiaries. It was submitted that all the trustees were required to join and unite.

22. Reference was made to the decision in the case of Trustees of the Provident Fund of the Tinsplate Co. of India Ltd. and Anr. v. Muktilal Agarwala and Ors. reported in AIR (38) 1951 Patna 488. In the said case the Id. Court dealt with the Provincial Insolvency Act (1920) Sections 2(d), 28(2), 56(3) proviso. The definition of property within the meaning of the said Act was also dealt with and in that context it was held that the definition of the term "property" as used in the Act contemplates that the power of disposition must be an unconditional power. It is only such a property that is divisible amongst the creditors of the insolvent. The facts and circumstances of the said case do not appear to have any applicability to the present case.

23. In the case of Dolagovinda Sethi v. Kanika Museum and Ors. reported in AIR 1989 Orissa 60, the Id. Bench dealt with the factors that are to be taken into consideration for determining whether any endowment is public or private. In the said decision it was held that the first requirement of a public trust is that it must be for the benefit of the community or a class of the community as distinguished from private individuals or a fluctuating body of private individuals who are ascertainable persons or are capable of being ascertained. There must be definite expression of intention to divest and evidence of actual divestment of the right, title and interest of the donor in the property in favour of the charity and of the same to have become vested in the trust. It was further held that origin of the trust, the manner in which its affairs are managed, the nature and extent of the gifts received by it and the awareness of the management and the beneficiaries that the trust is for the benefit of the public are important factors to be considered. In the context of the guidelines laid down in the said decision, it was submitted that the trust in question in the present case by no stretch of imagination can be said to be a public (or a charitable trust).

24. Ld. Counsel for the appellants further referred to the decision in the case of

State of U.P. Vs. Bansi Dhar and Others, while submitting that even in borderline cases, where it is not clear if a general charitable intention is expressed or not, the Court should lean in favour of the charity taking effect by imputing, without some legal straining, a general charitable intention.

25. The facts and circumstances of the said cases, however, strictly speaking are not relevant for the purpose of adjudication of the present case.

26. It was contended that the writ petitioner was neither a person aggrieved, nor a beneficiary. Ld. Trial Court very rightly explained the situation. The trust in question has a significant background. Such trust in respect of Provident Fund is exempted u/s 17 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The functioning and liability of the trust is governed by the scheme approved by the authority under the said Act of 1952. Trustees are required to discharge statutory liability. And, it cannot be denied that every member, individually or collectively, having a stake in the trust has a right to approach the trust, for necessary redress and the writ petitioner, as President of the fund, has every right to represent the cause of the workmen.

27. Concept of "beneficiary" must also not be so construed that such an irrational plea succeeds to close the doors of justice. The fact that in course of the proceeding, three trustees were added as parties cannot also be lost sight of. It is not that such an objection has been raised by the trustees of the said exempted fund. The fact remains that the workers for whose benefit such a trust exists have been virtually deprived of their legitimate claim and law certainly will not permit throwing them out on one technical pretext or the other. Sorrows and sufferings of the workers cannot be allowed to be brushed aside under the carpet by raising the question: "Who are you to demand on their behalf? If our justice delivery system does not allow raising of the voice of anguish, it will certainly amount to its failure to respond to the challenge. And, this may have far-reaching consequences.

28. Romaine Holland once said, "When order is injustice, disorder is the beginning of justice." It is the demand of the day that our system of administration of justice takes care of both-order as well as justice. Appellants cannot be permitted to demand dotting of every "i" and cutting of every "t".

Having regard to the nature and background of the case, it can certainly be said that the writ petitioner had locus standi to approach the Court with an application under Article 226 of the Constitution.

29. It was submitted on behalf of the appellants that the trust in question was "of the few, by the few and for the few" and having regard to its nature and composition, there could be no scope for taking recourse to a writ proceeding. The trust in question is required to discharge statutory liability in respect of the statutory fund since exempted but recognised by the statute and this leaves no scope for further controversy in that regard.

