
(1997) 11 MP CK 0052
In the Madhya Pradesh High Court
Case No : M.P. No. 493 of 1997

Madhu Sudan Agarwal and Others

APPELLANT

Vs

M.P. Stock Exchange and Others

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Securities Contracts (Regulation) Act, 1956 — Section 4

Citation : (1998) 2 MPJR 229

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : A.M. Mathur, Mr. K.G. Maheshwari, Mr. A.S. Garg and Mr. S.S. Samvatsar, for the Appellant; V.M. Rege, S.C. Bagadiya and Mr. Pankaj Bagadiya, Advocates., for the Respondent

Final Decision : Dismissed

Judgement

Deepak Verma, J.

THIS ORDER shall also given disposal of M.P. No. 1454/93 (Purushottam (deceased) through Lrs V. Union of India & ors.) M.P. No. 1928/93 (Ashok Kumar V. M.P. Stock Exchange and ors.), and M.P. No. 1410/95 (Rajendra Rathore & another V M.P. Stock Exchange & Ors.), as common questions of law and fact are involved in all these petitions.

In all the aforesaid petitions, the Respondent M.P. Stock Exchange (hereinafter shall be referred to as the "Stock Exchange") has raised preliminary objections with regard to maintainability of the petition, on the ground, that M.P. Stock Exchange is not a "State" within the meaning of Art. 12 of the Constitution and consequently it would not be amenable to writ jurisdiction Invoking Art. 226 of the Constitution. Since the question has been posed in the aforesaid petitions and in other petitions which have not been listed, it was thought fit and counsel appearing for both sides, prayed that the question with regard to maintainability of the petition, in the light of the aforesaid objection, be decided first so that the

petitioners are able to know their fate.

It has also been submitted by learned counsel for Respondents, that, if, this issue is ultimately decided against the petitioners, then, petitions would be thrown, on this ground only, as the said question goes to the root of the matter.

Accordingly, it was thought fit to decide the said question as preliminary issue. The Court has, accordingly, framed the following question which requires consideration;

Whether the M.P. Stock Exchange is "State" within the meaning of Art. 12 of the Constitution of India and, whether or not, petitions are maintainable under Art. 226 of the Constitution of India ?.

Learned counsel were informed about hearing of the matter on the aforesaid question. Notice in this regard was circulated in the Bar Associations. In Cause List, a note in this regard was appended for notice to all Advocates, so that any one disirous of advancing arguments, could do so.

To advance their respective submissions, both parites have cited number of authorities to press their respective contentions. I shall deal with each one of them later on, but, for the present, it is necessary to examine relevant facts and the nature of reliefs claimed by petitioners in the aforesaid petitions.

(i) In WP No. 493/1997 (Madhu Sudan Agarwal & others V. M.P. Stock Exchange & others);

In this petition, petitioners are challenging the demand of Stock Exchange, whereby, the members of the same have been directed to deposit a total amount of Rs. 2.00 lakhs, to show their capital adequacy. The mode of deposit has been mentioned in the notice issued by Stock Exchange to its member on 20.2.1997. On account of failure to comply, the Stock Exchange has issued notice for their expulsion. According to Stock Exchange, the said letter directing the petitioners and other members to deposit the sum of Rs. 2.00 lakhs has arisen on account of a directive issued by S.E.B.I.

In the light of the aforesaid averments, following reliefs are claimed by the Petitioners in this petition :-

The Petitioners, therefore, pray that this Hon''ble Court may kindly be pleased to issue appropriate writ/ orders and directions to quash Annexure "A" and direct the Respondent No. 1 to take capital adequacy from those members only, who are trading in the Ring of the Respondent No. 1, and not to suspend other members from membership for non-payment of capital adequacy / security amount. The petitioners may be awarded costs of this petition and any other such relief which this Hon''ble Court may deem fit in the facts and circumstances of the case.

