(1995) 07 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 3504 of 1994

Sanghi Technologies Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : AIR 1996 Delhi 74 : (1995) 59 DLT 681 : (1995) 34 DRJ 345 : (1997) ILR Delhi 297 : (1995) 111 PLR 54

Hon'ble Judges : M. Jagannadha Rao, J;D.K. Jain, J;Arun Kumar, J

Bench : Full Bench

Advocate : Mukul Rohatagi, Vipin Sanghi, K. Sukumaran, A.P. Vinod, Y.P. Narulla and Divya Kapur, for the Appellant;

Judgement

D.K. Jain, J.

(1) Indira Gandhi National Centre for Arts (for short, referred to as IGNCA in the Deed of Declaration of the said body) floated tenders for supply and installation of "Integrated Document Imaging and Management System for Scanning and Search through - put and retrieval thereof as images on any desired index". Petitioner No. 1 and respondent No.3 herein submitted their respective bids for tender. The tender was awarded by IGNCA, respondent No.2 herein, to respondent No.3. Petitioner No. 1, a Pvt. Limited Company, through petitioner No.2, its Managing Director, filed the present writ petition under Article 226 of the Constitution, seeking a writ, order and direction in the nature of certiorari quashing the process of selection/acceptance of the bid of the 3rd respondent by respondent No.2 and communication of its acceptance to Respondent No.3, in relation to the said tender. Union of India, through the Secretary, Ministry of Human Resources Development, Department of Culture, was imploded as the first respondent on the plea that respondent No.2 is a body constituted under the Department of Culture under the Ministry of Human Resources Development and is an instrumentality of the State.

(2) Respondent No.2, IGNCA, raised a preliminary objection regarding the maintainability of the petition on the ground that it being not a State, was not amenable to the writ jurisdiction. In support, reliance was placed on an earlier Bench decision of this Court in Cwp No.1831/92, decided on 23 October 1992 (J.S. Tanwar v. Indira Gandhi National Centre for Arts & Anr) wherein the Court had upheld a similar objection raised by respondent No.2. The petitioners herein countered the preliminary objection raised. Reliance by them was placed on another Bench decision of this Court in the case of Kuldip Mehta Vs. Union of India and Others, . The Bench, hearing the instant case (D.P.Wadhwa and Dr. M.K.Sharma, JJ) finding an apparent conflict in the two judgments, in particular taking note of the fact that the judgment in Cwp No.1831/92 was rendered in the case of the 2nd respondent itself and while observing that the present case may be covered by the decision in Kuldip Mehta''s case, thought it appropriate to refer the case for the opinion of a larger Bench. This is how the matter is now before us.

(3) The question referred is as follows:

"WHETHER the writ petition under Article 226 of the Constitution is maintainable against the second respondent in view of the averments made in the petition and even if it is held that second respondent is not a State?"

(4) The points for determination thus are:

1. Whether IGNCA, respondent No.2, is an instrumentality or agency of the State? and

2.If not, is the writ petition under Article 226 of the Constitution still maintainable?

(5) We have heard learned counsel for the parties, who took us through a resolution dated 19 March 1987 of the Govt. of India, Ministry of Human Resource Development (Department of Arts), published in the Gazette of India, annexed to the Deed of Declaration, various Articles of the Deed of Declaration and the Annual accounts for some of the years.

(6) The definition of the word "State" under Article 12 of the Constitution of India is an inclusive and not an exhaustive definition .The Article states that unless the context otherwise requires, the "State" includes the Government and Parliament of India and the Government and legislatures of each of the States, all local or other authorities within the territory of India or under the control of the Government of India. Thus, the Article gives an extended meaning to the words "the State" wherever they occur in Part Iii of the Constitution. Therefore, unless the context otherwise requires, ''the State'' will include not only the Executive and. the legislative organs of the Union and the States, but also local bodies as well as "other authorities" within the territory of India or under the control of the Government of Indira. In other words, an instrumentality or agency of the State will also be included in the definition of the words ''the State''.

