

(2015) 11 DEL CK 0173

In the Delhi High Court

Case No : W.P. (C) 5617/2012, CM Nos. 19930/2012, 9025-9027/2015 and 12311-12312/2015

Suresh Nath Jha

APPELLANT

Vs

Institute for Steel Development and Growth and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 11 DEL CK 0173

Hon'ble Judges : V. Kameswar Rao, J.

Bench : Single Bench

Advocate : Sunil Kr. Jain, Pawanshree Agrawal, T.N. Durga Prasad and Reeta Chaudhary, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—This petition has been filed by the petitioner primarily seeking the following reliefs against the Institute for Steel Development & Growth (INSDAG) (respondent No. 1), a society registered under the Societies Registration Act and Director General (INSDAG) (respondent No. 2) :-

(a) Issue a writ or order or direction in the nature of mandamus or any other appropriate writ directing the respondents to absorb and regularise the services of the petitioner in the E-6 Grade w.e.f. his date of appointment i.e. 1.2.2006; absorb and regularise the services of the petitioner in the E-7 Grade w.e.f. 29.11.2007, when the petitioner was selected to the said post; with all consequential benefits including all the benefits as per the recommendations of the 6th Pay Commission; retirement benefits of gratuity etc; service benefits of promotion etc. on par with his juniors who have been since promoted to higher scales where they are considered for promotion after 4 years of service where a formal interview takes place and they are promoted; so far no one is denied promotion except for one case;

(b) Direct the respondents to pay the petitioner arrears of pay with interest @ 18%.

(c) Grant the petitioner costs of this petition; and

(d) Pass any other such order or orders that may be just and necessary under the circumstances of the case."

2. The petitioner has also made Government of India through Secretary, Ministry of Steel, New Delhi, as one of the respondents (respondent No. 3).

3. It is the case of the petitioner that the respondents had issued an advertisement inviting applications for 3 posts of Chief Manager (Resident) for permanent employment in the Grade, E-6. The petitioner applied for the said post and was placed at serial No. 4 in the panel and was recommended for permanent employment. According to him, the respondent No. 2 recommended appointment of person at serial No. 1 for permanent employment and persons at serial Nos. 2 & 3 of the panel for contract. As the person at serial No. 1 did not accept the offer, the petitioner was given the offer for the post of Chief Manager (Resident) at Mumbai on contract. It is his case in the writ petition that he was assured that his contractual employment would be converted into permanent employment as notified in the advertisement. The petitioner agreed to join subject to being provided transport, housing etc. In January, 2006 the respondents issued appointment letter amending the place of duty of the petitioner from Mumbai to Delhi. The petitioner joined his post at Delhi on contract basis on the consolidated salary of Rs. 45,000/- per month, which is the minimum of E-6 scale. It is his case that the respondent No. 1 issued another advertisement for making appointment to the post of Deputy Director General, Marketing in E-8 scale and Deputy General Manager, Marketing in E-7 scale respectively. It has been averred that he has been empanelled for the post of Deputy General Manager (Marketing) for permanent employment. In January, 2008, he made a representation to the respondent No. 2 seeking appointment in E- 7 scale or absorption as E-6 scale from the time of his initial appointment or at worst extension of contract for 3 years with enhancement in pay. His request for extension by 3 years with 10% enhancement of salary was accepted without any change in the terms and conditions of the initial contract. It is also averred that he again represented on October 22, 2008 for his absorption as regular employee, which was recommended by the respondent No. 2 herein but was deferred by the President of the organisation. It is also averred that on March 16, 2010 the petitioner again represented for absorption as his consolidated salary was now equivalent to the E-3/E-4 scale after the implementation of the 6th Pay Commission and he was suffering great financial loss.

