(FULL BENCH)

Before G. C. Mital, A.C.J., A. P. Chowdhri and H. S. Bedi, JJ.

RAM PARSHAD,—*Petitioner.*

versus

THE INDIAN INSTITUTE OF BANKERS, BOMBAY,—*Respondent.*

Civil Writ Petition No. 6967 *of* 1987.

14th May, 1991.

Constitution of India, 1950—*Arts.* 12 & 226—*Indian Companies Act,* 1913—*S.* 26—*Indian Institute of Bankers incorporated under Companies Act—Primary aim towards advancement of study in Banking and conducting examinations—Institute not fulfilling tests laid down by Supreme Court—Such Institute—Whether amenable to writ jurisdiction.*

Held, that applying the tests laid down by the Supreme Court and other well recognised conditions for *mandamus,* the Indian Institute of Bankers is not an instrumentality of the State within the meaning of Article 12 or for purposes of Article 226 of the Constitution. (Para 31)

Civil Writ Petition Under Articles 226/227 *of the Constitution of India praying that:—*

(*i*) *a writ in the nature of* Mandamus *or* Certiorari *or any other appropriate writ order or direction quashing the order Annexure P-8, be issued ;*

(*ii*) *a writ in the Nature of* Mandamus *directing the respondent to declare the result of the petitioner and if found qualified to treat him pass with effect from May,* 1986, *when the examination was held, be issued ;*

(*iii*) *a writ in the nature of* Mandamus *directing the Respondent to permit the petitioner to take his examination of the CAIIB Part-I/II, at regular intervals, be issued ;*

(*iv*) *an Interim relief of permitting the petiitoner to appear in the forthcoming examination of the CAIIB and an interim direction to the Respondent to declare petitioner's result, be issued ;*

(*v*) *Requirement of Rule* 20(2) *of the writ jurisdiction Rules may kindly be dispensed with ;*

(*vi*) *requirement regarding services of advance notice of this writ petition and also copies of Annexures may kindly be dispensed with ;*

(*vii*) *the costs of this writ petition may also be awarded to the petitioner ;*

(*viii*) *filing of originals may kindly be dispensed with ;*

M. M. Kumar, Pawan Kumar and Nirmal Singh, Advocates, *for the Petitioner.*

R. K. Chhibbar, Sr. Advocate with Anand Chhibbar and M. M. Chowdhary, Advocates, *for the Respondent.*

JUDGMENT

A. P. Chowdhari, J.

(1) The main question which we are called upon to decide in this petition is whether the Indian Institute of Bankers (hereinafter referred to as 'the Institute'), a company registered under the Indian Companies Act, is an instrumentality of the State within the meaning of Article 12 and/or Article 226 of the Constitution of India ?

(2) Almost two decades back, a learned Single Judge of this Court held in an unreported judgment in *Virinder Kumar Kaura* v. *The Indian Institute of Bankers*, Civil Writ Petition No. 1116 of 1971, decided on March 16, 1972, that the Institute being a company incorporated under the Indian Companies Act was a private body; it had no statuory character and, therefore, it was not amenable to writ jurisdiction of the High Court under Article 226. There has since been a phenomenal development of the law with regard to the concept of the agency or instrumentality of the State. It is no longer possible to justify the finding that the Institute is not amenable to the writ jurisdiction of the High Court merely on the ground that it is a public limited company incorporated under the Indian Companies Act. Several bodies incorporated under the Companies Act or registered under the Societies Registration Act or some other Acts have been held to be agency or instrumentality of the State. The test is not how a particular corporation or company or other body is brought into existence but whether it is, in fact, to borrow the words of the Supreme Court "the third arm of the Government."

(3) Before dealing with the question, we may briefly state the facts :

The institute was incorporated as a public limited company under section 26 of the then extract Indian Companies Act, 1913, on April 13, 1928. The promoters included eminent bankers, businessmen and industrialists of the country. One of the primary aims of the Institute is the advancement of study of the theory and practice of banking. As banking is service oriented industry, the manpower is the key input and the Institute has, therefore, focussed its attention on human resource development. With that aim in view, the Institute has undertaken a programme of imparting inservice training *inter alia* through correspondence courses. The Institute conducts its Associate Examination (CAIIB Certificated Associate of Indian Institute of Bankers) for bank employees twice a year in 11 subjects divided into two parts, called Part-I and Part-II. Most of the banks, including nationalised banks, are Institutional Members of the Institute. The member banks accord recognition to the certificates, diplomas etc. issued by the Institute and on the basis thereof grant promotion, fix seniority and allow increments etc.