(7) On the question as to whether a particular authority is an instrumentality or agency of the State and hence "other authority" within the meaning of Article 12 of the Constitution, there is a plethora of case law, including Constitution Bench decisions of the Supreme Court, but we do not propose to burden the judgment by all the authorities on the point except to mention that in the earlier judgments a more conservative view was taken and the term continued to be expanded in the later judgments. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , the term "other authority" was confined to a constitutional or statutory body. This test was followed by A.N.Ray, C.J. in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, but K.K.Mathew, J emphasised the drastic change in the thinking by extending the ambit of the Article to private corporations as well. In Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, the Supreme Court went still further to say that Government may act through Natural persons or juridical persons to carry out its functions and it is not necessary that it is created by a Statute.

(8) How then to find out if a person or body falls within the ambit of "other authority" is the prime question.

(9) No decipherable test or significant criteria to identify "other authority" was laid down till the decision in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, came, where some tests were evolved. In Som Parkash Rekhi v. Union of India & Anr., , the Court, besides others, referred and relied on two earlier pronouncements of the Constitution Benches on the amplitude of "other authorities" in Article 12 and came to the conclusion that "other authorities ... under the control of the Government of India in Article 12 is comprehensive enough to take care of Part Iii without unduly stretching the meaning of ''the State'' to rape in whatever any autonomous body which has some nexus with Government." The Supreme Court analysed its earlier decision in Airport Authority''s case, and culled out the following tests to decide whether a company or society or other authority is a State for the purpose of this Article:

(I)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 the Government;

(II)existence of deep and pervasive control of the State may offer an indication that the Corporation is a State agency or instrumentality

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(III)if the financial assistance by the Government is so much as to meet almost entire expenditure of the Corporation, it would be some indication of the same being impregnated with governmental character;

(IV)monopoly status of a Corporation may be another indication of its being a

State;

(V)if the functions of the Corporation arc 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 the Government;

(VI)specifically, if a department of Government is transferred to a Corporation, it would be a strong factor supportive of its inference of the Corporation being an instrumentality or agency of the Government.

(10) While laying down the aforesaid parameters, it was observed in Airport Authority''s case (supra) that there is no strait jacket formula to hold what is "Other Authority" and it is not necessary that all the tests must be satisfied for reaching a conclusion for or against holding an institution to be a State. In a given case some of the features emerge so boldly and prominently that second view is not possible. There may yet be other cases where the matter would be on border line and it would be difficult to take one view or the other outright. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities of human experience in view so as to reach a reasonable conclusion.

(11) The fundamental test as laid down by the Supreme Court in Ajay Hasia''s case, (supra) relied upon by the five Judges Bench of the Supreme Court in M.C. Mehta and another Vs. Union of India and others, is - "the enquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government company or a company formed under the Companies Act, 1956 of it may be a society registered under the Societies Registration Act, 1860, or any other similar statute" (like a trust under the Trusts Act, 1882). Succinctly stated what is really to be determined for whether a body is or not "other authority" is - who created the body and why - what are its aims and objects, how is it running, the extent of government financial aid or grant to it and its dependency on the government and the latter''s control over it.

(12) The sum total, broadly speaking, is that constitutional or statutory bodies set up under a statute - whether as a government body or undertaking or as corporation a government company or public company or a private company under the Companies Act, 1956, or in the form of a society registered under the Societies Registration Act or any other form constituted under a similar statute of a body or a person performing the functions of a governmental character will be included in the expression "other authority".

(13) In the light of the above exposition and guidelines, we have to examine whether IGNCA, the 2nd respondent falls within the ambit of "other authority".

(14) From the Deed of Declaration of IGNCA, it is clear that the Government of India, Ministry of Human Resource Development (Department of Arts) intended to and did set up Indira Gandhi National Centre for Arts, respondent No.2, vide

