CASE NO.:
Appeal (civil) 992 of 2002

PETITIONER:
PRADEEP KUMAR BISWAS

Vs.

RESPONDENT:
IBNIDOILAONGYIN&STOIRTSU.TE OF CHEMICAL

DATE OF JUDGMENT: 16/04/2002

BENCH:
CJI, Syed Shah Mohammed Quadri, N. Santosh Hegde, Ruma Pal & Arijit Pasayat

JUDGMENT:

J U D G M EN T

RUMA PAL,J

In 1972 Sabhajit Tewary, a Junior Stenographer with the Council of Scientific and Industrial Research (CSIR) filed a writ petition under Article 32 of the Constitution claiming parity of remuneration with the stenographers who were newly recruited to the CSIR. His claim was based on Article 14 of the Constitution. A Bench of five judges of this Court denied him the benefit of that Article because they held in Sabhajit Tewari V. Union of India that the writ application was not maintainable against CSIR as it was not an "authority" within the meaning of Article 12 of the Constitution. The correctness of the decision is before us for re-consideration.

The immediate cause for such re-consideration is a writ application filed by the appellants in the Calcutta High Court challenging the termination of their services by the respondent No.1 which is a unit of CSIR. They prayed for an interim order before the learned Single Judge. That was refused by the Court on the prima view that the writ application was itself not maintainable against the respondent No.1. The appeal was also dismissed in view of the decision of this Court in Sabhajit Tewary's case .

Challenging the order of the Calcutta High Court, the appellants filed an appeal by way of special leave before this Court. On 5th August, 1986 a Bench of two Judges of this Court referred the matter to a Constitution Bench being of the view that the decision in Sabhajit Tewary required re-consideration "having regard to the pronouncement of this Court in several subsequent decisions in respect of several other institutes of similar nature set up by the Union of India".
The questions therefore before us are - is the CSIR a State within the meaning of Article 12 of the Constitution and if it is should this Court reverse a decision which has stood for over a quarter of a century?

The Constitution has to an extent defined the word 'State' in Article 12 itself as including:

"the Government and Parliament of India and the Government and the 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".

That an 'inclusive' definition is generally not exhaustive is a statement of the obvious and as far as Article 12 is concerned, has been so held by this Court . The words 'State' and 'Authority' used in Article 12 therefore remain, to use the words of Cardozo , among "the great generalities of the Constitution" the content of which has been and continues to be supplied by Courts from time to time.

It would be a practical impossibility and an unnecessary exercise to note each of the multitude of decisions on the point. It is enough for our present purposes to merely note that the decisions may be categorized broadly into those which express a narrow and those that express a more liberal view and to consider some decisions of this Court as illustrative of this apparent divergence. In the ultimate analysis the difference may perhaps be attributable to different stages in the history of the development of the law by judicial decisions on the subject.

But before considering the decisions it must be emphasized that the significance of Article 12 lies in the fact that it occurs in Part III of the Constitution which deals with fundamental rights. The various Articles in Part-III have placed responsibilities and obligations on the 'State' viz-a-vis the individual to ensure constitutional protection of the individual's rights against the State, including the right to equality under Article 14 and equality of opportunity in matters of public employment under Article 16 and most importantly the right to enforce all or any of these fundamental rights against the 'State' as defined in Article 12 either under Article 32 by this Court or under Article 226 by the High Courts by issuance of writs or directions or orders. The range and scope of Article 14 and consequently Article 16 have been widened by a process of judicial interpretation so that the right to equality now not only means the right not to be discriminated against but also protection against any arbitrary or irrational act of the State. It has been said that:

"Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment".

Keeping pace with this broad approach to the concept of equality under Articles 14 and 16, Courts have whenever possible, sought to curb an arbitrary exercise of power against individuals by 'centres of power', and there was correspondingly an expansion in the judicial definition of 'State' in Article 12.

Initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read ejusdem generis with the authorities mentioned in the definition of Article 12 itself. The next stage was reached when the definition of 'State' came to be understood with reference to the remedies available against it. For example, historically, a writ of mandamus was available for enforcement of statutory duties or duties of a public nature . Thus a statutory corporation, with regulations framed by such Corporation pursuant to statutory powers was considered a State, and the public duty was limited to those which were created by statute.

