
(1987) 04 CAL CK 0020
In the Calcutta High Court

Sri Dipak Sen

APPELLANT

Vs

Asiatic Society and Others

RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

Citation : (1988) 1 LLJ 102

Hon'ble Judges : Prativa Bonnerjea, J

Bench : Single Bench

Judgement

Prativa Bonnerjea, J.—The Respondent No. 1, Asiatic Society was registered under the Societies Registration Act, 1840 and thereafter, under the West Bengal Societies Registration Act, 1960. It is a non-profit making body corporate formed with philanthropic and literary research objects.

2. The petitioner was appointed by the respondent No. 1 in the post of "Publication Supervisor" on part-time basis on 1st January, 1962 initially for six months. A copy of the bio-data of the petitioner, annexed at page 27 of the petition, establishes that the petitioner is fairly qualified and is an experienced man in this line and several important publications were made by the respondent No. 1 on account of the meritorious services of the petitioner. According to the petitioner, at the time of his appointment, he was assured by the respondent No. 1 that on expiry of the probationary period of one year he would be absorbed in the full time vacancy under the respondent No. 1. The appointment letter is annexure "A" to the petition. At that time he was entitled to a consolidated pay of Rs. 200/- per month which was revised from time to time and, since 1974 it was increased to Rs. 300/- per month. The petitioner was allotted Provident Fund A/C PF/15600/87 and became entitled to the benefit of Provident Fund Scheme with effect from January, 1975. Since then he has been regularly contributing Rs. 31/- per month in his said account. He also became entitled to other marginal benefits including Widow Pension along with the other employees of the respondent No. 1. The petitioner served the respondent No. 1 from 7th December

1961 to 8th June 1985. According to him, he took 12 days" sanctioned leave and on expiry of the same when he went to join his office on 10th June 1985, he was wrongfully prevented from doing so for 4/5 consecutive days for which he lodged a complaint with the Park Street Police Station by a letter dated 14th June 1985. The respondent No. 1 alleged that the petitioner's service was terminated by the respondent No. 1 from 8th June 1985. The petitioner alleges that no such notice of termination was received by the petitioner upto the date when this writ petition was moved. The allegation of wrongful prevention from joining his office in this petition is denied by the respondent No. 1 in its affidavit-in-opposition but the fact that he had been drawing salary at the rate of Rs. 500/- per month since 1974 and enjoying Provident Fund facilities along with other facilities, as alleged in the petition, are admitted by the respondent No. 1. It is alleged by the respondent No. 1 that Provident Fund facilities are available to all categories of employees including casual workers as per requisitions made from the office of the Provident Fund Commissioner and as such it had no bearing on the character and nature of the service of any incumbent. The respondent No. 1 craved reference to the said requisition at the time of hearing of this application but no such requisition was produced before the Court at the time of hearing. It is also the case of the respondent No. 1 that the term of service of the petitioner was renewed from time to time by contracts and Court's attention was invited to the fact that the petitioner himself in paragraph 4(h) of his affidavit-in-reply had admitted that between 1st January 1963 and 31st December 1977 his period of service was extended once for 3 years and again for 5 years. In the affidavit-in-opposition, the respondent No. 1 specifically alleged that in view of the fact that the service of the petitioner was governed by contracts entered into from time to time it is not open to the petitioner to avail himself of the writ jurisdiction or to enforce personal contract of service under Article 226 of the Constitution of India. During hearing, I directed the respondent No. 1 to produce the service records of the petitioner to find out whether the petitioner's service was governed by mutual contracts entered into between the parties from time to time as alleged by the respondent No. 1 or not. Pursuant to my direction, the respondent No. 1 produced a copy of an undated draft contract prepared by the respondent No. 1 in July, 1974 containing blank spaces which was signed by the petitioner in the manner as follows:

"consented to" and under his signature the date given was 9th January 1975. In the last page of this draft agreement the petitioner had written as follows:

The draft is approved by the Council and I have no hesitation in consenting to it.

3. Below his signature the date is again 9th January 1975. In Clause I of the draft agreement the period of service was for 3 years five months starting from 1st August 1974 till 31st December 1977 and subject to be terminated earlier. The salary was fixed at Rs. 425/- during this period of service. Hence the document does not fit in with the admission of the petitioner in paragraph 4(h) that his service was renewed by contracts once for three years and then for five

years. This document also does not fit in with the admission of the respondent No. 1 in the affidavit-in-opposition made through its Secretary Dr. Chandan Roy Chowdhury that since 1974 the petitioner was drawing a salary of Rs. 500/- per month. Save this peculiar undated document containing blank space, the respondent No. 1 failed to produce any other contract. By my order dated 8th August 1986, I directed this document to be kept in the records of this case. It is surprising how this document absolutely inconsistent with actual facts and circumstances of this case and contrary to the admissions of both the petitioner and the respondent No. 1 came into existence and why the respondent No. 1 got it prepared and signed by the petitioner and kept the same in the petitioner's service record. The respondent No. 1 did not give any explanation and the petitioner alleged that it was thrust upon him. I am convinced that this alleged agreement was brought into existence for some other purpose and is certainly not the contract governing the terms and conditions of the petitioner's service IS under the respondent No. 1, as alleged by the respondent No. 1 as otherwise the salary

4. The Asiatic Society Act, 1984 came into force on 25th June 1984. The main object of the Act was to declare that the respondent No. 201, Asiatic Society, was an institution of national importance and to give it financial assistance for enhancement of its philanthropic works and for advancing its literary research works for the benefit of the public. A summary of the provisions of the Act is set out below:

