

(1986) 07 GUJ CK 0010

In the Gujarat High Court

Case No : Letters Patent Appeal No. 98 of 1984

M.S. Desai and Co.

APPELLANT

Vs

Hindustan Petroleum Corporation Limited

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226
Contract Act, 1872 — Section 73

Citation : AIR 1987 Guj 19 : (1987) 1 GLR 375

Hon'ble Judges : S.B. Majmudar, J;P.R. Gokulakrishnan, J

Bench : Division Bench

Advocate : V.B. Patel and D.G. Chauhan, for the Appellant; B.J. Shelat, for the Respondent

Judgement

Maimudar, J.—A short question falls for determination in this appeal. It runs as under: -Can the alleged arbitrary action of a Government company which is a State within the meaning of Art. 12 of the Constitution, emanating from the alleged breach of binding executive instructions issued to it by the Central Government for regulating the company"s dealings with third parties with whom such company might have entered into contracts, be brought in challenge under Art. 226 of the Constitution for testing it on the anvil of Art. 14 of the Constitution.

2. Factual backdrop: - In order to appreciate the aforesaid question in its correct perspective, the factual metrix leading to the present proceedings deserve to be noted at the outset. The appellant is a partnership firm which was appointed as dealer entrusted with the task of selling petroleum products in retail. The appellant was appointed by the respondent Corporation which is wholly owned by the Central Government. It is a Government company incorporated under the Indian Companies Act, 1956. The respondent Corporation discharges Governmental functions which were being initially discharged by the Department of the Central Government viz. Petroleum Ministry into between the respondent

Corporation on the one hand and the appellant firm on the other. The last of such agreements was dt/ 2-8-1976. During the time the appellant was working as a dealer in petroleum products supplied by the respondent Corporation, a sample of petrol sold at its pump was taken on 22-7-1981. It was subjected to laboratory test. Report thereof was received on 30-10-1981 and it was found that the petrol sold at the appellant's petrol pump was adulterated. On 10-11-1981, explanation was called for from the appellant in this connection and further supply of petroleum products to the appellant was suspended. The appellant submitted three written explanations in this connection on 16-11-1981, 28-12-1981 and 28-1-1982 respectively. The appellant also requested to restore supply of petroleum products. On 1-7-1982, a notice was issued to the appellant to show cause why its dealership for selling petroleum products at its petrol pump should not be terminated. The said show cause notice was issued as per Cls. 26, 42, 44 and 45(I) of the dealership agreement. The appellant gave a reply to the show cause notice on 7-7-1982 and, thereafter, as the supply of petrol was not restored, the appellant filed Special Civil Application No. 3943 of 1982 in this court, On 21-9-1982. The present appeal arises from the final order passed in that special civil application. In that special civil application, by an interim order dated 2-11-1982, Ahmadi, J. directed the respondent to take prompt decision within four weeks from the date of the order in connection with the show cause notice issued to the appellant. The respondent was directed to make a speaking order specifically stating whether this was a case of first lapse or second lapse. Thereafter, the respondent passed a speaking order dt. 24-11-1982 terminating the appellant's dealership. The said speaking order is at annexure "F" to the main petition. It was brought on record by way of amending the petition. It is this order which was challenged on diverse grounds before the learned single Judge, N. H. Bhatt, J. before whom the said special civil application reached final hearing, noted four preliminary objections raised before him by the respondent corporation in its affidavit-in-reply. Out of these four preliminary objections, the first two viz that the respondent Corporation was not a State and that relationship between the parties was that of contracting parties and, therefore, the court's jurisdiction was not attracted, were considered by the learned single Judge. The contention that the respondent was not a State was negatived while the preliminary objection about maintainability of the writ petition on the ground that relationship between the parties was governed by the contract between them and that excluded the writ jurisdiction, was upheld by the learned single Judge and consequently, the writ petition was dismissed as not maintainable. In that view of the matter, the learned single Judge naturally did not go into the merits of the controversy between the parties centering round the impugned dealership termination order.

[Paras 3, 4 and part of Para 5 xxxx]

The following two points for our consideration: -

(1) Whether the respondent Corporation is a State within the meaning of Art. 12

of the Constitution?

