

P.S. Bajwa

Before A. K. Sikri, Chief Justice & Rakesh Kumar Jain, J.

ARVINDER GOYAL—Appellant

versus

STATE OF PUNJAB AND OTHERS—Respondents

LPA No. 2059 of 2012

March 21, 2013

Constitution of India, 1950 - Art. 12, 226, - State - Writ petition filed challenging termination of employee - Petition dismissed on the ground that Punjab Alkalies & Chemicals Ltd. (Employer) is not a State under Article 12 - Appeal filed by Petitioner - Requirement of law is that such a company must be under 'deep' and 'pervasive' control of the Government - It has to be seen if the body is financially, functionally and administratively dominated by/ or under the control of the Government and this control is pervasive - even though an IAS officer is the Managing Director it is of no significance - Appeal dismissed.

Held, that it is now well settled that for the purpose of Article 12 of the Constitution, the body need not only be a statutory body created by a statute, even a company incorporated under the Companies Act or registered under the Societies Registration Act or a trust etc. can also be covered as a State within the meaning of Article 12 of the Constitution. The requirement of law in this respect is that such a company must be under 'deep' and 'pervasive' control of the Government.

(Para 11)

Further held, that thus even if we see that through whole time Managing Director and supervisory Chairman, some control is exercised, it is the PSIDC and not the State Government which exercises some control. The focal point has to be whether in the light of the cumulative effects as established, the body is financially, functionally and administratively dominated by/or under the control of the Government and this control is pervasive. We find complete absence of financial or functional control. Some administrative control may be there but it is not all pervasive.

(Para 22)

Further held, that thus merely because the Managing Director is an IAS officer and in that capacity for his posting necessary orders are passed by the Governor, that is hardly of any significance.

(Para 24)

Appeal dismissed.

Amar Vivek, Advocate, for the appellant in LPA No. 2059 of 2012.

Harsh Aggarwal, Advocate, for the appellant in LPA No. 2064 of 2012.

J.S.Puri, Addl. Advocate General, Punjab, for the respondent-State of Punjab.

Sanjeev Bansal, Advocate for respondent No.4 i.e. Punjab Alkalies & Chemicals Ltd.

Ishtbir Singh Sidhu, Advocate, for respondent No.3 in LPA No. 2064 of 2012.

A.K. SIKRI, CHIEF JUSTICE

(1) Letters Patent Appeal No. 2059 of 2012 arises out of the judgment dated 29.11.2012 passed in Civil Writ Petition No. 6729 of 2012. This writ petition was decided along with two other writ petitions by the learned Single Judge vide the aforesaid impugned judgment. All the three writ petitions have been dismissed holding that the Employer of the writ petitioners, namely, the Punjab Alkalies & Chemicals Limited. (for short 'the PACL') is not a 'State' or any 'Authority' under Article 12 of the Constitution of India and therefore, the writ petitions are not maintainable. Though against that judgment, all the three petitioners filed appeals, the appeal filed by Mr. Anurag Puri i.e. Letters Patent Appeal No. 2058 of 2012 has been withdrawn by him. That is the reason we are left with these two Letters Patent Appeals wherein identical issue about the maintainability of the writ petitions is to be decided.

(2) In Letters Patent Appeal No. 2059 of 2012, the concerned Employee is Shri Arvinder Goyal, who had challenged the validity of the orders dated 10.04.2012, vide which his services had been terminated. The termination was without issuing any charge-sheet or show cause notice, referring to a clause in the appointment letter, stating that his services could be terminated by giving one month notice or deposit one month salary in lieu thereof. Appellant in Letters Patent Appeal No. 2064 of 2012 had challenged his transfer from Head Office Chandigarh to Naya Nangal, I.T. Department, alleging malafides and raising a grievance that as a result of his transfer he was humiliated and made to work under his juniors who were given undue promotions.

