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**(2005) 11 DEL CK 0070**  
**In the Delhi High Court**  
**Case No : LPA No. 2256 of 2005**

S.D. Siddiqui

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

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**Date of Decision :** 19-11-2005

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226, 226(1), 32

**Citation :** (2006) 88 DRJ 504

**Hon'ble Judges :** Markandeya Katju, C.J.; Madan B. Lokur, J

**Bench :** Division Bench

**Advocate :** Sarbjit Sharma, for the Appellant; Rajeeve Mehra, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Markandeya Katju, C.J.—This Letters Patent Appeal has been filed against the impugned judgment of the learned single Judge dated 5.10.2005 by which WP(C)17670/2005 has been dismissed. However, while dismissing the writ petition the learned single Judge has held that a writ petition is maintainable against the Delhi University Teachers Association (for short "DUTA")

2. The writ petitioner, Mr. S.D.Siddiqui was one of the three unsuccessful candidates for the post of President of the DUTA in the elections held on 31.8.2005. He prayed for a writ of certiorari for calling for the records of the DUTA elections and for quashing of the election result in respect of the post of President.

3. In our opinion, the writ petition ought to have been dismissed on the short ground that no writ petition lies against the DUTA as it is a private body and not "State" under and is not performing any public functions.

4. As stated in para 3 of the writ petition the DUTA is an association of teachers working in the Delhi University as well as those working in the colleges affiliated to the Delhi University. There is no averment anywhere in the writ petition that the DUTA is a State under Article 12 of the Constitution. There is also no

averment that there is deep and pervasive control of the State in the functioning of the DUTA or that the DUTA is largely financed by the State.

5. No doubt, as is seen from the constitution of the DUTA (vide Annexure P-3 to the writ petition), DUTA is a registered society under the Societies Registration Act. In our opinion, this does not ipso facto make it either a State under Article 12 of the Constitution of India or an instrumentality of the State. A mere registration of a society under the Societies Registration Act does not make that society an instrumentality of the State, just as mere registration of a company under the Companies Act does not mean that the company automatically becomes a State under Article 12 of the Constitution of India simply because it has been registered under a statute. Even private bodies may have to be registered under a statute, or are regulated by a statute, but that does not necessarily mean that they are "State" under Article 12.

6. Article 226(1) of the Constitution states:

Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any or them for the enforcement of any of the rights conferred by Part III and for any other purpose.

7. The language of Article 226 is no doubt very wide. It states that a writ can be issued "to any person or authority" and "for enforcement of any of the rights conferred by Part III and for any other purpose." However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can even be issued to any private person or to settle even private disputes. If we interpret the word "for any other purpose" literally it will mean that a writ can be issued for any purpose whatsoever, e. g., for deciding private disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words "to any person" literally it will mean that a writ can even be issued to private persons. However, this would not be the correct meaning in view of various decisions of the Supreme Court in which it was held that a writ will ordinarily lie only against the State or instrumentality of the Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], Tekraj Vasandhi v. Union of India AIR 1988 SC 496, General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others, , Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, In Binny Ltd. and Another Vs. V. Sadasivan and Others, , the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. In our opinion the DUTA is not performing a public function nor discharging a public duty. Hence, no writ lies against it.

8. The correct interpretation of the aforesaid words in Article 226 is that a writ can ordinarily be issued to a person to whom writs were traditionally issued by British Courts on well established principles. Similarly, the words, "for any other purpose" have to be interpreted in the narrower sense to mean that a writ can ordinarily be issued for the purpose for which writs were traditionally issued by British Courts on well established principles. The British Courts did not ordinarily issue writs to private persons except a writ of habeas corpus.

9. No doubt the power to issue writs under Article 226 is wider than those of the British Courts vide *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, but in our opinion they are not so wide as to permit Judges to do anything they like in writ jurisdiction. There are well settled principles governing the exercise of jurisdiction under Article 226 as laid down in various decisions of the Supreme Court, and these principles have laid down several limitations to the exercise of such power. For instance, ordinarily a writ will not be issued to a private body except a writ of habeas corpus.