(2) If it is a State within the meaning of Art. 12 of the Constitution, whether the writ petition filed by the appellant against the respondent Corporation is maintainable under Art. 226 of the Constitution?

We shall deal with these points seriatim.

(1) Whether the respondent Corporation is a State within the meaning of Art. 12: - So far as this contention is concerned, the learned single Judge has rightly held that the respondent is a State within the meaning of Art. 12 of the Constitution. We have got to reject the submission to the contrary canvassed by Mr. Shelat for the respondent for obvious reasons. The respondent is admittedly solely owned by the Central Government. The respondent is discharging Governmental functions. The petroleum products are monopoly products whose procurement and distribution are within the direct control of the Petroleum Ministry of the Central Government. Originally, these functions were discharged by the department of the Government viz. Ministry of Petroleum and thereafter they were transferred by floating wholly owned Government companies like the respondent Corporation, which were duly incorporated under the Companies Act, 1956. It also cannot be disputed that the entire working capital of the respondent Corporation is being provided by the Central Government. Thus, the respondent corporation is owned and controlled by the Central Government. It is, therefore, necessarily an instrument or limb or agency of the Central Government. As it is an authority owned and controlled by the Central Government, it cannot but be styled as State within the meaning of Art. 12 of the Constitution. In fact, this question is squarely covered against the respondent by a decision of the Supreme Court in the case of *Som Prakash v. Union of India*, : AIR 1981 SC 212. The Supreme Court, in that case, was concerned with an almost identical question as to whether Bharat Petroleum Corporation Limited was a State within., the meaning of Art. 12 of the Constitution. V. R. Krishna Iyer, J. speaking for himself and O.Chinnappa Reddy. J. observed that if a statutory corporation, body or other authority is an instrumentality or agency of the Government, it would be an "authority" and, therefore "State" within the meaning of that expression in Art. 12 and is subject to the same constitutional limitation as Government. The preponderant considerations for pronouncing an entity as State agency or instrumentality are (i) financial resources of the State being the chief funding source (ii) functional character being governmental in essence; (iii) plenary control residing in Government, (iv) prior history of the same activity having been carried on by Government and made over to the new body and (v) some element of authority or command. It was found in that case that Bharat Petroleum Corporation Limited satisfied all the aforesaid tests and that it was distributing monopoly product viz. petroleum on behalf of the Central Government. In this connection, it was further observed that whether the legal person is a corporation created by a statute, distinguished from under a statute, is not an important criterion although it may be an indicium, and that commense

signification of the expression "other authorities under the control of the Government of India" is plain and there is no reason to make exclusions on sophisticated grounds such as that the legal person must be statutory corporation must have power to make laws, must be created by and not under a statute and so on. The facts of the present case are almost identical. All the aforesaid tests laid down by the Supreme Court in this decision for clothing a legal entity with the trappings of "State" within the meaning of Art. 12 of the Constitution are also complied with by the respondent-corporation. Consequently, there is no escape from the conclusion that the respondent is a State within the meaning of Art. 12 of the Constitution as rightly held by the learned single Judge.

