(1987) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 881/1982

N.N.Kaw APPELLANT

Vs

State Bank of India and Ors. RESPONDENT

Date of Decision : 09-07-1987

Acts Referred:
Constitution of India, 1950 — Article 2

Citation : (1988) JKLR 333 : (1988) KashLJ 205 : (1988) KashLJ 207

Hon'ble Judges : M.L.Bhat, J

Bench : Single Bench

Advocate : S.P.Gupta, Joginder Singh, Advocates appearing for the Parties

Judgement

1. A preliminary objection was raised by Mr. Gupta about the maintainability of the writ petition on the ground that the respondents herein were

not authorities within the meaning of Article 12 of the Constitution of India and were not amenable to the writ jurisdiction of this court. It was

stressed that they were neither instrumentalities nor agencies of the Central Government so as to come within the purview of Art. 12 of the

constitution. Learned counsel wanted a finding on the preliminary objection first. Therefore the consideration of the writ petition on merits was

deferred.

Mr. S.P. Gupta appearing for the respondents in support of the objection has referred to various provisions of the State Bank of India Act, 1955.

Elaborating his argument he gave the scheme of the functioning of the Bank and referred to sections 10, 13, 17, 43, 49 and 50.

2. Section 10 relates to the transferability of the shares. It provides that the shares of the State Bank shall be freely transferable subject to the

condition that Reserve Bank will not transfer any share hold by it in the State Bank if such transfer will result in reducing the shares held by it Jess

than fifty five percent of the issued capital of the State Bank. Section 13 makes a provision for keeping a register or one or ""more books of the

share holders shall be entered. Section 17 provides over all superintendence and direction of the affairs and business of the State Bank shall be

entrusted to the Central Board which may exercise all powers which are required to be exercised by the State Bank. Section 43 empowers the

State Bank to appoint officers, advisers, employees as its consulers necessary or desirable for the efficient performance of the functions and the

bank is empowered to determine the terms and conditions of their appointment and service, Section 49 prescribes that the Central Govt. in

consultation with the Reserve Bank may by notification in the Official Gazette make rules for all matters for which provision is necessary or

expedient for the purpose of giving effect to the provisions of the Act. Section 50 authorises Central Board after consultation with the Reserve

Bank and with previous sanction of the Central Government make regulations not inconsistent with the Act or rules framed there under for all

matters for which provision is expedient for the purpose of giving effect to the provisions of this Act.

3. It was contended on the basis of aforesaid provisions of the Act that functioning of the State Bank of India was governed by a statute and it was

an autonomous body which was not discharging any functions of the Central Government nor wars it controlled by the Central Government. The

administration of the Bank was vested with the Board of Directors who had independent existence, therefore, it cannot be held to be agency or

instrumentality of the State. Reliance is placed on K.M. Thomas Vs. Cochin Refineries Ltd. and others (AIR 1982 Kerala : 248) It was held by a

learned Judge of Kerala High Court that Cochin Refineries Ltd. was not an instrumentality of State because the share capital thereof belonged to a

foreign company and there was no evidence to suggest that any financial assistance was given by the Government or Board of Directors had full

control over the management of the affairs of the company. Government had no exclusive or unusual control over the management of the company.

It may be mentioned that the said company was registered under the companies Act though the State Govt. had nominated some members to the

Board of Directors But it was a commercial concern and did not perform any governmental function under the supervision of the government.

Therefore, the company was held not to be an authority within Art. 12 of the Constitution of India.

4. Mr. Gupta has relied on Ajay Hasia Vs. Khalid Mujib Sehravardi and ars (AIR 1981 S.C. 487) for the proposition that the respondents cannot

be elevated to the position of State for purpose of Art. 12.

5. Mr. Joginder Singh appearing for the petitioner has also relied on Ajay Hasia's case decided by the Supreme court as also on a few authorities

mention whereof is necessary. He has relied on K.M. Mukerjee Vs. Secretary and Tresurer S.B.I and others (AIR) 1968 Cal: 59). A single Judge

of the Calcutta High Court had held that in appropriate cases writ can lie against State Bank of India which is a statutory corporation. Relience was

also placed on State Bank of India Vs. Kalpaka Transport Co. Pvt. LTD. and another D.B. authority (AIR1979Bombay :250). The learned

Judges of the Bombay High Court deciding the case have opined that statutory bodies vested with powers and carrying on business of public

importance though not specifically performing government functions and lacking power to enforce obedience at pain of penalty are' other

authorities within the meaning of Art. 12 of the Constitution of India.