According to Section 4 of this Act, the Central Government is to give the respondent No. 1 financial assistance by way of grant, loan or otherwise for every financial year for the purpose of enabling the respondent No. 1 to discharge its functions efficiently. Section 5(1) and (2) impose duties on the respondent No. 1 to maintain " proper accounts, prepare statement of accounts, balance sheets in such form as may be approved by the Comptroller and Auditor-General of India and such accounts are to be audited by the Comptroller and Auditor-General of India who will have the same rights, privileges and authority as in the case of auditing Government accounts. Such audited accounts have to be forwarded annually to the Central Government and the same have to be laid before each House of the Parliament. u/s 6, the respondent No. 1 will have to submit annual report to the Central Government. Section 7 restricted the power of the respondent No. 1 to alter, extend, modify or abridge any of its objects or to amend its memorandum or regulations or to sell or dispose of any of its properties and assets or to be dissolved without the previous approval of the Central Government. Section 8 provides that the Central Government will establish a Planning Board for the purpose of advising the respondent No. 1 with respect to its planning and implementation of the development programmer and other matters concerning the Society. The Chairman of the Board and its other members are to be appointed by the Central Government. The Board will regulate its own procedure subject to any rule made by the Central Government. u/s 9, it is the Central Government which will constitute as many Committees as

are necessary and their members are to be appointed by the Central Government and each Committee will be assigned with works mentioned in Section 9(1)(a) (b), Sub-section (2), (3) and (4) thereof. Similarly, u/s 10, the Central Government will constitute a Committee whose members will be appointed by the Central Government for reviewing the work done by the respondent No. 1 for inspecting its building and other assets, for evaluating the works done and for advising the State Government in important matters concerning the works of 40 the respondent No. 1. This Committee can give direction to the President of the Society and in case the President does not carry out its directions satisfactorily, the Central Government will directly issue such directions concerning the subject-matter for which direction was issued. u/s 12, the Central Government will have power to issue direction to the respondent No. 1 in respect of any of its matters, including direction for amendment of its memorandum, regulations and determining the priority of works undertaken by the respondent No. 1. u/s 12 Sub-section (2), such direction as aforesaid will have overriding effect notwithstanding any law for the time being in force or anything in the memorandum or regulation of the respondent No. 1. Section 13 empowers the Central Government to issue show-cause notice in case the respondent No. 1 fails to give effect to any of the directions of the Central Government. It further provides that if the cause is not shown in accordance with the direction of the Central Government then the Central Government will take over the management of the respondent No. 1 and thereupon all members of the Council including the President will be deemed to have vacated their respective post and a representative of the Central Government will be appointed under Sub-section (2) of Section 13 for taking over the management. Section 14 of this Act provides that this Act shall have effect notwithstanding anything inconsistent therewith in the memorandum or regulation of the respondent No. 1 or in the West Bengal Societies Registration Act, 1960 or in any other law for the time being in force. The last Section 15 provides that the Central Government by a notification published in the Official Gazette may make rules in respect of the procedure to be followed by the Board u/s (3) of the Act regarding the terms of the office of its members, procedure in discharging its duties, filling up vacancies, etc. and the procedure to be followed by the Committee in discharging its functions and the allowance to be paid to its members and other matters concerning it under Subsection (2) of Section 10 of the Act and in respect of any other matters necessary under this Act. All such rules have to be approved or modified by the two Houses of the Parliament.

The provisions of this Act have to be specifically scrutinised as the respondents' case is that the respondent No. 1 being an autonomous philanthropic institution no application under Article 226 of the Constitution of India will lie against it. But the petitioner states that the respondent No. 1 is a "State" or "other authorities" and or has become an "instrumentality" or an "agency" of the Central Government within the meaning of Article 12 of the Constitution of India and a writ petition will lie against it. The respondent's counsel is vehemently disputing

the aforesaid contention of the petitioner. The submission of the counsel for the respondent No. 1 on this point is as follows:

The Society is a completely autonomous body and the Act of 1984, while declaring IS the Society as an institution of national importance, has highlighted the patent fact to preserve this autonomy of the respondent No. 1 as would be clear from the definition given about the Society in terms of Section 3(d) of the Asiatic Society Act, 1984 that it is a society within the meaning of West Bengal Societies Registration Act, 1960. The Asiatic Society while adopting its memorandum has also adopted a Constitution of its own and in terms of Clause 4 of the said Constitution it has tried to secure preservation of the intrinsic autonomy of the said institution and the composition of the Council of the Society as contemplated in Clause 37 of its Constitution. Hence it is an independent autonomous body and not a "State" or "Authority" or "instrumentality" or "agency" within Article 12 of the Constitution of India.

5. A copy of the Regulations of the respondent No. 1 corrected upto 15th May 1972 was handed over to me with further corrections made therein after the Act of 1984 came into force. Rule 4 of the regulations referred to above provided that the administration, direction and management of the affairs of the Society would be entrusted to a Council comprised of a President, Vice-President, General Secretary, a Treasurer and such Additional Secretaries as the Council may nominate in accordance with Rule 37 with many ordinary members and the Council will consist of minimum 15 and maximum 23 persons. Subsequently, the number was increased to minimum 18 and maximum 26. After the Act of 1984 came into force. Rule 4 was amended by adding:?

Provided always that within the aforesaid number there shall be on the Council four nominees of the Government of India and one nominee of the Government of West Bengal who need not necessarily be the members of the Society.

6. Another Regulation 4A has been added under the heading "Standing Finance Committee" and the function of this Committee is to consider and advise the Council on all matters having financial implications. It will be composed of three nominees of the Government of India, one nominee of the Government of West Bengal and three nominees of the Council including the General Secretary and the Treasurer, both Ex-officio, and one nominee from among its members. The Chairman of the Standing Finance Committee shall be designated by the Central Government from among the members of the Standing Finance Committee. The quorum of the Standing Finance Committee will be constituted with four members of the Committee including at least one nominee of the Central Government. Clause 37 of this Regulation as originally stood provided for the mode of electing the officers and the Council. The procedure and the powers of the Council of the respondent No. 1 under Clause 37 of the Regulation have been subsequently curtailed by the addition of the "proviso" to Clause 4 of the Regulation providing that Council must consist of atleast four nominees of the Government of India and one State Government nominee who may be a stranger

to the Society. Hence all functions of the Council must be discharged in the presence of Government representative. A close scrutiny of the provisions of 1984 Act and the consequential amendments made by the respondent No. 1 in its Regulations, clearly reveal that the "autonomy" emphatically proclaimed by the counsel for the respondent No. 1 is no longer in existence. On the contrary, the respondent No. 1 and its Council are now being controlled by the Central Government as well as by the State Government even in respect of their day to day activities. The quorum for transacting any business cannot be formed without the nominee of the Central Government. Therefore, the hay days of absolute autonomy of the Council of the respondent No. 1 are gone. Hence, I am" unable to accept the contention of the counsel for the respondent No. 1 that 1984 Act was passed only to highlight the autonomous character of the Society and/or to preserve its autonomy. On the contrary, the Council is now bound to observe all the directions to be issued by the Central Government u/s 10 Sub-section (5) and (6) and Section 12 of the Act and in case of disobedience, the Central Government is entitled to issue show-cause notice and to take over the entire management or any of the activities of the respondent No. 1 u/s 13 of this Act through its representative.

