

PETITIONER:
TEKRAJ VASANDI ALIAS K.L. BASANDHI

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT 10/12/1987

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
RANGNATHAN, S.

CITATION:
1988 AIR 469 1988 SCR (2) 260
1988 SCC (1) 236 JT 1987 (4) 621
1987 SCALE (2) 1278
CITATOR INFO :
F 1992 SC 76 (3,6)

ACT:
Service matter-Dismissal from service as a result of disciplinary action-Institute of Constitutional and Parliamentary Studies-Whether 'State' within the meaning of Article 12 of the Constitution.

HEADNOTE:

%

The appellant, an employee of the Institute of Constitutional and Parliamentary Studies (I.C.P.S., for short), was dismissed from service by order dated November 17, 1982, as a result of disciplinary action. He challenged the dismissal order by a writ petition before the High Court. The question whether the I.C.P.S. was a 'State' within the meaning of Article 12 of the Constitution arose for consideration as a major issue in the matter before the High Court. A Single Judge of the High Court dismissed the petition, holding that the employer was neither an agency nor an instrumentality of the government and did not constitute 'State' as above said, and, therefore, was not subject to the writ jurisdiction of the High Court. The appeal against that judgment of the Single Judge was dismissed by the Division Bench of the High Court. Aggrieved by the decision of the High Court, the appellant moved this Court by special leave.

Disposing of the appeal, the Court,

^

HELD: In the course of hearing, Dr. Anand Prakash, counsel for the I.C.P.S., respondent No. 2, stated that whether the Institute be 'State' or not within the meaning of Article 12 of the Constitution, the employer was prepared to give a fresh opportunity to the appellant to meet the charges against him. With that concession, the order of dismissal, etc. passed against the appellant should have been set aside and the matter should have gone before the enquiry officer, but Dr. Anand Prakash as also counsel for the Union of India invited the Court to decide the issue as to whether the I.C.P.S. constituted 'State' within the constitutional meaning of the term. [263H; 264A-C]

The main question for consideration then was whether I.C.P.S. was a 'State'. I.C.P.S. could become 'State' only if it was found to be an authority within the territory of India or under the control of the Government of India. [264D,G]

261

I.C.P.S. is a registered society. The emergence of a new generation within less than two decades of independence gave rise to a feeling that the people's representatives in the Legislatures required the acquisition of the appropriate democratic bias and spirit. I.C.P.S. was born as a voluntary organisation to fulfil this requirement. The Speaker of the Lok Sabha was its first President. Three Ministers, a former Chief Justice of India and a former Attorney General joined as its Vice-Presidents. Some of the public officers were associated in its Administrative set-up. Services of some employees of Parliament were lent to it. While Article 12 refers to Parliament as such, a few members of Parliament cannot be considered as Parliament so as to constitute that body as referred to in Article 12. The Speaker and the Ministers who joined as Vice-Presidents of the Society were there in their personal capacities and not as Ministers, etc. There were many people in the category of Vice-President, Executive Chairman, Treasurer and members, who were not a part of the Government, and some of them did not belong to Parliament. [281A-F]

The objects of the Society were not governmental business. Many of the objects of the Society were not confined to the two Houses of Parliament and were intended to have an impact on Society at large. [281G-H]

The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions. No material was placed before the Court for the stand that the Society was not entitled to receive contributions from any indigenous source without government sanction. Since government money has been coming, the usual conditions attached to government grants have been applied and enforced. If the Society's affairs were really intended to be carried on as a part of the Lok Sabha or Parliament as such, the manner of functioning would have been different. The accounts of the Society are subject to audit as the affairs of the Societies receiving government grants are. Government imposes conditions and restrictions when grants are made, and the Society is also subject to the same, and the mere fact that such restrictions are made is not a determinative aspect. [281H; 282 A-D]

There are registered societies which have been treated as 'State', but in the case of each of them, either governmental business had been undertaken by the Society or what was expected to be the public obligation of the 'State' had been undertaken to be performed as a part of the Society's function. [282H; 283A]

262

Having given anxious consideration to the facts of the case, the Court is not in a position to hold that I.C.P.S. is either an agency or an instrumentality of the State so as to come within the purview of other authorities in Article 12 of the Constitution. I.C.P.S. is a case of its type-typical in many ways and normal tests may, perhaps, not properly apply to test its character. Even if some institution becomes 'State' within the meaning of Article 12, its employees do not become holders of Civil posts so as to become entitled to the cover of Article 311 of the Constitution. They would, however, be entitled to the benefits of Part III of the Constitution. It is unnecessary

to examine the appellant's case, keeping Articles 14 and 16 of the Constitution in view, as, on the concession of counsel for I.C.P.S., the proceedings would have to re-open. [283C-E]

In the result, the appellant would be entitled to the following reliefs.