4. It is the petitioner's case that he made application to the Minister of State for Steel seeking absorption which was forwarded to the respondent No. 2, DG (INSDAG), to which representation a response dated October 09, 2010 was received from the President (INSDAG) stating that his absorption as a regular

employee can be sorted out only after the expiry of his contractual period on January 31, 2011 and he will be considered for absorption in the suitable grade depending upon his qualification, experience and performance. In the month of January, 2011 the petitioner's case was to be considered, even though for the post in the E-5 grade but the same was also given up on the pretext that the vacancy was to be notified to the public. Be that as it may, the petitioner received a letter dated January 29, 2011 extending his contract from February 01, 2011 to January 31, 2013.

5. During the course of the submissions, the petitioner had pointed out that his pay was increased to Rs. 59,500/- for this period of extension. The petitioner gave his conditional acceptance inasmuch as he has objected to the extension of contract instead of regularization as promised. The petitioner put up his grievance to the Joint Secretary, Government of India, Department of Administrative Reforms & Public Grievances, which was sent to the Joint Secretary, Ministry of Steel.

6. It is noted from the petition that the petitioner had invoked the provisions of the RTI Act to seek certain information. The petition has been filed in the year 2012 seeking the reliefs as already reflected above.

7. The respondent Nos. 1 & 2 have filed the counter-affidavit. It is their case that the Institute of Steel Development & Growth, is a non-profit making organization, registered under the Societies Registration Act. The institute primarily works towards the development of advanced design methodologies and technical marketing by expanding applications of steel in different segments of industry, upgrading skills and know-how, creating awareness amongst potential users and communicating the benefits of steel vis-a-vis other competitive materials etc. Its founding members include major steel companies like Steel Authority of India Ltd., TATA Steel, Jindal Steel, Rashtriya Ispat Nigam Ltd., Essar Steel, Ispat Industries including Ministry of Steel. The said society is not a "State" within the definition of Article 12 of the Constitution as it is not performing the Governmental functions or functions which can be regarded as of essential public importance or as closely related to governmental functions or being fundamental to the life of the people or duties and obligations to the public at large. Therefore no writ of mandamus can lie against them. The petitioner was engaged on contract basis in INSDAG for a period of 3 years on a consolidated salary in the year 2005-06. During the course of his engagement, he applied for the post under E-7 scale in the year 2007, but was not selected for the same as he could not clear the interview. On the expiry of the term of the aforesaid contract, the organization gave the petitioner a 3 year extension in the year 2008 which was also accepted by him. The Manpower Committee of INSDAG gave a further extension of 2 years in 2011 on contract basis to the petitioner which also he accepted and joined. His term expired on January 31, 2013. On January 17, 2013 the Manpower Committee has taken a decision to relieve the petitioner from his duties in INSDAG after the expiry of his contract on January

31, 2013. The INSDAG is in the process of closing down its Delhi office, in which petitioner was working. As there were no posts available in INSDAG, the request for regularization could not have been accepted. Furthermore, for filling the post on regular basis a post has to be created and duly advertised. It is evident from the facts on record that the petition is highly belated. The selection process for Chief Manager (Resident) in which the petitioner was one of the candidates was completed in the year 2005-06. The petitioner has approached this Court after a span of almost 6 years. That for the E-7 posts, the selection process was completed in the year 2007 wherein the petitioner was one of the candidates who applied and was not selected. There is an unexplained delay of almost 5 years in filing this petition. The petitioner kept on making representations to the respondents which were rejected after due consideration by the management of INSDAG. The petition is, therefore, liable to be dismissed on the ground of delay and laches.

8. It is also contended that the petitioner has wrongly invoked the writ jurisdiction as INSDAG is a society constituted by private and public sector organisations and is not a "State" under Article 12 of the Constitution of India. The legal proposition is well settled that the number of considerations are to be looked into while extending the definition of "State" to a Corporation, Society etc. Some of them include deep and pervasive control of the Government over the management and affairs of the entity, the source of funding, type of work carried out by the entity etc. INSDAG is not for profit entity with the "State" (through Ministry of Steel) as one of its members. The institute is run by the financial contributions of its members. Also, the management of the institute is jointly carried out by the members only. The Government does not have any such control over the Institute society. Ministry of Steel is only one of its members. INSDAG does not perform any statutory or sovereign functions. The deep and pervasive control as envisaged in the definition of "State" is not present in INSDAG. It is also contended that in view of the definition of "State" under Article 12, writ of mandamus will not lie against the INSDAG. It is also contended that the writ petition is not maintainable before this Court and is liable to be dismissed on the aforesaid ground.