10. In *General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P v. Satrugan Nishad and Ors.* (supra) the Supreme Court observed:-

The point raised is no longer rest integra as the same is concluded by decisions of this Court. In the case of *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.*, a Constitution Bench of this Court, while approving the tests laid down in the case of *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.*, as to when a corporation can be said to be an Instrumentality or agency of the government, observed at page 736-37 which runs thus:-

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the *International Airport Authority* case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority* case as follows:

(1) One thing is clear that if the 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 Government

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor...whether the corporation enjoys monopoly

status which is State conferred or State protected,

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government,

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government.

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an "authority" and, Therefore, "State" within the meaning of the expression in Article 12.

11. Ordinarily no writ lies against a private party except a writ of habeas corpus vide The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, , Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], etc.

12. A writ will lie ordinarily only against a State or an instrumentality of the State. vide Federal Bank Ltd. Vs. Sagar Thomas and Others, Pradeep Kumar bids was v. Indian Institute of Chemical Biology and Ors. (supra) , General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P v. Satrugan Nishad and Ors. (supra) etc.

13. There is no averment in the writ petition that the DUTA satisfies the tests of a State under Article 12 of the Constitution of India as laid down in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, etc. There is no allegation that the DUTA is financed by the State Government or that there is deep and pervasive State control over the DUTA.

14. It is true that in some exceptional cases it has been held that a writ lies against a private body, but that is only where it is performing a public duty, vide Binny Ltd. and Another Vs. V. Sadasivan and Others, The question, Therefore, arises as to what is a public duty or public function ?

15. In G. Basi Reddy Vs. International Crops Research Instt. and Another, the Supreme Court observed that although it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. We are satisfied that the DUTA is not discharging or conducting State functions and the Government has no deep or pervasive control over it nor do the funds of the DUTA come from the Government. Hence, in our opinion, the DUTA is not "State" under Article 12 of the Constitution of India and no writ lies against it.

16. The powers of the Supreme Court under Article 32 and High Court under Article 226 have been considered by the Supreme Court in a large number of decisions. In the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Supreme Court considered the writ jurisdiction of the High Court exercisable under Article 226 of the Constitution of India. The following conclusion of Their Lordships are relevant: ( vide paras 19 and 21)

19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226.

17. While considering the maintainability of a writ petition filed under Article 32 of the Constitution of India against Board of Control for Cricket in India (BCCI), the Supreme Court in Writ Petition (C) No. 541/2004 [*Zee Telefilms Ltd. and Anr. v. Union of India and Ors.*]- 2005 (1) SCALE 666 considered the term "State" under Article 12 and also considered the scope of interference under Article 32 by the Supreme Court and under Article 226 by the High Court. The main question for consideration before the Supreme Court was whether the "Board" (BCCI) fell within the definition of the "State" as contemplated under Article 12 of the Constitution. It was the argument of the Board that it did not come under the term "other authorities", hence it is not a State for the purpose of Article 12. After considering the decision in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, , and *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, the Court held:(para 16)

16. The distinction to be noticed between the two judgments referred to hereinabove namely Sukhdev Singh and Ors. and Sabhajit Tewary is that in the former the Court held that bodies which were creatures of the statutes having important State functions and where State had pervasive control of activities of those bodies would be State for the purpose of Article 12. While in Sabhajit Tewary's case the Court held a body which was registered under a statute and not performing important State functions and not functioning under the pervasive control of the Government would not be a State for the purpose of Article 12.

18. After referring to the decisions in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, their Lordships concluded thus:

24. To these facts if we apply the principles laid down by seven Judge Bench in Pradeep Kumar bids was (supra), it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

25. Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the parameters laid down by this Court in Pradeep Kumar Biswas's case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions even then as per the judgment of this Court in Pradeep Kumar bids was (supra) that by itself would not suffice for bringing the Board within the net of "other authorities" for the purpose of Article 12.