Maintainability of special civil application: -

6. That takes us to the main and moot question as to whether on the allegations in the petition, challenge to the order cancelling the appellant's dealership of petroleum products, is maintainable under Art. 226 of the Constitution or not. At the outset, it must be noted that for deciding this question, we must proceed on demurrer, meaning thereby, that whatever is alleged in the petition must be presumed to be true and then try to ascertain as to whether even on such assumption, the challenge mounted against the impugned order can be validly and legally entertained in the present proceedings under Art. 226 of the Constitution. We, therefore, did not permit Mr. Shelat for the respondent to submit before us that even on merits, the impugned order is not vitiated, as it does not conflict with the guidelines but on the, company run parallel to them and that in any case, these guidelines were not issued by the Petroleum Ministry as alleged by the petitioner-appellant. These questions will have to be thrashed out on merits if it is held that the petition is maintainable. Consequently, we express no opinion thereon. For the present purpose, we shall assume on demurrer that what is alleged in the petition is true and then try to find out whether such challenge on the allegations found in the petition falls within the permissible limits of the jurisdiction of this court under Art. 226 of the Constitution or not. Now, to recapitulate, the challenge to the impugned order terminating the appellant's dealership agreement by the respondent lies in a very narrow compass. The appellant contends that as per the guidelines issued by the Ministry of Petroleum which are binding on all companies and Corporations like the respondent-Corporation who are entrusted with the task of distributing petroleum products on behalf of the Central Government, a detailed procedure is laid down as to how the concerned dealer should be dealt with in cases where they are found to have misconducted themselves in distribution of petroleum products entrusted to them in the course of dealership agreements. Inviting our attention to the Marketing Discipline Guidelines annexed to the impugned order at annexure "F" dt. 24-11-1982 itself, it was submitted by Mr. Patel that these guidelines issued by the Ministry of Petroleum have laid down various mandatory procedures to be followed by the concerned oil companies while deciding whether dealership agreements of the dealers should be continued or should be terminated in given contingencies. He invited our attention to

Chapter V of the Marketing Discipline Guidelines which inter alia deals with Prevention of Adulteration at retail outlets. In that chapter, at the outset, certain guidelines have been laid down in connection with motor spirit. Amongst them it is provided that individual oil company joint inspection terms should carry on filter paper checks at the retail outlets and if filter paper checks indicate possible adulteration, signed and sealed one liter sample (3) should be collected from the retail outlet, out of which one should be kept with the dealer, one with the company and the third be sent for laboratory testing, and that if the sample fails in the laboratory test, the dealer should be issued a caution letter and supplies of oil products to the concerned retail outlet should be suspended for 15 days. A repeat sample should be taken from the retail outlet where the first sample failed in the laboratory test and if the repeat or any subsequent sample also fails in the laboratory test, supplies of all petroleum products should immediately be suspended and a show cause notice issued to the dealer. Action (which may include even termination of dealership) should be taken based on investigation. Reliance was also placed on one other guideline which is in chapter V to the effect that a repeat sample should be taken from the same outlet within 3 months period. That guideline is found as guideline No. 3 below the caption "Lubes" in Chapter V. Relying on these guidelines, it was submitted by Mr. Patel for the appellant that unlimited power to terminate dealership as found in the dealership agreement is fettered by the procedure laid down in these guidelines which are executive instructions issued by the Central Government and which are binding on all Government companies like the respondent. That as per these guidelines, when the first sample fails and the supply of petroleum is suspended for 15 days, the concerned dealer has to be given a second opportunity to run the petrol pump by being supplied petroleum products and thereafter when the second sample is taken and if it is found to be adulterated, then only question of terminating dealership would arise. On the facts of the present case, submitted, Mr. Patel, this procedure was not adopted and immediately on failure of the first sample, dealership agreement was terminated and, therefore, according to Mr. Patel, the impugned order conflicts with the binding guidelines and the mandatory procedure laid down therein and hence, the order is bad. Mr. Patel submitted that this allegation cannot be said to be purely in the realm of contractual relationship between the parties. That the learned single Judge ought not to have dismissed the petition in limine on the ground that the guidelines merely fettered the contractual obligations of the respondent and were purely in the realm of contract and hence, the writ petition was not maintainable for scrutinizing such grievance.

7. In order to consider this question, it is necessary to keep in view the peculiar nature of the allegations contained in the petition. It is true, as submitted by Mr. Shelat for the respondent, that the dealership agreement incorporates various clauses contemplating contingencies in which dealership can be terminated on account of misconduct of the dealer. Such termination of dealership by the respondent in exercise of its powers under the dealership agreement would no