30. Ld. Judge held that "the accumulation of the Provident Fund dues of each individual member till 30th June, 1986 was admittedly maintained by Kelvin Trust. With the transfer of the members of Kelvin Trust to Waverly Trust such accumulation is liable to be transferred to the Waverly Trust from Kelvin Trust." It was quite rightly held that without transfer of such fund the trustees cannot discharge their statutory liability.

31. An attempt was made to read something more than what meets the eyes when reference was made to averment (at para-6) in the writ application. Analysing the materials it was rightly held that "in fact it was the arrear liability of Kelvin payable to the Kelvin Trust, which was taken by Hooghly Mills. It was this arrear that was paid to the Waverly Trust when it was established or created."

32. In fact, such amount was shown in the balance sheet of Kelvin Trust as due to the Waverly Trust. This perhaps brings me controversy raised in this regard to an end.

33. In order to appreciate the objection raised on behalf of the appellants that Kelvin Trust being a Private Trust and as it does not come even with an expanded definition of "State" within the meaning of Article 12 of the Constitution, it is necessary to analyse the nature of the trust and its functioning in the context of the grievances of the petitioner.

34. Clause (h) of Section 2 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 defines "fund" as the Provident Fund established under a scheme.

35. Clause (fff) of Section 2 defines "exempted [establishment]" as follows:

"Exempted [establishment]" means [an establishment] in respect of which an exemption has been granted u/s 17 from the operation of all or any of the provisions of any scheme [or the Insurance Scheme, as the case may be], whether such exemption has been granted to the [establishment] as such or to any person or class of persons employed therein.

36. "Scheme" as per Section 2(1) of the said Act means the Employees' Provident Fund Scheme framed u/s 5.

37. Section 5 deals with Employees' Provident Fund Schemes. It follows from Section 5A of the said Act that the Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends....

38. Having regard to Section 17(1A) of the said Act it can be said that where an exemption has been granted to an establishment under Clause (a) of Sub-section (1), the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the scheme.

39. It also follows therefrom that the Board of Trustees constituted under Clause

(b) shall,--

- (i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;
- (ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;
- (iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;
- (iv) transfer, where necessary, the provident fund account of any employee; and
- (v) perform such other duties as may be specified in the scheme.

40. It may be relevant to refer to the Objects and Reasons of the said Act which may be stated as follows :

The question of making some provision for the future of the industrial worker after he retires or for his dependents in case of his early death, has been under consideration for some years. The ideal way would have been provisions through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a pension scheme cannot be visualised in the near future.... Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident funds in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly....

41. It appears that the Id. Judge took all these aspects into consideration while analysing and exploring the status and position of the trust under reference. Learned Judge observed that "though the trust is in respect of PF exempted u/s 17 of the 1952 Act, the liability of the trustees are governed by the provisions of the 1952 Act. Every action discharged by the trustees of an exempted PF are controlled and governed by the provisions of the approved scheme and the statute. Their liability is statutory liability. The discharge of their function is a public function." It was observed that "unless the exemption was granted the fund would have been governed by the scheme framed under the 1952 Act. But for the exemption the fund is governed by the scheme approved by the PF Authority. Thus the discharge of the function of the trustees is related to a statutory fund governed by a scheme approved by the Statute. As such the liability discharged is purely a statutory liability. Any infraction thereof is amenable to the provision contained in the 1952 Act. Thus, the trustees for the purpose of discharge of their liability in respect of PF as instrumentality and agency of the State are State within the meaning of Article 12 of the Constitution of India on the principle laid down in Anadi Mukta Sadguru SMVS Trust (Supra). As such writ is very much maintainable as against the trustees."

42. Article 12 of the Constitution defames "the State" in the following manner:

12. 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.

