
(2010) 05 RAJ CK 0038
In the Rajasthan High Court

P. Paliwal and Others

APPELLANT

Vs

Hindustan Zinc Limited and Others

RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

COMPANIES ACT, 1956 — Section 197A, 617

Constitution of India, 1950 — Article 12, 31

Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976 — Section 13, 5, 7, 9

Citation : (2010) 3 RLW 2156

Hon'ble Judges : Sangeet Lodha, J;Prakash Tatia, J;Deo Narayan Thanvi, J

Bench : Full Bench

Judgement

Prakash Tatia, J.—In D.B. Civil Writ Petition No. 236/1984, following question has been referred to the Laof the Constitution because rger Bench by the order dated 16.12.2005 passed by the Division Bench of this Court headed by the then Hon"ble Chief Justice and one of us (Hon"ble Mr. Justice Prakash Tatia):

Whether Hindustan Zinc Limited is "State" or "any other authority" within the meaning of Article 12 of the Constitution of India ?

2. The facts of the case of D.B. Civil Writ Petition No. 236/1984 are that the petitioner, an employee of the respondent-Company, appointed in the year 1968, faced disciplinary proceedings wherein order of termination of his service was passed on 23.12.1983 (Annex.31) which was challenged by the petitioner by preferring S.B. Writ Petition No. 236/1984 before the single bench of this Court on 11.1.1984. According to the petitioner, the respondent Hindustan Zinc Limited, a company registered under the Companies Act, 1956, is Government of India Enterprise and is an instrumentality of the Union of India and the Union of India completely controls its functions and activities. The respondent-company raised preliminary objection that the respondent-Hindustan Zinc Limited (for short "HZL") is merely a company registered under the Companies Act, 1956 and it is not State within the meaning of Article 12 of the Constitution of India and,

therefore, no writ lies against it. In support of this contention before the Single Bench, learned Counsel appearing for HZL Shri D.R. Bhandari relied upon the Division Bench judgment of this Court delivered in the case of Jialal Kapur v. UOI 1977 WLN 61 in which the Division Bench of this Court has opined that HZL under the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 though is a Government company, but is not a State in the definition of Article 12 of the Constitution of India. This issue was considered by the learned Single Judge in somewhat detail and learned Single Judge looked into the background in which the company was formed as well as considered the provisions of Metal Corporation of India (Acquisition of Undertaking) Act, 1965 and Metal Corporation of India (Acquisition of Undertaking) Act, 1966 and Metal Corporation (Nationalization and Misc. Provisions) Act, 1976. The learned Single Judge observed that after re-acquisition retrospectively and vesting the same in the Central Government, the Nationalization Act envisaged the placing of management of the undertaking under a Government company. The learned Single Judge was of the view that aforesaid aspect of the matter appears to have not been raised before and examined by the Division Bench in the case of Jialal Kapur and it is appropriate that the issue about the status of HZL be re-examined by the Division Bench as the learned Single Judge himself could not have taken the view contrary to the view expressed by the Division Bench in Jialal Kapur's case (supra).

3. The background in which this question has been referred to the Larger Bench was necessary because of the reason that the learned Counsel appearing for the respondent-HZL has challenged the reference itself alleging it to be in violation to rules 55 and 59 of the Rules of High Court of Judicature for Rajasthan, 1952 and further challenged the reference on the ground that in fact the learned Single Judge had no jurisdiction to refer the matter to the Larger Bench, as the learned Single Judge was bound by the Division Bench decision rendered in Jialal Kapur's case(supra) and further, the order referring the matter to the Larger Bench dated 10.5.2005 is not an speaking order passed after considering the issue and further the Division Bench also has not formulated the question for making a reference. We shall be deciding above question also.

4. The petitioner in para No. 2 of the writ petition pleaded that:

Hindustan Zinc Limited is the Government of India Enterprise and as such is an instrumentality and agency of the Union of India which completely control its functions and activities. The complete funds are provided by Government of India, though it is a Company limited and registered under the Indian Companies Act." Then in para No. 3, pleaded that "it performs the executive functions of the Central Government and being a Central Government Undertaking, it is part and parcel of the Union of India.

5. The respondent No. 2-General Manager of the respondent-HZL filed common reply to the main writ petition and the stay petition with an affidavit that respondent-HZL and also Hindustan Zinc Smelter, Debari have authorised him to

file the reply and the affidavit. It appears that, in view of the above, no separate reply has been filed by respondent No. 1 to the writ petition. The reply which has been filed by respondent-HZL, through respondent No. 2, is not para-wise reply to the writ petition. In last para (n), the respondent, without disputing the foundational facts pleaded by the petitioner, took the objection in this language:

That, in fact the petitioner Company is also not a State within the meaning of Article 12 of the Constitution of India as it discharges none of the governmental functions.

6. The respondent No. 2, after amendment of the writ petition filed further reply to the amended writ petition in brief and in this further reply, confined the submission to the extent of reply required in view of the amendment in the writ petition which is not relevant for the purpose of deciding the question referred to this Bench.

7. So far as pleadings in the Writ Petition No. 236/1984 are concerned, they remained as mentioned above upto the time when Single Bench and Division Bench passed the orders to refer the matter to larger Bench and for the first time in this Writ Petition No. 236/1984 before this Full Bench, on 5.2.2010, new plea was taken by the respondent that the Government of India took policy decision for disinvestment of equity of HZL including of several other enterprises, as such 26.6% equity of HZL and also the management of HZL was transferred in favour of strategic partner, namely M/s Sterlite Opportunities and ventures Ltd. (for short "SOLV"), consequent to which Share Purchase Agreement/Share Holders Agreement between the Government of India and SOLV was entered on 4.4.2002 and the status of the Company HZL changed from Government of India Enterprise to the Public Limited Company. The same new plea was taken in all other Writ Petitions; S.B. Civil Writ Petition No. 4204/2000, S.B. Civil Writ Petition No. 4730/2000, S.B. Civil Writ Petition No. 1982/2001, S.B. Civil Writ Petition No. 4138/2002 and in S.B. Civil Writ Petition No. 3541/2004, but on this new plea, no question has been referred to this Bench. In all petitions, including in Writ Petition No. 236/1 984(in additional submission), it has been admitted by the respondent that before disinvestment by the Government of India, the HZL was Government of India Enterprise and in furtherance to Government of India's policy decision, not only shares were transferred to SOLV but company's management was also transferred to SOLV a Private Limited Company.