The decision of the Constitution Bench of this Court in

Rajasthan Electricity Board vs. Mohan Lal & Ors. (1967) 3 SCR 377 is illustrative of this. The question there was whether the Electricity Board - which was a Corporation constituted under a statute primarily for the purpose of carrying on commercial activities could come within the definition of 'State' in Article 12. After considering earlier decisions, it was said:

"These decisions of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities".

It followed that since a Company incorporated under the Companies Act is not formed statutorily and is not subject to any statutory duty vis a vis an individual, it was excluded from the purview of 'State' In Praga Tools Corporation V. Shri C.A. Imanual & Ors. where the question was whether an application under Article 226 for issuance of a writ of mandamus would lie impugning an agreement arrived at between a Company and its workmen, the Court held that:

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

By 1975 Mathew, J. in Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Ors. noted that the concept of "State" in Article 12 had undergone "drastic changes in recent years". The question in that case was whether the Oil and

Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation each of which were public corporations set up by statutes were authorities and therefore within the definition of State in Article 12. The Court affirmed the decision in Rajasthan State Electricity Board V. Mohan Lal (supra) and held that the Court could compel compliance of statutory rules. But the majority view expressed by A.N. Ray, CJ also indicated that the concept would include a public authority which:

" is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit".

(emphasis added)

The use of the alternative is significant. The Court

scrutinised the history of the formation of the three Corporations, the financial support given by the Central Government, the utilization of the finances so provided, the nature of service rendered and noted that despite the fact that each of the Corporations ran on profits earned by it nevertheless the structure of each of the Corporations showed that the three Corporations represented the 'voice and hands' of the Central Government. The Court came to the conclusion that although the employees of the three Corporations were not servants of the Union or the State, "these statutory bodies are 'authorities' within the meaning of Article 12 of the Constitution".

Mathew J in his concurring judgment went further and propounded a view which presaged the subsequent developments in the law. He said:

"A state is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the state acting through a corporation and making it an agency or instrumentality of the State.."

For identifying such an agency or instrumentality he propounded four indicia:

(1) "A finding of the state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action."

(2) "Another factor which might be considered is whether the operation is an important public function."

(3) "The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to a governmental functions as to be classified as a government agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of state action. If the function does not fall within such a description then mere addition of state money would not influence the conclusion."

(4) "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?"

Sabhajit Tewary was decided by the same Bench on the same day as Sukhdev Singh (supra). The contentions of the employee was that CSIR is an agency of the Central Government on the basis of the CSIR Rules which, it was argued, showed that the Government controlled the functioning of CSIR in all its

aspects. The submission was somewhat cursorily negatived by this Court on the ground that all this

"will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing 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."

Although the Court noted that it was the Government which was taking the "special care" nevertheless the writ petition was dismissed ostensibly because the Court factored into its decision two premises:

i) "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 Society's Registration Act", and

ii) "This Court has held in Praga Tools Corporation V. Shri 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. Agarwal 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 relating to corporations. These could not be held to be departments of the Government".

With respect, we are of the view that both the premises were not really relevant and in fact contrary to the 'voice' and 'hands' approach in Sukhdev Singh. Besides reliance by the Court on decisions pertaining to Article 311 which is contained in Part XIV of the Constitution was inapposite. What was under consideration was Art. 12 which by definition is limited to Part III and by virtue of Art. 36 to Part IV of the Constitution. As said by another Constitution Bench later in this context:

"Merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be elevated to

the position of "State" for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV: it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. This is why the decisions of this Court in S.L. Aggarwal v. Hindustan Steel Ltd., and other cases involving the applicability of Article 311 have no relevance to the issue before us".

Normally, a precedent like Sabhajit Tewary which has stood for a length of time should not be reversed, however erroneous the reasoning if it has stood unquestioned, without its reasoning being 'distinguished' out of all recognition by subsequent decisions and if the principles enunciated in the earlier decision can stand consistently and be reconciled with subsequent decisions of this Court, some equally authoritative. In our view Sabhajit Tewary fulfills both conditions.

Side-stepping the majority approach in Sabhajit Tewary, the 'drastic changes' in the perception of 'State' heralded in Sukhdev Singh by Mathew, J and the tests formulated by him were affirmed and amplified in Ramana v. International Airport Authority of India . Although the International Airport Authority of India is a statutory corporation and therefore within the accepted connotation of State, the Bench of three Judges developed the concept of State. The rationale for the approach was the one adopted by Mathew J in Sukhdev Singh:

" 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 forge 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".