(3) In these writ petitions, interim orders were passed staying operation of the orders of termination and transfer, respectively. On dismissing the writ petition vide the impugned judgment, the learned Single Judge had stayed the execution of the judgment till 14.12.2012. Before this date, both these appeals were filed and the interim stay was extended.

(4) Coming to the issue as to whether the PACL is a 'State' under Article 12 of the Constitution or not, the learned Single Judge while taking note of certain judgments of the Supreme Court on the subject, held that the tests laid down in those judgments have not been satisfied in the instant case. We would like to refer to the discussion in the impugned orders at this stage.

IMPUGNED JUDGMENT

(5) The learned Single Judge took note of a judgment in case *Pradeep Kumar Biswas versus Indian Institute of Chemical Biology (1)*, wherein seven Judges Bench approved six tests laid down in *Ramanna Daya Ram Shetty versus International Airport Authority of India (2)* and went on to hold that those tests were not satisfied in the instant case. We would like to reproduce the following discussion from that judgment:-

“27. In Pradeep Kumar Biswas’s case (supra), Hon’ble the Supreme Court noted with approval the tests laid down in earlier judgment of Hon’ble the Supreme Court in **Ramanna Dayaram Shetty Vs. International Airport Authority of India, AIR 1979 SC 1628**, which are 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 Government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(1) 2002(5) SCC 111

(2) AIR 1979 SC 1628

(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.”

28. If the case of the petitioner is considered on the tests laid down aforesaid, it can safely be opined that the same does not fall in any of the tests, as laid down at Sr. Nos. (1) to (3), (5) and (6), as entire share capital of the Company is not held by the government; entire expenditure of the Company is not met with financial assistance from the State; the Company is not enjoying monopoly status, which is either State conferred or State protected; functions of the Company are not of public importance and closely related to governmental functions as it is merely a commercial establishment and none of the departments of the Government has been transferred to the Company.

29. Now the issue remains as to whether the respondent- Company satisfies the test, namely, “existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality”.

30. It is not in dispute in the present case that PSIDC holds 44.26% of share holdings in the respondent-Company. 37.35% shares are held by general public and balance is owned by financial institutions. The Board of Directors of the Company has been constituted in terms of the provisions of the Act, applicable for any public limited company. At present, out of nine Directors, three have been nominated by PSIDC, two by lending institutions and four by the share holders. Merely because some of the Directors are government servants will not lead to the conclusion that the Company, in which their services have been transferred, will amount to be a State or any other authority amenable to writ jurisdiction. There is no day-to-day control of the Government or even the PSIDC in the working of the Company as it is managed by its own Board of Directors or the employees employed by it independently.”

THE ARGUMENTS:-

(6) Mr. Amar Vivek, learned counsel appearing for the appellants submitted that PACL fulfills all the tests laid down in **Ramanna Daya Ram Shetty's** case (supra). He further submitted that PACL was floated primarily by the PSIDC, Punjab Undertaking, which was exercising full control over it. His endeavour in this behalf was to show that there were 9 Directors in the Board of Directors and 7 out of them were the Government nominees and through these Directors complete control over the functioning of the PACL was there with the Government. He referred to Article 159(1) of the Articles of Association of PACL, as per which the PSIDC has right to nominate a person to be the Chairman of the Board so long as PSIDC, either by itself or through its nominee hold in the aggregate not less than 25% of the paid up Equity Shares Capital of the Company. As per Article 159(2) of the Articles of Association, this Chairman is not to be whole time Director of the Company but he is entitled to call for any information relating to the company's working). Thus he does not have any day to day say in the affairs of the control or say in the affairs of the company. His position is that of a person who can supervise the working of the company by calling of any information.