(ii) In M.P. No. 1454 / 93 (Purushottam (deceased) through Lrs. V. Union of India and others) :-

In this petition, the deceased Petitioner was challenging the act of Respondent No. 2 / Exchange, in not deciding its Nomination Form No. 2, submitted by the deceased petitioner to it for being substituted as a member of the Exchange as successor of late father of deceased petitioner, Shri Gokuldasji Damani. During the pendency of the petition, the sole petitioner expired and his legal representatives have been brought on record. They are also claiming the same reliefs. The Stock Exchange has submitted, that petition is liable to be dismissed on the ground of delay and laches as petitioner approached the Court after 18 long years. It is also submitted, that no Nomination Form at all had been submitted by the deceased, therefore, the consideration of the same does not arise.

In the result of the aforesaid averments, following reliefs are claimed by the present Petitioner in this petition;

The Petitioner most humbly prays for the following reliefs as under:-

(A) An appropriate writ, direction or order be kindly issued and the letter dated 12.4.1993 (Annexure "J") issued by the Respondent No. 2 be quashed being without jurisdiction.

(B) An appropriate writ, direction or order be kindly issued and the Respondent No. 2 be kindly directed to substitute the name of the petitioner in place of his late father as a member of the M.P. Stock Exchange within the time specified by this Hon"ble Court;

(C) That the Petitioner be kindly awarded the entire cost of the present petition;

(D) Any other writ, direction or order which this Hon"ble Court deems fit in the circumstances of the case may also be kindly issued

(iii) In M.P. No. 1928 /93 (Ashok Kumar Shrivastava V. M.P. Stock Exchange & others.)

The facts in brief are as noted below.:

Petitioner was working as an employee of Stock Exchange holding status of Dy. Secretary and challenges his termination order dated 23.9.93. Stock Exchange has submitted, that petitioner was promoted as Dy. Secretary on temporary basis which was subject to confirmation after watching his performance for six months. Petitioner"s appointment was not required to be made with prior approval. The relationship between the petitioner and the Stock Exchange is purely contractual in nature and is not enforceable by this petition.

In the light of the aforesaid averments, following reliefs are claimed by the petitioner in this petition :-

It is, therefore, humbly prayed that in the facts and circumstances of the case, this Honb"ble Court may be pleased;

(a) to direct the Respondents to produce the entire relevant record in relation to

the termination of the Petitioner as also the minutes of the special meeting of the Governing Board dt. 23.9.1993."

(b) to quash the termination order dt. 23.9.93 (Annexure P. 15) which is ab initio without jurisdiction.

(c) to restrain the Respondents from taking over the charge of the office of the Secretary and Dy. Secretary from the Petitioner;

(d) to allow this petition with costs;

(e) to grant any other reliefs to the petitioner as may be deemed appropriate in the facts and circumstances of the case

(IV) In MP No. 1410/95 (Rajendra Rathore & another V. M.P. Stock Exchange & others)

Petitioners are challenging, letter dated 2.11.1995, issued by Respondent No. 1, Stock Exchange, to the Petitioners, calling upon them to make payment of the difference amount of Rs. 2, 75, 700/- to the seller member within 3 days of the receipt of this imitation. Respondents have submitted, that the transactions concerned in the petition were spot delivery transactions, the norms and parameters of spot delivery transactions are prescribed under the Rules. Petitioners committed default as they resiled from their own commitment and refused to sign the Contract / Correction slip.

In the light of the aforesaid averments, following reliefs are claimed by the Petitioners in this petition :-

In view of the facts stated above in paragraph No. 5, the Petitioners pray for the following reliefs :-

(a) This Hon''ble Court may graciously be pleased to call for the relevant record of the case from the Respondents;

(b) to quash the letter dated 2.11.95 (Annexure P.11) issued by the Respondent No. 1;

(c) to stay the operation of the impugned letter dated 2.11.95 (Annexure P.11 issued by the Respondent No. 1;

(d) to allow the petition with costs; and

(e) to pass such other order (s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the Petitioners.