From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a Corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act, 1860. Neither the form of the Corporation, nor its ostensible autonomy would take away from its character as 'State' and its constitutional accountability under

Part III vis-a-vis the individual if it were in fact acting as an instrumentality or agency of Government.

As far as Sabhajit Tewary was concerned it was 'explained' and distinguished in Ramana saying: "The Court no doubt took the view on the basis of facts relevant to the constitution and functioning of the Council that it was not an 'authority', but we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an 'authority' within the meaning of Art.12. 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'. The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an 'authority' ".

The tests propounded by Mathew, J in Sukhdev Singh were elaborated in Ramana and were re-formulated two years later by a Constitution Bench in Ajay Hasia v. Khalid Mujib Sehravardi . What may have been technically characterised as 'obiter dicta' in Sukhdev Singh and Ramana (since in both cases the "authority" in fact involved was a statutory corporation), formed the ratio decidendi of Ajay Hasia. The case itself dealt with a challenge under Article 32 to admissions made to a college established and administered by a Society registered under the Jammu & Kashmir Registration of Societies Act 1898. The contention of the Society was that even if there were an arbitrary procedure followed for selecting candidates for admission, and that this may have resulted in denial of equality to the petitioners in the matter of admission in violation of Article 14, nevertheless Article 14 was not available to the petitioners because the Society was not a State within Art. 12.

The Court recognised that:

" Obviously the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local authority and therefore, it must come within the expression "other authorities" if it is to fall within the definition of 'State' ".

But it said that:

"The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights".

It was made clear that the genesis of the corporation was immaterial and that:

" 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".

Ramana was noted and quoted with approval in extenso and the tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor..whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

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

In dealing with Sabhajit Tewary the Court in Ajay Hasia noted that since Sabhajit Tewary was a decision given by a Bench of Five Judges of this Court it was undoubtedly binding. The Court read Sabhajit Tewary as implicity assenting to the proposition that CSIR could have been an instrumentality of

agency of the Government even though it was a Registered Society and limited the decision to the facts of the case. It held that the Court in Sabhajit Tewari :

" did not rest its conclusion on the ground that the council was a society registered under the Societies Registration Act, 1860, but proceeded to consider various other features of the council for arriving at the conclusion that it was not an agency of the government and therefore not an 'authority'".

The conclusion was then reached applying the tests formulated to the facts that the Society in Ajay Hasia was an authority falling within the definition of "State" in Article 12.

On the same day that the decision in Ajay Hasia was pronounced came the decision of Som Prakash Rekhi v. Union of India . Here too, the reasoning in Ramana was followed and Bharat Petroleum Corporation was held to be a 'State' within the "enlarged meaning of Art.12". Sabhajit Tewary was criticised and distinguished as being limited to the facts of the case. It was said:

"The rulings relied on are, unfortunately, in the province of Art.311 and it is clear that a body may be 'State' under Part III but not under Part XIV. Ray, C.J., rejected the argument that merely because the Prime Minister was the President or that the other members were appointed and removed by Government did not make the Society a 'State'. With great respect, we agree that in the absence of the other features elaborated in Airport Authority case (1979) 3 SCC 489: (AIR 1979 SC 1628) the composition of the Government Body alone may not be decisive. The laconic discussion and the limited ratio in Tewary (1975) 3 SCR 616 : (AIR 1975 SC 1329) hardly help either side here."

The tests to determine whether a body falls within the definition of 'State' in Article 12 laid down in Ramana with the Constitution Bench imprimatur in Ajay Hasia form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited.

In P.K. Ramachandra Iyer and Others V. Union of India and Others 1984 (2) SCC 141, it was held that both the Indian Council of Agricultural Research (ICAR) and its affiliate Indian Veterinary Research Institute were bodies as would be comprehended in the expression 'other authority' in Article 12 of the Constitution. Yet another judicial blow was dealt to the decision in Sabhajit Tewary when it was said:

"Much water has flown down the Jamuna since the dicta in Sabhajit Tewary case and conceding that

it is not specifically overruled in later decision, its ratio is considerably watered down so as to be a decision confined to its own facts."