7. Then what is the effect of this Act on the respondent No. 1? Did it by its provisions bring the respondent No. 1 within the purview of Article 12 of the Constitution of India? The counsel for the respondent No. 1 very emphatically submitted that 1984 Act did not reduce the respondent No. 1 to an "instrumentality" or an "agency" or an "authority" or a "State" within the meaning of Article 12 of the Constitution of India. He relies on several decisions in support of his contention. The first one is *Ajay Hasia v. Khalid* 1981-I-L.L.J.-103. In this case, the question arose whether the Regional Engineering College sponsored by the Government and managed by a Society registered under the Societies Registration Act came within the purview of Article 12. In paragraph 9 of the case, it has been held 1981-I-L.L.J. 103 :

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's* case 1979-II-L.L.J.-217. 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.

8. The counsel for the respondent No. 1 also relies on paragraph 13 of *Ajay Hasia's* case (supra) where the Supreme Court has been dealing with the argument of the respondents" counsel appearing before them in that case and was urging that a Society registered under the Societies Registration Act could

never be regarded as an "authority" within the meaning of Article 12 of the Constitution of India. In support of his contention, the counsel relied on Sabhaji Tewari Union of India reported in (1975-I-L.L.J.-374) being an earlier decision of the Supreme Court. In Sabhaji's case (supra) the Council of Scientific and Industrial Research was a Society registered under the Societies Registration Act. It was contended in that case that the Council had become an authority" within the meaning of Article 12 of the Constitution of India but the Court found that the Government was giving only financial assistance to the Council to promote or guide this particular undertaking in a trade. Whatever rules or bye-laws had to be framed by the Government were not to be inconsistent with the rules or bye-laws of the Council. Hence, the Government control over the Council was not sufficient enough to reduce the Council to an instrumentality" or "agency" or "authority" within the meaning of Article 12. But in Ajay Hasia's case (supra) the Supreme Court clearly held that in Sabhaji Tewari's case (supra) the Supreme Court did not lay down any proposition that a Society registered under the Societies Registration Act could never be an instrumentality or agency or authority or State within the meaning of Article 12 of the Constitution as contended on behalf of the respondents before the Supreme Court and this will be clear from paragraph 13 of Ajay Hasia's case 1981-I-L.L.J. 103

This decision Sbhajit's case (supra) being a decision given by a Bench of five Judges of this Court is undoubtedly binding upon us but we do not think it lays down any such proposition as is contended on behalf of the respondents.

9. The next case relied on by the counsel for the respondent No. 1 is in Chakradhar Patel v. Som Singh (AIR) 1982 Ori 39. In that case, a question arose whether a Co-operative Society which was a Society within the meaning of Section 2(h) of the Orissa Co-operative Societies Act was a "State" within the meaning of Article 12 of the Constitution of India. The Division Bench of the Orissa High Court considered the cases of International Airport Authority (supra) Som Prakash Rekhi v. Union of India 1981-I-L.L.J.-79 and Ajay Hasia (supra) and at page 42, the Division Bench observed as follows:

As pointed out by one of the learned Judges in Som Prakash Rekhi's, case, (supra) the decision in the International Airport Authority's case, (supra) has given the matter a new turn and the older decisions may require review. Notwithstanding this position, even applying the tests in the three cases, which we have referred to above and on which strong reliance was placed by petitioner's counsel, we are of the view that a Co-operative Society of the type we are concerned with cannot be treated as State" within the meaning of Article 12 of the Constitution.

10. It should be noted that the ratio of this decision is that if the facts of a particular case fulfill the tests laid down in 1979-II-L.L.J.-217 1981-I-L.L.J.-79 and 1981-I-L.L.J.-103 then even a Co-operative Society can come within the meaning of "authority" under Article 12 of the Constitution of India. But the facts in (AIR) 1982 Ori 39 being different and not attracting the tests laid down by the

aforesaid three cases, the Co-operative Society concerned was held to be not an "authority" within Article 12 of the Constitution. Whether a Society registered under the Societies Registration Act or a Cooperative Society can come within the purview of Article 12 will depend on the facts and circumstances of each particular case.

11. The last case on this point relied on by the respondent's counsel is J.S. girl Rao Vs. Hind Kusht Niwaran Sangh and Others, . In this case, the question arose whether Indian Leprosy Association (Hind Kusht Niwaran Sangh) was an "authority" within Article 12. Applying the tests laid down in International Airport Authority (supra) and Ajay Hasia's (supra) cases, it was held that facts and circumstances of "Hind Kusht"s case were not fulfilling the tests laid down by the aforesaid two cases and as such Hind Kusht Sangh" could not be treated as an "authority" within the meaning of Article 12 of the Constitution.

12. Therefore, the four cases, strongly relied on by the counsel for the respondent No. 1, make it very clear that if the facts and circumstances of a particular case attract the tests laid down in International Airport Authority"s case (supra) and Ajay Hasia"s case (supra) no matter whether the organisation is a Corporation constituted under an Act or a company incorporated under the Companies Act or a Society registered under the Societies Registration Act or a Co-operative Society, it will be considered as an "authority", "instrumentality" or "agency" of the Government and will come within the purview of Article 12 of the Constitution of India provided the facts and circumstances of that particular case warrant 40 coming to that conclusion.