9. It is also contended that the petitioner entered into the contract with his free will knowing fully well the consequences of the same. He cannot now turn back and challenge the said contract after deriving benefits of the same. The petitioner is estopped from challenging the contract. There was no undue influence on the petitioner while accepting the terms of engagement. No cause of action accrued to the present petitioner as admittedly there was no breach of the contract by the respondents.

10. The petitioner, who appeared in person, apart from reiterating the stand taken by him in the petition has drawn my attention to page 489, which is the Memorandum of Association of the INSDAG, more specifically page 538, to contend that the Chairman of the Steel Authority of India is one of the Members

of the society. That apart, it receives the funds from the Joint Plant Committee (JPC) as grant in aid. This JPC is part of the Ministry of Steel, Government of India. He would also state that the INSDAG is following the SAIL/JPC rules and pay structure since its inception and the revised pay scale as applicable to the Executive/Non-Executive of the SAIL were being implemented for employees of INSDAG. On the merit, it is his submission that a Manpower Committee was proposed to be held on January 17, 2011 to discuss the absorption of the petitioner as permanent employee of the INSDAG. According to him, a brief note was also prepared wherein the achievements of the petitioner were highlighted. He would draw my attention about the verbal assurance given by the Director General, INSDAG of making him permanent employee of the organization. On January 17, 2011, a meeting was held when the petitioner was called for the interview. Unfortunately, the Committee decided not to offer permanent employment, rather they decided to grant the petitioner an extension of 2 years. He states that his continuous representations on January 23, 2008, October 22, 2008, March 16, 2009, March 16, 2010 and August 04, 2010 were proved futile as the respondent Nos. 1 & 2 have not absorbed the petitioner. According to him, the respondents should have granted permanent appointment to the petitioner rather than a contractual one. That apart, the petitioner has been wrongfully denied his promotion to E-7 grade as Deputy General Manager, Marketing, to which post he was selected and would press for the reliefs he has prayed for.

11. On the other hand, learned counsel for the respondent Nos. 1 & 2 apart from reiterating the submissions with regard to the maintainability of the petition and the terms of contract being clear, would also submit that the appointment of the petitioner was on contract basis. The petitioner has with open eyes accepted the terms of the contract, which was also extended from time to time. He states, that the petitioners' contract/engagement having come to an end, this Court would not like to issue direction for treating his initial appointment as a regular one. According to him, the respondent Nos. 1 & 2 were within their right to appoint a person on contract basis. That apart, instead of framing its own rules, had, for convenience adopted the Rules of the Steel Authority of India for its employees. That cannot be construed, to mean, the respondent No. 1 is a "State" or that the service conditions of the employee has a public law element. He also state that the present petition is devoid of any merit.

12. On the aspect of maintainability of the petition on the ground that the respondent Nos. 1 & 2 are not "State" within the meaning of Article 12 , the respondent would rely upon the following judgments.

(i) Lt. Governor of Delhi and Others Vs. V.K. Sodhi and Others, ;

(ii) General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, ;

(iii) Naresh Kumar Vs. Department of Atomic Energy and Others,

He would also submit that the case against the petitioner is covered by the

judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

13. Having heard the petitioner and the learned counsel for the respondents, the first and foremost issue, which arises for the consideration of this Court is whether the respondent No. 1 is a State "under Article 12 of the Constitution of India" or not. As noted from the Memorandum of Association of the respondent No. 1, the respondent No. 1 has been established as a Society, registered under the Societies Registration Act, as a non profit organization by various organizations involved in manufacturing of steel, which include the Government companies like Steel Authority of India etc in the year 1996 with the objectives, which inter-alia includes to promote, develop and propagate the proper and effective use of steel and increase intensity of steel usage particularly in the Construction sector and other related activities. The initial registration of the Society was done by the following members:

14. The rules and regulations stipulates membership with which the Association was registered. The relevant rules stipulate through clause 2.2 Categories of members:

"2.2 Categories of Members.