(7) Mr. Vivek further submitted that in PSIDC, a person, who is appointed as Chairman, is an I.A.S. officer and is the Principal Secretary as well. He further submitted that the Managing Director of the PSIDC is always appointed by the State of Punjab who is again an I.A.S. officer. From this he sought to argue that the Government through PSIDC is exercising control over the PACL. In order to buttress this submission he referred to the order of the Governor dated 20.07.2012 whereby an IAS Officer was posted as Managing Director of PACL. This order pertaining to the said officer reads as under:-

“GOVERNMENT OF PUNJAB
DEPARTMENT OF PERSONNEL
(I.A.S. BRANCH)

ORDER OF THE GOVERNOR OF PUNJAB

The postings/transfers of following officers are ordered with immediate effect:-

Sr. No.	Name and Present posting	Transferred/Posted as
1 to 20	xx	xx
21	Sh. Jiwan Deep Singh Kahlon, IRS, Special Secretary, VAT and Advisor, Income Tax, Punjab.	Special Secretary VAT and Advisor Income Tax, Punjab and in addition Managing Director, Punjab Alkalics & Chemicals Ltd. Chandigarh relieving Shri Sukhjit Singh Bains, IAS of this additional charge.
22 & 23.	xx	xx

Consequent thereupon a letter dated 23.07.2012 was written by the PSIDC to the PACL stating that in terms of Article 129(a) of the Articles of Association of the PACL, the PSIDC could nominate the Managing Director and in place of earlier Managing Director it was nominating Shri Jiwandeep Singh Kahlon, IRS, as a nominee Director. The PACL was requested to take necessary steps to appoint him as the Managing Director of the Company. He further submitted that even the Board members from time to time were nominated by the Government. Mr. Vivck also referred to the Gradation List corrected upto 01.11.1995 which shows posting of an I.A.S. officer as the Managing Director of PACL.

(8) In furtherance of his argument to the effect that the deep and pervasive control of the Government was vested in PACL, Mr. Vivck also referred to the following features:-

- (a) When a move of disinvestment of 44.26% equity share holding of PSIDC in PACL was initiated in July, 2010, in the document titled as 'request for qualification' prepared by the Directorate of

Disinvestment, Government of Punjab, it was accepted that PACL is a company promoted by PSIDC, a company wholly owned by the Punjab Government. This document also clearly states that the PSIDC intended to disinvest its entire stake of 44.26% in PACL alongwith 'full management control through competitive bids'. He thus submitted that full management control of PSIDC in PACL has been accepted in the said document.

(b) The PACL was allotted the land by the Punjab Government at concessional rates applicable to Public Sector Undertaking. He also referred to number of other benefits drawn by PACL like continue supply of power/electricity; exemption from deposit of security for electricity connection from Punjab State Transmission Corporation Ltd. and 100% peak load by granting exemption from peak load restriction for the period w.e.f. 08.10.2009 to 31.05.2010.

(c) Mr. Vivek also referred to the Minutes of the Meeting dated 08.06.2011 which was held to consider the measures for sustainable operations of PACL and its long term survival. He submitted that in these minutes, it was decided that PSIDC and PACL should explore the possibility of arranging fresh loan to the extent of 80 Crores from any other Institution(s)/Bank(s) and also for making One Time Settlement with the existing Lenders so that the PACL may exit from the CDR Package. For this, Department of Finance, Punjab, had agreed to provide Punjab Government Guarantee to the new Lender(s) for repayment of said fresh loan(s) to the extent of Rs. 80 Crores. Submission was that without Government control, the Punjab Government could not have agreed for providing such guarantee.

(d) Representations were made to various departments to the effect that PACL was Public Sector Undertaking Company.

(e) Mr. Vivek also referred to the Minutes of the Meeting dated 13.01.2010 under the Chairmanship of Chief Secretary, Punjab to consider the reliefs and concessions which were to be given to PACL as per the Revised Corporate Debt Reconstructing Package, sanctioned by the CDR Cell on 13.01.2010.

(f) He submitted that so many exemptions were granted to PACL in this meeting.

On the basis of aforesaid material, it was sought to argue that the PACL was nothing but an 'Authority' under the Articles of Association.