doubt be exercise of contractual power under the dealership agreement. However, peculiar feature of the present case is that dealership has been terminated by the respondent Corporation on account of the alleged misconduct of the appellant in selling adulterated petrol at its pump, by passing the impugned order which according to Mr. Patel for the appellant, flying in the face of mandatory procedure prescribed by the Central Government through the Ministry of Petroleum which according to Mr. Patel has to be followed by the concerned Government company before taking any decision to terminate the dealership contracts. Thus, the grievance of the appellant is that the respondent" which is the instrumentality of the State and therefore, a State within the meaning of Art. 12 of the Constitution, has passed the impugned order terminating the dealership agreement in violation of the mandatory executive instructions issued by the Central Government, Ministry of Petroleum which are binding to all petroleum companies like the respondent and, therefore, the impugned order is contrary to the mandatory directions of the Central Government and is patently arbitrary and, therefore, it violates the mandate of Art. 14 of the Constitution so far as the appellant petitioner is concerned. In our view, this type of grievance cannot be styled as falling wholly within the domain of contractual rights and obligations of the respective parties under the dealership agreement. In fact, the Central Government instructions issued by the Petroleum Ministry are totally dehors the dealership contract between the parties. The dealership agreement Ex. D dt. 2-8-1976 nowhere lays down such a detailed procedure for termination of the dealership agreement. This procedure is engrafted on the relationship between the parties not by any contract but by independent executive instructions issued by the Central Government through the Ministry of Petroleum which are "binding on all concerned who deal with petroleum products whether as distributing agent like the respondent or as retail dealers like the appellant. It cannot be suggested that these executive instructions issued by the Ministry of Petroleum flow from any contractual source. In fact, the appellant has no contract whatsoever with the Petroleum Ministry. Similarly, the respondent Corporation is also not under any contractual obligations qua the Central Government. The instructions, therefore, which have emanated from the petroleum ministry, are the result of the exercise of the executive power of the Central Government. In exercise of that power, the Government has issued instructions to its instrumentality or limb directing - it how to behave in given contingencies. If these binding instructions are committed breach of and if that breach adversely affects any citizen of India, may be, a dealer who might be entitled to receive stock of petroleum products under the dealership agreement with the instrumentality of the State, it is difficult to appreciate how such a person cannot ventilate his grievance against the instrumentality of the State by filing a writ petition under Art. 226 of the Constitution on the ground that such instrumentality has behaved in an arbitrary manner qua him by not following the executive instructions of its principal which are binding on it. In our view, such type of challenge mounted against the alleged arbitrary action of the authority which is a State within the meaning of

Art. 12 of the Constitution and which naturally has to be tested on the anvil of Art. 14 of the Constitution cannot be shut out from the scrutiny of the court under Art. 226 of the Constitution. Such a challenge cannot be said to be raising purely a question of breach of contract based only on the contractual rights and obligations and which would be foreign to the scope of proceedings under Art. 226 of the Constitution. With respect to the learned single Judge, it is not possible to agree with the view taken by him on the peculiar facts of this case and in the light of the allegations in the petition, that the grievance voiced by the appellant-petitioner cannot be entertained in the present proceedings. It is also, with respect, not possible to agree with the finding reached by the learned single Judge that in this matter, the impugned order terminating the dealership agreement is solely in exercise of contractual rights. In fact, as seen earlier, the action is challenged on the ground that the legal obligations of the respondent Corporation in complying with the binding executive instructions of the Government issued through the Ministry of Petroleum have been committed breach of by the respondent Corporation which is a State within the meaning of Art. 12 of the Constitution and that has resulted in the impugned order. Such an order, in our view, cannot be said to have been passed purely in exercise of , the contractual right of the Corporation under the dealership agreement but it can be said to have been passed allegedly flying in the face of the binding executive instructions and which would result into nullifying consequences voiding the order, if such" allegations are found to be true. Ultimately, we must, therefore, hold that such a challenge is not contra-indicated by Art. 226 of the Constitution. We must also make it clear that the present observations of ours should be confined to the limited question as to whether such challenge is open for scrutiny of this court under Art. 226 of the Constitution. We should not be presumed to have endorsed on merits the contention of the appellant-petitioner that the impugned order is in fact, in violation of the guidelines or whether the guidelines were ever issued by the Ministry of Petroleum. These questions will obviously have to be thrashed out on merits before the learned single Judge after these proceedings are remanded pursuant to the present order.

