

CASE NO.:
Appeal (civil) 5247-5248 of 1998

PETITIONER:
THE MYSORE PAPER MILLS LTD.

Vs.

RESPONDENT:
THE MYSORE PAPER MILLS OFFICERS' ASSOCIATION & ANR.

DATE OF JUDGMENT: 08/01/2002

BENCH:
G.B. Pattanaik & Doraiswamy Raju

JUDGMENT:

RAJU, J.

The above appeals have been filed by the Mysore Paper Mills Ltd. (hereinafter referred to as the "Appellant-Company", against the judgment of a Full Bench of the High Court of Karnataka dated 12.8.98 in W.A. Nos.1242-1243, insofar as it was held therein that the appellant-company is "State" within the meaning of Article 12 of the Constitution of India, though, their appeals against the order of the Single Judge came to be allowed on the ground that impugned order of transfer against the 2nd respondent was not shown to be vitiated by malafides or by any extraneous considerations and that the respondents have no legal right to challenge the said order of transfer made on administrative grounds, when plea of alleged malafides and vindictiveness has not been substantiated.

The second respondent, said to be a Post-Graduate in Chemistry joined the services of the appellant-company on 10.8.91 as Management Trainees and after successive career prospects came to be promoted as senior Superintendent (D.M.Plant) which came to be redesignated as Assistant manager (D.M.Plant) on 7.9.91. By a memorandum bearing reference No.FPA/TRF/97/384 dated 27.11.97 he was transferred to the regional office Calcutta. The said order came to be challenged as vitiated by malafides and illegality and one made with a view to victimize and prevent him from functioning as an Executive Member of the M.P.M. Officers' Association. Certain allegations to support such a claim were also made, and it is not necessary to advert to all those details, in view of certain subsequent developments and turn of events. In the Writ Petition filed by the respondents, a learned Single Judge of the High Court by an order dated 4.3.98 granted stay of the order of transfer dated 27.11.97 confirming thereby the ex-parte interim order of stay earlier granted on 24.2.98 and rejecting the application of the appellant company for vacating the same. Before the Division Bench, at the time of initial hearing of the appeals the two grounds of challenge urged were:

(i) The Writ Petitions filed were not maintainable against the appellant-company, since it is not a 'State or other authority' within the meaning of Article 12 of the Constitution of India and (ii) the order of transfer was quite in accordance with the terms and conditions of contract of service as well as Officers Service Rules and necessitated on account of the exigencies of work and the interests of business of the appellant-company and therefore not vitiated due to any malafides or other extraneous considerations, as alleged. Since, in certain earlier decisions of the Division Bench, the appellant-company was held to be not "State" within the meaning of Article 12 and it was considered to require reconsideration in the light of certain decisions of this Court, the matter was referred to a Full Bench for

consideration.

Before the Full Bench, the following questions were taken up for consideration:

(1) Whether the Mysore Paper Mills which is a company incorporated under the Companies Act, 1956, and which is a Government Company as defined in Section 617 of the Companies Act falls within the meaning of the word "State", as defined in Article 12 of the Constitution of India?

(2) Whether the action taken by the appellant-company transferring the 2nd respondent to Calcutta under the memo bearing No. FPA/TRF/384 dated 27.11.97 is vitiated by malafides and whether it is arbitrary and illegal?

On a review and consideration of the case law on the subject, the Full Bench, in the judgment under challenge, noticed the various tests laid down by this Court and proceeding to consider the status of the appellant-company in the light of those tests and adverting as well to the memorandum of Association and Articles of Association of the appellant-company and the day-to-day administration of its affairs, held as hereunder:

"(a) That the appellant-company is a governmental company as per Section 617 of the Companies Act, 1956.

(b) The declared objects of the company viz., 1, 1A, 3, 4, 4A, 5, 5A and 5B establish that the company has been entrusted with an important function of public interest closely related to governmental functions and it enjoys monopoly status, which is state conferred.

(c) The functions entrusted to the appellant-company go to show that the government operates behind a corporate veil carrying out governmental functions of vital importance and therefore, there is no difficulty in identifying the appellant-company to be 'State' within the meaning of Article 12 of the Constitution of India.