The order of dismissal set aside and the proceedings restored to the stage of enquiry. [283F]

The appellant shall be deemed to have been restored to service and he would become entitled to normal relief available in such a situation. He should be deemed to be in service and his suspension would not continue. His suspension, which had merged into dismissal is vacated. It shall, however, be open to the employer to make any direction as is deemed appropriate in that behalf in future. [283F-G]

The appellant becomes entitled to salary for the past period subject to his satisfying the authorities that he had not earned any income during that period. [283H]

The appellant shall be given a reasonable opportunity by the enquiring officer to meet the charges and the enquiry shall be completed within four months. [283H; 284A]

The enquiry officer shall allow inspection to the appellant of all records relevant to the enquiry. [284B]

Rajasthan State Electricity Board, Jaipur v. Mohan Lal and Ors., [1967] 3 SCR 377; Smt. Ujjam Bai v. State of Uttar Pradesh, [1963] 1 SCR 778; Sabhajit Tewary v. Union of India

JUDGMENT:

Sardar Singh Raghuvarshi & Anr., [1975] 3 SCR 619; Ramana Dayaram Shetty v. The

263
International Airport Authority of India & Ors., [1979] 3 SCR 1014; Managing Director, Uttar Pradesh Warehousing Corporation & Anr. v. Vinay Narayan Vajpayee, [1980] 2 SCR 773; Ajay Hasia, etc. v. Khalid Mujib Sehravardi & Ors. etc., [1981] 2 SCR 79; Som Prakash Rekhi v Union of India and Anr., [1981] 2 SCR 111; B.S.Minhas v. Indian Statistical Institute & Ors., [1984] 1 SCR 395 and P. K Ramachandra Iyer and Ors. v. Union of India and Ors., [1984] 2 SCR 200.

&
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 495 of 1984.

From the Judgment and order dated 1.11.1983 of the Delhi High Court in L.P.A. No. 160 of 1983.

P. P. Rao and A. Mariaputham for the Appellant.

Dr. Anand Prakash, D.N. Dwivedi, Mrs. Anil Katiyar, C.V. Subba Rao, Vineet Kumar and Deepak K. Thakur for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by special leave calls in question the judgment of a Division Bench of the Delhi High Court in a Letters Patent Appeal upholding the decision of a learned Single Judge rejecting the writ petition of the appellant. The appellant was an employee of the Institute of Constitutional and Parliamentary Studies (hereafter referred to as ICPS for short) and in a disciplinary action he was dismissed from service by order dated 17th November, 1982. When he assailed the order in a writ petition before the High Court, the question whether ICPS was 'State' within the meaning of Article 12 of the Constitution came for consideration as the major issue arising in the matter. The learned Single Judge dismissed the writ petition by holding

that the employer was neither an agency nor an instrumentality of the Government and did not constitute 'State' within the meaning of Article 12 and, therefore, was not subject to the writ jurisdiction of the High Court. The appeal against the judgment of the learned Single Judge was dismissed on 1st November, 1983.

In course of hearing of the appeal Dr. Anand Prakash appearing for ICPS fairly stated that whether the Institute be 'State' or not within the meaning of Article 12 of the Constitution, the employer

264

was prepared to give a fresh opportunity to the appellant to meet the charges so as to dispel from his mind the feeling that he has not been given reasonable opportunity to defend himself. Ordinarily, with that concession the impugned order entailing the dismissal of the employee and the judicial determination against the appellant should have been set aside and the matter should have gone before the enquiry officer for affording reasonable opportunity to the appellant of being heard against the charges. Dr. Anand Prakash, however, invited us to enter into the merits of the issue as to whether ICPS constitutes 'State' within the constitutional meaning of the term The Union of India which appears before us through counsel also wanted that the question should be decided. Thereupon we suggested to the appellant who was till then appearing in person to get represented through counsel so that the matter could be appropriately argued on his behalf also. He has been rendered suitable assistance by the Supreme Court Legal Aid Committee and Mr. P.P.Rao, Senior Counsel, has appeared on his behalf.