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29...Assuming that the above mentioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies" own volition (self arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be No....

30...But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board.

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.

19. In *General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrugan Nishad* (supra) the Supreme Court had an occasion to consider the expression "other authority" referred to in Article 12. In that case, the appellant-Mill was a cooperative society registered as under the U.P. Cooperative Societies Act, 1965. The contesting respondents filed writ petitions in the High Court alleging therein that they had worked on Class III and IV posts in the Mill for a period ranging from 5 to 12 years. The services of the surplus workmen were dispensed with without giving any notice and paying retrenchment compensation as required u/s 6-N of the U.P. Industrial Disputes Act, 1947 in spite of the fact that they had worked for more than 240 days which necessitated filing of writ applications in the High Court. The said writ petitions were contested by the Mill on the grounds, inter alia, that the Mill, which is a cooperative society, was neither a "State" nor an "instrumentality" or "agency of the State" within the meaning of Article 12 of the Constitution; hence the writ jurisdiction of the High Court could not be invoked. The learned Single Judge of the High Court over-ruled the preliminary objection raised on behalf of the Mill and came to the conclusion that the Mill which is a Society is "State" within the meaning of Article 12 of the Constitution as it was an instrumentality of the State and there was infraction of the provisions of Section 6-N of the Act. Accordingly, the writ applications were allowed. The said order was affirmed by the Division Bench on appeals being preferred by the Mill, hence the Mill approached the Supreme Court by way of special leave. An argument was advanced before the Supreme Court stating that the contesting respondents could not have been allowed to invoke the writ jurisdiction of the High Court as the Mill, which is a registered cooperative society, was not State within the meaning of Article 12 of the Constitution as it was neither an instrumentality nor an agency of the Government of Uttar Pradesh. On the other hand, counsel appearing on behalf of the contesting respondents submitted that the Mill was an instrumentality of the Government,

as such it was an authority within the meaning of Article 12 of the Constitution. In this connection the Supreme Court observed:-

6. The point raised is no longer rest integra as the same is concluded by decisions of this Court. In the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, a Constitution Bench of this Court, while approving the tests laid down in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, as to when a corporation can be said to be an instrumentality or agency of the Government, observed at pp.736-37 which runs thus: (SCC para 9)

"9. The tests for determination as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority* case (supra) These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority* case as follows:

(1) One thing is clear that if the 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 Government. (SCC p.507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p.508, para 15)

(3) It may also be a relevant factor...whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p.508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p.509, para 16)

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SC p.510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the *International Airport Authority* case (supra), be an "authority" and, Therefore,

"State" within the meaning of the expression in Article 12.

7. In the case of *Pradeep Kumar bids was v. Indian Institute of Chemical Biology* (2002) SCC 111, a Bench of Seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in *International Airport Authority* case and approved in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, for determining as to when a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12 of the Constitution. There the Bench referred to the case of *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this Court in *The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers' Association and Another*, where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government.

After saying so, Their Lordships further remarked:

8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution.

Considering the ratio of the nominees of the State Government and the Management of the committee, Their Lordships held: (para 8)

8...Under the bye-laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less a deep and pervasive one....

At the end, an argument was advanced on behalf of the contesting respondents that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, a writ petition can be entertained against it as mandamus can be issued under Article 226 of the Constitution against any person or authority

which would include any private person or body. On the other hand, learned counsel appearing on behalf of the appellant submitted that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty. In this connection the Court held (vide para 9):

9...Reference in this connection may be made to the decisions of this Court in *Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani* in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of *VST Industries Ltd. Vs. VST Industries Workers' Union* and *Another*, the same principle has been reiterated. Further, in the case of *VST Industries Ltd.*, it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.