M.P. Stock exchange is a recognized Stock Exchange by Central Government, as required under Sec. 4 of Securities Contracts (Regulations Act), 1956 (hereinafter shall be referred to as "the Act"). Sec. 3 of the Act deals with regard to application to be filed by the Stock Exchange for its recognition. Sec. 4 of the Act pertains to grant of recognition of Stock Exchanges. The said power to grant

recognition to Stock Exchange vests with the Central Government. Under Sec. 5, power has been conferred on the Central Government for withdrawal of the recognition. Sec. 6 gives power to Central Government to call for periodical returns or direct enquiries to be made. Sec. 7 deals with annual return to be furnished to Central Government by Stock Exchanges. Under Sec 7-A, power has been given to the recognized Stock Exchange to make Rules restricting voting rights etc. Secs. 8 and 9 give power to the Central Government to direct the recognized Stock Exchanges to make Rules and Byelaws. Under Sec. 10 and 11, power has been conferred on Central Government to make or amend Byelaws of recognized Stock Exchanges or to supersede governing body of recognized Exchanges or to supersede governing body of recognized Stock Exchanges for the reasons stated in the said Notification. Under Sec. 12, Central Government, in case of emergency, has the power to suspend business of recognized Stock Exchange.

From the aforesaid provisions as mentioned above, petitioners have contended that the Central Government has direct control over the affairs, management control of the trading methods and practices to be followed by recognized Stock Exchanges, Regulations of Contracts and auction in Securities and listing of Securities by Public Companies, therefore, M.P. Stock Exchange would be a "State within the meaning of Art. 12 of the Constitution.

It has further been contended, that even otherwise, under Art. 226 of the Constitution, a writ can be issued against any person or authority, in appropriate cases, against any government. According to them, any person or authority has got wider aspect and would also include M.P. Stock Exchange. It has further been submitted that the function and duties which are being carried on by such Stock Exchanges are to be seen, if, it is found that it is discharging public functions, then, also writ can be issued against it.

Further ground of attack has been made, with regard to Art. 19 (1) (g) of the Constitution claiming that the petitioners have fundamental right to carry on their own business and trade. For this reason also, their submission is, that since fundamental right to carry on business or trade is being infringed, therefore, petition would be maintainable. The action of the Stock Exchange has been termed as arbitrary, beyond its jurisdiction, and beyond the ambit and scope of Rules and Byelaws, therefore, writ would be the only remedy available to the petitioners.

Shri V. M. Rege, learned counsel appearing for Stock Exchange, has submitted, that object of the Act is not to make a direct interest in the transactions that may take place on day today basis, but, is to prevent speculations, which is manifest from the scheme of the Act. Membership to the Stock Exchange is not a matter of right. It is personal privilege which is granted by the Respondents. Depositing of security is sine quo non for getting membership. Reference has been made to the Stock Exchange Rules, Byelaws and Regulations, 1957. It has also been submitted, that Central Government has no financial control or involvement in

the Stock Exchange. What is material is public duty and not public purpose. Any person or authority - appearing in Art. 226 of the Constitution refers to authorities which have nexus with Government functions, or, are instrumentalities of the State. Stock Exchange as a whole, is not an authority, as it is not performing any public functions. The only statutory function it has to perform, is, to list companies for its shares in the market under Sec. 73 of the Indian Companies Act, 1956. Reference has also been made with regard to Constitution of Securities and Exchange Board of India (hereinafter in short referred to "SEBI") which has been constituted under Security and Exchange Board of India Act, 1992.

It has further been contended, that for taking any action against members of the Stock Exchange, no approval from the Central Government or SEBI is required to be obtained. Powers conferred on the Stock Exchange under the Act, Rules, Byelaws are wide enough to take appropriate action against its members. Even Power of superintendence of Central Government, or SEBI, with regard to internal management of the Stock Exchange is not there. It is an independent body, without having any control whatsoever of the Central Government or SEBI. In this view of the matter, his contention is, that it is neither a "State" nor can it be amenable to a writ jurisdiction.