Government of India Notification No.F.16-7/86-Arts, for undertaking a variety of programmes and activities to demonstrate the central role of arts in life which was an article of faith with the late Prime Minister Smt. Indira Gandhi. The Government decided to set up the body in the form of a Trust and nominated seven eminent persons, named in the notification ,as the first Trustees to constitute the said Trust (the number was later revised during the year 1991-92 to 21, through subsequent notification by the Government of India) and to complete all required formalities for the purpose. In the Notification the Government also nominated Shri Rajiv Gandhi (since deceased), the first trustee as the President and Dr. (Mrs.) Kapila Vatsyayan as Member Secretary of the Trust. Pursuant thereto, as required, the Trustees got the Trust deed registered saying that whereas the Government of India had decided further to make an initial corpus grant to construct the building complex in an area of 10.10 hectares of land, described in the schedule, for permanently using the IGNCA office and activities, and whereas the Trustees agreed to take steps for establishment and registration of a perpetual Trust, it was declared that the corpus grant and other contributions by the Government and all other donations shall be held by the Trustees solely for the purpose of the Trust. The deed further sets out the aims and objects of the Trust, enjoins use of Trust funds solely for the purpose of the Trust (Article 4); setting up of component institutions (Article 6); and the provisions as to the number of Trustees - all to be nominated and vacancies to be filled in by the Government of India (Article 7); the first President of the. Trust to be appointed by the Government of India out of the Trustees, to remain in office for ten years - thereafter to be elected by the Trustees from amongst themselves (Article 8); the Member Secretary to be appointed by the Government of India on such terms, remuneration and conditions as the Government may decide (Article 9); the Trustees not to transfer the immovable property of the Trust without the prior approval of the Government of India (Article 12); the constitution of an Executive Committee of 5 to 7 members from out of the Trustees -the first Executive Committee to be notified by the Government of India in the notification aforesaid (Article 16); the powers and functions of the Executive Committee including framing of rules, regulations and bye-laws etc. (Article 17); the submission of annual report and accounts for approval and adoption by the Trustees and onward submission to Government of India (Article 19); the bar against amendment of the Trust deed except with the prior approval of the Government of India (Article 24); periodical review of the working of the IGNCA, its component divisions, institutions, units etc. by a review committee to be appointed by the President of India in his capacity as the Visitor 6t the IGNCA and its recommendations and suggestions as accepted by the Government of India in consultation with the Trustees to be binding on the Trust (Article 25); and further that in the event of dissolution of the Trust, all movable and immovable properties of the Trust to revert to the Government of India (Article 26).

(15) A perusal of the constitution of the body and some of the articles of the

deed of declaration, noted, hereinabove, and in particular the provision of initial corpus grant followed by capital grants, the land and building and the provisions for the nominations of Trustees and the first President, the appointment of Executive Committee through nomination, all by Government of India, the provision as to Government''s control on its working, provision for giving of directions by the Government, binding on the management of the body, the direct and indirect restraint on the powers of the Trustees in the matter of/ transfer of movable and immovable property, and the stipulations for reversion of all movable and immovable property to the Government of India in case of dissolution of the Trust, speak volumes about the Government''s all pervasive control over it. Indeed some factors boldly and prominently speak about respondent No.2 being a government body or agency. These are: (1) the body was contemplated to be and was set up and created by the Government of India, Ministry of Human Resource Development for furtherance of the objects decided by it to be achieved, which squarely fall within the domain of the concerned department of the Government of India .and make its activities of governmental character; (2) that it was funded by the Government of India through corpus grant of 25 crores and capital grants as per requirement from time to time and it had been running solely/mainly on it, without which, it could not meet its revenue expenditure and function, as would appear from the following details extracted from the annual accounts:

year ending interest self generated service expenditure income income (Revenue expenditure) 313.91 4,42,81,802 1,79,991 2,28,24,246 31.3.92 4,41,14,143 5,51,712 3,98,60,525 31.3.93 5,68,31,486 1,61,861 4,44,86,756 31.3.94 7,28,35,050 4,74,722 3,42,71,819

(THE ''specific purpose grants'' received from abroad, mentioned in the annual accounts ,are minimal and negligible, compared to the outlay, indicated above), and (3) the deep pervasive control the Government had on it. These are strong pointers to its being an instrumentality of the State, if not a Government body itself, since it was given the form of a Trust under the Trusts Act, presumably for twin purposes - to enlist the support of eminent persons for getting donations and aid from abroad by giving it the colour of autonomous body and facilitate its efficient running by side tracking bureaucratic delays and red tapism.