There shall be the following three categories of members:-

- i) Founding Members.
- ii) Primary Members.
- iii) Associates.

2.3 Founding Members

Ministry of Steel through their nominated representatives and signatories to this memorandum shall be the Founding members of the Society. Further, any individual, firm, company or undertaking, whether incorporated or not and engaged in or intending to engage in production of steel from iron ore/iron ore pellets and having integrated facilities for the different stages of steel production, under the same roof or under a group shall be eligible to apply for becoming a founding member of the Association.

2.4 Primary Members

Any individual, proprietary concern, firm, company or undertaking, whether incorporated or not, owning or managing or engaged in any of the following activities shall be eligible to become a primary member of the Association.

- i) Production of Steel including Steel Plants, or steel mills, rolling mills, cold Rolling/Forming, Coating/Cladding in whole or part, or
- ii) Manufacture of a product using steel in whole or part, including steel processors, Fabricators, Tube/Section Manufacturers, persons involved in

Construction, Developers Builders etc.

iii) Design, Consultancy Assembly, Erection, Maintenance, Sales of Construction/ Structures etc. including Architects, Designers, Design Institute, Educational and Research Institutes, Interior Decorators, Engineering firms, Consultants, Specifiers, etc.

2.5 Associates

Any Individual, Proprietary Concern, Firm, Company or Undertakings, Overseas Organisation and other Association interested in steel industry or steel usage or construction sector or in any of the allied industries shall be eligible for admission as Associates.

2.6 Honorary Members

i) Officials and other persons connected with the Steel Industry, Engineers and Technicians, or those who have rendered distinguished service to the interests represented by the Association may be elected Honorary Members by the Executive Council.

ii) Honorary members shall be entitled to receive the last published report of the Council and to attend and speak, but not to vote, at any meeting held during their membership and may, upon invitation, attend under like conditions any meeting of the Council.

2.7 INSTITUTIONAL MEMBERS

All India Professional Institutes/Organisations/Boards etc of Industry Interests dealing with collection and dissemination of information, research and development, technical upgradation process, exploration of new resources etc Educational Institute as distinct from Industry Associations shall be eligible for membership of the Institute on such terms and conditions as the Executive Council may decide, with no power to occupy a seat on the Executive Council and no voting rights. The minimum per annum subscription to be paid by such bodies would be Rs. 10,000/-.

2.8 Whenever the Council by resolution, adopted by majority of all its members present and voting shall declare that it is in the interest of the Association to admit to membership in the Association a separate division of particular existing corporation, then such separate division shall be considered as a corporation within the meaning of clause.

(i) If any member company is amalgamated with any other company or is taken over as a going concern by any other company or its assets are assigned to any other company; or

(ii) If any individual firm be dissolved and is taken over as a going concern by any other individual and its business is carried on in the old name or in any new name.

The Council may allow such new company or the individual firm as the case may be, to continue as a member in place of the old company or individual firm.

15. The subscription received is as per clause 4.0. The same is reproduced as under:-

4.0 SUBSCRIPTION

4.1 The Annual subscription due from each member shall be calculated on the basis of the type of membership and Gross Sales Turnover during the last financial year in the case of existing primary member or on the basis of an estimated turnover for such existing primary members who have not finalised their Gross Sales Turnover figures or for a new member. Annual subscription per member shall be as follows:-

Note :

a) Gross Sales Turnover would be equal to net sales (plus service charges) turnover i.e., exclusive of Sales Return and other charges, plus excise duty.

b) The words "last financial year", contained in this rule shall mean the last financial year of respective members for their accounting purposes.

c) The words "new member" appearing in this Rule shall mean a member whose commercial production has not started or whose sale of its products has not commenced".