Before proceeding further, it is necessary to examine the aims and objects of the Securities Contracts (Regulation) Act, 1956. The same was enacted to prevent undesirable transactions in securities by regulating the business of dealing therein by prohibiting the options and by providing for certain other matters concerned therewith. The securities Contracts arising out of business in securities is done through the trading facilities offered by institutions called Stock Exchanges, are sought to be regulated under the aegis of the aforesaid statute. It has been brought on the Statute Book mainly with an intention to regulate buying and selling of securities. Stock Exchanges primarily fulfill economic functions. They act as catalysts for mobilizing the savings of the community and also providing necessary frame work for safety, marketability and stability of prices of the securities dealt in by them. The Act only imposes a limited governmental control over the Stock Exchange. The act, in a broad sense provides the frame work within which the Central Government seeks to achieve the object of regulations of Securities Contracts and their dealings.

After examination of the aforesaid provisions and after going through the relevant commentary as available, I find, that either Central Government or SEBI have absolutely no financial involvement or control over the internal management or looking after internal day to day business of the Stock Exchanges. It has only a power of superintendence.

Now I shall deal with the authorities which have been cited by both sides. The first authority is reported in AIR -1961-SC 21 (Madhubhai Anantlal Gandhi Vs. Union of India). This was a petition filed in the Supreme Court, under Art. 32 of the Constitution, for issuance of mandamus, praying for cancellation of the

Notification dt. 31.8.1957, issued by Central Government. The Supreme Court, in this case, has elaborately discussed the working of Stock Exchanges and the purpose of Stock Exchanges.

From perusal of this judgment, it clearly reflects that the question with regard to Art. 12 of the Constitution was neither raised, nor considered. Thus, this judgment renders no help in deciding the issue involved in this matter.

The most often cited judgment of the Supreme Court, reported in AIR 1976 SC 1628 (Ramana Dayaram Shetty Vs. The International Airport Authority of India and others) deals with Art. 12 of the Constitution of India, Hon"ble Mr. Bhagwati J. (as, he, then was) speaking for the Bench, has held elegantly in para - 20, which is reproduced here in below :-

20. Now, obviously where a corporation is an instrumentality of agency of Government, it would be in the exercise of its power of discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance

From this judgment, it is crystal clear that Respondent / International Airport Authority of India has been held to be in instrumentality or Government. It is further held that a corporation may be created in one or two ways. It may be either established by Statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Ordinarily where a Corporation is established by Statute, it is autonomous in its working, subject only to a provision, often times made that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a Corporation, incorporated under law is managed by a Board of Directors or committee of management in accordance with the provisions of the Statute under which it is incorporated. Now one thing is clear that if the entire share capital of the Corporation is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. But, as is quite often the case, a Corporation established by statute may have no shares or shareholders in which case, it would be a relevant factor to consider, whether the administration is in the hands of a Board of Directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from Government control in the discharge of their functions. What then are the tests to determine, whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government. It is not possible to formulate an all inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the

correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.

In the aforesaid case, the Government had full control as regards the financial and management, both, on the working of International Airport Authority of India. Thus, this case renders no help to the advantage of the petitioners. As has been mentioned above, in Stock Exchanges, Government has no financial stakes or involvement. It also does not have any control over it except power of superintendence. It is also not discharging any public duty or public function.

While considering the meaning of word "company" appearing in Sec. 3 (e) of the Land Acquisition Act, the Supreme Court has made certain observations which find place in a judgment reported in State of Punjab and Others Vs. Raja Ram and Others, . The Supreme Court has held as under :-

The Food Corporation is not a Government department. A Government department has to be an organization which is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government. The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party. It is true that its original share capital is provided by the Central Government (S. 5 of the F. C. Act) and that 11 out of the 12 members of its Board of Directors are appointed by that Government (S.7 of the F. C. Act) but then these factors may at the most lead to the conclusion that the Corporation is an agency or instrumentality of the Central Government.