The main question for consideration now, therefore, is whether ICPS is 'State'. For appropriate consideration of this question it is necessary to look into the constitution of the body, the purpose for which it has been created, the manner of its functioning including the mode of its funding and the broad features which have been found by this Court in several decisions to be relevant in the matter of determining a dispute of this type. Article 12 of the Constitution provides an inclusive definition of the term 'State' by saying:

"In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the State Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

obviously ICPS can become 'State' only if it is found to be an authority within the territory of India or under the control of the Government of India.

ICPS, respondent No.2, is a society registered under the Societies Registration Act, 21 of 1860, and was registered on 9th March, 1965. As would appear from its Memorandum of Association, the foundation members were 19 in number-13 being members besides a President and five Vice-Presidents. The first President of the Soci

265

ety was the then Speaker of the Lok Sabha. The five Vice-Presidents were the then Minister of Railways, Minister of Law and Social Security Minister of Communication and Parliamentary Affairs, a former (Chief Justice of India and a former Attorney General of India. Dr. L.N. Singhvi, then a member of the Lok Sabha, was its Executive Chairman. The

Public Trustee in the Department of Company Affairs and Insurance in the Ministry of Finance was the Director and a member of the Lok Sabha was the Society's Treasurer. The then Minister of Cultural Affairs in the Ministry of Education along with three members of the Lok Sabha, a Senior Advocate of the Supreme Court, a member of the Rajya Sabha, the then Vice-Chancellor of Rajasthan University, the respective Secretaries of the Lok Sabha and the Rajya Sabha Secretariat and the Secretary in the Ministry of Law were its Members. The registered office of the Society was initially located within the Parliament House but was later on shifted to the Vithalbhai Patel House, Rafi Marg, New Delhi. The objects of the Society inter alia were:

(1) to promote and provide for constitutional and Parliamentary studies with special reference to comparative studies in constitutional systems of various countries and working of the Indian Constitution and parliamentary and governmental institutions in their various aspects;

(2) to undertake study of courses and fundamental research relating to developments in constitutional law, conventions and practices, parliamentary procedure, legislative drafting, trends in judicial interpretation and allied matters;

(3) to organise inter alia training programmes in constitutional problems and matters of current parliamentary importance;

(4) to set up a legislative research and reference service for the benefit of all interested members of the Union Parliament and State Legislature irrespective of their party affiliations;

(5) to undertake and provide for the publication of a journal and of research papers and of books and brochures with a view to disseminate democratic values and to foster broad based civic education and awareness, and in particular, to promote study of constitutional and parliamentary affairs;

266

(6) to establish and maintain libraries and information services to facilitate the study of constitutional and parliamentary subjects and spread information in regard thereto;

(7) to invite as and when feasible, scholars who may or may not be members of the Society, to take advantage of the facilities offered by the Society and to benefit the Society by their knowledge and experience; and

(8) to institute appropriate fellowships, offer prizes and arrange scholarships and stipends in furtherance of the objects of the society.

The Memorandum permitted the Society to accept gifts, donations and subscriptions of cash and securities and of any property either movable or immovable. The rule classifies the members under heads like Founder Members, Life Members, Honorary Members, ordinary Members, Corporate Members and Associate Members. ordinary membership, according to the Rules, would extend to Members of Parliament or of any State Legislature or those who have been or are members of the Judiciary or advocates of the Supreme Court or the High Courts or persons employed in public service or persons engaged in teaching of study of social sciences particularly of Political Science, Law or subjects related thereto. In the category of Honorary Members were the President, the Vice-President and the Prime Minister of India. Though the Memorandum permitted receipt

of gifts and donations from outside, it is not disputed that the main source of income of the society has been the annual Central Government grant.

We think it appropriate at this stage to turn attention to judicial precedents to find out as to what should be the test to be applied for determining when an institution like respondent No.2 would be treated as 'other authorities' under Article 12 of the Constitution. The first in point of time is the Constitution Bench judgment in the case of Rajasthan State Electricity Board, Jaipur v. Mohan Lal & Ors., [1967] 3 SCR 377 Bhargava, J. who delivered the main judgment observed:

"the meaning of the word 'authority' given in Webster's Third New International Dictionary, which can be applicable, is a "public administrative agency or corporation having quasi-governmental powers and authorised to

267

administer a revenue-producing public enterprise." This dictionary meaning of the word 'authority' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words 'other authorities' are used in Article 17 of the Constitution

In Smt. Ujjam Bai v. State of Uttar Pradesh, [1963] 1 SCR 77 Ayyangar, J. had observed:

"Again Article 12 winds up the list of authorities falling within the definition by referring to 'other authorities' within the territory of India which cannot obviously be read as ejusdem generis with either the Government and the Legislatures or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India.