8. On merits, learned Senior Counsel Shri M. Mridul assisted by Shri P.S. Chundawat, while arguing the matter, drew our attention to the provisions of Metal Corporation of India(Acquisition of Undertaking), Act, 1965 and the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, the Metal Corporation (Nationalization and Misc. Provisions) Act, 1976 and the aims and objects for enacting above laws and with the help of judgments of the Hon'ble Apex Court, wherein principles have been laid down for deciding the question that who can be "State" or "other authority" within the definition of Article 12 of the Constitution of India, learned Senior counsel Shri M. Mridul, assisted by Shri

P.S. Chundawat and other counsels in other writ petitions - Sarva Shri Sanjay Mathur, R.S. Mankad, Salil Trivedi and R.S. Saluja submitted that the respondent-HZL is State within the meaning of Article 12 of the Constitution of India and, therefore, the writ against respondent-HZL is maintainable.

9. Learned Counsel for the respondents Sarva Shri D.R. Bhandari, Rajesh Joshi, Manish Shisodia and B.L. Saruparia, all appearing on behalf of the respondent-HZL, with the help of subsequent pleadings in Writ Petition No. 236/1984 and the plea taken in other writ petitions vehemently submitted that the HZL is a separate legal entity as it is a company registered under the Companies Act governed by the provisions of the Companies Act and it has its own Board of Directors, who alone can take decision in respect to all the matters relating to the respondent-HZL and this company is engaged in commercial activities and not discharging any State function. It is submitted that before the year 2002, the Central Government had more than 51% share in the paid-up share capital of the Company but the Central Government dis-invested its investment in the respondent-HZL, for which appropriate order was passed by the Government of India, Ministry of Coal and Mines Department of Mines on 15.5.2002(Ann. R/3) resulting into reduction of the share of the Government of India to lower than 49.22% which is less than 51 % of the paid up share capital of the respondent-HZL and consequently, the respondent-HZL is no longer Public Sector Undertaking u/s 617 of the Companies Act, 1956. This order has been passed by the Under Secretary to the Government of India, obviously, a competent officer on behalf of the Government of India. Therefore, according to the learned Counsel for the respondents, the court is required to answer the reference as per the fact situation which is existing today. Today, in view of the disinvestment by the Government of India, the company in question is no more even Government Company much less than the "other authority" within the meaning of Article 12 of the Constitution of India. Therefore, today no writ can be issued against such private company, therefore, the writ petition of the petitioners is liable to be dismissed on the ground of above subsequent events without examining the issue whether the company in question was "other authority" within the meaning of Article 12 of the Constitution of India, when the writ petition was filed by the petitioners.

10. Learned Counsel for the respondents Shri D.R. Bhandari, on behalf of the respondent-HZL has raised preliminary objections, therefore, before proceeding further, on any other point; we would like to examine first these preliminary objections.

11. The first objection of the learned Counsel for HZL Shri D.R. Bhandari is that the learned Single Judge was under obligation to follow the Division Bench Judgment of this Court delivered in Jialal Kapur's case and, therefore, had no jurisdiction to refer the matter to the Division Bench and he relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Sri Nasiruddin Vs. State Transport Appellate Tribunal, wherein it has been held as under:

The mere fact that the result of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the court will adopt that which is just reasonable and sensible rather than that which is none of those things. If the convenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the court would not make any alteration.

12. Learned Counsel Shri D.R. Bhandari stretched the above observations of the Hon"ble Supreme Court to the extent that the learned Single Judge, even if was feeling uncomfortable because of the judgment of the Division Bench rendered in Jialal Kapur"s case (supra) even then it was no ground for making a reference to the Division Bench for deciding the issue and the learned Single Judge should have decided the issue by following the Division Bench judgment. We cannot subscribe to the view as advanced by the learned Counsel appearing for the respondent- HZL. The said observations of the Hon"ble Supreme Court have no application to the present facts of the case. The above judgment is not even authority for holding that if during course of arguments, a question comes up for consideration before learned Single Judge, then he cannot refer the matter to the appropriate Bench consisting of appropriate number of Judges so that, that question can be decided by appropriate Bench who can reconsider the decided issue. The learned Counsel for the respondent Shri D.R. Bhandari himself drew our attention to rules 55 and 59 of the Rules of 1952. Rule 55 defines the jurisdiction of a Single Judge of the High Court with proviso empowering the Hon"ble Chief Justice who may, from time to time, direct that any case or class of cases, which may be heard by a Judge sitting alone, shall be heard by a Bench of two or more Judges and as per proviso (b) to Rule 55, it is specifically provided that- a Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting alone on any question or questions of law arising therein for decision to a Bench of two Judges. From above rule, it is clear that the Single Judge of the High Court can refer the question or questions of law arising before the Single Judge for decision of Larger Bench of two Judges. In addition to above, Rule 59 is also relevant, which is as under:

59. Reference of a case to a larger Bench.- The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question or questions of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the questions so formulated shall be returned to the Bench hearing the case that Bench shall follow that decision on such question or questions and dispose of the case after deciding the remaining questions, if any, arising therein.

13. Here in this case, as already noticed that the Division Bench headed by Hon"ble the Chief Justice, upon reference made by the learned Single Judge,

formulated the question of law and referred the matter to the Larger Bench of this Court. Learned Counsel Shri Bhandari stated that under proviso (b) of Rule 55, as well as, under Rule 59 of the Rules of 1952, the Bench is required to formulate the question and that question has not been formulated. The contention of the learned Counsel Shri Bhandari appears to have been advanced without noticing the first part of order dated 16.12.2005 passed by the Division Bench where the point has been specifically formulated in this language:

the point for consideration is whether Hindustan Zinc Limited is "State" or "any other authority" within the meaning of Article 12 of the Constitution of India.

14. Therefore, the above objections raised by the learned Counsel Shri D.R. Bhandari on behalf of the respondents are rejected.