43. The present Article gives an extended meaning to the words "the State" wherever they occur in Part III of the Constitution. Unless the context otherwise requires, "the State" will include not only the Executive and Legislative organs of the Union and the States, but also local bodies (such as municipal authorities) as well as "other authorities", which include the "instrumentalities or agencies" of the State, or bodies or institutions which discharge public functions of a Governmental character.

44. On behalf of the appellants it was strongly urged that by no stretch of imagination the Trust under reference can be brought within the definition of "the State". It was categorically asserted that the application under Article 226 of the Constitution thus cannot be held to be maintainable.

45. On behalf of the appellants it was contended that members can file a case if they are deprived of the benefit but not in the manner as had been done in the present application. While discussing about the nature of Public Trust and Private Trust, Mr. Mitra emphatically asserted that the Trust under reference in this case cannot be a Public Trust. He also wondered as to why the copy of the trust document had not been filed and according to him, all trustees were required to act conjointly except where the instrument otherwise provide. He further submitted that there is no such material before this Court to suggest that the President of the Union had the competence to initiate a proceeding. It was contended that the relevant E.P.F. and M. P. Act, 1952 does not make the Trust statutory.

46. No dispute was, however, raised in regard to the claim that the Trust under reference is having the recognition of the statute. All these aspects have already been dealt with and it does not seem to be necessary to discuss those aspects any further.

47. It was urged that maintainability of a proceeding is to be decided with reference to the position that exists on the date of filing of the application or initiating proceeding.

48. This does not seem to an acceptable position for all practical purposes and it is not that, any irregularity in the framing of an application cannot be taken care of at a subsequent stage so as to pass the test of maintainability. It was submitted that the case essentially involves dispute arising out of transfer of money from one Private Trust to another Private Trust. Mr. Mitra contended that there could be no statutory obligation on the part of one Private Trust to transfer in favour of another. Referring to the date of the transfer i.e., 30.06.1986, it was

further submitted that there could be no scope for assigning the status to the Trust in the manner as had been done by the Id. Single Judge.

49. Much was argued as to the scope of the words "State" and "Authority" in the context of Article 12 of the Constitution. The Apex Court (J. Ruma Pal) in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, observed that the words "State" and "authority" used in Article 12 therefore remain, to use the words of Cardozo, among "the great generalities of the Constitution" the content of which has been and continues to be supplied by Courts from time to time".

50. It was also observed that "Initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read ejusdem generis with the authorities mentioned in the definition of Article 12 itself. The next stage was reached when the definition of "State" came to be understood with reference to the remedies available against it. For example, historically, a writ of mandamus was available for enforcement of statutory duties or duties of a public nature. Thus a statutory corporation, with regulations framed by such corporation pursuant to statutory powers was considered a State, and the public duty was limited to those which were created by statute."

51. It was thought that a State being an abstract entity, it can only act through the instrumentality or agency of natural or juridical persons. In this context, reference may be made to the thought of Dr. B. R. Ambedkar which may be reproduced 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, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

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 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 on repeating this phraseology

every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words". [1948 (Vol.VII CAD 610)].

52. True, Article 12 of the Constitution does not specifically mention the words "instrumentality" or "agency" of the State. By the process of judicial interpretation, those have been brought within the net of Article 12 subject to satisfying certain tests.

53. The word "instrumentality" means "a means or agency through which a function of another entity is accomplished, such as a branch of a governing body".

54. The word "agency" is defined as "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions". (Ref: Black's Law Dictionary, 7th Edn.)

55. In the said case reported in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, observations made in this regard by Justice R.C. Lahoti may also be reproduced as follows:

Thus Instrumentality and agency are the two terms which to some extent overlap in their meaning, "instrumentality" includes "means" also, which "agency" does not, in its meaning. "Quasi-governmental agency" is "a Government-sponsored enterprise or corporation (sometimes called a Government-controlled corporation)". Authority, as Webster's Comprehensive Dictionary (International Edition) defines, is "the person or persons in whom Government or command is vested; often in the plural". The applicable meaning of the word "authority" given in Webster's Third New International Dictionary is "a public administrative agency or corporation having quasi-Governmental powers and authorized to administer a revenue-producing public enterprise.