Shah, J., as he then was, added a note to the leading Judgment of Bhargava and observed:

"I am unable, however, to agree that every constitutional or statutory authority on whom powers are conferred by law is 'other authority' within the meaning of Article 12. The expression 'authority' in its etymological sense means a body invested with power to command or give an ultimate decision, or enforce obedience, or having a legal right to command and be obeyed.

..... In determining what the expression 'other authority' in Article 12 connotes, regard must be had not only to the sweep of fundamental rights over the power of the authority, but also to the restrictions which may be imposed upon the exercise of certain fundamental rights (e.g., those declared by Article 19) by the authority. Fundamental rights within their allotted fields trans-

268

cend the legislative and executive power of the sovereign authority. But some of the important

fundamental rights are liable to be circumscribed by the imposition of reasonable restrictions by the State. The true content of the expression 'other authority' in Article 12 must be determined in the light of this dual phase of fundamental rights. In considering whether a statutory or constitutional body is an authority within the meaning of Article 12, it would be necessary to bear in mind not only whether against the authority fundamental rights in terms absolute are intended to be enforced, but also whether it was intended by the Constitution makers that the authority was invested with the sovereign power to impose restrictions on very important and basic fundamental freedoms.

In my judgment, authorities, constitutional or statutory invested with power by law but not sharing the sovereign power do not fall within the expression 'State' as defined in Article 12. Those authorities which are invested with sovereign power, i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others fall within the definition of 'State' in Article 12, and constitutional or statutory bodies which do not share that sovereign power of the State are not, in my judgment, 'State' within the meaning of Article 12 of the Constitution.

Two cases, the First of *Sabhajit Tewary v. Union of India & Ors.*, [1975] 3 SCR 616 and the other of *Sukhdev Singh & Ors v. Bhagatram Sardar Singh Raghuvanshi & Anr.*, [1975] 3 SCR 619 were disposed of by the same Constitution Bench on February 21, 1975. In both these cases, the true meaning of Article 12 of the Constitution fell for consideration. *Sabhajit Tewary's* case was one where the status of the Council of Scientific and Industrial Research was examined. This Court took note of the fact that the Council was a society registered under the Societies Registration Act. Under Rule 3, the Prime Minister of India was the ex-officio President of the Society and under Rule 30 the governing body consisted of persons appointed by the Government of India representing the administrative ministry under which the Council of Scientific and Industrial Research is included and the Ministry of Finance. The Court also took note of the manner in which the affairs of the Society including funding were conducted. Ray, C.J., in the brief judgment that the

269

Court delivered in the case observed: A

"Extracting the features as aforesaid, it was contended that these would indicate that the Council of Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The society does not have a statutory character like the oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the governing body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and cooperation of

scientific and industrial research, the institution and functioning of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.

This Court has held in *Praga Tools Corporation v. C.A. Imanual & Ors.*, [1969] 3 SCR 773; *Heavy Engineering Mazdoor Union v. The State of Bihar & Ors.*, [1969] 3 SCR 995 and in *S.L. Aggarwal v. General Manager, Hindustan Steel Ltd.*, [1970] 3 SCR 363 that the Praga Tools Corporation, Heavy Engineering Mazdoor Union and Hindustan Steel Ltd. are all companies incorporated under the Companies Act and the employees of these companies do not enjoy the protection available to Government servants as contemplated in Article 311. The companies were held in these cases to have independent existence of the Government and by the law related to corporations. These could not be held to be departments of the Government."

The ratio of this decision has been fully relied upon by the High Court in dismissing the claim of the appellant.