15. Learned Counsel Shri D.R. Bhandari also submitted that there is no sufficient pleading to raise the issue that the respondent-HZL is "State" or "other authority" within the meaning of Article 12 of the Constitution of India. We have quoted relevant part of paras 2 and 3 contained in the original writ petition itself which was filed originally and the above pleadings are kept in amended writ petition. There is difference between "not pleading the facts" and "not pleading the facts in detail". If facts are pleaded and they sufficiently indicate the foundation for the plea then that is not a case of no pleading. Sufficient pleadings is requirement of law but how elaborate or how brief pleadings can be, depends upon personal skill of pleader. Long pleadings may miss material fact as well as material particulars and short pleadings may give full facts and full particulars. Here in this case, the petitioner pleaded that (1) the HZL is Government of India Enterprise and as such is an instrumentality and agency of Union of India, (2) Union of India completely controls the HZL's functions and activities, (3) complete funds are provided by the Government of India, obviously to the HZL, (4) the HZL performs executive function of Central Government, (5) and being a Central Government undertaking, it is part and parcel of Union of India. Not only above, but the petitioner stated so even after admitting that the HZL is company registered under Companies Act. In our opinion, the petition contains the sufficient pleadings indicating on what basis the petitioner said that respondent-the HZL is "State" under Article 12 of the Constitution of India.

16. Apart from above, the respondents did not dispute the above facts in its reply to writ petition nor raised this objection of lack of pleadings before the Single Bench or before the Division Bench when orders to refer the above issue were passed by the Single Bench and the Division Bench. The courts are meant to do justice and not to deny the justice only on mere technical grounds. Where facts are pleaded and in the opinion of respondent, they are not sufficient then it is for the respondents to take a plea as early as possible and at least in the reply to the petition so that if law permits, additional facts may be submitted. In fact, in present case, the non- petitioner, though, has filed reply to the writ petition but did not dispute the facts specifically pleaded by the petitioner like that; (1) the HZL is Government of India Enterprise and as such is an instrumentality and

agency of Union of India, (2) Union of India completely controls the HZL's functions and activities, (3) complete funds are provided by the Government of India, obviously to the HZL, (4) the HZL performs executive function of Central Government, (5) and being a Central Government undertaking, it is part and parcel of Union of India. Facts show that it is not the petition lacking pleadings but in fact, the facts pleaded by the petitioner have not been rebutted by the respondents and mere denial of a fact or evasive denial of the facts by the party, who has specific knowledge of the fact, is not a denial of fact, express or implied and such evasive denial can be treated to be an admission of fact under Order 8 Rule 5, CPC.

17. It is very pertinent to notice here that, though in P. Paliwal's writ petition, this objection that HZL is not "State" has been taken by the respondent HZL (without disputing material facts, as already stated above) but in the subsequent pleadings submitted in P. Paliwal's case as well as in other writ petitions; S.B. Civil Writ Petition No. 4204/2000, S.B. Civil Writ Petition No. 4730/2000, S.B. Civil Writ Petition No. 1982/2001, S.B. Civil Writ Petition No. 4138/2002 and in S.B. Civil Writ Petition No. 3541/2004, the respondent HZL admitted it to be "State" within the meaning of Article 12 of the Constitution of India till the U.O.I decided to disinvest its holding from HZL. We would like to refer the stand of the respondent HZL taken in subsequent pleadings in P. Paliwal's case itself as well as taken in all other writ petitions which were sent to this bench by the orders of different benches of this Court, as parties in those writ petitions requested the concerned benches to send their petitions to this larger bench only on the ground that the question whether HZL is State in the definition of Article 12 is pending before the larger Bench and in none of the petition, the parties prayed before the Single Benches to frame additional question either that due to subsequent development of disinvestment of Government of India's share from HZL in favour of a private company, the HZL is no more Government Company and its instrumentality or that the G.O.I's disinvestment was illegal or otherwise said disinvestment cannot affect the petitioners' rights. Therefore, the questions that what is the effect of disinvestment by the Government of India from HZL as raised by the respondent HZL and plea of petitioner about invalidity and illegality in disinvestment by Government of India are not the questions referred to this Bench in any matter nor there is conflicting decision of Benches of this Court on this new plea. Further, if reference is answered in favour of the respondent HZL than the above issues may not survive and if the reference is answered in favour of the petitioners then these issues can be decided by the Single Benches after giving opportunity to parties to complete pleadings as in all matters these new pleas have been taken either in reply to show cause notice or in additional submissions submitted by the respondents which have not yet been replied by any of the petitioners. Therefore, we are not inclined to decide the new issues, not referred to this Larger Bench by any order passed under Rule 55 or Rule 59. However, since all other writ petitions are attached with P. Paliwal's case and respondent is relying upon their pleadings in all petitions, therefore, we will look

into the facts stated in all petitions only for the purpose of deciding the question referred to this Bench:

18. Facts Pleaded In S.B. Civil Writ Petition No. 4204/2000, S.B. Civil Writ Petition No. 4730/2000, S.B. Civil Writ Petition No. 1982/2001, S.B. Civil Writ Petition No. 4138/2002 and in S.B. Civil Writ Petition No. 3541/2004:

19. In D.B. Civil Writ Petition No. 236/1984, the petitioner specifically pleaded that the respondent-Company is totally owned and controlled by the Central Government and is a Government of India undertaking and is State within the meaning of Article 12 of the Constitution of India. The respondent in reply specifically stated that this fact is not disputed. In S.B. Civil Writ Petition No. 1982/2001- Kishore Lal Verma v. Hindustan Zinc Ltd. again the petitioner of that writ petition, pleaded that respondent-Company is instrumentality of the State within the meaning of Article 12 of the Constitution of India and though in para 1 of the preliminary submissions (reply), submitted by the respondents, it has been denied that respondent- Company is instrumentality of the State but it appears that the said denial was only in the context of subsequent event of disinvestment by the Government of India which is clear from para 2 of the respondent's reply filed in above S.B. Civil Writ Petition No. 1982/2001. In para No. 2, respondent specifically admitted that "respondent No. 1 was a Government of India Enterprises". Then further it is admitted that the respondent-company's management has been transferred on 11.4.2002 to Strategic Partner (SP) namely M/s Sterlite Opportunities and Ventures Limited". Then further it is stated that "as a result of this, the status of respondent No. 1 has been changed and it is no longer a Public Sector Company (Government of India Enterprises)." Then in the same para further it is admitted that "Government of India issued an Office Memorandum dated 15.5.2002 by which it has been declared that respondent- Company is no longer a Public Sector Company."