20. In *Federal Bank Ltd. Vs. Sagar Thomas and Others*, the question that arose for consideration was, whether the Federal Bank, which is a private bank, is a State or its agency or instrumentality within the meaning of Article 12 of the Constitution of India and whether a writ petition under Article 226 is maintainable against it. After referring all the earlier authorities, the Supreme Court held (vide para 18):

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."

Ultimately the Court held (vide para 33):

33...A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a

discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

21. In *G. Basi Reddy Vs. International Crops Research Instt. and Another*, the appellants were employees of the International Crops Research Institute ("ICRISAT" in short)/first respondent therein. Their services were terminated. They filed Writ Petitions before the High Court of Karnataka against ICRISAT and the Union of India. The Writ Petitions were dismissed on the ground that ICRISAT was not amenable to writ jurisdiction under Article 226 of the Constitution, and that a writ could not be issued to ICRISAT. Against the ruling of the High Court, the petitioners therein appealed to the Supreme Court. After considering the earlier decisions and the scope for issuance of writ under Article 226 of the Constitution by the High Court, Their Lordships observed (vide paras 25 to 29):

25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed. *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, The claim as made by the appellant in his writ petition is founded on Arts. 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a "State" or authority within the meaning of Art.12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in *Pradeep Kumar bids was v. Indian Institute of Chemical Biology and Ors.* (2002) SCC 111 in which we said:

The question in each case would be-whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State".

26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfill any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by nor is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot Therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.

27. It is true that a writ under Article 226 also lies against a "person" for "any

other purpose". The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any one of the writs mentioned would according to well established principles issue.

28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty VST Industries Ltd. Vs. VST Industries Workers" Union and Another, has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corporation v. C.V. Imanuel AIR 1960 SC 1306, this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

...an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute (See Sohanlal Vs. The Union of India (UOI),

29. We are Therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT.

22. In Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, the sole point that arose for decision before the Supreme Court was, whether U.P. Rajya Karmachari Kalyan Nigam (Corporation) was covered by the definition of "State" under Article 12 of the Constitution and was amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. In that case the service of the petitioner had been terminated from the post of salesman in one of the stores of the Corporation, against which he had approached the High Court, Allahabad. A preliminary objection was raised by the Corporation to the maintainability of the writ petition on the ground that the Corporation does not fall in the definition of "State" under Article 12 of the Constitution. Relying on decisions of the Lucknow Bench of the same Court in the case of Vijay Kumar

Verma v. U.P. Govt. Employees Welfare Corporation [W.P. No. 8246 (SS) of 1992, decided on 13-4-1993], the writ petition filed by the petitioner in the High Court was dismissed as not maintainable, against which the petitioner has preferred the appeal to the Supreme Court. After analysing the factual materials and various factors, ultimately Their Lordships concluded (vide para 27):

27. On detailed examination of the administrative, financial and functional control of the Corporation, we have no manner of doubt that it is nothing but an "instrumentality" and agency of the State" and the control of the State is not only "regulatory" but it is "deep and pervasive" in the sense that it is formed with the object of catering to the needs of the government employees as a supplement to their salaries and other perks. The top executives of the government department ex officio are members and office-bearers of the Corporation. The Corporation is fully supported financially and administratively by the State and its authorities. Even day-to-day functioning of the Corporation is watched, supervised and controlled by the various departmental authorities of the State particularly the Department of Food and Civil Supplies. The multiple test indicated to be applied both by the majority and minority view in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, is fully satisfied in the present case for recording a conclusion by us that the Corporation is covered as an "agency and instrumentality of the State" in the definition of "State" under Article 12 of the Constitution. It is, Therefore, amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

23. In Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, the Constitution Bench of the Supreme Court reconsidered the decision taken in Sabhajit Tewary Vs. Union of India (UOI) and Others, and held (vide para 40):

The picture that ultimately emerges is that the tests formulated in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