270

In *Sukhdev Singh's case* (supra) the leading judgment was delivered also by Ray, C.J. Two questions fell for consideration-(1) whether an order of removal from service contrary to Regulations would enable the employee to a declaration against the statutory corporation of continuance in service or would it end up in claim for damages only and (2) whether the employee of a statutory corporation is entitled to claim protection of Articles 14 and 16 against the Corporation. The Court, therefore, straight went into the question as to whether statutory corporations were authorities within the meaning of Article 12. As a fact, three corporations being the oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation were before the Court and each one of them had been set up under a special statute. At page 641 of the Reports, the learned Chief Justice pointed out:

"In the background of the provisions of the three Acts under consideration, the question arises as to whether these Corporations can be described to be authorities within the meaning of Article 12 of the Constitution . "

At page 642 of the Reports the conclusion was reached to the effect that "these statutory bodies are 'authorities' within the meaning of Article 12 of the Constitution." We are really concerned with what Mathew J., added to the judgment He observed:

"The test propounded by the majority is satisfied so far as the oil and Natural Gas Commission is concerned as section 25 of the oil and Natural Gas Commission Act provides for issuing, binding direction to third parties not to prevent the employees of the Commission from entering upon their property if the Commission so directs. In other words, as section 25 authorises the Commission to issue binding directions to

third parties not to prevent the employees of the Commission from entering into their land and as disobedience of such directions is punishable under the relevant provision of the Indian penal Code since those employees are deemed to be public servants under section 21 of the Indian Penal Code by virtue of section 27 of the Act, the Commission is an 'authority' within the meaning of the expression 'other authorities' in Article 12

271

Though this would be sufficient to make the commission a 'State' according to the decision of this Court in the Rajasthan Electricity Board case (supra), there is a larger question which has a direct bearing so far as the other two corporations are concerned, viz., whether, despite the fact that there are no provisions for issuing binding directions to third parties the disobedience of which would entail penal consequences, the corporations set up under statutes to carry on business of public importance of which is fundamental to the life of the people can be considered as 'State' within the meaning of Article 12."

Mathew, J. referred to the precedents and other authorities from England, France and United States and at page 654 of the Reports stated:

"The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business? When it is seen from the provisions of that Act that on liquidation of the corporation, its assets should be divided among the shareholders, namely, the Central and State governments and others, if any, the implication is clear that the benefit of the accumulated income would go to the Central and State Governments. Nobody will deny that an agent has a legal personality different from that of the principal. The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own The crux of the matter is that public corporation is a new type of institution which has sprung from the new social and economic functions of government and that it therefore does not neatly fit into old legal categories. Instead of forcing it into them, the law should be adapted to the needs of changing times and conditions.

I do not think there is any basis for the apprehension expressed that by holding that these public corporations are 'State' within the meaning of Article 12, the employees of these corporations would become government servants. I also wish to make it clear that I express no opinion on

272

the question whether private corporations or other like organisations, though they exercise power over their employees which might violate their fundamental rights, would be 'State' within the meaning of Article 12."

Then comes the case of Ramana Dayaram Shetty v. The

International Airport Authority of India & Ors., [1979] 3 SCR 1014. The question before the Court was whether the International Airport Authority of India was 'State' within the meaning of Article 12 so as to be subjected to enforcement of fundamental rights against it. Examining this aspect, Bhagwati, J., as he then was spoke for the three-Judge Bench thus:

"Now it is obvious that the government which represents the executive authority of the State, may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of judicial persons to carry out its functions. In the early days, when the Government had limited functions it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to force a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government. As early as 1819 the Supreme Court of the United States in *Mac Cullough v. Maryland*, (4 Wheat 315) held that the Congress has power to charter corporations as incidental to or in aid of governmental functions and, as pointed out by Mathew J., in *Sukhdev v. Bhagat Ram*, (supra) such federal corporations would ex-hypothesi be agencies of the Government. In Great Britain too, the policy of public administration through separate corporations was gradually evolved and the conduct of basic industries through giant corporations has now become a permanent feature

273

of public life. So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated with April, 1948 where it was stated inter alia that 'management of state enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this.' It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily, these functions could have been carried out by Government departmentally through service personnel, but the instrumentality or agency of the corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as

instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If the Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations. But the question is how to determine whether a corporation is acting as instrumentality or agency of Government. It is a question not entirely free from difficulty."

It was again pointed out in the same case that:

"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a Law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government ..."

274

The Court further stated:

"But the public nature of the function, if impregnated with governmental character or 'tied or ent-wined with government' or fortified by some other additional factor may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference.

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

governmental instrumentality or agency.