(9) Learned counsel for the respondents, per-contra, submitted that as per the judgment in Pardeep Kumar Biswas (supra), it was necessary that there had to be financial, administrative as well as functional control of the Government in order to bring a particular body within the ambit of Article 12 of the Constitution. His submission was that the PACL did not meet all these tests which were considered cumulatively as rightly held by the learned Single Judge. Learned Counsel heavily relied upon Articles 129(a), 159 and 172 of the Articles of Association in this behalf. He submitted that as per Article 129(a), the PSIDC was entitled to nominate three Directors on the Board of Directors of the Company only so long as it hold shares not less than 26% and Article 159 gives powers to the PSIDC to appoint the Managing Director of the company. Further Article 172 describe the manner in which the Managing Director(s) or whole time Director(s) were to be appointed and this power was given to the Board of Directors subject to the provisions of Sections 269, 316 and 317 and other applicable provisions of the Company Act. He also traced the history of PACL by pointing out that no doubt in 1975, the PACL was established as 100% subsidiary of PSIDC. However, in the year 1983, 40.18 lacs shares were sold by the PSIDC, likewise in the year 1994 5 lacs more shares hold by PSIDC in PACL were off-loaded and at present share holding was less than 50% i.e. 44.26%. He also submitted that the Chairman was holding the office on full time basis. Likewise, the Directors nominated by the PSIDC in the Board of PACL were not full time Directors and it was only the Managing Director sent by the PSIDC to PACL who was whole time.

(10) On the aforesaid submissions which are highlighted by counsel for both the sides, we have to decide as to whether the PSIDC is an authority or instrumentality of the State under Article 12 of the Constitution. Before we undertake this exercise of analyzing these features it is necessary to keep in mind the legal position as enunciated in series of judgments. This legal position is taken on and summarized by us in the subsequent paragraphs:-

**PRINCIPLES TO DETERMINE THE STATUS OF A COMPANY
BEING STATE UNDER ARTICLE 12 OF THE CONSTITUTION:-**

(11) Test for determining this issue are now well settled and well ingrained by catena of judgments of the Apex Court. It is now well settled that for the purpose of Article 12 of the Constitution, the body need not only be a statutory body created by a statute, even a company incorporated under the Companies Act or registered under the Societies Registration Act or a trust etc. can also be covered as a State within the meaning of Article 12 of the Constitution. The requirement of law in this respect is that such a company must be under 'deep' and 'pervasive' control of the Government.

(12) A Seven-Judge Bench of the Apex Court in *Pradeep Kumar Biswas* versus *Indian Institute of Chemical Biology & Others* (*supra*) 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.

(13) The entire law discussed in the aforesaid judgment is beautifully summed up by the Supreme Court in a recent case titled as *Balmer Lawrie and Co. Ltd. and Ors. Vs. Partha Sarathi Sen Roy and Ors.* Civil Appeal Nos. 419-426 of 2004 and Civil Appeal No. 926 of 2013 Decided On: 20.02.2013. Therefore, we do need no more than to find out from the said judgment narrating as to what Pradeep Kumar Biswas's case (*supra*) decided.

The Apex Court, while deciding the said issue placed reliance upon its earlier judgments in *Rajasthan State Electricity Board Jaipur* versus *Mohan Lal and others* (3), and *Sukhdev Singh and others* versus *Bhagatram Sardar Singh Raghuvanshi and Anr.* (4), wherein it was held that such a body must perform certain public or statutory duties and

(3) AIR 1967 SC 1857

(4) AIR 1975 SC 1331

those duties must be carried out for the benefit of the public, and not for private profit. Furthermore, it was also laid down that such an authority is not precluded from making a profit for public benefit. The court came to the conclusion, that although the employees of the Corporation may not be servants of either the Union, or of the State, at the same time, such a company/corporation must not represent the "voice and hands" of the government. Therefore, this Court in Pradeep Kumar Biswas case (supra), held that the financial support of the State, coupled with an unusual degree of control over the management and policies of a body, may lead to an inference that it is a State. Additionally, other factors such as, whether the company/corporation performs important public functions, whether such public function (s) are closely related to governmental function, and whether such function (s) are carried out for the benefit of the public, etc. are also considered. The Apex Court also considered the case of *Ramana Dayaram Shetty versus International Airport Authority of India and others (5)*, wherein it was held that a corporation can be said to be an instrumentality or agency of the government therein under certain conditions, and the same are summarised below:

"(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."