6. The test for determining as to whether a body corporation or any authority is instrumentality or agency of the state was called out by the

Supreme Court in International Airport authority reported in AIR 1979 S.C. 1628. The tests laid down in that authority were not conclusive or of

clinching nature, but they were indicative to determine as to whether an authority can be brought within the purview of Art. 12. The expression

'other authority 'used in Art.12 interpreted appropriately by the Supreme court in Ajay Hasia's Supra. It laid down some tests which were gathered

from the International Airport authority which determines as to whether a corporation comes within the purview of Art. 12 of the Constitution of

India. These tests are:

1) One thing is clear that if the entire share capital of the corporation is held by the government it would go a long way towards indicating that the

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 governmental character.

3) It may also be a relevant factor ... 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 public importance and closely related to governmental functions, it would be a relevant factor 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.

7. It was observed by the Supreme Court that it is immaterial to find out as to how an agency was created whether it was created by the Statute or

under a statute was not material. The enquiry must relate to the question as to why the juristic person was brought into existence and not how it

was brought into existence. Corporation may be statutory corporation created by a statute or it may be a Government company or a company

formed under the companies Act of 1956 or it may be a society registered under the Societies Registration Act. Whatever be its genetical, it would

be an authority within the meaning of Art. 12 if it is an agency or instrumentality of the Government.

8 In Sukdev Singh V. Bhagat Ram (AIR 1975 S. C. 1331) the Supreme Court had taken a view that corporation created by statute would come

within the purview of 'other authorities' and those corporation will be excluded from its purview who were governed by the statute. However in

Ajay Hasia's case this blurred distinction among the corporations created by the Statute was removed by the Supreme Court,

9. Thus from the law and facts given above it is to be seen whether the State Bank of India is a corporation which would fall within the group of

'other authorities' or it will be excluded from its purview.

10. The State Bank of India Act, 1955 (Act No. 23 of 1955) established a bank to be called a State Bank of India for carrying on the business of

banking and other business in accordance with the provisions of the Act and for the purpose of taking over the undertaking of the Imperial Bank.

In its object the Act had said that to extend banking facilities on a large scale more particularly in rural and semiurban areas and for diverse other

public purposes it was expedient to constitute a State Bank for India and to transfer to it the undertaking of the Imperial Bank of India and to

provide for other matters connected therewith or incidental thereto. So the very object of the establishment of the State Bank was to serve public

purpose and to transfer the Imperial Banks undertakings to it. The Imperial Bank of India, it may be stated was a state owned bank exclusively

under the state control. The two things which emerge from the object for which the bank was created are (I) it was creation of a statute which

statute was exclusively framed for constituting the State Bank of India and (2) it was to serve public purpose and had the monopoly in that regard

which was protected by the State.

11. Mr. S.P. Gupta's contention that the respondent, State Bank can not be held to be an authority under Art. 12 because it is not an

instrumentality or agency of the state does not seem to be correct. The Kerala authority (AIR 1982 Kerala: 248) Supra, on which reliance is

placed by him is not all applicable to the facts of this case. The corporation in that case was financed by foreign capital and it had no monopoly

status nor was it created for public purpose. Therefore, it was rightly said by the learned Judge deciding the case that it was not an authority within

the meaning of Art. 12 of the constitution.

12. Mr. S.P. Gupta's contention on the basis of Ajay Hasia's case (AIR 1981 S.C. Supra) does not seem to be well founded. The guidelines laid

down in the said authority if applied in proper perspective would make State Bank of India as an instrumentality and agency of the State so as to

be brought within the meaning of other authorities' and would fall within Art. 12 of the Constitution of India. I have reproduced the broad guidelines

given by the Supreme Court for the determination as to whether Corporation is an authority or not for the purposes of Art. 12 and applying those

tests one is constrained to hold that State Bank of India does fulfill all the requirements so as to be clothed with the status of an authority for

purposes of Art. 12 of the constitution.

(AIR 1979 Bombay ; 250), Supra, Seems to have taken the correct view which is in accord with the view taken by the Supreme Court in Ajay

Hasia's case.

13. After the consideration of the facts of this case and after considering the law on the point, I am of the opinion that State Bank of India is an

authority within the meaning of Art. 12 of the Constitution of India and is amenable to the writ jurisdiction of this court and as to whether it can be

elevated to the status of the state for purposes of Articles 309, 310, 311 which rind place in part XIV of the Constitution of India is to be seem

when the main writ petition comes up for consideration.

14. The writ petition is accordingly held to be maintainable and the preliminary objection raised by Mr. S.P. Gupta is overruled. Let the main writ

petition be listed before any available bench for hearing on a date to be fixed by the Deputy Registrar