20. In para 3 of the reply of the respondent-Company, it has been stated that "in view of the facts stated in para 2 of this reply "Government of India Enterprise" have been struck off from its title."

21. The respondent virtually admitted in para 3 that before alleged disinvestment, the Government of India had the pervasive control over the functions of respondent No. 1 and we would like to quote relevant part of para 3 which is as under:

The Strategic Partner now holds 45.90% capital of the company. As such, it is clear that the Government of India does not have any deep and pervasive control over the functioning of the respondent No. 1. Thus, respondent No. 1 is no more amenable to the writ jurisdiction of this Hon"ble Court and, therefore, the writ petition against it deserves to be dismissed.

22. In reply to S.B. Civil Writ Petition No. 4202/2000-Dinesh Kumar Ameta v. Hindustan Zinc Limited and Ors., the petitioner specifically in para 2 pleaded that

the respondent is Government of India undertaking and is owned and controlled by the Central Government and for this fact, the respondent replied that the averments contained in para 2 are not disputed. This reply was filed in the year 2001, obviously before alleged disinvestment and, therefore, the fact was admitted in the light of the fact situation which was in the year 2001 and in S.B. Civil Writ Petition No. 1982/2001 the reply was filed after disinvestment in the year 2002. Therefore, by reading above replies of the respondent-Company, it is clear that the respondent-Company itself admitted it to be being Government of India Enterprise having control of the Government of India till alleged disinvestment. Furthermore, in S.B. Civil Writ Petition No. 4730/00, initially in reply to the writ petition, no objection was taken that respondent-Company is not instrumentality of the State within the meaning of Article 12 of the Constitution of India and, therefore, the writ petition is not maintainable, but after disinvestment, additional reply was filed by the respondent-Company in the year 2003, wherein there is implied admission of the respondent. Again in this reply also, according to the respondent-Company itself, it is no longer amenable to writ jurisdiction because of disinvestment only, obviously from 2002. In this additional reply of July, 2003, the respondent-Company specifically again admitted the fact in issue. Admission of the respondent-Company as made in para 2 of the reply of July, 2003 is as under:

--- it is necessary to give certain facts that earlier HZL was the Government of India Enterprise and was incorporated as company under the Companies Act, 1956 on 10.1.66. Since 100% equity shares were held by the Government of India, it was as a Government company. Thus it was considered to be "State" under Article 12 of the Constitution of India. The disinvestment process of company started in the year 1991-92 and 1992-93 and as a result of which 24.08% of the equity was disinvested in favour of financial institutions, Banks, UTI mutual fund etc. Yet since more than 51% of holding of equity was with Government of India, it continued to be the Government company as public sector undertaking.

23. In para 3, the relevant pleaded is quoted herein below:

...pursuant to the Share Purchase Agreement/ Shareholders Agreement between the Government of India and Strategic Partner entered into on 4.4.2002, the status of company has been changed from Government India Enterprise to the Public Limited Company. As per the share purchase agreement, the Board of the company has also been reconstituted on 11.4.2002 wherein majority 6 Directors are of SOVL (M/s Sterlite Opportunities and Ventures Limited) and 5 Directors represent Government of India. As a result of this, the status of respondent No. 1 has been changed and it is no longer a public sector company. The Government of India has issued an office memorandum dated 15.5.2002 by which it has been declared that the respondent company is no longer a public sector company.

24. In para 4, it has been admitted by the respondent-company that "that in view of the aforesaid expression "Government of India Enterprise" has been

deleted" In this para again it has been stated that "Hence, respondent No. 1 is no more amenable to the writ jurisdiction of this Hon"ble Court...."

25. Exactly the same pleadings referred above are in the preliminary reply to the S.B. Civil Writ Petition No. 4138/02, which reply was filed also after disinvestment in the year 2003 and further, the same is the stand of the respondent in reply to the S.B. Civil Writ Petition No. 3541/04 filed on 14.2.2005.

26. After admitting the facts that respondent-Company is a statutory company and its 100% shares were held by the Government of India and it was Government of India Enterprise and it was considered as State under Article 12 of the Constitution of India and the company has been not only known as Government of India Enterprise but has been expressly made clear by the company itself that it is Government of India Enterprise and the Board of Directors was constituted by the representative of the Government India only and after disinvestment, the Board was reconstituted on 11.4.2002 and six Directors of Strategic partner of company were inducted keeping five Directors of the Government of India. In addition to above, the respondent-HZL admitted that with the transfer of shares of the company HZL by the Government of India, the Government of India also transferred HZL's management to Private Company SOLV. The management of the Company if was with the Government of India then only it could have been transferred to the Private Company by the Government of India. Furthermore, HZL was subject to policy decision of Government of India and, therefore, the Company HZL was under pervasive control of Government of India. The respondent, ignoring their own documents containing the words "the Government of India Enterprise" and without explaining their admission made in the pleadings, submitted in arguments before this Bench that the respondent, before and up to disinvestment, was not the State within the meaning of Article 12 of the Constitution of India.

27. Without deciding the question referred to this bench on the basis of above admission of the respondent, we would like to first in brief may refer the decisions of the Supreme Court relied upon by the parties and then trace out the history of the respondent company to find out how and for what purpose the respondent company was incorporated which will help us in deciding the question referred, as in all the cases relied upon by the parties, Hon"ble the Apex Court has already laid down the principle to adjudge any body's status according to facts of that body only.

28. Who can be "State" within the ambit of Article 12 of the Constitution of India? Article 12 of the Constitution of India gives definition of the State and says that "the State" includes (1) the Government and Parliament of India; (2) Government and the Legislature of each of the State and (3) all local or other authorities within the territory of India or under control of the Government of India. For this, the learned Counsel for the petitioner relied upon the judgment of the Hon"ble Supreme Court delivered in the case of State of U.P. and Another Vs. Radhey Shyam Rai, , wherein Hon"ble the Supreme Court has considered the

earlier judgments of the Hon"ble Supreme Court delivered in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , 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, , Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, and P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . The Hon"ble Supreme Court noticed that with the changing societal conditions, a large number of bodies exercising public functions have been brought within the purview of the definition of "State". Then Hon"ble Supreme Court held that we need not dilate on the development of law in this regard in view of the decision rendered by this Court beginning from Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and other decisions including a Seven Judges Bench decision of the Hon"ble Supreme Court delivered in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, . In Pradeep Kumar Biswas's case (supra), the points were formulated for determining the nature and the activities which would make the body come within the purview of the State which are as under: (1) formation of body, (2) objects and functions, management and control and (4) financial aid etc. Then Hon"ble the Supreme Court in the case of State of U.P v. Radhey Shyam Rai (supra) noticed issues which if are there in the agency or instrumentality then that agency or instrumentality can be held to be "State" or "other authority" in the definition of the State as defined in the Article 12. Those issues are as under:

(1) "A finding of the state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action."