4.2 For Overseas Organisations/Companies annual subscription will be Rs. 2000/- only.

4.3 Ministry of Steel, Govt. of India may not be required to make any annual membership subscription.

4.4 All subscription and admission fees shall be payable by Account Payee cheque only, in advance on such date as may be decided by the Executive Council from time to time.

4.5 Corpus Fund

To build a corpus, each Founding member may contribute such sums as deemed fit but not less than Rs. 1 lac towards the corpus. Efforts will be made to obtain contribution from Govt. of India through Ministry of Steel for the Corpus Fund.

4.6 Special Contributions

Every Founding member and other members of the Association as decided will be expected to pay such additional contributions not exceeding Rs. 20 (Twenty) lacs per annum as may be decided by the Executive Council from time to time, having regard to the requirements of the Association for furthering its objectives and goals.

4.7 In case of all members, the first payment by way of annual subscription shall

be normally made in full irrespective of the time of joining of the member. However, Executive Council may permit or frame rules for past payment of subscription reduced proportionately, on a monthly basis, to allow for the part of the calendar year which has already expired at the time of admission to membership.

4.8 To enable the Association to calculate the subscription amount payable by its members and for other purposes, members shall as and when required by the Association furnish to the Association, necessary data particulars or information relating to their gross sales turnover in such a manner as the Association shall require and/or copies of their audited balance sheet and profit and loss account and income and expenditure account as the case may be of their last financial year or other financial years from time to time. Members shall also furnish to the Association as and when required by it, such other information data or particulars as the Association shall indicate to members from time to time.

4.9 Immediately after 21st December in each year, the Council shall call on each member of the Association to make a return of the Gross Sales Turnover during the last financial year to determine the subscription and the number of votes to which each member of the Institute would be entitled during the ensuing official year beginning with 1st April. In the event of non-submission of required information by any member within a period of six weeks of the issue of the notice, the Association shall determine the number of votes to which each member is entitled as well as the subscription, based upon the information that may be in their possession.

4.10 Each member shall be advised by letter/Notice from the Association concerned about the amount of annual subscription due, which amount shall be paid within thirty days from the date of demand each year. Any member whose subscription shall be in arrears for a period exceeding three months from the date of demand as aforesaid shall not be entitled to exercise the right of voting or to stand for election for any purpose in the Association as long as such arrears shall remain unpaid.

4.11 Should a member's annual subscription for the year remain unpaid even after three months from the date of demand such member(s) shall be deemed to be defaulter(s) and cease to be member(s) of the Association from 1st April of the official year. Their membership may however be renewed at the discretion of the Council provided an explanation is furnished stating the cause of non-payment of subscription to the satisfaction of the Council and upon payment of all upto date dues. A defaulting member who shall cease to be a member of the Association shall nevertheless remain liable for the payment of all arrears of subscriptions etc owing by him/them to the Association.

4.12 The Council may, however, in their absolute discretion, waive the claim of the Association to all or any arrears of subscription if any applicant for membership is a past member.

16. The Rules and Regulations through clause 5.0 stipulates cessation of Membership. There is a stipulation of voting rights. Rule 8 stipulates "General Body". The General Body consist of Founding Members, Primary Members and Associates whose names appear on the register of the association. The source of income and utilization of funds is through clause 11 which is reproduced as under:-

11.0 Sources of Income and Utilisation of Funds

11.1 Association"s can draw its Income primarily from

- (i) subscription from Members, Associates and others.
- (ii) Corpus from Ministry of Steel or Members/Associates/Hon. Members or Institute Members.
- (iii) Interest from Corpus and other Funds.
- (iv) Income from service rendered, Consultancy, Publications or other source to members, Associates or others.

11.2 The funds of the Association can be utilised towards the objects of the Association or for any other purpose approved by Executive Council, President or Secretary provided such purpose is not contrary to the objects of the Institute. Expenditure can be incurred with the approval of Executive Council, President or in a manner decided by the Executive Council.