(4) The petitioner is a clerk in the State Bank of Maharashtra posted at Chandigarh. He appeared in CAIIB Part-I examination held by the Institute in May, 1986. The Institute imposed a threefold penality on the petitioner on the ground that his answer book contained material which had either been copied from another examinee or the same had been copied from a common source by the petitioner and some others. The penalties were that his candidature for the examination was cancelled, he was debarred from appearing in any examination held by the Institute upto May 31, 1991, and his name was to be reported to the bank in which he was serving. The petitioner challenged the imposition of the above penalties through the present writ petition under Article 226 seeking a writ of *mandamus* directing the respondent to declare his result and if he was found to have passed, to treat him as such with effect from the date of examination and to remove the other penalties imposed by the Institute.

(5) The writ petition has been resisted. A preliminary objection was taken that the writ petition was not maintainable as the respondent was not an instrumentality of the State.

(6) At the time of hearing before the learned Single Judge, learned counsel for the respondent placed reliance on *Virinder Kumar Kaura's* case (supra). It was submitted that the aforesaid

decision had been followed in latter decisions of this court, namely, *Ram Niwas Garg* v. *The Reserve Bank of India* (1), *G. K. Chhabra and others* v. *The Indian Institute of Bankers* (2), and Single Bench decision of the Karnataka High Court in *P. Maju Nath* v. *The Indian Institute of Bankers* (3).

(7) On behalf of the petitioner, it was contended that the decision in *Virinder Kumar Kaura's* case (supra) required re-consideration in view of the development of this branch of law as noted in *Ramana Dayaram Shetty* v. *The International Airport Authority of India and others* (4), and *Ajay Hasia etc.* v. *Khalid Mujib Sehravardi and other* (5). The learned Single Judge referred the question to a larger Bench and when the matter came up before a Division Bench, it was further referred to still a larger bench and this is how the matter is before us.

(8) Apart from the memorandum of Association, Articles of Association and the 60th Annual Report of Accounts filed by the respondent with the return, we also have on record a Hand-book of Rules, a copy of Special Supplement brought out by the Financial Express, New Delhi, on April 30, 1988, on the occasion of the Diamond Jubilee Celebration of the respondent Institute containing articles on various facets of the Institute and its working. Also placed on record by the petitioner is the text of the speech of the President of the Institute at the 61st annual general meeting as reported in the journal of the Indian Institute of Bankers July—September 1988 issue. These documents were taken on record with the consent of the learned counsel for the respondent.

(9) As noted in the beginning of this order, it was conceded by Mr. R. K. Chhibbar, learned counsel for the respondent, that the decision in *Virinder Kumar Kaura's* case cannot be supported on the mere ground that the Institute was incorporated as a public limited company under the provisions of the Companies Act. His

(1) C.W.P. No. 2892 of 1983 decided on 6th February, 1984.
(2) C.W.P. 3290 of 1984 decided on 13th October, 1984.
(3) C. R. No. 11587-D decided on 23rd October, 1981 of Karnatka High Court.
(4) A.I.R. 1979 S.C. 1628.
(5) A.I.R. 1981 S.C. 487.

contention, however, is that the Institute cannot be brought within the purview of Article 12 or Article 226 by applying the tests laid down by the Supreme Court.

(10) The contention of Mr. M. M. Kumar, learned counsel for the petitioner, on the other hand, is that the respondent-Institute satisfies at least three of the tests laid down by the Supreme Court and, therefore, the respondent-Institute should be held to be an instrumentality of the State so as to be amenable to writ jurisdiction of this court.

(11) We have given our earnest consideration to the respective submissions of the learned counsel for both the parties.