(2) "Another factor which might be considered is whether the operation is an important public function."

(3) "The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to a governmental functions as to be classified as a governmental agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of state action. If the function does not fall within such a description then mere addition of state money would not influence the conclusion."

(4) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?"

29. Keeping in mind above and all other guidelines given in the judgments of the Hon''ble Apex Court, we are now proceeding to look into the facts leading to the incorporation of the respondent-company HZL which will be helpful in deciding the nature and character of the company for finding out whether the respondent-company fit in the definition of State within the ambit of Article 12 of the Constitution of India because of the reason that from the catena of authorities cited before us, it is clear that the issue more depends upon the facts from which inference can be drawn with the help of the guidelines given in the various judgments of the Hon''ble Apex Court.

How the company HZL came to be incorporated

30. Not only the facts how and for what purpose and object the company HZL was incorporated but who incorporated the company HZL cannot be disputed as it is already made clear in the Act of 1965, Act of 1966 and in the Act of 1976.

31. A company the "Metal Corporation of India", incorporated under the Companies act, 1956 was engaged in exploiting the Lead and Zinc metals in the Zawar area near city of Udaipur in the State of Rajasthan. It expanded its activity of mining operations and also proceeded to erect a zinc smelter plant. However, said company went in bad financial conditions and could not pay dues of even its machinery suppliers. The activity of exploiting Lead and Zinc to its fullest extent was essentially in the public interest. Therefore, the Government of India, in the public interest decided to exploit to the fullest extent possible, zinc and lead deposits in and around Zawar area in the State of Rajasthan and to utilize these minerals in such manner as to sub-serve the common good enacted the Metal Corporation of India (Acquisition of Undertaking) Act, 1965 (hereinafter referred to as the Act of 1965), which came into force from 22nd day of Oct., 1965. The preamble of the Act of 1965 is as under:

An Act to provide for the acquisition of the undertaking of the Metal Corporation of India Limited for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around the Zawar area in the State of Rajasthan and to utilize these minerals in such manner as to subserve the common good.

32. By virtue of Section 3 of the Act of 1965, the company Metal Corporation of India (hereinafter referred to as MCI) stand transferred and vested in the Central Government. Section 3 of the Act of 1965 is as under: -

3. Undertaking of company vest in Central Government.

On the commencement of this Act, the undertaking of the company shall, by virtue of this Act transferred to, and vest in, the Central Government.

33. The effect of vesting of the MCI is given in Section 4 of the Act of 1965. By virtue of Sub-section (3) of Section 4 of the Act of 1965 it has been provided that subject to other provisions contained in the Act of 1965, all contracts and working arrangements which are subsisting immediately before the

commencement of the Act of 1965 and affecting the company shall, in so far as they relate to the undertaking of the company, cease to have effect or be enforceable against the company or any person who was surety or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the Central Government and enforceable as fully and effectually as if instead of the company the Central Government had been named therein or had been a party thereto. By Sub-section (4) of Section 4 it has been provided that all the cause of action pending or existing immediately before the commencement of the Act of 1965 by or against the company in relation to its undertaking may, as from such commencement, be continued and enforced by or against the Central Government as it might have been enforced by or against the company if this Act had not been passed, and shall cease to be enforceable by or against the company, its surety or guarantor. Sub-section (1) of Section 5 of the Act of 1965 provides that except Director or any managerial personnel specified in Section 197A of the Companies Act, 1956 or any other person entitled to manage the whole or a substantial part of the business of the company under a special agreement to be employee of the Central Government obviously from the date of commencement of the Act.

34. Section 12 of the Act of 1965 provided provision for formation of Government Company for management of undertaking. Section 12 of the Act of 1965 is relevant for the purpose of deciding the issue, therefore, the same is quoted as under: -

12. Formation of Government company for management of undertaking.

For the efficient management and administration of the undertaking of the company vested in the Central Government by virtue of this Act, that Government may form a Government company in accordance with the provisions of the Companies Act, 1958 and on the formation of such company the undertaking together with all its properties, assets, liabilities and obligation specified in Sub-section (1) of Section 4 and such other properties assets, liabilities and obligations as may hereafter be acquired or incurred for the purposes of the undertaking shall, by virtue of this Act, stand transferred to, and vest in, that Government company.

35. It will be clear from subsequent Acts also, apart from HZL's own Memorandum of Association of the Company, that the HZL- the respondent-company was formed for the purpose of Section 12 of the Act of 1965. The HZL was incorporated on 10.1.1966 on the basis of the memorandum of association of the company, copy of which has been placed on record by the respondent-company along with their application submitted before this Court on 5th April, 2010. The object of the company says as under: -

To acquire, take over, manage and develop the undertaking formerly belonging to the Metal Corporation of India Limited which shall be deemed to include all assets, rights, lease holds, including mining leases, if any, powers, authorities

and privileges and all property, movable and immovable, including lands, buildings, works, mines, workshops, projects, smelters, refineries, stores, instruments, machinery, locomotives, auto mobiles, and other vehicles, mind or extracted zinc or lead ores, concentrate and metals, in process or in stock or in transit, cash balances, cash on hand, reserve fund investments and book debts and all other rights and interests arising out of such property as were immediately before the 22nd day of October, 1965 in the ownership, possession, power or control of Metal Corporation of India Limited in relation to the undertaking, whether within or outside India, and all books of account, registers, maps, plans, sections, drawings, records of survey and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the Metal Corporation of India Limited in relation to the undertaking which has been transferred to and vested in the Central Government by virtue of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (No. 36 of 1966), and shall also be deemed to include all other properties, assets, liabilities and obligations acquired or incurred for purposes of the undertaking since the transfer thereof to and vesting thereof in the Central Government by virtue of the said Act.