At page 1052 of the Reports the Court proceeded to consider whether International Airport Authority of India could be said to be an 'authority' falling within the meaning of 'State' in Article 12. The constitution of the body, the manner of filling it up? Government's power of control in the matter of appointment of members and termination of membership were utilised as tests for examining whether

275

the Airport authority was 'State'. After referring to the special A aspects, the Court observed:

"It will be seen from these provisions that there are certain features of the respondent which are eloquent and throw considerable light on the true nature of the first respondent. In the first place, the Chairman and Members of the first respondent are all persons nominated by the Central Government and the Central Government has also the power to terminate their appointment as also to review them in certain specified circumstances. The Central Government is also vested with the power to take away the management of any airport from the first respondent and to entrust it to any other person or authority and for certain specified reasons, the Central Government can also supersede the first respondent. The Central Government has also power to give directions in writing from time to time on questions of policy and these directions are declared binding on the first respondent."

Reference was made to the case of Sabhajit Tewary (supra). Bhagwati, J. referring thereto stated :-

"This decision does not lay down any principle or test for the purpose of determining when a corporation can be said to be an authority. If at all, any test can be gleaned from the decision, it is whether the corporation is really an agency of the Government."

and ultimately it was held that the Authority was 'State' under Article 12.

This case clearly approves the treatment of the matter by Mathew, J. in Sukhdev Singh's case (supra). The two-Judge Bench in the case of Managing Director, Uttar Pradesh Warehousing Corporation & Anr. v. Vinay Narayan Vajpayee, [1980] 2 SCR 773 was cited but we do not consider it necessary to refer to the same. On the other hand reference to the two later decisions of this Court may be more useful. Those are Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc., [1981] 2 SCR 79 of a Constitution Bench and the other is Som Prakash Rekhi v. Union of India & Anr., [1981] 2 SCR 111 being a three-Judge Bench decision. It is pertinent to indicate that both the judgments were delivered on November 13, 1980.

276

In Ajay Hasia's case an Engineering College was also a Society registered under the Jammu & Kashmir Registration of Societies Act, 1898, and the question that fell for consideration was whether it was an authority within the meaning of Article 12. The Court found that the Memorandum of Association of the Society in clause (3) set out the objects for which the Society was incorporated and they included among other things establishment of the college with a view to providing instructions and research in such branches of engineering and technology as the college may think fit and for the advancement of learning and knowledge

in such branches. Reference was made to the Memorandum of Association, the objects and the powers of the State Government to make appointments and to the fact that the State government with the approval of the Central Government had the power to take such action and to issue such directions as are necessary in respect of all matters relating to the functioning of the college as noticed in the review of the activities. The Court also took note of the fact that the founding members of the society were enumerated in clause (9) of the memorandum and they were the Chairmen to be appointed by the State Government with the approval of the Central Government, two representatives of the State Government, one representative of the Central Government, two representatives of the All India Council for Technical Education to be nominated by the Northern Regional Committee, one representative of the University of Jammu & Kashmir, one nonofficial representative of each of the Punjab, Rajasthan, Uttar Pradesh and Jammu & Kashmir States and to be appointed by the respective Governments in consultation with the Central Government and the principal who shall also be the ex-officio Secretary. The rules of the Society were referred to with a view to finding out the details of functioning. Sabhajit Tewary's case was referred to and distinguished and the tests laid down in the International Airport Authority's case (supra) were approved. Ultimately the Court summarised the position as under:

"

The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities'. it must be realised that it should not stretched so far as to bring in

277

every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows:

- (1) "one thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of (Government
- (2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."
- (3) "It may also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected."
- (4) "Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality."
- (5) "If the functions of the corporation are of public importance and closely related to

governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

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

The Court thereafter proceeded to say:

"We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality

278

or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an 'authority' within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression 'authority' in Article 12."

At pages 99 and 100 of the Reports, the Constitution Bench referred to the facts of the particular case and came to hold that the society was an instrumentality or agency of the State. In *Som Prakash Rekhi's case* (supra) at page 137 of the Reports, Krishna Iyer, J. referred to the five tests and concluded by saying that:

"The finale is reached when the cumulative effect of all the relevant factors above set out is assessed and once the body is found to be an instrument or agency of Government, the further conclusion emerges that it is 'State' and is subject to the same constitutional limitations as Government

At page 138 the criticism against the conclusions reached in the *c, Airport Authority's case* was taken note of and the learned Judge observed:

"There is no doubt that Bhagwati, J. broadened the scope of State under Article 12 and according to Shri G.B. Pai the observations spill over beyond the requirements of the case and must be dismissed as obiter."