11.3 Accounting Year- The accounting year of the society shall be from 1st April to 31st March of the following year.

17. Rule 9.0 stipulates Executive Council. The relevant provisions are as under:

"9.0 Governing Body: Executive Council

9.1 a) The general management and control of the Association shall be vested in the Executive Council. Meetings of the Executive Council may be held anywhere in India and shall be held not less than once in six months with the last meeting each year, coinciding with the Annual General Meeting of the Association.

b) The Executive Council may exercise all the power of the Association not specifically required to be exercised by the members in General Body Meeting.

c) The Executive Council may delete all or any of their powers to any sub-Committee, person, brand or body of the Association.

d) The Executive Council shall be the sole author for the interpretation of the Rules and of any bye-laws and regulations that may be made from time to time under the Rules and the decision the Executive Council upon any question of interpretation or upon any matter affecting the Association and not provided for by these Rules or by the said bye-laws and Regulations shall be final and binding on the members.

9.3 Composition

9.3.1 Composition of Executive Council

- i) The Executive Council shall consist of members elected/nominated from the Founding members, Primary Members and Associates.
- ii) The President of the retiring Executive Council shall be a member of Executive council.
- iii) One member can be nominated by the Council from amongst the Associates.
- iv) A minimum of three members shall be elected from amongst the Founding members.
- v) Balance members shall be elected by all members including Founding and Primary members.

9.3.2 There shall be the following office bearers of the Society namely, a President, Vice President and Members of the council who shall act without remuneration. There shall be a Secretary & Director General and as many other officers as may be decided upon from time to time by the Council.

9.3.3 President

- i) The President shall preside at all meetings of the Council, at all general meetings and lead all deputations. He shall preside at the Annual General Meeting, may address the members on such subject as he may deem proper, but such address shall not be taken to represent the views of the Association or of the Council unless such representation is expressly indicated.
- ii) The President shall also, at any time when he shall deem proper, communicate to the Association or the Council such matters and shall make suggestions as may, in his opinion, to promote the prosperity and welfare and increase the usefulness of the Association shall perform such other duties as may be incidental to the office of the President.

9.3.4 Vice President

The Vice President, in the absence of the President, shall have the power to perform the duties of the President. In the absence of the President and the Vice President, the power and duties of the President shall be exercised and discharged by one of the members of the Council nominated by the President or the Vice President as the case may be or in their absence, by the Executive Council.

9.3.5 Secretary and Director General

The Executive Council shall appoint the Association's Secretary and Director General. The Association's Secretary and Director General shall be the administrative head of the Institute's permanent staff and Secretary and also

work as Secretary to the Association."

18. A perusal of the Memorandum of Association and the Rules would only suggest that the intent of forming the Society was to have an organization, which would promote, develop and propagate the effective usage of steel, particularly in the Construction sector. That could be achieved if all the steel manufacturing organizations were brought under one Umbrella as having common interest. No doubt, the initial registration included the representatives of the Ministry of Steel and Government companies like Steel Authority of India and Rashtriya Ispat Nigam Ltd. etc. But at the same time, the Society has, as its founding members, many companies from the private sector as well.

19. The membership is open to steel plants, steel mills, manufacturer of a product using steel in whole or part including steel processors, Fabricators, Developers, Builders, Architects, Designers, Design Institute, Educational and Research Institutes, Engineering Firms, Consultants etc. There is a provision for cessation of membership, expulsion, resignation. There is a provision of voting rights to be exercised at all general meetings of the Society. There is a General Body. There is an Executive Council, which is vested with the management and control of the Association. The composition of the Executive Council shall consist of members elected/nominated from the founding members, primary members and associates. There shall be a President and Vice- President. The Secretary and Director General is also part of the Executive Council, who acts as the Administrative Head. The sources of income are various like subscription from members, associates, corpus from Ministry of Steel or Members/Instituted Members, interest from corpus and other funds, income from service rendered, consultancy, publication etc. Further a perusal of the statement of annual accounts for the year 2010-11 reveals the following:-