36. There is no mention of name of Hindustan Zinc Ltd Company in the Act of 1965 obviously because of the reason that such Government company could have been incorporated after the enactment of the Act of 1965 only.

37. The validity of the Act of 1965 was challenged by MCI in writ petition filed in Punjab High Court, which was allowed by the judgment of the High Court dated 14th March, 1966 and the Act of 1965 was declared to be violative of Article 31(2) of the Constitution of India because in the opinion of the High Court by the Act of 1965, the owners were not paid just and equivalent compensation of the properties acquired. The judgment of the Punjab High Court was challenged before the Hon''ble Supreme Court. The Hon''ble Supreme Court vide its judgment dated 5th Sept., 1966 upheld the judgment of the High Court and declared the Act of 1965 as unconstitutional. Forced with this situation, the Government enacted the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (hereinafter referred to as the Act of 1966) as in the opinion of the Government of India it was necessary to acquire the undertaking for the reasons as mentioned in the statement of objects and reasons for enacting the Act of 1966. The statement of objects and reasons given in the Act of 1966 are as under:

The Metal Corporation of India, Limited, a company as defined in Companies Act, 1956 owned the Zawar lead- zinc mines in Rajasthan and the lead-zinc smelter at Tundro in Bihar. It had undertaken to expand production of these mines and construction of a Zinc smelter near Udaipur for producing electrolytic grade zinc and bye- products. However, for want of finances the Corporation was not able to complete the project it had undertaken. Construction work had come to a

standstill and the corporation failed to meet its repayment obligations to suppliers of machinery and others. As lead and zinc are essential raw-materials to the industry and are of considerable strategic importance it was necessary in the public interest that the project undertaken by the corporation should be completed as soon as possible. In the circumstances, and as at the time Parliament was not in session, the Metal Corporation of India (Acquisition of Undertaken) Ordinance, 1965 (No. 6 of 1965), was promulgated by the President on the 22nd Oct., 1965 to provide for the acquisition of the undertaking of the Metal Corporation of India Ltd., for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around Zawar area in the State of Rajasthan and to utilize those minerals in such manner as to subserve the common good. The Ordinance was later replaced by the Act of Parliament, namely, the Metal Corporation of India (Acquisition and Undertaken) Act, 1966 (44 of 1965).

The vires of the said Act was challenged by the Metal Corporation of India and another in a writ petition in the High of Punjab. The High Court in its judgment delivered on 14.3.1966 declared the said Act to be violative of Article 31(2) of the Constitution because in its opinion the principles laid down in the Act could not ensure the owners just equivalent of properties acquired. On appeal preferred by the Union Government before the Supreme Court against the said judgment of the High Court, the Supreme Court, in its judgment, on 5.9.1966, upheld the judgment of the High Court and declared the said Act as unconstitutional.

As it was still necessary to acquire the undertaking to ensure uninterrupted progress to capital works and there early completion and commencement of production from the project and the full-development of lead-zinc deposits in the Zawar area and as Parliament was not in session, as Ordinance, namely, the Metal Corporation of India (Acquisition of Undertaking), Act, 1966 (10 of 1966) was promulgated by President on 13.9.1966. In the Ordinance the principles of compensation have been suitably modified to give effect to the judgment of the Supreme Court. The Bill seeks to replace the Ordinance and when enacted would ensure expeditious, and full development of the only important indigenous source of lead and zinc-Gaz. Ind., 7.11.1966, part II, Section 2, Ext., page 1188.

38. It appears that before the Act of 1965 could have been declared ultra vires, the company HZL was incorporated on 10.1.1966. The Act of 1966, except Section 17, has been made to operate retrospectively from 22nd Oct., 1965 i.e., from the date when the Act of 1965 came into force. By Sub-clause (a) of Section 17 it has been provided that Government company called the Hindustan zinc Limited, (respondent), which was formed under the Companies Act, 1956 in pursuance of Section 12 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1965 which has been declared to be unconstitutional and void, shall be deemed to be and to have been formed under the Companies Act, 1956, in pursuance of Section 12 of the Act of 1966 and the undertaking of the Metal

Corporation of India together with all properties, assets, liabilities and obligations referred to in Section 12 of the Act of 1966 shall be deemed to have been transferred to, and vested in, the said Government company on the date of its formation. Section 12 of the Act of 1966 is verbatim same to the Section 12 of the Act of 1965. Therefore, from above Acts of 1965 and 1966, it is clear that it was the decision of the Government of India to form a Government company HZL to whom the Government of India may vest and transfer all the assets, liabilities including employees etc of the Metal Corporation of India. The aims and objects for forming Government company Hindustan Zinc Ltd. have been made clear in the preamble of the Acts of 1965 and 1966 that the company has been formed to fulfill public interest and to sub serve the common good because of the reason that the MCI, a company incorporated under the Companies Act, 1956 was engaged in exploiting lead and zinc from the mines in Zawar area in Rajasthan and lead and zinc at Tundro in Bihar and the said MCI expanded its activities in the field of mines and also constructed zinc smelters near Udaipur for producing electrolytic grade zinc and bye-products, but MCI for want of finances could not complete the project it had undertaken. The MCI failed to meet its repayment obligations to suppliers of machinery and others. In the opinion of the Government of India Lead and zinc are essential raw-materials and are of considerable strategic importance and the Government of India find it fit in public interest that the project undertaken by the MCI should be completed as soon as possible and it was found in the public interest that MCI be taken over by the Government of India and therefore, before enacting Act of 1965 even Metal Corporation of India (Acquisition of Undertaken) Ordinance, 1965 was promulgated by the President on the 22nd Oct., 1965.