Food Corporation of India has been held to be an autonomous body created under the Food Corporation of India Act, 1964. This case also either directly or indirectly, does not deal, in any way, with the question involved in this matter.

Supreme Court had the occasion to extensively deal with regard to the ambit and scope of Art. 12 of the Constitution. This has been dealt with in a judgment reported in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . The Supreme Court has given certain guidelines and broad parameters where an Authority can be held to be "State" within the meaning of Art. 12. Para-9 which reflects light on the question, is, reported here in below :-

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of wide meaning to be placed on the expression "other authorities", it must be realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government

with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wide limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows :-

- (1) One thing is clear that if the entire share capital of the corporation is held by Government it would to a long way towards indicating that corporation is an instrumentality or agency of Government.
- (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with government character".
- (3) "It may also be relevant fact... whether the corporation enjoys monopoly status which is the State conferred or State protected".
- (4) "Existence of" deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality".
- (5) "If the functions of the corporation of publi(sic)ance and closely related to governmental functions, It would be a relevant factory in classifying the corporation as an instrumentality or agency of Government".
- (6) "Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government".

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority's case be an "authority" and, therefore, "State" within the meaning of the expression in Art. 12.

An identical question had again cropped up in the Apex Court, which is reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Central Inland Water Corporation is not only a Government Company as defined in Sec. 617 of the Companies Act, but is wholly owned by Central Government and two State Governments, jointly. It is financed entirely by these three Governments, and is completely under the Control of the Central Government and is managed by the Chairman and Board of Directors appointed by the Central Government and removable by it.

While discussing Art. 12, the Supreme Court has held in para-69 as under :-

69. What is the position before us ? It is only one case decided on a concession and another based upon an assumption that a Government company is "the State" under Art. 12 ? That is the position in fact but not in substance. As we have seen authorities constituted under, and corporations established by, statutes have been held to be instrumentalities and agencies of the Government in a long catena of decisions of this Court. The observations in several of these decisions, which have been emphasized by us in the passages extracted from the judgments in those cases, are general in their nature and take in their sweep all

instrumentalities and agencies of the State, whatever be the form which such instrumentality or agency may have assumed. Particularly relevant in this connection are the observations of Mathew J. in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, of Bhagwati J, in the International Airport Authority's case AIR 1979 SC 1628) and Ajay Hasia's case (AIR 1981 SC 840) if there is an instrumentality or agency of the State which has assumed the garb of a Government company as defined in S.617 of the Companies Act, it does not follow that it thereby ceases to be as instrumentality or agency of the State. For the purposes of Art. 12, one must necessarily see through the corporate veil to ascertain whether behind the veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State. The Corporation which is the Appellant in these two Appeals before us, squarely falls within these observations and it also satisfies the various tests which have been laid down. Merely because it has so far not the monopoly of inland water transportation is not sufficient to divest it of its character of an instrumentality or agency of the State. It is nothing but the Govt. operating behind a corporate veil, carrying out a governmental activity and governmental functions of vital public importance. There can thus be no doubt that the Corporation is "the State" within the meaning of Art. 12 of the Constitution.

Critical examination of the aforesaid judgment, clearly shows that the aforesaid Corporation is wholly owned by Central Government and two State Governments jointly. These Governments have absolute financial involvement in the working of the Corporation. Whereas, in the case in hand, except, for the fact that Central Government, has some power of the superintendence, on the working of Stock Exchanges, but, has otherwise, no say in the matter.

Petitioners have strongly relied and repeatedly quoted, the judgment of Supreme Court reported in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , to contend that issuance of Writ of mandamus under Art. 226 of the Constitution is not only confined to statutory authorities and instrumentalities of State, but, can be issued to any person or authority performing public duty, whether, the duty is imposed by statute, or otherwise.