B. S. Minhas v. Indian Statistical Institute & Ors. held that the Indian Statistical Institute, a registered Society is an instrumentality of the Central Government and as such is an 'authority' within the meaning of Article 12 of the Constitution. The basis was that the composition of respondent No.1 is dominated by the representatives appointed by the Central Government. The money required for running the Institute is provided entirely by the Central Government and even if any other moneys are to be received by the Institute it can be done only with the approval of the Central Government, and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction. The Society has to comply with all such directions as may be issued by the Central Government. It was held that the control of the Central Government is deep and pervasive.

The decision in Central Inland Water Transport Corporation Ltd. V. Brojo Nath Ganguli held that the appellant company was covered by Article 12 because it is financed entirely by three Governments and is completely under the control of the Central Government and is managed by the Chairman and Board of Directors appointed by the Central Government and removable by it and also that the activities carried on by the Corporation are of vital national importance. However, the tests propounded in Ajay Hasia were not applied in Tekraj Vasandi alias K.S. Basandhi V. Union of India and Others 1988 (1) SCC 237, where the Institute of Constitutional and Parliamentary Studies (ICPS), a society registered under the Societies Registration Act, 1860 was held not to be an "other authority" within the meaning of Article 12. The reasoning is not very clear. All that was said was :

"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".

However, the Court was careful to 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".

All India Sainik Schools Employees' Association V. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and Others 1989 Supp.(1) SCC 205 held applying the tests indicated in Ajay Hasia that the Sainik School Society is a 'State'.

Perhaps this rather over - enthusiastic application of the broad limits set by Ajay Hasia may have persuaded this Court to curb the tendency in Chander Mohan Khanna v. National Council of Educational Research and Training and Others 1991 (4) SCC 578. The Court referred to the tests formulated in Sukhdev Singh, Ramana, Ajay Hasia, and Som Prakash Rekhi but striking a note of caution said that "these are merely indicative

indicia and are by no means conclusive or clinching in any case". In that case, the question arose whether the National Council of Educational Research (NCERT) was a 'State' as defined under Article 12 of the Constitution. The NCERT is a society registered under the Societies Registration Act. After considering the provisions of its Memorandum of Association as well as the rules of NCERT, this Court came to the conclusion that since NCERT was largely an autonomous body and the activities of the NCERT were not wholly related to governmental functions and that the Government control was confined only to the proper utilisation of the grant and since its funding was not entirely from Government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. The Court relied principally on the decision in Tekraj Vasandi @ K.L.Basandhi v. Union of India (supra) However, as far as the decision in Sabhajit Tewary v. Union of India (supra) was concerned, it was noted that "the decision has been distinguished and watered down in the subsequent decisions".

Fresh off the judicial anvil is the decision in the Mysore Paper Mills Ltd. vs. The Mysore Paper Mills Officers Association JT 2002 (1) SC 61 which fairly represents what we have seen as a continuity of thought commencing from the decision in Rajasthan Electricity Board in 1967 upto the present time. It held that a company substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government is 'an authority' within the meaning of Art.12.

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.

Coming now to the facts relating to CSIR, we have no doubt that it is well within the range of Article 12, a conclusion which is sustainable when judged according to the tests judicially evolved for the purpose.

The Formation of CSIR

On 27th April 1940 the Board of Scientific and Industrial Research and on 1st February 1941, the Industrial Research Utilisation Committee were set up by the Department of Commerce, Government of India with the broad objective of promoting industrial growth in this country. On 14th November 1941, a resolution was passed by the Legislative Assembly and accepted by the Government of India to the following effect:

"This Assembly recommends to the Governor General in Council that a fund called the Industrial Research Fund be constituted, for the purpose of fostering industrial development in this country and that provision be made in the Budget for an annual grant of rupees ten lakhs to the fund for a

period of five years."

For the purpose of coordinating and exercising administrative control over the working of the two research bodies already set up by the Department of Commerce, and to oversee the proper utilisation of the Industrial Research Fund, by a further resolution dated 26th September 1942, the Government of India decided to set up a Council of Industrial Research on a permanent footing which would be a registered society under the Registration of Societies Act, 1860. Pursuant to the resolution, on 12th March, 1942 the CSIR was duly registered. Bye-laws and Rules were framed by the Governing Body of the Society in 1942 which have been subsequently revised and amended. Unquestionably this shows that the CSIR was 'created' by the Government to carry on in an organized manner what was being done earlier by the Department of Commerce of the Central Government. In fact the two research bodies which were part of the Department of Commerce have since been subsumed in the CSIR.