8. Now is the time for us to refer to a few of the decisions on the point on which the learned Advocates of the respective parties laid great stress. The first judgment on the point is the decision of the Supreme Court in the case of Radhakrishna v. State of Bihar, AIR 1977, SC 1496. The Supreme Court in that case was concerned with the question of maintainability of writ proceedings under Art. 226 of the Constitution wherein the orders of the State Government of Bihar revising rates of royalty payable by the concerned lessees of Government lands were brought in challenge. The High Court of Patna repelled the challenge on the preliminary ground that writ proceedings were not maintainable however arbitrary the action may be of revising the royalty rates. This view of the Patna High Court was confirmed by the Supreme Court in the aforesaid decision by holding - "At the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all, the

State, no doubt, acts purely in the executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art. 14 or any other constitutional provision when the State or its agents, purporting to act within this field perform any act". In the aforesaid decision, the Supreme Court noted with approval three categories of cases listed by the Patna High Court in which question of maintainability of writ application against the State authorities acting as contracting parties usually arises for consideration. (i) where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament but the agreement is short of a contract within the meaning of Art. 299 of the Constitution; (ii) where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or rules framed thereunder and the petitioner alleges a breach on the part of the State; and (iii) where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and the petitioner complains about breach of such contract by the State. It was held that out of the aforesaid three categories of cases, cases falling under the third category cannot be considered in proceedings under Art. 226 of the Constitution; while the first two categories of cases could well be considered in such proceedings. Mr. Patel for the appellant submitted that the present case falls under category No. (ii) while Mr. Shelat for "the respondent submitted that it falls within category No. (iii).

9. In our view, on the peculiar facts of the present case as alleged in the petition, neither category (ii) nor category (iii) gets attracted. So far as cases falling under category (ii) are concerned, they will only cover those cases in which contract is entered into in exercise of a statutory power under the Act or the rules. It cannot be said that the respondent has entered into the agreement of dealership with the appellant in exercise of any power under the Act or the rules framed thereunder. It has entered into the agreement in exercise of its power under the Articles of Association. Nor can category No. (iii) apply, as submitted by Mr. Shelat for the simple reason that even though dealership agreement entered into between the respondent and the appellant is non-statutory and contractual, on the allegations made in the petition, the grievance does not refer to any rights and liabilities of the parties governed by the terms of the dealership contract nor does the petition complain about the breach of any of such contractual terms. But as seen earlier, the grievance is that independent of the dealership agreement, certain guidelines issued in exercise of executive power by the Central Government through the Ministry of Petroleum which are binding on

the respondent are committed breach of by the respondent while passing the impugned order. Such type of cases, in our view, would represent entirely a new category of-cases viz. category (iv) which would run as under

"Where a contract is entered into between the instrumentality; of the State which is "State" within the meaning of Art. 12 of the Constitution and a private party and the grievance of the private party to the contract is that the contract is terminated in an arbitrary manner by such instrumentality of the State acting contrary to the binding executive instructions issued by its principal viz. the Government and which results in arbitrary exercise of power by the instrumentality of the State violating the guarantee of Art. 14 of the Constitution".

So far as such category of cases is concerned, in our view, it would fall in line with categories (i) and (ii) as enumerated by the Supreme Court in Radhakrishna's case (supra) and in which according to the Supreme Court proceedings under Art. 226 would lie.

10. We may now refer to a later decision of the Supreme Court in the case of Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., . In that case, D.A. Desai, J. speaking for the Supreme Court held that "where a company tried to enforce through writ petition the right to remove timber without the liability to pay royalty, it was held that the company was not enforcing its right under R. 37 of the Assam Land and Revenue and Local Rates Regulation but was seeking to enforce a contractual right under the specific terms of contract of lease agreed to between the company and the Government. Such contractual right, therefore, could not be enforced in writ petition". The ratio of this judgment, heavily relied upon by Mr. Shelat for the respondent cannot be of any avail on the facts of this case. The allegations in the petition, as already observed earlier, are far different from the allegations against the State action as were found in the aforesaid decision of the Supreme Court.