In Para-14, of the aforesaid judgment Supreme Court has held as under:-

If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. There are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants - trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like

Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See the *Evolving Indian Administrative Law* by M.P. Jain (1983) p. 266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has superadded protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party

After careful reading of the said case, I find, that looking to the facts and nature of the reliefs claimed by petitioners, the same appears to be purely of private character which do not warrant issuance of a writ of mandamus. It is also clearly made out that Respondent / Stock Exchange is not performing any public duty. The purpose for which Stock Exchange(sic) have been set-up, has already been discussed by me in detail above. None of the functions of Stock Exchanges would reflect that it is performing any public duty. This is the considered opinion of this Court, the case of *Anadi Mukta* (supra) has to application to the facts of the instant case. On the other hand, in fact, it supports the contentions of the Respondents.

The learned counsel for respondents has placed reliance on a judgment reported in *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and others*[OVERRULED], , to contend that the Apex Court has held, where activities of any such authority of association is not related of governmental functions and if the government operates behind a corporate veil, carrying out governmental activity and governmental functions of public importance, it cannot be rendered to be a "State" under Art. 12 of the Constitution. It has been held, as under in the aforesaid judgment;

There are only general principles but not exhaustive test to determine whether a body is an instrumentality or agency of the Government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the Government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance

and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case.

The case in hand amply prove from the facts and reliefs claimed, that they are trying to get their personal rights invoked by these petitions. The Stock Exchanges do not appear to be performing any public duty. The Constitution of Stock Exchange of M.P. is also said to be in association of brokers it has no legal entity. It is an association of individuals, joining hands with each other to form an association. In view of aforesaid judgment of the Supreme Court, in the considered opinion of this Court, it is clear that MP Stock Exchange is not a "State" within the meaning of Art. 12 of the Constitution.

Petitioners have placed reliance on Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, . It has been held as under by the Supreme Court.

It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even, though, the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

The existence of the power of judicial review however depends upon the nature of and the right involved in the facts and circumstances of the particular case, it is well settled that there can be "malice in law". Existence of such "Malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action

The case reported in AIR 1992 (Del) 68 (Rajesh Kumar Mahesh wari V. Union of India) deals with the question of induction of new members by the Stock Exchange. It has been held that induction of new members selected by expert committee, in absence of any arbitrariness, but, made on the basis of experience, professional qualifications and such other factors, would not be amenable to writ jurisdiction.

Shri S. C. Bagadiya, learned Sr. Counsel appearing with Shri Pankaj Bagadiya, has brought to my notice judgment of the Bombay High Court, reported in Pesi Shroff Vs. State of Maharashtra and Others, , where the petitioner was denied racing license. The Division Bench, while elaborately discussing the matter, has held, that against Turf Club, no writ under Art. 226 can be issued, as the petitioner is claiming personal right. While constructing the words (any other person) appearing in Art 226, Their Lordships have further clarified that it means enforcement of legal rights and performance of any legal duty. Legal right means

legally enforceable rights and not purely personal rights and / or personal contract having no statutory force. Their Lordships have, then, sustained the preliminary objection raised by the Respondents of the said petition, and have held that against Turf Club no writ can legally be issued.

I shall now deal with a case reported in AIR 1995 (Kar) 420 (R. Jagdeesh Kumar V. P. Shrinivasan). The learned Single Judge has held that with regard to expulsion of member by Stock Exchange, writ in the nature of mandamus would not lie. Para - 7 of the said judgment, which is relevant for the purpose of this petition is reproduced here in below :-