13. The petitioner"s counsel on the other hand very strongly relied on International Airport Authority"s case (supra) paragraph 20 wherein the tests laid down by the Supreme Court had been enumerated 1979-II-L.L.J.-217 :

It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarised as under: whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance, whether there is any other form of assistance given by the State, and if so, whether it is of the usual kind or it is extra-ordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State-conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to Governmental functions. This particularisation of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the Cooperation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an

unfailing answer to the question whether a corporation is governmental instrumentality or agency. Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. "The dispositive question in any State action case", as pointed out by Douglas. J. in *Jackson v. Metropolitan Edison Co.* 419 US 345; 42. ed. 2nd 477, "is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compels a finding of State responsibility". It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individuality as being insufficient to support a finding to that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

14. He also relied on *Ajay Hasia's case* (supra) in support of his contention that a society registered under the Societies Registration Act can be an "authority" within the meaning of Article 12 of the Constitution and invited my attention to the observation of the Supreme Court in paragraph 13 of this report that a Society can be an "authority" 1981-1-L.L.J.-103

The Court did not rest its conclusion on the ground that the Council was a Society registered under the Societies Registration Act. 1860 but proceeded to consider various other features of the Council for arriving at the conclusion that it was not an agency of the Government and therefore not an authority". This would have been totally unnecessary if the view of the Court were that a society registered under the Societies Registration Act can never be an "authority" within the meaning of Article 12.

15. The next case relied on by the petitioner's counsel is in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Gunguly and Anr.* 1986-II-L.L.J.-171. In this case, it was held in paragraph 70 1986-II-L.L.J.-171 at IW

For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State. The Central Inland Water Transport Corporation which is the Appellant in these two Appeals before us. squarely falls within these observations and it also satisfies the various tests which have been laid down. Merely because it has so far not the monopoly of inland water transport is not sufficient to divest it of its character of an instrumentality or agency of the State. It is nothing but the Government operating behind a corporate veil carrying out a governmental activity and governmental function of vital public importance. There can thus be no doubt that the Corporation is the "State" within the meaning of Article 12 of the Constitution.

16. The aforesaid finding was arrived at by applying the tests laid down in *International Airport Authority's case* (supra) and *Ajay Hasia's case* (supra). In

this case 1986-II-L.L.J.-171 the Supreme Court distinguished the cases relied on by the respondents" counsel and considered almost all the decisions on this point

17. The counsel for the petitioner also relied on A.L. Kalra v. The Project and Equipment Corporation of India Ltd. 1984-II-L.L.J.-186 where relying on Ajay Hasia's case (supra) and applying the tests, the respondent was held to be "other authority" within the meaning of Article 12. The petitioner's counsel also cited on B.S. Minhas v. Indian Statistical Institute and Ors. 1984-I-L.L.J.-67. This Institute was a Society registered under the Societies Registration Act and was carrying on its activities. By Indian Statistical Institute Act, the Institute was declared to be an "Institution of National Importance". In paragraph 2 of this decision, the Supreme Court enumerated the provisions of this Act. From these provisions it has become abundantly clear to this Court that the provisions of Indian Statistical Institute Act and those of Asiatic Society Act, 1984 are almost similar in their scope and effect. In this Institute's case (supra) applying the tests laid down in International Airport Authority's case, (supra) and Ajay Hasia's case (supra) and after considering the earlier decision reported 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, , it was held that the Institute was an "authority" within the meaning of Article 12 of the Constitution. Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another, relied on by the petitioner is a Full Bench decision of the Delhi High Court. In this case, the respondent was a Society registered under the Societies Registration Act who entered into an arrangement with the Government to enable it to discharge its public function of imparting education and thereby not only received concessions and privilege and authority to conduct public examination but was statutorily recognised by Section 2(a) of Delhi Education Act as a body of persons or a Society recognised and authorised by the Government to discharge the public or the Governmental function of imparting education. The rules and regulations of the Society established Governmental supervision and control on the Society by two of the members of the society to be nominated by the Government. On constructions of its rules and regulations, the Full Bench held that the Society must be deemed not only functionally but also structurally deeply impregnated with Governmental character and was admittedly discharging a public function and was an "authority" within the meaning of Article 12. It would be significant to note that the tests enumerated in Airport Authority's case (supra) were applied in this case.

18. I have already pointed out that in Som Prakash Rekhi's case (supra) the Supreme Court had held that International Airport Authority's case (supra) had given a new turn to this point. In this case, the Supreme Court was considering the old decisions and the new decisions on this point and held at paragraph 30 1981-I L.L.J. 79 :

True, a tour of the case laws runs zigzag, but guided by principles and

jurisdictional discriminant it is possible to reach the same destination to which the two rulings 1979- 40 II-L.L.J.-217 and 1980-I-L.L.J.-222 referred to above take us. Shri G.B. Pai pressed us to reconsider the latest decisions in view of their error when read in the perspective of prior rulings by referring the issue to a larger Bench. We will presently explain by examining the earlier cases why we hold the recent decisions to be right and reconcilable with the broad approach in the older authorities. Moreover, rulings of this Court are calculated to settle the law and not to unsettle it by reconsideration in season and out merely because it hurts one party or other or tastes sour for one Judge or the other. It incompatibility between the ratios stares us in the face, we must clear the confusion by process suggested by Shri Pai. But, we are satisfied that the Airport Authority (*supra*) has been consistently and correctly decided.

19. In view of the fact the law on this point has already been settled by the Supreme Court by the decisions starting from 1979-II L.L.J. 217 to 1986-II-L.L.J.-171 there is no necessity of multiplying the authorities on this point, The facts of the case of Indian Statistical Institute (*supra*) and the facts of the present case of Asiatic Society run parallel and the provisions of the Indian Statistical Institute Act and the Asiatic Society Act, 1984 are almost similar in their nature, scope and effect. Under the circumstances applying the tests in Airport Authority's case, (*supra*) Ajay Hasia's case (*supra*) and Statistical Institute's case (*supra*) and the provisions of the Asiatic Society Act, 1984 and the cumulative effects of the above mentioned Act, I hold that this Asiatic Society is not only functionally but also structurally deeply impregnated with the Governmental operation and as such it is an "authority" within the meaning of Article 12. Hence the writ petition is maintainable against the respondent No. 1.