"4.0 FINALIZATION OF ANNUAL ACCOUNTS FOR THE YEAR 2010-11

The Accounts of the Institute for the year 2010-11 have been complied, which have been audited by the Institute Auditors- M/s. Sen & Roy Chartered Accountants. A copy of the said Statement of Accounts is given in Annexure 4.1. A summary of accounts is given below:-

Receipts & Disbursements Account (Rs. in lakhs) for the Year 2010-11

Project Expenditures

Income under the head "Project Work" is Rs. 254.46 lakhs and the total expenditure is Rs. 57.99 lakhs. The surplus amount of Rs. 196.47 lakhs transferred to Corpus Fund.

Balance Sheet of INSDAG as on 31st March, 2011

From the Balance Sheet it may be noted that the Institute has total Assets of Rs. 2075.27 lakhs, a major part of which is earmarked for Steel Intensive INSDAG Building. The Assets have been invested in the Financial Institutions in the

following details:-

20. Further, as per the financial statement filed by the petitioner, contribution made by the Ministry of Steel and other members gives the following picture:-

21. The test for determining the status of the Society being under Article 12 of the Constitution is well settled in terms of catena of judgments of the Supreme Court. For the purpose of Article 12 of the Constitution, a body need not be a statutory body created by statute. Even a company incorporated under the Companies Act or registered under the Societies Registration Act or a Trust can also be covered as a State within the meaning of Article 12 of the Constitution of India. The requirement of law in this respect is that such a company must be under deep and pervasive control of the Government. The seven judge bench of the Supreme Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, , held that while examining such an issue, the Court must bear in mind whether in the light of the cumulative facts as established, the body is financially, functionally and administratively, dominated by or is under the control of the Government. Such control must be particular to the body in question, and must be pervasive. If it is found to be so, then the body comes within the purview of State within the meaning of Article 12 of the Constitution. On the other hand, when the control exercised is merely regulatory, whether under a statute or otherwise, the same would not be adequate, to render the body a State.

22. The Supreme Court has referred to its judgment in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

23. In *Ajay Hasia* (supra), the Supreme Court after noting *Ramana* (supra), quoted with approval, the test propounded for determining as to when a Corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised 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".

24. In para 40 of Pradeep Kumar Biswas (supra), the Supreme Court held as under:-

"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."

25. If the provisions of the Memorandum of Association and the Rules are applied to the conditions laid down by the Supreme Court, as noted above, it is clear that the conditions would not be satisfied, inasmuch as there is nothing to suggest that the entire grant-in-aid is received from the JPC, the same meets the entire expenditure of the organization. The money as is seen from annexure A-1 (colly) at page 580, financial support of the JPC was in the nature of corpus and grant in aid. There are other avenues for generating income to the organization, which is clear from para 20 above. The other members also contributed substantial amount. The objective of the organization is to promote the usage of the steel manufactured by various companies both in the government and the private sector does not reflect that the organization enjoys monopoly status which is State conferred or closely related to governmental function or that it is a governmental function which stood transferred to the Society. It is not such a case here. It is an informal association of Government and private companies. The usage of the steel would be equally beneficial to the private companies as is beneficial to the government companies. It is not the case of the petitioner that all the Members who got the Society registered are from the Government; the Members of the Governing Body are appointed by the Government; the appointees running the organization are through a process of Recruitment Rules framed with the approval of the Government and the selection is undertaken by the Government. That apart, nothing has been pointed out by the petitioner to suggest that the functioning is dominated by or under the control of Ministry of Steel, Government of India. The Rules, which have been reproduced above, suggest the functioning of the organization is through an inbuilt mechanism like the Governing Body/Executive Council. The manner in which the Executive Council is appointed has also been laid down in the Rules. The auditing is done by the Auditors of the Institute. The Rules of the Steel Authority of India have

been adopted by the Society to regulate the service conditions of the employees, would not have the effect of the organisation is part of SAIL. The CVC instructions sent to the respondent No. 1 by the respondent No. 3 does not alter the above position under the MOA and Rules. An issue arose on identical facts in the case of G. Basi Reddy Vs. International Crops Research Instt. and Another, , wherein the Supreme Court held as under:-