The first question that arises for consideration in this case is, whether a writ would lie in the nature of mandamus to the Stock Exchange which is a company registered under the Companies Act in respect of an action to expel a member from the company. In order to appreciate the case put forward before the Court, it is necessary to bear in mind the activities that are carried on in a Stock Exchange, before I advert to the statutory provisions governing such a company, I may first briefly notice how a Stock Exchange works and the nature of control and regulation exercised by the statute. Under the Act, Stock Exchange means any body of individuals, whether incorporated or not, constituted for the purpose of assisting or controlling the business of buying, selling or dealing in securities. A Stock exchange provides facilities to liquify capital by enabling a person who has invested money in any company by way of shares which is converted into cash by disposing of his share in the enterprise to someone else. A Stock Exchange give mobility to the capital in the absence of which the capital invested in the form of shares in any enterprise would become locked up. The proper working of a Stock Exchange essentially depends not only on the calibre of the members constituting it, but also perhaps more importantly on their moral statute. In carrying out the activities in a Stock Exchange the members thereof should be men of valour, prudence, levelheaded and act with wisdom even in the most adverse circumstances. They must also be men of good financial stability, considerable experience, capable of assessing the market psychology etc., The Stocks and shares are dealt with in three manners - (i) spot delivery contract - where the contract provides for actual delivery of securities on payment of a price either on the day of the contract or the next day excluding perhaps the time take for dispatch of the securities or the remittance of money from one place to another, (ii) Ready delivery contract which means a contract for the purpose or sale of securities for the purpose of which no time is specified and it is to be performed immediately or within a reasonable time; and (iii) forward contracts, that is, contracts under which the parties agree for their performance at a future date. If the Stock Exchange is under the influence of unscrupulous members, the second and third categories of contracts to buy or sell shares would lapse to highly degenerating and speculative transactions amounting to pure gambling. If the parties do not intend while entering into contracts for sale or purchase of securities that only difference in prices should be paid, the transactions which are even those speculative, may be valid and not void for

there is no law against speculation as there is against gambling. If the parties do not intend that there should be no delivery of the shares but only the difference in price should be paid or accounted for, the contract becomes void for it is a wager. Quite often it becomes difficult for a Court to distinguish one from the other as a wagering transaction can be ingeniously camouflaged as to pass-off as a speculative transaction. Such obnoxious potentialities are inherent in the transaction and if left uncontrolled would tend to subvert the main object of the Stock Exchange and convert it into a den of gambling which would ultimately upset the economy of the country

While discussing further, it has been held by Learned Single Judge as under :-

The nature of control that is exercised by the Government from a perusal of these provisions referred to from S.3 to S.12 would only indicate as to making provisions for carrying on effective functioning of the Stock Exchange and does not take away the powers of a Stock Exchange in the matter of internal regulation, namely; to take a decision as to whether a person who is a member of the Stock Exchange should continue to be so or whether a person is entitled to be a member of the Stock Exchange, as long as the power that is exercised by the Stock Exchange is within the frame-work of the statute. Therefore, by no stretch of imagination can it be said that the Stock Exchange in the matter of regulating as to who should be its members and who should be expelled exercises any public duty or discharges any duty to the public at large. What it does in a particular case is to find out whether a particular member has violated the terms of any rules, regulations or bye-law or the Articles of Association of the Stock Exchange so as to become disentitled to continue to be its member. In such matter, it is very difficult to consider that the Stock Exchange discharges any public duty. It is only in cases where a company exercises or performs a public duty, a writ would lie.

The aforesaid case decides the whole issue against the petitioners. A similar view has been expressed by Their Lordships of Kerala High Court reported in Satish Nayak Vs. Cochin Stock Exchange Ltd., Ernakulam and Others, . Their Lordships have held that against Stock Exchange, Art. 226 of the Constitution cannot be invoked. While referring to the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Their Lordships of Kerala High Court held that public education is duty of a welfare State and if the said duty is performed by a private institution, it would be held to be discharging a public duty. But, in the case in hand, there is no duty cast upon the Government to run Stock Exchange and in absence of it, the first respondent / Stock Exchange, which does the business of securities, cannot be termed as discharging public duty. In para 26-27 after discussing all the judgments of the High Courts and Supreme Court, Their Lordships have held as under;