20. The next question to be decided is whether the petitioner is a Government servant 40 and he had been holding a civil post and whether he was a permanent employee, as alleged by him. According to the respondent No. 1, the petitioner was a part-time temporary employee serving the respondent No. 1 pursuant to contracts entered into from time to time. Under Regulation 41(c), as it stood originally, the duties of the Council were to superintend and direct all the publications of the respondent No. 1 One of the main objects of the respondent No. 1 was to "acquire" finance, publish any periodicals, books or other literatures that the Society may think fit for promotion of its objects as will be evident from Clause 8(e) of the Regulations. To discharge the aforesaid main functions of the Society, in 1961 the Society, the respondent No. 1, issued an advertisement for a qualified person to look after its publication section. The advertisement was silent regarding the terms, conditions, designation or the duration of service. The petitioner applied for the post and was appointed as a part-time publication supervisor at a consolidated salary of Rs. 200/- per month, initially for six months. Both the parties admit that thereafter the petitioner's service was once extended for three years and then for five years expiring on 30th December 1977. Both the parties admit that the petitioner was drawing Rs. 500/- per month since 1974. I have already mentioned that the respondent No. 1 could

produce only one contract dated 9th January 1975 recording that the petitioner's service would be counted with retrospective effect from 1st August 1974 to 30th December 1977 i.e. only for 3 years and five months. The petitioner's allegation is that this purported contract was thrust upon him. This contract does not fit in with the facts pleaded in their respective pleadings and is absolutely contrary to the admissions of both the parties contained in the petition and the affidavit-in-opposition. The respondent No. 1 is unable to explain this contract. Moreover if the respondent No. 1 is to be believed that the petitioner was serving the respondent No. 1 under different period contracts, then how could the petitioner continue in this post from 31st December 1977 to 8th August 1985? There was no contract after 31st December 1977. If the post and the service both were temporary, then both ought to have come to an end on expiry on 30th December 1977. Apart from the fact that the petitioner continued to serve the respondent No. 1 even after 30th December 1977, he was entitled to have the benefit of the Provident Fund Scheme, widow pension, Puja allowance, medical benefits and other fringe benefits. According to the petitioner, all these would indicate that the petitioner was a permanent employee in a permanent post but the contention of the respondent No. 1 is that all employees, even the casual employees, were enjoying all these pecuniary benefits. Therefore, receipt of pecuniary benefits does not establish that the petitioner was a permanent employee. In view of the fact that the respondent No. 1 has failed to produce any contract to prove that after 30th December 1977 the petitioner continued to serve the respondent No. 1 under a contract, I am unable to accept this contention. The respondent No. 1 frantically attempted to prove that the petitioner's service was governed by contracts only with the view to urge that these contractual rights cannot be enforced under Article 226 of the Constitution against a Society registered under the Societies Registration Act, 1960 which is only an autonomous body. The Counsel for the respondent No. 1, in support of his contention, mentioned above, relies on *Kulchhindar v. Hardayal* 1976-II-L.L.J.-204. In this case, it was contended that the Punjab State Co-operative Land Mortgage Bank Limited was a "State" within the meaning of Article 12 of the Constitution and a writ petition would lie against it. The Supreme Court accepted the first contention but held that the petitioner was trying to enforce contractual rights by that writ petition and as such the writ petition was dismissed holding that mere contractual rights could not be exalted into service rules or statutory duties or sovereign obligations and no writ would lie. But the question of implementation of contractual rights will arise provided there is a contract and the respondent No. 1 can satisfy this Court by producing the same. There being no contract after expiry of 30th December 1977, it would be difficult for this Court to hold that the petitioner is trying to enforce contractual rights and obligations by this writ petition. I have already pointed out that no contract could be produced by the respondent No. 1 except the peculiar one dated 9th January 1975 which does not fit in with the facts and circumstances of this case.

21. The petitioner's case is that he was continuing as a permanent employee in

a permanent post. His case is that the respondent No. 1 did not have any service rules or conditions for its employees at any point of time when under the provisions of 1984 Act, which came into force on 25th June 1984, the respondent No. 1 became an "authority" or a "State" within the meaning of Article 12 of the Constitution. On and from that date i.e. 25th June 1984, all the employees serving the respondent No. 1 became Government servants holding civil posts and the Civil Service Regulations and allied Service Rules automatically became applicable to these employees. I will consider this contention of the petitioner later on. The counsel for the respondent No. 1 relies on V.P. Gupta v. Union of India 1976 LIC 288, a Full Bench decision of the Delhi High Court. In this case, following the old law enunciated in Subhagit Tewari's case (supra) the Delhi High Court held that Indian Council of Agricultural Research and Indian Agricultural Research Institute were not "authorities" within Article 12 of the Constitution. This case was decided prior to International Airport Authority's case (supra) which gave a new turn to the law on this point. Hence it is of no help to the respondent No. 1. Moreover, this case has nothing to do with the point now under consideration. The next case relied on by the counsel for the respondent No. 1 is in Ch. Venkata Swamy Vs. Superintendent, Post Offices and Another, . In this case the petitioner was employed as a part-time Extra Departmental Branch Post Master in 1925. He was dismissed in 1954. The petitioner filed an application under Article 226 of the Constitution challenging the legality and validity of the order of dismissal. The Court held that the Extra Departmental part-time Branch Post Master did not hold any civil post and was not a Government servant within the meaning of Article 311(2) of the Constitution. This case was cited particularly in support of the contention that a part-timer cannot be a Government servant or a holder of a civil post. But Ch. Venkata Swamy Vs. Superintendent, Post Offices and Another, cannot now be considered as a good law in view of the decision reported in State of Assam v. Kanak Chandra Dutta 1968-I-L.L.J.-288. In this case it was held that all persons who were working as extra departmental agents of the Post and Telegraph, Department were holders of civil posts. In p. 291 of 1968-I-L.L.J.-288 the Supreme Court, while dealing with Ch. Venkata Swamy Vs. Superintendent, Post Offices and Another, expressly held:

... the observation in that case that a part-time employee cannot be the holder of a civil post outside the regularly constituted services is too wide and cannot be accepted"

The same view was taken by the Supreme Court once again in The Superintendent of Post Offices and Others Vs. P.K. Rajamma, . following 1968-I-L.L.J.-288. Therefore, it is too late in the day to agitate that a part-timer cannot be a Government servant and cannot hold a civil post. The counsel for the respondent No. 1 then argues that because an employee enjoys Provident Fund facilities or other financial fringe benefits he cannot be treated as a Government servant only on that basis. In support he cites State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, . He invites my attention to paragraph 15 of this report and submits that all the tests required for determining whether a

person is a Government servant or a member of a Civil 1 Service have been enumerated in this paragraph. Going through this paragraph, I find that the petitioner in the present case fulfils all the tests laid down in the said paragraph. This case is actually helping the petitioner and not the respondents.

22. Turning to the petitioner's contention that all the employees of the respondent No. 1 are now governed by the Central Civil Service Regulation and allied Service Rules, because these rules became applicable on and from 25th June 1984 when Asiatic Society Act, 1984 came into force, I find there is a lot of force in this" contention. It is an admitted fact that the respondent No. 1 had no service rules and I have already held that the respondent No. 1 became an "authority" within the meaning Article 12 of the Constitution of India. The fact that the petitioner was a part-timer throughout his service period does not make any difference in his position as a Government servant. The word "part-time" denotes that the employee's working hours are less than that of a full time employee and he has to work for fixed hours. The petitioner is strongly relying on Civil Service Regulations 426, 429 and 436 for the purpose of his case. These regulations are set out below:

426: If an officer is selected for discharge owing to abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed to be at least equal to those of his own, have the option

(a) of taking any compensation pension or gratuity to which he may be entitled for the service he has rendered; or

(b) of accepting another appointment on such pay as may be offered, and continuing to count his previous service for pension.

xx xx xx xx 429: The discharge of one officer to make room for another better qualified is not the abolition of an appointment within the meaning of Article 426; the abolition must produce a real saving to Government. Particulars of the saving effected should be fully set forth in every application for compensation pension. The saving should always exceed the cost of pension; otherwise it may perhaps be better to postpone the reduction of establishment or abolition of appointment.

XX XX XX 437: Reasonable notice should be given to an officer in permanent employ before his service is dispensed with on the abolition of his office. If, in any case, notice of at least three months is not given, and the 40 officer has not been provided with other employment on the date on which his service is dispensed with then with the sanction of the authority competent to dispense with the officer's service, the gratuity of not exceeding his emoluments for the period by which the notice actually given to him falls short of three months, may be paid to him, in addition to the pension to which he may be entitled under Articles 474 to 481; but the pension shall not be payable for the period in respect of which he receives a gratuity in lieu of notice.

23. The petitioner's counsel submits that in the staffing pattern, prepared by the

establishment Committee, a post of Publication Officer was created. He further submits that two new part-time posts were also created with monthly salary of Rs. 550/- each. In that view of the matter, the permanent post of Publication Supervisor was purported to be abolished and the petitioner was discharged from his service. He submits that all steps for abolition of his post and termination of his service were taken contrary to the aforesaid regulations and as such are illegal, invalid and arbitrary. He was not absorbed or offered to take any post nor given any compensation and his service was dispensed with without giving statutory notice. Moreover, the abolition of the post of Publication Supervisor did not result in real saving to the Government. Therefore, the resolution of the Council dated 8th June 1985 and the notice dated 8th June 1985 dispensing with the petitioner's service are both bad in law and are liable to be quashed.

24. The petitioner also alleged that the purported abolition of the post of Publication Supervisor and his consequential discharge from his service are both malafide and have been resorted to for inflicting punishment upon him as he refused to act as the publicity agent of Dr. Chandan Roy Choudhuri, the then General Secretary of the respondent No. 1. According to the petitioner, he was working as in-charge of law courts reporting in the daily newspaper "Aajkaal". Since the middle of 1982, Dr. Roy Choudhuri started visiting the office of "Aajkaal" and wanted the petitioner to highlight his multifarious activities by publishing news items regarding him either in the news headlines or in the introductory paragraphs of news items. In short, he wanted to utilise this newspaper as his publicity medium and the service of the petitioner as his, publicity agent. Dr. Roy Choudhry handed over to the petitioner certain letters written by him to the late Prime Minister Mrs. Indira Gandhi with copies to Mrs. Madhuri Shah and Mrs. Sheela Kaul as well as a draft letter written to the then Governor of West Bengal, Mr. B.D. Pande for publishing in the newspaper. A copy of Dr. Roy Choudhuri's letter addressed to the petitioner requesting him to prepare a feature story concerning the contents of the letters addressed to Mrs. Gandhi and Mr. B.D. Pande along with the letters mentioned above are annexed to the affidavit-in-reply of the petitioner filed in this proceeding. The allegations of malafides against Dr. Roy Choudhuri have also been made in paragraphs 27 and 28 of the petition. Dr. Roy Choudhuri while filing the affidavit-in-opposition on behalf of the respondent No. 1 generally denied these allegations. But strangely enough, he remained absolutely silent about the detailed allegations against him in the affidavit-in-reply as well as the copies of the documents annexed to the affidavit-in-reply. He could have prayed for an opportunity to deny the charges levelled against him in the affidavit-in-reply as also to challenge the genuineness or otherwise of the documents disclosed by the petitioner by filing a supplementary affidavit with the leave of Court. But he did not do so. During hearing, I directed the respondent No. 1 to reconsider the petitioner's case. The Council consisting of Dr. Roy Choudhuri and other members purported to consider the same and rejected the petitioner's case. One R.K. Mukherjee, the Registrar of the respondent No. 1, was authorised by Dr. Roy

Choudhuri to affirm an affidavit stating that on reconsideration of the petitioner's case it was rejected by the Council. Dr; Roy Choudhuri himself could have availed of this opportunity and filed an affidavit-in-reply. Most probably, Dr. Roy Choudhuri did not do so as he had nothing to deny. The petitioner states that the purported abolition of the post of Publication Supervisor and his discharge from his service were manoeuvred by Dr. Roy Choudhuri to retaliate against the petitioner as he did not oblige him by acting as his publicity agent.