Objects and Functions:

The 26th September 1942 Resolution had provided that the functions of the CSIR would be:

(a) to implement and give effect to the following resolution moved by the Hon'ble Dewan Bahadur Sir A.R. Mudaliar and passed by the Legislative Assembly on the 14th Nov' 1941 and accepted by the Government of India. (quoted earlier in this Judgment)

(b) the promotion, guidance and co-ordination of scientific and industrial research in India including the institution and the financing of specific researches;

(c) the establishment or development and assistance to special institutions or Department of existing institutions for scientific study of problems affecting particular industries and trade;

(d) the establishment and award of research student-ships and fellowships;

(e) the utilisation of the results of the researches conducted under the auspices of the Council towards the development of industries in the country and the payment of a share of royalties arising out of the development of the results of researches to those who are considered as having contributed towards the pursuit of such researches;

(f) the establishment, maintenance and management of laboratories, workshops, institutes, and organisation to further scientific and industrial research and utilise and exploit for purposes of experiment or otherwise any discovery or invention likely to be of use Indian Industries;

(g) the collection and dissemination or

information in regard not only to research but to industrial matters generally;

(h) publication of scientific papers and a journal of industrial research and development, and

(i) any other activities to promote generally the objects of the resolution mentioned in (a) above.

These objects which have been incorporated in the Memorandum of Association of CSIR manifestly demonstrate that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. That such a function is fundamental to the governance of the country has already been held by a Constitution Bench of this Court as far back as in 1967 in Rajasthan Electricity Board v. Mohan Lal (Supra) where it was said:

"The State, as defined in Art.12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people".

We are in respectful agreement with this statement of the law. The observations to the contrary in Chander Mohan Khanna v. NCERT (supra) relied on by the Learned Attorney General in this context, do not represent the correct legal position.

Incidentally, the CSIR was and continues to be a non-profit making organization and according to clause (4) of CSIR's Memorandum of Association, all its income and property, however derived shall be applied only 'towards the promotion of those objects subject nevertheless in respect of the expenditure to such limitations as the Government of India may from time to time impose'.

Management and Control:

When the Government of India resolved to set up the CSIR on 26th February, 1942 it also decided that the Governing Body would consist of the following members:

(1) The Honourable Member of the Council of His Excellency the Governor General in charge of the portfolio of Commerce (Ex-officio).

(2) A representative of the Commerce Department of the Government of India, appointed by the Government of India.

(3) A representative of the Finance Department of the Government of India, appointed by the Government of India.

(4) Two members of the Board of Scientific and Industrial Research elected by the said Board.

(5) Two members of the Industrial Research Utilisation committee elected by the said Committee.

(6) The Director of Scientific and Industrial Research.

(7) One or more members to be nominated by the Government of India to represent interests not otherwise represented.

The present Rules and Regulations 1999 of CSIR provide that :

(a) The Prime Minister of India shall be the ex-officio President of the Society.

(b) The Minister-in-Charge of the Ministry or Deptt. dealing with the Council of Scientific & Industrial Research shall be the ex-officio Vice President of the Society.

Provided that during any period when the Prime Minister is also such Minister, any person nominated in this behalf by the Prime Minister shall be the Vice-President.

(c) Ministers Incharge of Finance and Industry (ex-officio).

(d) The members of the Governing Body.

(e) Chairman, Advisory Board.

(f) Any other person or persons appointed by the President, CSIR."

The Governing Body of the Society is constituted by the:

(a) Director General,
(b) Member Finance,
(c) Directors of two National Laboratories,

(d) Two eminent Scientists/ Technologists, one of whom shall be from Academia;
(e) Heads of two Scientific Departments/Agencies of the Government of India.

The dominant role played by the Government of India in the Governing Body of CSIR is evident. The Director-General who is ex-officio Secretary of the Society is appointed by the Government of India [Rule 2(iii)]. The submission of the learned Attorney General that the Governing Body consisted of members, the majority of whom were non-governmental members is, having regard to the facts on record, unacceptable. Furthermore, the members of the Governing Body who are not there ex officio are nominated by the President and their membership can also be terminated by him and the Prime Minister is the ex-officio President of CSIR. It was then said that although the Prime Minister was ex-officio President of the Society but the power being exercised by the Prime Minister is as President of the Society. This is also the reasoning in Sabhajit Tewary . With respect, the reasoning was and the submission is erroneous. An ex-

officio appointment means that the appointment is by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer, in this case the Prime Minister, which are not specifically conferred upon him, but are necessarily implied in his office (as Prime Minister), these are ex-officio .