39. It appears that above position, as created by the Act of 1966, continued up to the time when new Act - Metal Corporation (Nationalization and Miscellaneous Provisions) Act, 1976 (hereinafter referred to as the Act of 1976) came into force from 7th Sept., 1976. The preamble of the Act of 1976 is almost same as was in the Act of 1965. This Act of 1976 also has been made operative retrospectively from 22nd Oct., 1965. By this Act of 1976, the Act of 1966 was repealed and as per Sub-section (1) of Section 4 of the Act of 1976, the undertaking of the Metal Corporation, which had been transferred to, and vested in, the Central Government by virtue of the provisions of Section 3 of the Act of 1966 together with all its properties, assets, liabilities and obligations specified in Sub-section (1) of Section 4 of the Act of 1966 etc., which stood vested by virtue of Section 12 of the Act of 1966 and which have been transferred to and vested in the Government company (obviously, Hindustan Zinc Ltd.) formed in pursuance of the provisions of Section 12 of the Act have been retransferred to, and re-vested in, the Metal Corporation, and, it has been provided that immediately thereafter the management of the undertaking of Metal Corporation of India shall be deemed to have been transferred to and vested in the Central Government. Even after enacting of the Act of 1976 the undertaking remained with Hindustan Zinc Limited is a fact and it is no body's case that the respondent Hindustan Zinc

Limited company ever lost vesting of the undertaking in it. The respondents' contention is not that there is no such order of vesting of undertaking in the HZL was passed by the Central Government but their plea is that they could not trace out said order. Upon giving more time, the respondent produced additional affidavit and a few correspondences and stated on oath that they could not trace out the relevant order. Section 9 of the Act of 1976 empowers the government to give the undertaking to the overnment Company and it is undisputed that after 1976 undertaking is being run by the Hindustan Zinc Ltd. only, therefore, it cannot be inferred nor it is the case of either parties that the Government Company HZL was unauthorizedly running the undertaking. Rather inference can be drawn from the fact that even after Act of 1976, since, the entire Board of Directors was continued to be constituted by the Government of India's representatives only than it was done by the order of the Govt. of India only and HZL company continued under complete and pervasive control of the Government of India .

40. Above inference can be drawn because of the reason that the Sub-section (1) of Section 5 of the Act of 1976 empowered the Government of India to appoint administrator for the undertaking and also u/s 9 to transfer the undertaking to the Government Company and the HZL was/is the only company created/constituted/incorporated for this purpose and has not been wound up after Act of 1976 and admittedly the undertaking which was vested in G.O.I. again by the Act of 1976 continued to vest in HZL. By Sub-section (1) of Section 5 of the Act of 1976, the Central Government was authorized to appoint Administrator, who may be any person or body of persons including a Government company whether in existence at the commencement of the Act of 1976 or incorporated after commencement of the Act of 1976. On appointment of the Administrator, the Administrator was responsible to carry on the management of the undertaking for and on behalf of the Central Government. The respondents submitted certificate of incorporation of the company HZL dated 10.1.1966, the constitution of Directors (subsequent to alleged dis-investment by Government of India), shareholding chart from 31.3.1994 to 31.3.2010, shareholder's agreement dated 4.4.2002 and memorandum and article of association of HZL. The respondents, as stated above, did not produce any order, if passed u/s 5 or u/s 9 of the Act of 1976. Be it as it may be, on 11.5.2010, further arguments were heard and matter was adjourned to 13.5.2010 and then further opportunity was granted to the respondents to submit the material documents by 20.5.2010. Then the respondent-company on 19.5.2010 submitted the affidavit of its present Company Secretary stating that the respondents tried to search all its records, but could not find any order passed for appointment of the Administrator and could lay hand upon some of the documents which show that prior to incorporation of the respondent-company u/s 12 of the Act of 1966, Sh. AK Sen Gupta issued a telegram on behalf of the Administration on 16.1.1966 and placed on record the copy of the said telegram. It is also submitted that Sh. Chhedi Lal was appointed as Administrator and he called the first meeting of the Board of

Directors for which he gave telegram on 18.1.1966. The copy of the telegram has been placed on record along with this affidavit dated 19.5.2010. It is also stated in the affidavit that Sh. AK Sen Gupta wrote a letter to Sh. T.S. Velu, Minister of Steel and Mines, New Delhi which also shows that the administrator was appointed for the respondent-company. In the affidavit it is stated that so far as order u/s 9(1) of the Act of 1976 is concerned, the same is not available in the record of the HZL. As we have already held on the basis of facts of this case that the undertaking continued to vest in HZL even after coming into force of the Act of 1976, the production of the order by the HZL is of no effect as if that would have been placed on record, it would have been a proof in favour of our above finding. The statutory power of the Govt. of India under the Act of 1976 to appoint administrator and statutory power of the Govt. of India to transfer the undertaking to Government Company, obviously to HZL, are sufficient indication of HZL being "other authority" and instrumentality of State.

41. At this juncture, it will be worthwhile to mention here that Section 13 of the Act of 1976 says the general superintendence, direction, control and management of the affairs and business of the undertaking of a Metal Corporation, the right, title and interest in relation to which have vested in the Central Government u/s 7, shall vest in the Government company specified in Sub-section (1) of Section 9, and that company shall be entitled to exercise all such powers and do all such things as the Metal Corporation was authorized to exercise and do in relation to the undertaking. As already observed, it is nobody's case that any other government company or the G.O.I. directly exercised power over the HZL or over the undertaking and it is admitted case that HZL is exercising its power u/s 13, therefore, also continuation of control and management of the undertaking with the HZL after 1976 was by virtue of any order passed by the Government of India under Sub-section (1) of Section 9 of the Act of 1976 only.

42. Learned Counsel for the respondent Sh. Rajesh Joshi relied upon the judgment of the Full Bench of this Court delivered in Gopal Prasad Varshney v. Bank of Rajasthan Ltd reported in 2009 (3) WLC 1 , judgments of Hon'ble Supreme Court delivered in case of Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, , Federal Bank Ltd. Vs. Sagar Thomas and Others, , Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Sabhajit Tewary Vs. Union of India (UOI) and Others, and the division bench judgment of the Delhi High Court delivered in the case P.B. Ghayalod Vs. M/s. Maruti Udyog Ltd. and others, .

43. In the Zee Telefilms Case (supra), 102 earlier cases including the cases from other countries were considered and Hon'ble Supreme Court re-examined the scope of definition of "State given in Article 12 of the Constitution of India". In

Zee Telefilms" case the Hon"ble Supreme Court once again traced the origin and scope of Article 12 in Indian Constitution which was from beginning and took note of the debate on Article 12 in the draft Constitution in the Constituent Assembly and its expansion of definition of the term of "other authorities" under Article 12 of the Constitution of India. Though we referred few judgments in earlier part of this judgment, yet since this is a judgment rendered after considering more than 100 earlier judgments, therefore, we may mention here that even in the case of Zee Telefilms Ltd., petition was declared not maintainable by the majority judgment of the Hon"ble Supreme Court after holding that Board of Control for Cricket in India (in short BCCI) is not State within the meaning of Article 12 of the Constitution of India, but so was held on the basis of the facts noted in para No. 23 of the judgment, which runs as follows: -

The facts established in this case shows the following:

1. Board is not created by a statute.
2. No part of the share capital of the Board is held by the Government.
3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.
4. The Board does enjoy a monopoly status in the field of cricket but such status is not State conferred or State protected.
5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.
6. The Board is not created by transfer of a Government owned corporation. It is an autonomous body.