56. This was quoted with approval by the Constitution Bench in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others,

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 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 we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution.

57. Mr. Balai Chandra Ray, Id. Counsel also challenged the maintainability of the application while emphasising that functioning of the Trust has nothing to do with the Kelvin Company and the Trust in question being not a public trust, there could be no scope for entertaining the present writ application. Mr. Roy categorically asserted that the Court while granting reliefs can certainly mould

the prayer but cannot travel beyond the pleadings. In this context he referred to the decision in Sheikh Abdul Kayum Vs. Mulla Alibhai, as referred to earlier. Mr. Roy also elaborately discussed about the role of Courts. According to Mr. Roy, the prayer made in the writ application was beyond the scope of a writ petition.

58. It was further submitted by Id. Counsel Mr. Anindya Mitra that writ petition if allowed to be saved on the ground that Regional Provident Fund Commissioner is a statutory authority, relief granted by the Id. Judge was more or less in the nature of directions upon the appellants and not the said authority. Mr. Balai Chandra Ray echoed the voice of Mr. Mitra in this regard.

59. Thus it seems the writ petition was attempted to be assailed from every nook and corner. It started with raising dispute regarding locus standi of the writ petitioner, followed by challenging maintainability of the proceeding on the ground that the Trust in question is not a public trust and it could not come within the scope and ambit of Article 12 of the Constitution and that the reliefs were essentially sought for from the present appellants.

60. It may be interesting to refer to what was said by Lord Denning in his book, "The Discipline of Law":- (7th Reprint, p.-144):

In administrative law the question of locus standi is the most vexed question of all. I must confess that whenever an ordinary citizen comes to the Court of Appeal and complains that this or that Government department--or this or that local authority--or this or that trade union--is abusing or misusing its power--I always like to hear what he has to say....

The ordinary citizen who comes to the Court in this way is usually the vigilant one. Sometimes he is a mere busybody interfering with things which do not concern him. Then let him be turned down. But when he has a point which affects the rights and liberties of all the citizens, then I would hope that he would be heard: for there is no other person or body to whom he can appeal. But I am afraid that not everyone agrees with me.

61. Schwartz and Wade in Legal Control of Government wrote:

Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away because he is not sufficiently affected personally, that means some Government agency is left free to violate the law and that is contrary to public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?

62. McCauley remarked, "if recourse to law is more difficult, men must suffer wrongs without redress or redress wrongs by the strong hand."

63. In the present case it is not in dispute that three of the Trustees were brought into the picture subsequent to filing of the writ application. And the writ

application was filed by none other than the President of Waverly Jute Mills Workers' Provident Fund. In such circumstances, there can be absolutely no justification for raising the plea of absence of locus standi.

64. The nature of the Trust in question and its functioning have been discussed earlier in the context of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It is clear that such an exempted fund within the meaning of the said Act is required to function in a specified manner and there are relevant legal provisions mentioned about the functioning of the Board of Trustees. Such functioning of the Board of Trust is strictly guided by the rules and regulations of the said Act. Apart from the fact that Regional Commissioner, P.F., is a statutory authority, there can be no rational justification for ignoring the fact that the trust in question is also required to be operated within specific guidelines as indicated in the statute itself.

65. The question next arises as to whether in such backdrop a writ application under Article 226 could at all be entertained. Reference has already been made to some decision of the Apex Court in this regard.

66. Relying upon the decision in the case of Federal Bank Ltd. Vs. Sagar Thomas and Others, it was contended that there is no scope for any further controversy in this regard. The Apex Court in the said judgment observed as follows: ,

A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vi) a private body discharging a public duty or positive obligation of a public nature; and (viii) a person or a body under a liability to discharge any function under any statute, to compel it to perform such statutory function. It is no doubt true that a mandamus can be issued to any person or authority performing public duty; owing positive obligation to the affected party.