24. By applying the various tests enunciated in the above mentioned decisions and considering the facts relating to Council of Scientific and Industrial Research (CSIR), the Supreme Court found that the same is well within the range of Article 12. It is to be noted that CSIR was set up by the Department of Commerce, Government of India with the broad objective of promoting industrial growth in the country. On 14-11-1941, a Resolution was passed by the Legislative

Assembly and accepted by the Government of India. The objects which have been incorporated in the memorandum of association of CSIR demonstrate that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. CSIR was and continues to be a non-profit-making organization and according to clause 4 of CSIR's memorandum of association, all its income and property, however derived shall be applied only towards the promotion of those objects subject nevertheless in respect of the expenditure to such limitations as the Government of India may from time to time impose. The details regarding management and control show the dominant role played by the Government of India in the Governing Body of CSIR is evident. The Prime Minister shall be the ex officio President of CSIR. The Governing Body is required to administer, direct and control the affairs and funds of the Society and shall, under Rule 43, have authority to exercise all the powers of the Society subject nevertheless in respect of expenditure to such limitations as the Government of India may from time to time impose. This is evident that the financial control lies with the Government. After analysing all the relevant aspects, as the majority view, the Supreme Court ruled that CSIR is a State within the meaning of Article 12 of the Constitution.

25. In *Chander Mohan Khanna v. N.C.E.R.T* (supra), the question that was considered was, whether the National Council of Educational, Research and Training (NCERT) is "State" as defined under Article 12 of the Constitution. The NCERT was a society registered under the Societies Registration Act. After verifying its object, programmes, activities, funding, and considering the fact that the Government has got limited control only to proper utilisation of the grant, the Court ultimately concluded that NCERT is largely an autonomous body and does not fall within the definition of "State" under Article 12.

26. The N.C.E.R.T was set up as a society with 7 Government officers subscribing to the memorandum of association. The object of the council was to assist and advise the Ministry of Education and Social Welfare in the field of education particularly school education. The income and property was to be applied towards promotion of objects only. The expenditure on grants subject to limitations was placed by the Government of India. The Government could review the work and take action to give effect to reports. The Governing council consisted mainly of Government officials but also included some educationists. The N.C.E.R.T was held to be not a "State" under Article 12 of the Constitution of India.

27. In the case of *General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad* (supra) the appellant was a cooperative society, 50 per cent of whose shares were held by the State Government. The membership to the Mill was open to cane growers, other societies etc. Its committee of management had 15 members, out of which 5 were nominated by the State Government. The State Government could not issue any direction to the Mill or determine its policy. The manufacture and sale of sugar did not involve any public function. Hence, the Mill

was not a "State" within the meaning of Article 12 of the Constitution of India.

28. In *Karuppan v. The Patron of Chennai Rifle Club, Chennai*, reported in (2004) 1 M.L.J. 153, a Division Bench of the Madras High Court, after considering the formation, object and the activities of the Chennai Rifle Club and after analysing various case law on the point, held that a writ would not lie against the Chennai Rifle Club and the said authority would not come within the purview of Article 226. In that case, the Commissioner of Police is the President of Rifle Club. Still the Division Bench found that the club was not an instrumentality of the State and had not discharged any public duty. The said decision would apply on all fours to the present case.

29. In view of the above discussion, we are clearly of the opinion that the DUTA is not a State or an instrumentality of the State under Article 12 of the Constitution of India and it does not also perform any public functions. It is a purely private body working for the welfare of teachers of the University and affiliated colleges. There is no deep or pervasive control of the State over it. There is no averment that it is largely financed by the State. Hence, in our opinion, no writ lies against DUTA.

30. Apart from the above, we are further of the opinion that if one wishes to challenge an election, he should file an election petition, if that is provided under the relevant statute or rules, and if there is no such provision in any statute or rule for election petition, then one has to file a civil suit for this purpose and not a writ petition.

31. For the reasons given above, we uphold the impugned judgment of the learned single Judge giving our own reasons. There is no force in this appeal. The appeal is accordingly dismissed.