(14) Two things follow from the above, namely:-

(i) firstly, the Court has to take into consideration 'cumulative effect' as established, to find out whether the body is financially, functionally and administratively, dominated by, or is under the control of the Government.

(ii) secondly, the control must be 'pervasive'.

(15) Dictionary meaning of word 'pervasive' as per 'Black's Law Dictionary (9th Edition)-2009 is as under:-

"It means that which pervades/tends to pervade in such a way, so as to be, or become, prevalent or dominant.

Extensive or far reaching, spreading through every part of something."

(16) Thus, in order to determine the issue this Court is supposed to carry out an in depth examination of who has administrative, financial and functional control over the Corporation and then assess whether the State in such a case is only a regulatory authority or it has deep and pervasive control over the Corporation; whether such company is receiving full financial support from the Government; whether the administrative control over it has been retained by the State and its authorities; and whether it is supervised, controlled and watched over by various departmental authorities of the State, even with respect to its day-to-day functioning. If it is so then the Corporation can be held to be an instrumentality of the State under Article 12 of the Constitution (See *Virendra Kumar Srivastava* versus *U.P. Rajya Karmachari Kalyan Nigam and Anr. (6)*).

(17) Keeping in view the aforesaid test in mind, we proceed to discuss the structure of the respondent-corporation.

OUR ANALYSIS

(18) At the out set we would like to affirm the findings of the learned Single Judge that the present case does not fall in tests No. (1) (2) (3) (5) and (6) of the six tests laid down in *Ramanna Dayaram Shetty's* case

(supra). It is clear from the share holding pattern given above that neither the entire share capital of PACL is held by the government nor the State is providing any assistance. It is only the PSIDC which holds some share holding and as of today even that is much less than 50%. Likewise, it is no body's case that PACL is enjoying the monopoly status conferred by the State or State protected. Likewise, the activities of the PACL are commercial in nature and not akin to any Government function or of any public importance. It is also no body's case that any services of the Departments of the Government are transferred to the PACL.

This leaves us with only one test i.e. test No. (4) and we have to examine as to whether there is deep and pervasive State control over the functioning of the PACL.

(19) In order to fulfill the test of pervasive control, it is to be so extensive and far reaching, spreading through every part of the functioning of the PACL and it is to be shown that this control of the Government is prevalent all over the functioning of the PACL and the Government is calling shots being in a dominant position.

(20) While examining this issue we have also to keep in mind the cumulative effect of various considerations and to see whether the PACL is functionally and administratively dominated or is under the control of the Government.

(21) No doubt, as per the provisions of Article 129(a) of the Articles of Association of the PACL, PSIDC is entitled to nominate three Directors out of 9 Directors on the Board of Directors of PACL, so long as it holds shares not less than 26% and Article 159 gives PSIDC power to appoint the Managing Director of the PACL as well. However, such a power is generally given to the majority share holders and it cannot be said that merely because of this PSIDC has control over the affairs of the PACL and through PSIDC the control is vested with the State Government. Three Directors nominated by PSIDC still remains in minority having regard to the number of Directors in the Board of Directors of PACL. No doubt, the Managing Director is sent by the PSIDC and normally he is an IAS officer. He is even full time Managing Director of PACL. But merely because of this reason, it cannot be said that it is a statutory character of the State within the meaning

of Article 12 of the Constitution. At this stage, we would like to reproduce para No. 39 of the judgment in Pradeep Kumar Biswas's case (*supra*) to the following effect:-

“39. The picture that ultimately emerges is that the tests formulated in **Ajay Hasia** 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.”