The six factors which have been enumerated in the case of Ajay Hasia and approved in the later decisions in the case of Ramana and the seven-Judge Bench in the case of Pradeep Kumar Biswas may be applied to the facts of the present case to see whether those tests apply to the appellant Bank or not. 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.

67. It was submitted on behalf of the appellants that the writ application essentially relates to a private dispute between two Private Trusts. It was contended that there could be no liability under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to transfer accounts from one Trust to

another Trust. Mr. Mitra further submitted that the statutory obligation is at best to pay to the employees. Ld. Advocate General, Mr. Balai Chandra Ray, appearing for the appellants in connection with one of the two cases also submitted that there is no material to indicate that the Kelvin Company has any liability whatsoever and, as such, question of prosecuting the company in the manner as directed by the Id. Single Judge could hardly arise.

68. In the backdrop of the facts and circumstances of the present case it can be said that the grievances of the writ petitioner cannot be allowed to be brushed aside on the ground that writ petition is not maintainable as the Trust in question does not function as a "State" or "Authority" within the meaning of Article 12 of the Constitution.

69. Apart from the fact that the trust functions within the statutory guidelines, the grievance, as ventilated in the application, is also directed against the Regional Commissioner of the P.F, which being a statutory authority, cannot afford to remain indifferent. There are materials on record in the form of various grievances made from time to time which go a long way to reflect the concern of the said authority but it cannot be denied that such concern was never translated into substantial relief for the writ petitioner. It continued to remain hollow assurances to the affected employees/workers and empty threats to the appellants reminding one of the character "Ah Q" in the book of Lu Tsun, "The True Story "Ah Q".

70. It may not be out of context to refer to the role of State and mention about our justice delivery system in today's first changing society.

71. It was observed by Lord Denning that "The principles of law laid down by the Judges of 19th Century -- however suited to social conditions of that time--are not suited to the social necessities and social opinion today."

72. Benjamin Cardozo in his book "Nature of the Judicial Process" observed :

If Judges have woefully misinterpreted the mores of their day, or if the mores of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.

73. As indicated earlier, the expressions "State" and "Authority" in Article 12 of the Constitution have undergone radical change in complexion from time to time over the years in view of the various judicial pronouncements in that regard. In fact, in the present scenario, doors of justice cannot just be closed merely raising such hyper-technical issues.

74. Justice V.R. Krishna Ayer cautioned by saying that "let there be no law innocent of justice, obedient to the establishment and unconcerned with the commonality."

75. W. Friedmann in his book "Law in a Changing Society" observed as follows :

Five different State functions call for analysis. They result from the activities of

the State : first, a Protector; secondly, as Provider; thirdly, as Entrepreneur; fourthly, as Economic Controller; fifthly, as Arbitrator.

76. While discussing about functioning of the State as provider, it was observed that "Legally it expresses itself in two different ways. Many important social services are discharged through the imposition of compulsory duties and conditions on private relationship. A multitude of statutory duties affects both public and private law; their infringement leads to fines, as well as to remedies at the suit of persons protected by the statute. There is a parallel expansion of common-law duties of employers towards employees through the assimilation of new principles of public policy by the law Courts."

77. Mr. Partha Sengupta, who assisted Mr. Pal as learned Counsel for the writ petitioner, submitted that there can be no question of Turning a blind eye when there is allegation of denial of P.F. amount, which the workers need in order to live with dignity. He contended that this is practically in the nature of a demand for enforcement of fundamental right under Article 21 of the Constitution. Besides, it was emphatically added and, very rightly, that the said money, as claimed, is their own hard-earned money, the fruits of their toil. It is not for them, the workers, to get entangled in legal intricacies as to how to knock the doors of justice. Let there be no voice of wisdom asking them to follow a particular path, in a particular fashion or manner. It is not for them to pay heed to any such voice. They just want their money back. They still believe, and fortunately so, that technicalities cannot stand in the way of their demand for justice. Impliedly they desire that their demands be considered by "bold spirits", rather than "timorous souls".

