

**(1996) 03 PAT CK 0054**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 1905 of 1994 (R)**

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| Ram Gopal Pujari              | Vs | APPELLANT  |
| The State of Bihar and Others |    | RESPONDENT |

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**Date of Decision :** 26-03-1996

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

**Citation :** AIR 1997 Patna 1 : (1996) 2 PLJR 15

**Hon'ble Judges :** Asok Kumar Ganguly, J

**Bench :** Single Bench

**Advocate :** Anil Kumar Sinha and Binod Kumar Jha, for the Appellant; M.Y. Eqbal and B.P. Verma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.K. Ganguly, J.—After hearing learned counsel for the parties, this writ petition is being disposed of at the stage of admission itself by passing the following order:

2. This writ petition has been filed by the petitioner who is claiming himself to be the permanent Pujari of Shri Shiv Hanuman Mandir against the order dated 8-6-1994 passed by Tata Iron & Steel Company Limited (hereinafter referred to as the said Company), Jamshedpur relating to grant of electric connection to the said temple. Previously also the petitioner came before this Court and after hearing the parties, a Division Bench of this Court passed an order directing the said Company to grant temporary electric connection to the petitioner and to consider their application for grant of permanent connection and dispose of the same by a speaking order.

3. The petitioner's present grievance is that even after the said order, permanent connection has not been given to the petitioner and so this writ petition has been filed.

4. Without going into the merits of the claim made by the petitioner, this Court is

of the opinion that the instant writ petition is not maintainable for the reasons indicated below:

5. Learned counsel for the petitioner admitted that the entire writ petition is directed against the action of the said Company. The said Company is admittedly not a State within the meaning of Article 12 of the Constitution of India. In that view of the matter, this Court holds that no writ petition is maintainable against the said Company. Learned counsel for the petitioner has drawn the attention of this Court to Section 22 of the Indian Electricity Act, 1910 in order to show that the said Company is a licensee and being a licensee, it is doing public duty and as such the writ petition is maintainable. In support of the said contention, learned counsel for the petitioner has also placed reliance on a judgment of the Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . In the said judgment, the learned Judges of the Supreme Court held that where a public body is discharging public duties, mandamus will lie. While coming to the said conclusion, the learned Judges of the Supreme Court placed reliance on the expression "authority" used under Article 226 of the Constitution of India and came to the conclusion that the word "authority" used under Article 226 of the Constitution must receive a liberal meaning unlike the word authority used under Article 12 of the Constitution of India.

6. In the later judgment of the Supreme Court in the case of *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], question arose as to whether the said National Council of Educational Research and Training (hereinafter referred to as the said N.C.E.R.T.) is a State within the meaning of Article 12 of the Constitution of India. Discussing several previous judgments of the Supreme Court, the Court speaking through Jagannath Shetty, J., (as his Lordship then was) came to the conclusion that even though the activities of the said N.C.E.R.T, are connected with the co-ordination of research, extension of services and training and dissemination of improved educational techniques, collaboration in the educational programmes and preparation of arid publication of books but they are not wholly related to Governmental functions and cannot be called "State" within the meaning of Article 12 of the Constitution of India. The previous judgment of the Supreme Court in the case of *Anadi Mukta* (supra) was also delivered by the same learned Judge.

7. In Paragraph 3 of the said judgment in the case of *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], the learned Judges of the Supreme Court came to the conclusion that Article 12 of the Constitution should not be stretched too far so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". In coming to the said conclusion the learned Judges of the Supreme Court also relied on another judgment of the Supreme Court in the case of *Tekraj Vasandi alias K.L. Basandhi*

Vs. Union of India (UOI) and Others, , In the said case of Tekraj Vasandhi (supra) the Apex Court came to the conclusion, that the Institute of Constitutional and Parliamentary Studies (I.C.P.S.) was not a "State" within the meaning of Article 12 of the Constitution of India.

8. In a still more recent judgment of the Full Bench of Bombay High Court in the case of the The Shamrao Vithal Co-operative Bank Limited and another Vs. Padubidri Pattabhiram Baht and another, the learned Judges came to the conclusion that the petitioner which started as a Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and under the Multi-State Co-operative Societies Act, 1984 is not a "State" within the meaning of Article 12 of the Constitution of India even though it is governed by the Banking Regulation Act, 1949 and provides public functions.

9. Therefore, following all the aforesaid judgments this Court is of the view that what is required to be seen in order to find out whether an organisation can be called a State within the meaning of Article 12 of the Constitution is the nature of pervasive State control over its management and functioning. Merely because an organisation performs functions of public importance, one cannot hold, that the organisation is "State" within the meaning of Article 12 of the Constitution. This Court is of the view that before an organisation can be called "State" or before it can be endowed with "Statehood", one has to examine the nexus of such organisation with the State, the extent and area of State control, namely, whether it is entirely financed by the State or by private individuals. It may also happen that there are functions of public importance which can be performed by private organisation also. In this connection the following excerpts from the Full Bench judgment of Bombay High Court in the case of Shamrao Vithal Co-operative Bank Limited (supra) are set out below:--

"There may be many functions of public importance which can be performed by private organisation also. We have a large number of organisations doing important social work vital to the community. There are, for example, organisations which look after, educate and train handicapped persons or the blind, provide them with jobs and rehabilitate them. There are private charitable organisations which may provide free or subsidised housing to the poor or free medical aid. They may supply text-books to poor students, freeships and scholarships. There may be private organisations engaged in transport of goods and men. They perform functions which are, undoubtedly of public importance; and they subserve a public need. But this does not necessarily make such organisations "State" under Article 12. Banking is undoubtedly a function of public importance. In fact, the nationalised banks do carry out these functions under the control of the State. But that does not mean that banks which are not so controlled, or banks which are set up by private organisations or co-operative societies becomes "State" under Article 12. In a welfare State, many activities which are often Carried on by private organisations are undertaken by the State, in such cases the Supreme Court has said that we must look at the overall

position of the organisation in the light of the other tests also, especially when the function of the organisation is not such as can be carried on only by the State or is not connected with Governmental functions."

10. Applying the above test this Court cannot come to the conclusion that the said Company which has no manner of Government control and is completely run by private management is a "State" within the meaning of Article 12 of the Constitution of India. This Court accepts the enunciation of law on this subject by the Hon"ble Supreme Court in its judgment in the aforesaid case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], which is a subsequent judgment of the Apex Court and further holds that the ratio of the judgment of the Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, does not govern the question which has fallen for consideration in this particular case.

11. For the reasons aforesaid, this Court holds that this writ petition is not maintainable and the same is dismissed without going into the merits of the case. This will, however, not prevent the writ petitioner from seeking any appropriate remedy and, if so advised, before any appropriate forum. There will be no order as to costs.