The control of the Government in the CSIR is ubiquitous. The Governing Body is required to administer, direct and control the affairs and funds of the Society and shall, under Rule 43, have authority 'to exercise all the powers of the Society subject nevertheless in respect of expenditure to such limitations as the Government of India may from time to time impose'. The aspect of financial control by the Government is not limited to this and is considered separately. The Governing Body also has the power to frame, amend or repeal the bye-laws of CSIR but only with the sanction of the Government of India. Bye-law 44 of the 1942 Bye-laws had provided 'any alteration in the bye-laws shall require the prior approval of the Governor General in Council'.

Rule 41 of the present Rules provide that:

" The President may review/amend/vary any of the decisions of the Governing Body and pass such orders as considered necessary to be communicated to the Chairman of the Governing Body within a month of the decision of the Governing Body and such order shall be binding on the Governing Body. The Chairman may also refer any question which in his opinion is of sufficient importance to justify such a reference for decision of the President, which shall be binding on the Governing Body."

(emphasis added)

Given the fact that the President of CSIR is the Prime Minister, under this Rule the subjugation of the Governing Body to the will of the Central Government is complete. As far as the employees of the CSIR are concerned the Central Civil Services (Classification, Control & Appeal) Rules and the Central Civil Services (Conduct) Rules, for the time being in force, are from the outset applicable to them subject to the modification that references to the 'President' and 'Government Servant' in the Conduct Rules would be construed as 'President of the Society' and 'Officer & establishments in the service of the Society' respectively. (Bye Law 12). The scales of pay applicable to all the employees of CSIR are those prescribed by the Government of India for similar personnel, save in the case of specialists (Bye Law 14) and in regard to all matters concerning service conditions of employees of the CSIR, the Fundamental and Supplementary Rules framed by the Govt. of India and such other rules and orders issued by the Govt. of India from time to time are also, under Bye Law 15 applicable to the employees of the CSIR. Apart from this, the rules/Orders issued by Government of India regarding reservation of posts for SC/ST apply in regard to appointments to posts to be made in CSIR.(Bye Law 19) The CSIR cannot lay down or change the terms and conditions of service of its employees and any alteration in

the bye-laws can be carried out only with the approval of Government of India. (Bye Law 20).

Financial Aid

The initial capital of the CSIR was Rs. 10 lakhs, made available pursuant to the Resolution of the Legislative Assembly on 14th November, 1941. Paragraph 5 of the 26th September, 1942 Resolution of the Government of India pursuant to which CSIR was formed reads:

"The Government of India have decided that a fund, viz., the Industrial Research Fund, should be constituted by grants from the Central Revenues to which additions are to be made from time to time as moneys flow in from other sources. These 'other sources' will comprise grants, if any, by Provincial Governments by industrialists for special or general purposes, contributions from Universities or local bodies, donations or benefactions, royalties, etc., received from the development of the results of industrial research, and miscellaneous receipts. The Council of Scientific and Industrial Research will exercise full powers in regard to the expenditure to be met out of the Industrial Research Fund subject to its observing the Bye-laws framed by the Governing Body of the Council, from time to time, with the approval of the Governor General-in-Council, and to its annual budget being approved by the Governor General-in-Council."

As already noted, the initial capital of Rs. 10 lakhs was made available by the Central Government. According to the statement handed up to the Court on behalf of CSIR the present financial position of CSIR is that at least 70% of the funds of CSIR are available from grants made by the Government of India. For example out of the total funds available to CSIR for the years 1998-99, 1999-2000, 2000-01 of Rs.1023.68 crores, Rs.1136.69 crores and Rs.1219.04 crores respectively, the Government of India has contributed Rs.713.32 crores, Rs.798.74 crores and Rs.877.88 crores. A major portion of the balance of the funds available is generated from charges for rendering research and development works by CSIR for projects such as the Rajiv Gandhi Drinking Water Mission Technology Mission on oilseeds and pulses and maize or grant in aid projects from other Government Departments. Funds are also received by CSIR from sale proceeds of its products, publications, royalties etc. Funds are also received from investments but under Bye-Law 6 of CSIR, funds of the Society may be invested only in such manner as prescribed by the Government of India. Some contributions are made by the State Governments and to a small extent by 'individuals, institutions and other agencies'. The non-governmental contributions are a pittance compared to the massive governmental input.