Applying the tests laid down by the series of Supreme Court decisions, we do not find that these regulatory measures by itself are sufficient in the absence of any other factors like financial assistance, control of management and policies, State

protected monopoly status and public functions, so as to come to the conclusion that the 1st respondent Company is an authority amenable to writ jurisdiction under Art. 226 of the Constitution. 27. The subject matter in both the matters are purely contractual in character. Therefore, in any event, the issue relating to the violation of the Bye-laws of the Company and appointment of arbitrator for realizing the claim of another member and the issue relating to the termination of services of an employee are purely in the realm of contract. Therefore, the extraordinary jurisdiction under Art. 226 is not the proper forum for the reliefs prayed for.

It is pertinent to mention here that Their Lordships have dissented with the view expressed by Learned Single Judge of Bombay High Court reported in AIR 1991 (Bombay) - 30 (Mrs. Sejal Rikeen Dalai V. Stock Exchange Bombay & Ors.) on which the petitioners had placed strong reliance.

The petitioner, then, submitted that in view of the decision of the Division Bench of Andhra Pradesh High Court reported in Rakesh Gupta and others Vs. Hyderabad Stock Exchange Ltd. and others, , a writ can be issued against the Stock Exchange. I am, afraid, even, though, there has been an elaborate discussion on the working of the Stock Exchanges, but, the facts of this case differs entirely with the facts of the cases in hand. Therefore, the same also does not render any help to the petitioners' cases.

I may refer to some of the recent judgment of the Supreme Court reported in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, . In the said judgment it has been held that unless a public interest element is present in a petition, a writ cannot be issued against any private party.

Yet another recent judgment of the Supreme Court which is the relevance to the fact of the case, is reported in Hindustan Steel Works Construction Ltd. Vs. State of Kerala and others, . In the said case. Their Lordships of Supreme Court have held that Hindustan Steel Works Construction. Ltd. cannot be held to be a department of the Government. There may be deep pervasive control of the Government over the appellant / Company and the appellant Company on such account may be an instrumentality or agency of the Government and as such is "State" within the meaning of Art. 12 of the Constitution. Even, then, it cannot be held to be a department and establishment of Government in all cases.

From the discussion held above, it is manifestly proved that the Central Government does not have any deep or pervasive control over the working of the Stock Exchange, therefore, this cannot be said to be either "State" or amenable to writ jurisdiction.

In view of the foregoing discussions and on the basis of authorities which have consistently held that no writ can be issued against the Stock Exchange. I also hold it accordingly. It may further be mentioned here that this has become necessary to hold so in view of the facts and the reliefs claimed by the

petitioners. They have not been able to show it to my satisfaction that any of their fundamental rights or legal rights are being infringed warranting to invoke writ jurisdiction under Art. 226 of the Constitution.

It may be clarified further to avoid any controversy in future that if a citizen is able to show and prove to the satisfaction of the Court, that his fundamental rights are going to be affected, if writ is not issued, then, in a given case, court has power to invoke the jurisdiction conferred under Art. 226 of the Constitution. But generally for enforcement of personal rights, service matters or in contractual obligations, writ would not be the proper remedy against Stock Exchange. The person, who complains of the infringement of a fundamental right must show that the alleged fundamental right belongs to him. In short, the extraordinary remedy under Art. 226 cannot be used to strike down some action of the Stock Exchange, on the ground that it is calculated to prejudice the interest of the petitioner. The existence of the legal right which is alleged to have been infringed is similarly a condition precedent to the maintenance of a petition under Art. 226, where it has been brought for the enforcement of a nonfundamental right.

Consequently, I sustain the preliminary objection raised by Stock Exchange and hold that in the aforesaid cases writ would not be a proper remedy. The aforesaid petitions are accordingly dismissed, but, with no order as to costs. Security amount, if, any, be refunded back to the Petitioners after its due verification.