78. In fact, in the words of W. Friedmann once again "The ideal of social welfare, i.e., of the responsibility of the community for minimum standards of living and protection against the major vicissitudes that would leave the individual--except the fortunate few--destitute and degraded, provided only with the theoretical freedoms of contract, property and trade, is now almost universally accepted."

79. Mr. Anindya Mitra, as learned Counsel appearing for one of the appellants, contended that the appellants cannot be burdened with the liability to make payment of the amount, as demanded. But in view of the changes that took place; the trustees of Kelvin Trust cannot have any legal right or authority, to retain the fund so far it rebates to the members of the Waverly Trust.

80. The apprehension that the proposed transfer of the fund may adversely affect the interest of third parties being the workers of the Kelvin does not seem to have any basis. After all, every employee is entitled to the accumulation of the fund standing in his credit and others cannot have any right in respect of the same.

81. Reference was made by Mr. Mitra to Section 41 of the Indian Contract Act but, to this, Mr. S. Pal, arguing on behalf of the respondent/writ petitioner rightly submitted that the dispute does not relate to a contract between the transferor

and transferee. It rather involves statutory liability. Waverly Trust was not in existence at the time of transfer and so, there could be no question of any contract between Kelvin Trust and Waverly Trust, nor any relationship of any promisor and promisee.

82. Inviting attention of the Court it was submitted that the transfer having been effected before the 1988 amendment, Section 17(1A) cannot be attracted to that part of the liability which is that of the employer and not of the trustees. Violation of such statutory liability, in the opinion of Mr. Mitra can be decided by a Court of Magistrate in view of Section 14C read with Section 14A. Learned Trial Judge was, however, of the view that any continuation of an infraction would come under the amended provisions and one cannot be absolved of the liability by reason of absence of provision before amendment. It was held that such liability of the Trustees cannot be segregated from that of the employers who are equally liable. Learned Judge held that after the amendment the amended provisions would also be applicable in respect of the continuing default and where the infraction continues after the amendment, the amended provision is very much applicable to that part of the infraction which continues.

83. Learned Trial Judge while interpreting the amendment to the Act of 1952, referred to the principles laid down in Heydon's case, which may be reproduced as hereunder:

For sure and true interpretation of all statute in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

(1st) What was the common law before the making of the Act. (2nd) What was the mischief and defect for which the common law did not provide. (3rd) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And (4th) The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico." (Ref: Maxwell on "The Interpretation of Statutes", 12th Edn. P.-40).

84. In essence, these mean consideration of how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief.

85. The way the learned Judge looked at the issues seems to be extremely rational and it is consistent with the smooth working of the system which the statute purports to be regulating. It best harmonises with the subject of the enactment. Alternative treatment would have introduced uncertainty, friction or confusion.

86. Various other issues taken by the appellants go a long way to reflect their attitude and desperate desire to deny the respondents their dues. Strangely enough, they did not even feel embarrassed while trying to grab something which is the legitimate claim of the respondent, who represents the unfortunate workers. Will law permit such appellants to take shelter behind the high walls of legal technicalities? Can there be any such place which is beyond the reach of law? After all, hands of law are long enough and it can reach any place in order to do justice.

87. In the present case it cannot be denied that Kelvin Trust has a liability to transfer PF amount of the workers who subsequently formed Waveriy Trust. Kelvin also cannot wash his hands of and is equally liable. There was statutory obligation to submit return to Regional Provident Fund Commission, to invest the P.F. money and to transfer the amount of the workers represented by the writ petitioner with interest accumulated thereon. Learned Trial Judge held that the Trust while dealing with a fund exempted u/s 17 acts as an instrumentality and agency. The decision in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, lends support to the aforesaid finding.