25. Dr. Roy Choudhuri, while filing the affidavit-in-opposition on behalf of the respondent No. 1 had made certain statements which not only surprised me but also shocked me profoundly. It was alleged in the said affidavit that the petitioner had filed a T. Suit No. 1388 of 1984 in the City Civil Court and therefore, the writ petition should not be entertained on the ground that the petitioner was not entitled to take two legal recourses on the same cause of action. In view of the pendency of the suit, the writ petition would not lie. Nobody knows better than Dr. Roy Choudhuri that the subject-matter of the suit is the rejection of petitioner's candidature for the post of Publication Officer and the subject-matters of the present petition are arbitrary abolition of the post of Publication Supervisor and the order of termination of the petitioner's service, viz., the resolution of the Council dated 8th June 1985 and the notice of termination of petitioner's service dated 8th June 1985. Both are entirely different matters. Still Dr. Roy Choudhuri on behalf of the respondent No. 1 deliberately tried to confuse the two issues. This was not expected from a distinguished person like Dr. Roy Choudhuri and it was extremely unbecoming of an institution of national importance. This proves the desperate attitude of the respondent No. 1 to get ride of the petitioner.

26. On the facts and circumstances of this case, I hold that the respondent No. 1 is an "authority" and the petitioner was holding a permanent civil post under it as a Government servant. Since 25th June 1984, the petitioner was governed by the Central Civil Service Regulations and allied Service Rules and the abolition of the post of Publication Supervisor and consequential discharge of the petitioner from his service, both being contrary to the statutory regulations mentioned above, are arbitrary, bad in law and are liable to be quashed.

27. Assuming for the sake of argument that the aforesaid service rules do not apply to this case, let us examine whether the abolition of the post of Publication Supervisor and the discharge of the petitioner from his service were done according to the statutory regulations framed under the Asiatic Society Act, 1984. It is an admitted case that this post has been abolished in accordance with the resolution of the Council. Let us examine whether on 8th June 1985, the Council had the power of authority or jurisdiction to abolish any post or dispense with the service of any employee of the respondent No. 1.

28. The Regulation 41 of the respondent No. 1, as it stood before 25th June 1984, enumerated the powers and duties of the Council. The Council was the apex body with all the powers to control and run the respondent No. 1. The

Council was all in all in true sense of the term. Rule 41(d) conferred powers on the Council to appoint as many salaried officers or servants as necessary, to define their duties, allowances, salaries, gratuities and privileges. The Council also had the power to suspend and dismiss them or dispense with their services when occasion would require and to report all such actions to the next General Meeting. Any appointment with salary exceeding Rs. 150/- per month was subject to the confirmation by the next General Meeting. On behalf of the respondent No. 1, with great confidence, my attention is invited to this Rule 41(d) and it is submitted that the Council had the right to dismiss any employee and/or to dispense with his service under the Rule 41(d). According to him, the Council had exercised its said power under Regulation 41(d) in dispensing with the service of the petitioner and in doing so acted strictly in accordance with this rule.

29. But I think that the status and/or the position of the Council had undergone an enormous change and its powers were curtailed and/or severely corroded by the Act of 1984. Section 12 of the Act lays down:

The Central Government may, if it is satisfied that it is necessary so to do in the public interest, issue, for reasons to be recorded and communicated to the society, such directions as it thinks fit to the society and such directions may include directions requiring the Society ?"

(a) to amend the memorandum or to make and amend any regulation within such period as may be specified in the directions.

(b) to give priorities to the works undertaken or to be undertaken by the Society in such manner as the Central Government may think fit to specify in this behalf

(2) Any directions issued under this Section shall have effect notwithstanding anything contained in any law for the time being in force or in the memorandum or regulations of the society.

30. This non-abstante Clause in Sub-section (2) of Section 12 of the Asiatic Society Act is very important. It clearly establishes that the Central Government's directions have to be complied with by the Society irrespective of its any regulation or any existing law. It overrides everything. It is admitted that pursuant to the directions given by the Central Government from time to time, the regulations of the respondent No. 1 had to be amended drastically. These regulations which were amended by virtue of the provisions of Section 12 and u/s 12(2) have statutory force with overriding effect. Under amended Regulation 41A a standing Finance Committee has come into existence (hereinafter mentioned as "S.F.C.") which has taken away very vital powers and functions of the Council. Under the amended Rule 41A the powers and duties of the S.F.C. have been enumerated. Under Rule 41A(c) it is the S.F.C. which is to consider and make recommendation for the creation of new posts. Hence the Council's power to appoint is gone. Rule 41A(b) lays down that the S.F.C. will have powers to make recommendations of the services of salaries officers, clerks or servants

of the Society having financial implication, namely, pay scales, allowance, etc. Hence the Council's power to fix the same is also gone. Rule 41A Sub-rule (2) contains?"Notwithstanding anything contained in the Regulations, no matter having financial implication will be considered by the Council unless it is considered and recommendation made by the Standing Finance Committee". Therefore, any matter having financial implications comes within the domain of S.F.C. and Council has no authority to consider the same without reference to S.F.C. This power of S.F.C. has overriding effect. Rule 41A Sub-rule (3) provides that in case the Council for any reason is not in a position to agree with the advice of the Standing Finance Committee in any matter, the Council shall refer the same to the Central Government and act in accordance with the directions of the Central Government. Hence the Council will either abide by the direction of S.F.C. or the Central Government. The Council itself has no power to act against the S.F.C. Therefore, the autonomy of the Council in respect of the matters covered under Rule 41A is totally gone. The powers of the Council under Regulation 41 had been severely mauled and crippled by the Regulation 41A which came into force pursuant to Section 12 of 1984 Act and has overriding statutory force by virtue of Section 12(2) of 1984 Act as well as the Regulation 41A(2) incorporated in the Regulations of the Society. The Council is no longer the appointing authority. It is no longer entitled to consider the matters of financial implication on its own without reference or recommendation of S.F.C. The Council, not being the appointing authority, has no right to dismiss or dispense with the service of any person without reference to S.F.C. If the Council does so, it will be in breach of the statutory regulations framed under the Asiatic Society Act, 1984 and would be bad in law.