(12) With the advent of the welfare State, the activities of the Government multiplied and it was increasingly felt that the framework of the civil service was not sufficient to handle the new task which was often of specialised and highly technical character. It was in these circumstances that it became necessary to forge a new instrumentality or administrative device for handling these new problems. The device of the Corporations whether incorporated under the Companies Act or under a special law relating to the particular corporation itself or under any other Act, was found to possess the desired flexibility and capacity to take fairly quick decisions which was the need of the hour. Some of such bodies exercised governmental functions. In some cases, the Corporations were wholly or substantially owned or controled by the Government and it was in the changed situation that the question came up for consideration whether those corporations with the facade of a private body amounted to the State or an instrumentality of the State within the meaning or Article 12 and 226 of the Constitution. Individual cases were decided by the courts both in India and in the United States of America. Their Lordships of the Supreme Court considered several such cases and formulated various tests in paragraph 19 in *Ramana. Dayaram Shetty's* cases (supra).

(13) A Constitution Bench of the Supreme Court reiterated the aforesaid tests in *Ajay Hasia's* case (supra). In paragraph 9 at page 496 the tests were formulated as under :

> "(1) One thing is clear that if the entire share capital of the corporation is held by the Government it will 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 the 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 function of the corporation of public importance and closely related to government 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."

(14) Before applying the above noted tests, it is necessary to briefly notice the salient features of the respondent-Institute both structurally as well as functionally.

(15) The Institute was incorporated as a public limited company under section 26 of the Indian Companies Act, 1913. The membership of the Institute was restricted to five categories of members. The members were required to pay specified fees per annum. The management of the affairs of the Institute was vested in an elected body called the council which was to consist of not less than 10 and not more than 30 members of the Institute. The members were to be elected at the annual general meeting of the Institute. The council was empowered to constitute as many sub-committees as the work required. The general body was required to elect President of the Institute. The Institute was required to keep proper accounts. It was further required to get the accounts audited. Detailed provisions for a democratic functioning of the Institute as well as the Council were made in the Articles of Association.

(16) Applying the tests No. 1 and 2 to the facts of the Institute, it is evident that the share capital of the Institute is not held by the

Central Government or the State Government nor is the Institute dependent on the Government for financial assistance. In fact, reference to the 60th Annual Report shows the following break-up of the income of the Institute :—

(1) Examination fee	=45.82 per cent.
(2) Subscription from individual members.	=23.15 per cent.
(3) Subscription from Institutional Members.	=16.09 per cent
(4) Interest and other misc.	=12.05 per cent
(5) Correspondence courses tutorial Class fees and royalty on publication of books.	=2.89 per cent
	100.00

(17) In 1988, the total membership of the Institute stood over 6 lakhs. About 2 lakh candidates appeared at the Associate Examination of the Institute twice a year. The examination was conducted at 488 Centres in the country and 13 centres abroad. About 40,000 new members were admitted every year and an increasingly large number of members appeared at the examination of the Institute,— (*vide* the article by Prof. R. D. Pandiya, Chief Secretary of the Institute, at page 11 columns 1 and 5 of the Financial Express Supplement).

(18) All that Mr. Kumar, learned counsel for the petitioner, could point out was from the speech of the President expressing gratitude to the managements of the banks and financial institutions for the their generous and sustained financial support to the Institute. In the background set out above, the "financial support" is not indicative of any direct financial assistance to the Institute. It is in an indirect manner that the various banks permit their employees to undergo training courses designed and carried out by the Institute. They avail of the various examinations on payment of fees and thereby augment the resources of the Institute. This would not be possible if the banks were to withdraw their support. The only counclusion, therefore, is that not only that the first two tests are not satisfied in this case, it is manifest that the Institute has independent sources of income and is not dependent on the Government for any financial support.

(19) The contention of Mr. Kumar that the Institute enjoys a monopoly status, referable to test No. 3, is largely based on the fact that the Institute is the only one of its type in India and all the banks have to depend on it. In other words, the Institute enjoys a monopoly status. In our considered view, the contention is untenable. The supposed monopoly status is not State conferred nor State protected. It has been seen that the Institute was incorporated as a private limited company and it continues to be so. There is no law prohibiting any other company with similar aims and objects to be incorporated. In the article by Mr. M. N. Goiporia at page 10 column 1 of the Supplement, there is reference to several institution which have training facilities in various branches of banking. No doubt, system of examination of CAIIB as evolved over the years is peculiar to the Institute and in that sense it is a poineer and holds monopoly but the aforesaid status is neither State conferred nor State protected. In our view, therefore, this test is not satisfied.