88. The question that next arises as to whether the learned Trial Judge was at all justified in moulding the reliefs. Mr. Balai Chandra Ray contended that the Court cannot travel beyond the pleadings. Mr. Anindya Mitra joined him while submitting that the Court can mould but in the process cannot substitute the prayer.

89. Relying upon the decision in the case of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Smita Johnbhai Master and Others Vs. State of Gujarat and Others*, it was contended on behalf of the respondent/writ petitioner that the Court can enforce public statutory duty and in appropriate cases it can mould the relief to suit the purpose or exigencies of a particular case. It seems to be the settled position of law that the Court can undoubtedly take note of the changed circumstances and suitably mould the relief in order to meet the demand of justice. This view finds support in the decision in the case of *Sm. Nihar Kumari Debi and Others Vs. Commissioner of Police*,

90. The judgment of the learned Single Bench was sought to be assailed on the further ground that the learned Court without any pleading and any prayer pass the order on pure assessment and without any material on record against the company. In this context reference was made to the decision in the case of *S.S. Sharma and Others Vs. Union of India (UOI) and Others*, wherein it was held that the Court should ordinarily insist on the parties being confined to their specific written pleadings. The decision in the case of *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, and the case of *Sheikh Abdul Kayum Vs. Mulla Alibhai*, were referred to. It was emphatically asserted on behalf of the appellants that under Article 226 of the Constitution, the Court cannot go a step further and grant the relief which the petitioner did not ask for.

Reference was made to the decision in the case of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, and The State of Andhra Pradesh and Another Vs. K. Jayaraman and Others,

91. Discussion as made earlier, however, leaves very little scope for further confusion or controversy in this regard.

92. In order to give fruits of the labour of the toiling workers, the Court cannot beyond a point burden itself with mere procedural formalities. Rather justice delivery system must respond to the needs of the people. It has to keep pace with the ever changing demands of time. The writ petitioner approached the Court for transfer of the amount of Rs. 2,00,98,363.02 as reflected in the balance sheet of Kelvin Trust prior to 1986 and carried over without adjustment to be transferred to Waverly Trust. Learned Trial Judge observed that the amount as referred to earlier was held in trust by Kelvin Trust. "The Trustees are bound by the condition of the Trust which is governed by the condition of exemption as well as the provisions of the Act as might be applicable to it." It was further held that "Kelvin and Kelvin Trust were dealing with the fund of the members of the Trust since transferred to Waverly.... Neither the Kelvin Trust nor Kelvin could exercise any right over the said fund except as are provided in the condition for exemption and under the provisions of the Act...."

93. It was repeatedly submitted on behalf of the appellants that disputed questions of facts being involved, the Writ Court could not have had any reason or scope to pass such directions.

94. After careful consideration of the relevant facts and materials, it does not seem that the judgment under challenge can be found fault with on this score either.

95. Our former Chief Justice of India Dr. A.S. Anand, said that "moulding the remedies to suit the needs of the situation so that efficacious and comprehensive remedies may be granted, regardless of pickled precedents in remedial methodology, is part of judicial dynamics."

96. After due consideration of all relevant facts and materials we are inclined to hold that the judgment and order under challenge does not suffer from any such infirmity which calls for any interference by this Court.

97. Accordingly, the present two cases being A.P.O.T, No. 274/02 with A.P.O. No.258/02 with G.A. No. 2029/02 arising out of W. P. No.4312/93 and A.P.O.T. No. 255/02 with A.P.O. No. 238/02 with G.A. No.1968/02 arising out of W.P. No.4312/93 be dismissed on contest.

98. Directions given in the judgment and order of the learned Single Bench are to be complied with in letter as well as in spirit within a period of three months from the date. In default, the legal consequences as indicated by the learned Trial Judge will follow.

99. All parties and Banks are to act on a xerox signed copy of the operative part of the judgment.

Asok Kumar Ganguly, J.

I agree.

Later:

100. Prayer for stay of operation of this judgment and order is considered and rejected.

101. Urgent xerox certified copy of this judgment be made available to the parties, if applied for.