11. We may now refer to the judgment of the Supreme Court in the case of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., . The Supreme Court in that case had to consider whether Gujarat State Financial Corporation which was a statutory body constituted under the Gujarat State Financial Corporations Act, 1951 can arbitrarily back out from the promise held out by it to the original petitioner who was promised loan for construction of a hotel. It was held that such a corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance, If the appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct to the respondent. On the facts of the present case, there is no allegation that any promise was held out by the respondent Corporation to the appellant. Therefore, we may not dilate on this

decision any further. Mr. Shelat for the respondent Corporation also invited our attention to the decision of the Delhi High Court in the case of *Civil Miscellaneous Mancat Ram Vs. Delhi Development Authority and Others*, . A Division Bench of the Delhi High Court observed in connection with a writ petition filed under Art. 226 challenging the State action and action of public bodies with whom contracts were entered into by the aggrieved parties to the effect that it cannot be said that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Art. 226 of the Constitution. This branch of law is still in a process of evolution. The proliferation of statutory authorities and public corporations has brought into existence a huge contractual field in which the terms and conditions of the contract are practically dictated by the monopolistic limbs of the State or other public authority and the other party to the contract has very little say in regard to the terms and conditions to which he is supposed to have agreed. In this state of things, situations are likely to arise which may justify interference under Art. 226 even in such cases. There are two situations where such interference can be made. The first covers cases where, after entering into a contract, the Government purports to exercise certain rights under the contract but in reality, the Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. In such cases, though the Government is ostensibly acting under the terms of a contract it can be said, in reality, to be an exercise of the executive power of the State that is being challenged. The second situation involves an extension of the above principle. This is one of the cases where a term of a contract "imposed" by the State or authority on the citizen is contrary to law and thus, non est". In our view, the aforesaid cataloguing of cases where the court can interfere under Art. 226 of the Constitution is not exhaustive. The case with which we are concerned, as observed earlier, exhibits entirely a different category of cases which would also attract provisions of Art. 226 of the Constitution as seen earlier. Mr. Shelat relies on an unreported decision of R. C. Mankad, J. in Special Civil Application No. 4757 of 1982 and as confirmed by a Division Bench of this court in L.P.A. No. 467 of 1982 which is also of no assistance to him. In that case, dealership agreement for selling petroleum products was terminated by the Government Company in exercise of its powers under the dealership agreement. There was no complaint regarding violation of any binding executive instructions issued by the Petroleum Ministry resulting into the impugned order. In these circumstances, it was held by this court that such challenge cannot be entertained under Art. 226 of the Constitution and a suit would be the proper remedy. As we have observed above, the present case represents an entirely different type of category of cases. Consequently, the aforesaid decisions of this court cannot advance the case of the respondent-Corporation any further.

12. Reliance was also placed on a decision of this court in the case of *Rashmikanth Babubhai Patel and Another Vs. Gujarat Electricity Board, Baroda and Another*, . In that case, the Division Bench had to consider the question whether a writ

petition would lie for challenging the action of the Gujarat Electricity Board which had entered into an agreement for purchase of transformers and which agreement was arbitrarily terminated by the G.E.B. The Division Bench of this court speaking through B. K. Mehta, J. held that such challenge can be made the subject matter of a writ petition under Art. 226 of the Constitution. For coming to this conclusion, various decisions of the Supreme Court on the point were considered and thereafter, the following pertinent observations were made: -

"In view of this settled position we must hold that the respondent Board entered into the present contract with the appellant in exercise of its statutory power for the fulfilment of its statutory obligation viz. of supply electricity to the consumers and the distributing licensees in the State and, it cannot be said that the matter was lying purely in the contractual sphere. This would be a case falling in the second category as indicated by the Patna High Court and approved by the Supreme Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under the Act or the rules framed thereunder and the party alleged breach on the part of the Board which is other authority" within the meaning of Art. 12 of the Constitution".

13-14. In our view, on the facts of the present case, the second category of cases as contemplated by the aforesaid decision of this court in the light of the Supreme Court decision in Radhakrishnan's case (supra) does not get attracted but as already indicated above, the present case represents entirely a new category of cases viz. fourth category which of " course would fall in line with category (ii) as envisaged by the Supreme Court in Radhakrishna's case (supra) and consequently, petition under Art. 226 of the Constitution can lie for redressing the grievance of the appellant.

x x x x x 15. Order accordingly.