(16) In the authorities Tekraj v. Union of India 1988 Sc 469, Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], and U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, , relied upon by learned counsel for respondent No.2, the above noted basic and vital characteristics do not exist. Taking the said authorities in reverse order, the last one does not help respondent No.2. It was held (herein that U.P.Financial Corporation, the appellant, is an instrumentality of the State, created under the State Financial Corporation Act, 1951. Chander Mohan Khanna''s case relates to NCERT, a society registered under the Societies Registration Act, having its own Memorandum and Articles of Association, was

free to act within its frame work and the Government control was confined only to proper utilisation of its grant, was held to be an autonomous body. The decision is clearly distinguishable. Similarly, Tekraj''s case (supra) related to a voluntary organisation, namely Institute of Constitutional and Parliamentary Studies, its objects were nongovernmental and was held to be not a "State" or its agency. The said decisions are, Therefore, distinguishable on facts.

(17) In Cwp No. 1831/92, the order reproduced in the referral order, a contrary view was taken. The same is reproduced hereunder:

"IN our opinion this writ petition is not maintainable because the respondent which is a trust cannot be regarded as a State. We have seen the deed of declaration whereby the trust was formed. The main objects of the trust such as service as a resource centre for arts, specially primary material to undertake research and publication programmes of reference work etc. in the arts, humanity and cultural heritage and to establish tribal and folk arts collection etc. cannot be regarded as governmental functions. The mere fact that one of the clauses of the objects also postulates the analysis of the data and information and the supply of the same to scholars, academicians, students, institutions, policy makers in Central and State Governments would not mean that the centre is discharging any governmental functions. We further do not find such pervasive control of the Government in this trust so as to regard it as a State. This case is similar to the case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], wherein the Supreme Court came to the conclusion that NCERT was not a State. Following the said decision this writ petition is dismissed on the ground that the respondent is not a State."

(18) The Bench deciding that case came to that conclusion basically on the ground that: (i) the main object of the Trust cannot be regarded as governmental functions as the object, referred to in the order, appearing in one of the clauses of the objects, postulating analysis of the data and information and the supply of the same to scholars etc. would not mean that the Centre is discharging any governmental functions; (ii) there was no pervasive control of the Government and (iii) the case was similar to NCERT''s case (supra). With respect, it appears, that the fundamental and most important heads of the objects of the Trust namely research and publication programmes of reference works, glossaries, dictionaries, Encyclopedias, fundamental texts in arts, humanities and cultural heritage; to provide for a forum for creative and critical dialogue among the diverse arts ranging from architecture and literature to music, dance etc., to evolve models of research programmes and administration of arts more pertinent to the Indian ethos and reality in general and identification and survey of repositories having significant holdings/collections of primary source material on Indian arts, humanities and cultural heritage in diverse forms and to analyze and disseminate data and information thereof to scholars, academicians, students, institutions and to policy makers in Central and State Governments etc., all

falling in the purview of Ministry of Human Resources Development, pointers to the governmental functions, appear to have escaped the attention of the learned Bench deciding the matter. From the aforenoted articles, pervasive control of the Government of India is clearly visible.

(19) Though given the form of Trust, spelt out as an autonomous body, as observed in Ajay Hasia''s case (supra), we feel, it is really the Government which acts through the instrumentality or agency of respondent No.2 and the juristic veil of an autonomous body worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government - for if the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation or any other form should equally be subject to the same limitations.

(20) In view of the foregoing discussion we are of the considered view that IGNCA, respondent No.2, is an instrumentality of the State and hence "other authority" within the meaning of Article 12 of the Constitution and thus, amenable to writ jurisdiction under Article 226 of the Constitution of India. The question referred to us is answered accordingly.

(21) On the second aspect of the question, formulated as question No.2 hereinabove, there are a large number of decisions, including in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , Rattan Lal Koul v. Jammu & Kashmir Bank Ltd, 1989 (3) Alt 177, by one of us (the Chief Justice) and in Kuldip Mehta''s case (supra), holding that prerogative writs under Article 226 of the Constitution could be issued against "persons or authorities" even if the authorities are not statutory authorities or instrumentalities of the State. However, for the view we have taken in the instant case, it is unnecessary to go into this question in detail.