As far as expenditure is concerned, under Bye-law (1) as it stands at present, the budget estimates of the Society are to be prepared by the Governing Body 'keeping in view the instructions issued by the Government of India from time to time in this regard'. Apart from an internal audit, the

accounts of the CSIR are required to be audited by the Controller and Auditor General and placed before the table of both Houses of Parliament(Rule 69).

In the event of dissolution, unlike other registered societies which are governed by Section 14 of the Societies Registration Act, 1860, the members of CSIR have no say in the distribution of its assets and under clause (5) of the Memorandum of Association of CSIR, on the winding up or dissolution of CSIR any property remaining after payment of all debts shall have to be dealt with "in such manner as the Government of India may determine". CSIR is therefore both historically and in its present operation subject to the financial control of the Government of India. The assets and funds of CSIR though nominally owned by the Society are in the ultimate analysis owned by the Government. From whichever perspective the facts are considered there can be no doubt that the conclusion reached in Sabhajit Tewary was erroneous. If the decision of Sabhajit Tewary had sought to lay down as a legal principle that a society registered under the Societies Act or a company incorporated under the Companies Act is, by that reason alone, excluded from the concept of State under Article 12, it is a principle which has long since been discredited. "Judges have made worthy, if shamefaced, efforts, while giving lip service to the rule, to riddle it with exceptions and by distinctions reduce it to a shadow".

In the assessment of the facts, the Court had assumed certain principles, and sought precedential support from decisions which were irrelevant and had "followed a groove chased amidst a context which has long since crumbled". Had the facts been closely scrutinised in the proper perspective, it could have led and can only lead to the conclusion that CSIR is a State within the meaning of Art. 12.

Should Sabhajit Tewary still stand as an authority even on the facts merely because it has stood for 25 years? We think not. Parallels may be drawn even on the facts leading to an untenable interpretation of Art. 12 and a consequential denial of the benefits of fundamental rights to individuals who would otherwise be entitled to them and "there is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public." Since on a re-examination of the question we have come to the conclusion that the decision was plainly erroneous, it is our duty to say so and not perpetuate our mistake.

Besides a new fact relating to CSIR has come to light since the decision in Sabhajit Tewary which unequivocally vindicates the conclusion reached by us and fortifies us in delivering the coup de grace to the already attenuated decision in Sabhajit Tewary. On 31st October 1986 in exercise of the powers conferred by sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985, the Central Government specified 17th November 1986 as the date on and from which the provisions of sub-section (3) of Section 14 of the 1985 Act would apply to CSIR 'being the Society owned and controlled by Government'.

The learned Attorney General contended that the notification was not conclusive of the fact that the CSIR was

a State within the meaning of Article 12 and that even if an entity is not a State within the meaning of Article 12, it is open to the Government to issue a notification for the purpose of ensuring the benefits of the provisions of the Act to its employees.

We cannot accept this. Reading Art. 323 (A) of the Constitution and Section 14 of the 1985 Act it is clear that no notification under section 14 (2) of the Administrative Tribunals Act could have been issued by the Central Government unless the employees of the CSIR were either appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. Once such a notification has been issued in respect of CSIR, the consequence will be that an application would lie at the instance of the appellants at least before the Administrative Tribunal. No new jurisdiction was created in the Administrative Tribunal. The notification which was issued by the Central Government merely served to shift the service disputes of the employees of CSIR from the constitutional jurisdiction of the High Court under Article 226 to the Administrative Tribunals on the factual basis that CSIR was amenable to the writ jurisdiction as a State or other authority under Article 12 of the Constitution. Therefore, the notification issued in 1986 by the Central Government under Article 14 (2) of the Administrative Tribunals Act, 1985 serves in removing any residual doubt as to the nature of CSIR and decisively concludes the issues before us against it.

Sabhajit Tewary's decision must be and is in the circumstances overruled. Accordingly the matter is remitted back to the appropriate Bench to be dealt with in the light of our decision. There will be no order as to costs.

.CJI

J
(Syed Shah Mohammad Quadri)

..J
(N. Santosh Hegde)

..J
(Ruma Pal)

...J
(Arijit Pasayat)

April 16, 2002