31. Therefore, for all practical purposes, S.F.C. has become the apex body almost in respect of all important financial matters, viz. for appointment, dismissal or abolition of any post which is bound to have some financial implications and as such cannot be considered by the Council itself without first being considered by the S.F.C. In respect of these matters, no step can be taken by the Council on its own without the recommendation of the S.F.C. under Rule 41A(2).

32. Dr. Roy Choudhuri, in his affidavit-in-opposition, filed on behalf of the respondent No. 1, stated in paragraph that the post of the petitioner was found to be additional surplusage and as there was no rationale behind retention of the said post, the post was dispensed with as the society was accountable to the Central Government and it could ill-afford to go in for uneconomic expenses. So, according to Dr. Roy Choudhuri himself, the post of Publication Supervisor was abolished due to financial implication. Could the Council consider this or take any step in this regard without the S.F.C first considering the question of abolition of the post of Publication Supervisor and without having recommendation to that effect from the S.F.C? In paragraph 8, Dr. Roy Choudhuri stated that the Publication Secretary of the Society, one Jagannath Chakraborty, submitted a confidential report and on the basis of the said report the Council adopted a resolution at its meeting held on 8th August 1985 and decided to abolish the

post of Publication Supervisor and to dispense with the service of the petitioner on the ground that both the post and the petitioner's service had become superfluous and uneconomical. I wonder, on whose instruction or on what authority Dr. Chakraborty had written that verbose report which clearly involved the question of financial implication. The heading of the report was "strictly confidential" but the report was addressed to or submitted to none. Atleast the report does not disclose at whose instance or behest it was made and to whom it was submitted. Although under Regulation 41A(2) it is the S.F.C. who has the right to consider matters of financial implication at the first instance and the Council had no authority to move in the matter without obtaining the recommendation of the S.F.C. no paper was shown, nor any submission was made during the hearing of this application that the S.F.C. had considered this matter and had recommended the abolition of the post of Publication Supervisor or dispensing with the service of the petitioner. Even there was no indication that S.F.C. was ever taken into confidence by the Council regarding this verbose and strictly confidential report of Dr. Chakraborty. It is obvious that Dr. Chakraborty, either on his own initiative or as a tool in the hands of some designing person, prepared this report in violation of the statutory regulation in 41A(2) and the Council also considered this report and adopted the resolution dated 8th June 1985 in flagrant disregard and violation of the said rule bypassing the S.F.C. The Council did not stop there, but issued a Memo. No. 3221 dated 8th June 1985 intimating the petitioner that his services were no longer required. This memo was posted on 10th August 1985 and if it was a valid notice, it would-have taken effect from the date of communication to the petitioner. But in this notice it was stated that it would take immediate effect from 8th June 1985, that is, with retrospective effect. I have no hesitation to hold that the report of Dr. Chakraborty and all steps taken by the Council on the basis of the said report were unauthorised, arbitrary and in utter disregard of the statutory Regulation 41A(2). I further hold that the S.F.C. was the only authority to consider this matter having financial implication and not the Council. I must further record here that during hearing, I directed the respondent No. 1 to reconsider the case of the petitioner. Reconsideration of the petitioner's case obviously should require consideration whether to retain the post of the Publication Supervisor or to absorb the petitioner elsewhere or to pay him compensation. Reconsideration in this case would involve financial implication and should have been considered by the S.F.C. at the first instance and the Council could act in accordance with the recommendation of the S.F.C. But that was not done. On the contrary, the Council considered the case itself and rejected it. In that view of the matter, I hold that the respondent No. 1 did not consider the direction given by the Court to reconsider the petitioner's case. The Council had played with the Court's order. Or it may be that the Council was day dreaming that it still enjoyed the autonomy it had prior to 1984 Act came into force. The conduct of the Council in disposing of the Court's direction without having any authority whatsoever to do so does not speak highly about members of the Council who are all otherwise very respectable persons. I am also constrained to record here that the Council,

acting on the basis of the unauthorised report of Dr. Chakraborty and by adopting the resolution dated 8th June 1985 and issuing the Memo No. 3221 dated 8th June 1985, violated its own statutory regulations. The Council was either ignorant of its own regulations or deliberately acted in that manner with full knowledge thereof. In the premises, I hold that the report of Dr. Chakraborty, the resolution dated 8th June 1985 and the Memo No. 3221 dated 8th June 1985 are all unauthorised, arbitrary and are the result of complete non-application of mind by the Council in utter disregard of the statutory regulations of the respondent No. 1 and as such are bad in law. Hence, the resolution and notice both dated 8th June 1985 must be quashed.

33. In the premises, the petition is allowed, I direct that a Writ of mandamus be issued for quashing the resolution dated 8th June 1985 and the Memo. No. 3221 dated 8th June 1985. A Writ of Prohibition be issued prohibiting the respondent Nos. 1 to 26 from giving effect to the purported resolution dated 8th June 1985 and the memo dated 8th June 1985. There will be a mandatory injunction directing the respondent Nos. 1 to 26 to allow the petitioner to join and attend his office regularly and release his salaries due to him from 8th June 1985 and that this part of the order must be given effect to within 2 weeks from the date of service of a signed copy of the minutes of this order on the respondent No. 1. The petitioner will be entitled to cost of this application from the respondent No. 1 assessed at 100 G. Ms. to be paid within a month from the date of receipt of the signed copy of the minutes of this order.

34. I, however, record that this order will not stand in the way of the proper authority of the respondent No. 1 from considering whether it would be beneficial for the respondent No. 1 to retain the post of the Publication Supervisor. If it recommends abolition of this post then to consider whether the petitioner can be absorbed in an alternative suitable post or be given compensation, gratuity, pension, etc., as he is entitled to receive under law.