44. The facts of the present case already considered above are quite different and are in contrast to facts of the case of Zee Telefilms. In the present case, the company was constituted by the conscious decision of the Government of India in public interest and for which the Acts of 1965, 1966 and 1976 were enacted by the parliament and the entire share capital of the company was that of the Government of India and it is nobody's case that the company got financial assistance from anybody else other than the Government of India. The Board of Directors was constituted by the representatives of the Government of India only. The Government of India has been given power under all above Acts to hand over the undertaking to the Government company and appoint the Administrator. Therefore, there was deep and pervasive of the Government of India over HZL and Government's control was not regulatory in nature. For vesting of undertaking in HZL, the undertaking of the MCI was taken over by the Government of India by the Act of 1965, Act of 1966 and Act of 1976 and then

undertaking was transferred to HZL. In Jialal Kapur's case, the Division Bench of this Court was influenced by the fact that the respondent HZL is a Government Company not created under any statute and being a company registered under the Companies Act, 1956 and has no statutory power vesting in it, therefore, held that the HZL is not State in the definition of Article 12. The Division Bench relied upon the judgment of Sukhdev Singh v. Bhagat Singh wherein the Hon''ble Supreme Court held that a company makes rules and regulations in accordance with provisions of the Companies Act whereas the statutory body on the other hand makes the rules and regulations by and under the powers conferred by the statute creating such bodies. A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise the powers unless the company follows the statutory provisions. The source of power for making rules and regulations in the case of corporation created by the statute is the statute itself, whereas a company incorporated under the Companies Act is not created by the Companies Act, but comes into existence in accordance with the provisions of the Act. A company is not statutory body because it is not created by the statute. The said Sukhdev Singh's case has already been considered in almost all the subsequent judgments rendered by the Hon''ble Supreme Court. The company incorporated under the provisions of the Act can also fall within the definition of Article 12 in the view taken in the subsequent judgments and the Hon''ble Supreme Court held that if 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 the Government and 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, and more important existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. Substantially all the characteristics which have been indicated in various judgments expanding the definition of Article 12 for "other authorities" or limiting the definition of "other authorities" under Article 12 are very much available in the present case, which we may sum up as:

It was the decision of the Government of India to exploit the zinc and lead in the area of Zawar of Udaipur and in public interest acquired the undertaking of the Metal Corporation of India and vest that undertaking in the respondent HZL. Fund was provided by the Government of India and the HZL was controlled by G. O. I. through its Board of Directors consisting of all the representatives of the Government of India only. The respondent HZL in their replies admitted that it was a Government of India enterprise under the full control of Government of India. Its management was vesting in Government of India through HZL which according to the respondents, in the year 2002 only has been transferred to the private company SOLV, which could have been done only if the management of the company would have been vesting in the Government of India.

45. We have not referred all other judgments cited by learned Counsel for the

parties because of the reason that the issue has been considered several times by the Hon''ble Supreme Court in above judgments but those all judgments have been considered in Zee Telefilm''s case also and broadly there is no dispute about the principles for deciding the status of the company for the purpose of determining whether it comes within the definition of Article 12 of the Constitution of India. However, we would like to mention here that Full Bench of this Court in Gopal Prasad Varshney''s case (supra) had occasion to decide the status of Bank of Rajasthan Ltd. and Full Bench of this Court after considering the two earlier cases as well as other several decisions held that Bank of Rajasthan is not amenable to the writ jurisdiction of the High Court. The facts of case of respondent-bank were that share capital of the bank was not held by the Government nor any financial assistance was provided by the State. The State in any manner had no control over the affairs of the Rajasthan Bank and it was managed by the Board of Directors elected by the share holders. No Government agency or officer was connected with the affairs of the bank nor anyone of the Government representatives was member of Board of Directors. The act of the bank was of commercial in nature. In view of the above facts, the Division Bench held that bank is not the instrumentality of the State or other authority under Article 12. Here, we may say that one of the contentions of the respondent is that the respondent-company is engaged in commercial activity. The commercial activity itself is not a decisive factor nor body''s registration under the Companies Act itself is decisive. The decisive criteria as already referred and discussed above, clearly proves the respondent to be "other authority" within the meaning of Article 12 of the Constitution.

46. Therefore, after the decision of Jialal Kapur''s case holding that a company registered under the Companies Act cannot be instrumentality of the State or other authority in the definition of Article 12, the legal position has changed totally in view of the decisions of the Hon''ble Supreme Court referred above which came subsequent to the Jialal Kapur''s case. Therefore, the view expressed by the Division Bench of this Court in Jialal Kapur''s case in the light of the guidelines given by the Hon''ble Supreme Court is not correct.

47. Since the issue of dis-investment and its effect has been raised by the respondent-company for the first time in the writ petition No. 236/1984 before the Full Bench by submitting additional submissions in the year 2010, which were not part of pleading in the writ petition before the single bench and even before the division bench who referred the question and that too inspite of the fact that the dis-investment was made in the year 2002 and yet point was not raised before the learned Single Judge when first order of reference dated 10.5.2005 was passed nor it was raised before the Division Bench when matter was referred to the Larger Bench and in view of the fact that in all other writ petitions the pleading of dis-investment was taken which have not yet been replied by the petitioners nor petitioners have raised any ground to challenge the dis-investment and pleadings are not complete on these issue of dis-investment and its validity and there are no contradictory decisions of the Benches of this Court

therefore, single bench hearing the writ petitions can decide the issue, therefore, we are leaving the issues open to be decided by the Single Benches in accordance with law.

48. In view of the above discussion, we are of the considered opinion that the respondent HZL is the "other authority" within the meaning of Article 12 of the Constitution of India and reference is answered accordingly.

49. All the petitions be placed before the Single Bench of this Court for further proceedings.