(22) Thus even if we see that through whole time Managing Director and supervisory Chairman, some control is exercised, it is the PSIDC and not the State Government which exercises some control. The focal point has to be whether in the light of the cumulative effects as established, the body is financially, functionally and administratively dominated by/or under the control of the Government and this control is pervasive. We find complete absence of financial or functional control. Some administrative control may be there but it is not all pervasive.

(23) The position would have been different had it been a wholly government enterprises or it was under the administrative control of the State Government or all the Directors were appointed by the State Government or from Government Services. No such feature is available here. It is also not a case like many companies which come within the ambit of Article 12 that the State Government or the Governor is entitled to issue directives or instructions from time to time. It also does not meet the test of a government company defined under Sections 15 and 17 of the Companies Act, 1956. No matters of policy regarding the PACL or the management issues are decided by or even the control of the State Government. As emphasized above, day to day business and operations and decisions in this behalf are taken by the Board of Directors in a totally independent manner.

(24) Managing Director is also under the control of Board of Directors which is the Apex Body incorporated under the Companies Act. The policy decisions are taken by this Apex Body. Thus merely because the Managing Director is an IAS officer and in that capacity for his posting necessary orders are passed by the Governor, that is hardly of any significance. Likewise, some other features which are highlighted by Mr. Amar Vivek, Advocate are not indicative of any deep and pervasive control of the Government. We have to keep in mind the circumstances under which those steps were taken. It was move of disinvestment of 44.26% equity share holding of PSIDC in PACL that prompted the Government to take those steps and the aforesaid steps were taken in the interest of PACL to facilitate the move of PSIDC to disinvest its equity shares.

(25) At this stage, we would like to discuss certain judgments which would reflect the manner in which the principles to determine whether PACL is an instrumentality or agency of the Government under Article 12 of the Constitution have been applied. In *General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, U.P. versus Satrughan Nishad and others (7)*, the question arose as to whether Kisan Sahkari Chini Mills Ltd. which is a Cooperative Society registered under the U.P. Cooperative Societies Act, 1965, would come within the ambit of Article 12 of the Constitution. Holding that none of the tests applied in that case, the Court entailed the following discussion:-

“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 no where 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 cooperative 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 nongovernment 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.”

(26) Likewise, in *G.Bassi Reddy versus International Crops Research Institute and another* (8) 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 nongovernment 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.

(27) Another case of importance which needs mention is *Lieutenant Governor of Delhi and others versus V.K.Sodhi and others* (9). In that case, the Apex Court 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 versus National Council of Educational Research and Training* (10), held that NCERT did not

(8) 2003(4) Supreme Court Cases 225

(9) 2007(15) Supreme Court Cases 136

(10) 1991(4) SCC 578

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 byelaws 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.

The Supreme Court observed that even going as per the judgment in Case Pradeep Kumar Biswas's case (*supra*), it was to consider the cumulative effect of all the facts available in the case. So considered, SCERT was not 'State' or 'other authority' within the meaning of Article 12 of the Constitution. According to Pradeep Kumar Biswas's case (*supra*), each case has to be considered with reference to the facts available for determining whether the body concerned is State or other authority within the meaning of Article 12 of the Constitution.

So considered, the Apex Court found that the Government does not have deep and pervasive control over the working of the SCERT and it does not have financial control in the sense that once the finances are made available to it, the administration of those finances was left to SCERT and there was no further governmental control. The Apex Court held that SCERT was not State or 'other authority' within the meaning of Article 12 of the Constitution of India and the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the State.

(28) Thus, we agree with the analysis and conclusions of the learned Single Judge and affirm the findings that the PACL is not a State under Article 12 of the Constitution. As a result, both these appeals are dismissed.