279

Pathak, J., as he then was, added a brief note to the judgment by A saying:

"I must confess to some hesitation in accepting the proposition that the Bharat Petroleum Corporation Limited is a 'State' within the

meaning of Article 12 of the Constitution. But in view of the direction taken by the law in this Court since *Ramana Dayarama Shetty v. International Airport Authority* I find I must lean in favour of that conclusion. I would have welcomed a wider range of debate before us on the fundamental principles involved in the issue and on the implications flowing from the definition in the Companies Act, 1956 of a 'Government Company'? but perhaps a future case may provide that."

We have thus the tests available in the two decisions to be applied to the facts of the case in hand for determination as to whether ICPS is 'State' within the meaning of Article 12.

There are two more cases to which brief reference may now be made—*B.S. Minhas v. Indian Statistical Institute & Ors.*, [1984] 1 SCR 395 and *P.K. Ramachandra Iyer & Ors. v. Union of India & Ors.*, [1984] 2 SCR 200. The case of the Indian Statistical Institute is also of a society registered under the Societies Registration Act. The Court found that the entire money required for funding the Institute was provided by the Central Government and even if any other money was to be received by the Institute it could be done only with the approval of the Central Government and the accounts of the Institute were to be submitted to the Central Government for its scrutiny and satisfaction. The Society had to comply with all directions as may be issued by the Central Government. 'The control of the Central Government was deep and pervasive and, therefore, it was an instrumentality of the Central Government and as such was an authority within the meaning of Article 12 of the Constitution. In coming to this conclusion, the Court relied upon the tests indicated in the *International Airport Authority's* case as also in the case of *Ajay Hasia*.

In *Ramchandra Iyer's* case, the question for consideration was whether the Indian Council of Agricultural Research (ICAR) was a set up within the meaning of Article 12 of the Constitution. ICAR is also a Society registered under the Societies Registration Act. The Court found that when it was set up, it was an attached office of the

280
Government of India and had not undergone any change when it got transferred into a Society. Applying the tests indicated in *International Airport Authority* case as also the case of *Ajay Hasia*, the Court came to the conclusion that there was little doubt that it was an instrumentality or agency of the State. It further stated:

"ICAR came into existence as an integral department of the Government of India and later on became an attached office of the Central Government. The composition of the ICAR as evidenced by Rule 3 could not have been more governmental in character than any department of the Government."

It is time to turn to the facts of the present case to find out as to what the conclusion should be when the tests formulated by the several cases of this Court referred to above are applied. There cannot indeed be a strait jacket formula. It is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be 'State'. In a given case some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the border line and it would be difficult to take one view or the other outright.

Our struggle for independence which spread over a century bore fruit in 1947. During the long period of struggle, the British Government following the pattern of the democratic system prevailing in their own country had patronised the evolution of a process of self government. The Government of India Act of 1935 which was a positive improvement on the previous Acts had introduced provincial autonomy and the Indian Independence Act, 1947, adopted that pattern of Government. Even the Constitution which the people of India gave unto themselves in 1949 and which came into force from the 26th of January, 1950, followed that pattern, of course, with considerable modifications. Thus when we became independent a democratic pattern had evolved in this country through more or less an historical process. Soon the princely States disappeared by a process of merger and the Constitution ultimately came to have a federal base the federating States as the units and the federation at the Centre.

Democracy pre-supposes certain conditions for its successful working. It is necessary that there must be a deep sense of understanding, mutual confidence and tolerance and regard and acceptance
281

Of the views of others. In the early years of freedom, the spirit of sacrifice and a sense of obligation to the leadership that had helped the dream of freedom to materialise had been accepted. The emergence of a new generation within less than two decades of independence gave rise to a feeling that the people's representatives in the Legislatures required the acquisition of the appropriate democratic bias and spirit. ICPS was born as a voluntary organisation to fulfil this requirement. At the inception it was certainly not a governmental organisation and it has not been the case of the parties in their pleadings nor have we been told at the bar during the long arguments that had been advanced that the objects of ICPS are those which are a State obligation to fulfil. The Society was thus born out of a feeling that there should be a voluntary association mostly consisting of Members of the two Houses of Parliament with some external support to fulfil the objects which were adopted by the Society.