(20) With regard to the 4th test, Mr. Kumar submitted that deep and pervasive State control over the Institute was evident from the fact that by an unbroken convention the Governor of the Reserve Bank of India was elected as the President of the Institute. He further submitted that the Government of India had appointed a Banking Commission in 1969 and the Institute had the benefit of "guidance, advice and counsel" of the top government officials of the Government of India. For these submissions, learned counsel relied on the write-up in the Financial Express aforesaid. In our view, these facts do not go to show deep and pervasive State control over the Institute. Having regard to the provisions of the Articles of Association, the President of the Institute is to be elected in the general meeting. Going by the said provisions, it is perfectly possible to discontinue the convention of electing the Governor of the Reserve Bank of India as president. In fact, it appears to be a mutually acceptable arrangement both for the Institute as well as for the Governor of the Reserve Bank of India to continue the convention. As far as the Articles of Association are concerned, the provision is for the election of the President from amongst its members.

(21) The appointment of the Banking Commission does not go to show any State control. It has not been shown that the terms of the reference of the Banking Commission related only to the Institute and not to the banking industry in general in the country. The

article relied on by Mr. Kumar further shows that the recommendations of the Banking Commission 1969 were examined by a committee constituted by the Council of the Institute under the Chairmanship of Shri R. K. Talwar and the recommendations were accepted not as the recommendations of the Banking Commission but as recommendations of the Review Committee constituted by the council of the Institute ,—(*Vide* page 10 column 6 of the Special Supplement). Giving of guidance, advice and counsel does not indicate any State control. No provision either of the Memorandum or of the Articles of any statute has been brought to our notice which would make any directive of the Government binding on the Institute. In the natute of things, guidance, advice and counsel may be had from any quarter depending on the will of the person giving it and the person receiving it.

(22) With regard to the 5th test, Mr. Kumar submitted that the functions of the institute were of public importance and closely related to Governmental functions. In this connection, he invited our attention to Article 41 of the Constitution, in which one of the directive principles of the State policy is to make an effective provision for securing the right *inter alia* to education. It was argued that one of the avowed objectives of the Institute is to impart education in banking. In that sense, the institute was performing a governmental function. Since more than 2 lakh employees of various banks appeared in the examination conducted by the Institute, it could be legitimately said that the Institute was discharging a public function which was akin to a governmental function. While dealing with the test based on functions of the Corporation of public importance, the Supreme Court in *Ramana Dayaram Singh's* case (supra) referred to *E. S. Evans* v. *Charles E. Newton* (6), and *Smith* v. *Allwright* (7), and observed that the decisions show that the test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a Corporation which is otherwise a private entity, would be an instrumentality or agency of the Government by reason of carrying of such activity. In applying the test, therefore, a further precaution is to be taken and it is to be seen whether the public nature of the

(6) (1966) 382 U.S. 296.

(7) (1943) 326 U.S. 572.

function is impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor,—*vide* observations in para 18 column 2 at page 641.) In our view, therefore, the 5th test is also not satisfied.

(23) Admittedly, no department of the Government was transferred to the Institute and test No. 6 is also not satisfied in this case.

(24) The various rulings relied on by Mr. Kumar do not advance the case of the petitioner. In *Master Vibhu Kapoor* v. *Council of Indian School Certificate Examination and another* (8), the question for consideration was whether the Council for Indian School Certificate Examination, which was a Society registered under the Societies Registration Act, 1860, was in instrumentality of the State within Article 12/226 of the Constitution of India. It was observed that the council had entered into an arrangement with the Government to enable it to discharge its public functions of imparting education and thereby had not only received the authority or concession or privilege to conduct public examinations but had been statutorily recognised by section 2(s) of the Delhi Education Act as a body of persons or a Society recognized and authorised by the Government to discharge the public function or the Government function of imparting education. The rules and regulations of the Council also showed that there was governmental supervision, if not control, over the working of the Council. It was, therefore, held that the Council not only structurally but also functionally was deeply impregnated with governmental character and was discharging a public function. The Council was, therefore, held to be an authority within the meaning of Article 226 of the Constitution (*Vide* paragraph 34).