"The Supreme Court held that International Crops Research Institute was amenable to writ jurisdiction as it was not the State or Authority under Article 12 of the Constitution. The said Research Institute was set up as a non-profit research and training centre by the Consultative Group on International Agricultural Research (CGIAR). It was found that CGIAR is an informal association of about 50 government and non- government bodies and is co-sponsored by certain wings of the United Nations. The object of setting up of said Crops Research Institute was to help the developing countries in semi-arid tropics to alleviate rural poverty and hunger in ways that are environmentally sustainable. Certain members of CGIAR are providing funds as well. On application of the principles laid down in Pradeep Kumar Biswas's case (supra), the Apex Court held that since this Institute was not set up by the Government and it giving its services voluntarily to a large number of countries besides India and it was not controlled by or accountable to the Government but did not meet the tests of Article 12 of the Constitution".

26. Further the Supreme Court in the case of Lieutenant Governor of Delhi and others v. V.K. Sodhi (supra) has observed that there was no simple litmus test to determine whether an entity is a "State" or "other authority" within the meaning of Article 12 of the Constitution. Various facets of the foundation and the working of the entity are relevant in determining the question in the context of the functions entrusted to it, or taken up by it for performance. The Court observed that the question was to be determined in the context of the functions entrusted to the SCERT; the Rules and Bye-laws that govern it and the financial position enjoyed by it. On facts, the provisions of the Memorandum of Association and the bye-laws of SCERT are more or less the same as that of NCERT. The Apex Court in case Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], held that NCERT did not qualify as a "State" under Article 12 of the Constitution of India whereas NCERT was to assist the National Government in the matter of coordinating education and SCERT was to assist the State Government in the matter of promoting education within Delhi. It was also governed by an Executive Committee. It was further held that in the case of SCERT, in addition to the operational autonomy of the Executive Committee, it could also amend its bye- laws subject to the provisions of the Delhi (sic) Societies Registration Act though with the previous concurrence of the Government of Delhi and that the proceedings of the Council are to be made available by the Secretary for inspection of the Registrar of Societies as per the provisions of the Societies Registration Act. SCERT is primarily regulated by the Societies Registration Act, 1860, rather than by the State Government and that

the intention was to keep the SCERT as an independent body and the role of the State Government cannot be compared to that of the Central Government in the case of Council of Scientific and Industrial Research.

27. Even in *General Manager, Kisan Sahkari Chini Mills Ltd.* (supra), the Supreme Court in para 8 has held as under:-

"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 co-operative 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. In this context, Bye Laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has nowhere been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of Bye-Laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-Law 52, a committee of management consisting of 15 members is constituted, out of whom, 5 members are required to be elected by the representatives of individual members, 3 out of co-operative society and other institutions and 2 representatives of financial institutions besides 5 members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of State Government in the committee is only 1/3rd and the management of the committee is dominated by 2/3rd non-government members. 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 deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is Secretary, Department of Sugar

Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by Managing Director of the Federation on 22nd November, 1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of Mill, as such the same being neither instrumentality nor agency of government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution.

28. From the above, I find that none of the conditions noted above are fulfilled in the present case. The respondent No. 1 being neither an instrumentality nor an agency of the Government, cannot be said to be an authority and therefore it is not a "State" within the meaning of Article 12 of the Constitution.

29. It is not the case of the petitioner, that the functions of the respondent No. 1 organization or the relief sought for by him in the writ petition has a public law element. Even on that ground, the present petition under Article 226 shall not be maintainable. In view of my conclusion above, it would not be necessary for this Court to go into the merit of the claim made by the petitioner or the relief sought by the petitioner as noted above. The writ petition is dismissed. The petitioner is at liberty to seek such remedy as available to him in law.

30. No costs.

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In view of the order passed in the writ petition, the present applications are dismissed as infructuous.