To Start with, the Society was accommodated in the Parliament House but in due course it shifted out. The President of India inaugurated the Society. Very appropriately the Speaker of the Lok Sabha became its first President and three Ministers, a former Chief Justice of India and a former Attorney General joined as its Vice-Presidents. Some of the public officers were also associated in the administrative set-up of the Society. Individual Members of Parliament and the corporate body known as Parliament are certainly two different concepts. Services of some of the employees of Parliament were lent to the Society. While Article 12 refers to Parliament as such, a few Members of Parliament cannot be considered as Parliament so as to constitute that body as referred to in Article 12. The Speaker and the Ministers who joined as Vice-Presidents of the Society were there in their individual capacities and not as Ministers, though designations were indicated. In the category of Vice-Presidents, Executive Chairman, Treasurer and members, there were many people who were really not a part of Government as such and some of them did not belong to Parliament.

The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislatures

with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large.

The Memorandum of the Society permitted acceptance of gifts,

282

donations and subscriptions. There is material to show that the Ford Foundation, a US based Trust had extended support for some time. Undoubtedly, the annual contribution from the Government has been substantial and it would not be wrong to say that they perhaps constitute the main source of funding, Yet some money has been coming from other sources. In later years, foreign funding came to be regulated and, therefore, it became necessary to provide that without Government clearance like any other institution, ICPS was not to receive foreign donations. No material has been placed before us of the stand that the Society was not entitled to receive Contributions from any indigenous source without Government sanction. Since Government money has been coming, the usual conditions attached to Government grants have been applied and enforced. If the society's affairs were really intended to be carried on as a part of the Lok Sabha or Parliament as such, the manner of functioning would have been different. The accounts of the Society are separately maintained and subject to audit in the same way as the affairs of societies receiving Government grants are to be audited. Government usually impose certain conditions and restrictions when grants are made. No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspect.

Considerable attempt has been made by Mr. Rao, learned counsel for the appellant, to show that in the functioning of the Society there is deep and pervasive control of government. We have examined meticulously the correspondence and the instances where control was attempted to be exercised or has, as a fact, been exercised but these again are features which appear to have been explained away.

We were taken through the report submitted by the Tripathi Committee which had been set up to suggest changes in the set up and affairs of the Society. The report and the steps taken on the basis of the report are also not material which can be taken to be indisputable features for reaching the conclusion one way or the other. We were shown the correspondence by the Minister of Law with the Executive Chairman of the Society. Undoubtedly the Minister has tried to exercise his authority as the controlling department of Government in the matter of making the grant. As we have already pointed that itself may not be a conclusive feature.

We have several cases of societies registered under Societies Registration Act which have been treated as 'State' but in each of

283

those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the 'State' had been undertaken to be performed as a part of the Society's function. In a Welfare State, as has been pointed out on more than one occasion by this Court, Governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has

to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of this case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of 'other authorities' in Article 12 of the Constitution. We must say that ICPS is a case of its type-typical in many ways and the normal tests may perhaps not properly apply to test its character.

While we were referring to the cases in an earlier part of our judgment, we have noticed the caution indicated by this Court that even if some institution becomes 'State' within the meaning of Article 12, its employees do not become holders of civil posts so as to become entitled to the cover of Article 311. They would, however, be entitled to the benefits of Part III of the Constitution. It is unnecessary to examine the appellant's case keeping Articles 14 and 16 of the Constitution in view as on the concession of Dr. Anand Prakash the proceedings will have to reopen.

Before we part with this case, we must indicate what reliefs the appellant would be entitled to. Now that the order of the dismissal is set aside and the proceedings have been restored to the stage of enquiry, the appellant shall be deemed to have been restored to service. The appellant would have become entitled to the normal relief available in such a situation. He should be deemed to be in service and we do not agree with Dr. Anand Prakash that his suspension should continue. His suspension which had merged into dismissal has been vacated. It shall, however, be open for the employer to make any direction as is deemed appropriate in that behalf in future. The appellant, therefore, becomes entitled to the salary for the past period subject to his satisfying the authorities that he has not earned any other income during that period. The appellant shall be given reasonable opportunity by the enquiring officer to meet the charges

284

and the enquiry shall be completed within four months. The appellant has personally assured us in Court that he will fully cooperate in the enquiry. The enquiry officer shall allow inspection to the appellant of all records relevant to the enquiry.

We make no order as to costs.

S.L.

Appeal disposed of.

285