(25) In *Pawan Kumar* v. *The State of Punjab*, (9) a learned Single Judge of this Court held that no doubt originally Thapar Institute of Engineering and Technology, Patiala, was registered as a Society under the Societies Registration Act, it was declared a University under section 3 of the University Grants Commission Act, 1956, by a notification of the Central Government and as such the Institution enjoyed legal authority and was covered under the

(8) A.I.R. 1985, Delhi 142 (F.B.).
(9) 1986 (2), S.L.R. 333.

extended definition of 'State' in Article 12 as well as 226 of the Constitution. No such status or authority has been conferred on the Indian Institute of Bankers and *Pawan Kumar's case* (supra) is thus clearly distinguishable.

(26) Lastly, it was contended by Mr. Kumar that Article 226 of the Constitution confers wide powers on the High Court to issue writs *in the nature* of prerogative writs. It was submitted that this was a striking departure from the English law. It was further submitted that under Article 226, writs can be issued to any person or authority. It would be issued for the enforcement of any of the fundamental rights and for any other purpose. It was, therefore, contended that the wide amplitude of Article 226 must be given its due effect. Reference was made to the observations of the Supreme Court with regard to the scope of Article 226 in *Dwarka-Nath* v. *Income Tax Officer* (10). It was observed therein as under:—

> "This article is couched in comprehensive phraseology and it *ex-facie* confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country.".

(27) Reliance was also placed by the learned counsel on the observations made in *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami, Suvarna Jayanti Mohtsav Smarak Trust and others* v. *V. R. Rudani and others* (11). The portion relied is as under:—

> "The terms "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement

(10) A.I.R. 1966, S.C. 81.

(11) A.I.R. 1989 S.C. 1607.

of fundamental rights under Art. 32. Article 226 confers powers on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights.".

The contention of Mr. R. K. Chhibar is that a *mandamus* lies to secure the performance of a public duty or a statutory duty in the performance of which the one who applies for it has a sufficient legal interest. The condition precedent for the issue of *mandamus* is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. In other words, an order of *mandamus* is in the form of a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty.

(28) The contention of Mr. Chhibar finds support from *Praga Tools Corporation* v. *C. V. Imanual and others*, (12). It was held in para 7, therein as under :—

"7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a *mandamus*, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a *mandamus* or an order in the nature of *mandamus* could lie against the company.".

(29) Even in *Anadi Mukta Sadguru's case* (supra), the observation relied on by the learned counsel for the petitioner was followed by the following observation:—

"The words "any person or authority" used in Article 226 are therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body *performing public duty*....." (Emphasis supplied).

The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. By

(12) A.I.R. 1969 S.C. 1306.

public authority is meant everybody which is created by statute and whose powers and duties are defined by statute. Thus defined, the Government departments, local authorities, police authorities and statutory undertakings and Corporations are all public authorities (*Vide* paragraph 16). In the sense explained by their Lordships, it cannot be said that the Indian Institute of Bankers can be considered a public authority, even though the Institute is performing functions in relation to the public. The said function is not being performed in compliance with any statute.

(30) Moreover, the decision in *Anadi Mukta Sadguru's case* (supra) is distinguishable on the ground that the Trust running the Science college in that case was receiving grant from the State. There is no question of State grant being given to the Institute.

(31) For the foregoing reasons, we find that applying the tests laid down by the Supreme Court and other well recognised conditions for *mandamus,* the Indian Institute of Bankers is not an instrumentality of the State within the meaning of Article 12 or for purposes of Article 226 of the Constitution. We, therefore, affirm the view of the learned Single Judge in *Virinder Kumar Kaura* v. *The Indian Institute of Bankers,* (13). though for altogether different reasons.

(32) As a result of the above conclusion. the writ petition fails and the same is dismissed without any orders as to costs. The petitioner, if so advised, may have his remedy by a regular civil suit.

P.C.G.

Before : J. V. Gupta, C.J. & R. S. Mongia, J.

GIAN SINGH AND OTHERS,—*Petitioners.*

versus

SENIOR REGIONAL MANAGER, F.C.I., CHANDIGARH, —*Respondents.*

Letters Patent Appeal No. 1215 *of* 1990.

27th November, 1990.

Contract Labour (Regulation and Abolition) Act, 1970—*Ss.* 1(4), 2(*b*), 2(*e*)—*Act applies to establishments employing* 20 *or more workmen—No provision for total abolition under Act—Abolition*

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(13) C.W.P. 116 of 1971, decided on March, 16, 1972.