(d) The summarized balance sheets for the years 1993-94, 1994-95, and 1995-96 disclosed that more than 97% of the share capital has been contributed by the State of Karnataka and the financial institutions controlled and belonging to Government of India.

(e) The business of the company which has to be managed by the Board of Directors (Article 114 of the Articles of Association) shall have the Chairman of the Board and Managing Director (Article 119) and four Directors of whom one will be the Chairman will be nominated by the Government of Karnataka who shall not retire by rotation or be removed from office except under the orders of the Government of Karnataka (Article 94). The Directors to whom the Management is entrusted shall not be more than 12 or less than 9, inclusive of the Government nominees and nominees of the Financial Institutions noticed under Article 94A and not only such nominees of Financial Institutions hold office so long as moneys remain owed to those institutions or those institutions hold debentures in the company as a result of direct subscription or private placement, but the Board also has no powers to

remove them during such period.

(f) The appellant-company is found to be under the control of the Government of Karnataka sometimes directly and sometimes through the machinery of Karnataka State Bureau of Public Enterprises in respect of matters entrusted to it: as disclosed from the book published by the Department of Personnel and Administration Reforms of the Government of Karnataka.

(g) Apart from the Directors who are nominees of the government and the Financial Institutions controlled by the Central Government even the elected Directors were also to be nominated by the Government of Karnataka and one cannot become a Director of the appellant-company without the concurrence or nomination by the Government.

(h) Appointment of several officers, playing vital role in the day-to-day administration of the company can be done only with the prior permission or approval of the Government of Karnataka. The General Manager also may be appointed on such terms and remunerations as may be fixed, only subject to the approval of the Government of Karnataka.

(i) For any investment or expenditure above 25 lakhs the approval of Government of Karnataka is required. Any revision of Pay Scales and allowances of employees and officers also have to be done only with the approval of the KSBPE. Recruitments to posts carrying Pay Scales above Rs.4700/- can only be with the permission of the Government and reservation policies under Article 16(4) of the Constitution are also applicable to recruitments by the company. Deputation to Govt. and vice versa are also permitted. All foreign tours of officers have to be approved by the Government.

(j) All loans taken by the appellant-company are guaranteed by the Government of Karnataka.

(k) The Company Secretary of the appellant-company has in his communication annexure "GGG" declared that the same is an undertaking under the control of the Government of Karnataka. "

On the basis of the above facts found and several other documents produced reflecting the conditions and terms subject to which the affairs of the company were found actually carried on (noticed in para 12 of the judgment of the High Court) the full Bench came to the inevitable conclusion that the entire company is run as part or an enterprise of the State Government and that everyone of the schemes of the company are also to be approved by the Government. Total financial control of the company by the Government has also been found. The fact that the State Government has notified the premises of the company at Bhadravathi as "public premises" under the provisions of the Karnataka public premises (Eviction of Unauthorized Occupants) Act 1974, and appointment of five of its officers as competent officers for the purpose of the Act, has been also taken due note and consideration to come to the ultimate conclusion that the company is an authority and instrumentality or agency of the State, so as to attract Article 12 of the Constitution of India.

Heard, the learned senior counsel, appearing on either side who tried to reiterate the very stand taken before the High Court relying upon one or the other

of the decisions noticed by the High Court and some subsequent decisions, to which a reference will be made hereinafter. We have carefully considered the submissions on either side in the light of the principles laid down by this Court and the factual details found on the basis of the materials placed at the time of hearing before the High Court. Except taking exception to the finding that the company's business in the manufacture of news printing papers no monopoly of State is enjoyed and that the said assumption was wrong, none of the other factual findings were ever shown to be incorrect or unwarranted and without basis. Even this grievance is sought to be made on the basis of national level factual assumption and not by producing any material to disprove the statement recorded in the judgment that no other company than the appellant is allowed to produce newsprint in State of Karnataka, which alone being relevant for the purpose.

In *Praga Tools Corporation vs C.A. Imanual & Ors.* [1969(1) SCC 585], this court declared that the person or authority on whom the statutory duty is imposed need not be a public official or an official body and further held that a mandamus can be issued to a society to compel it to carry out the terms of the statute to which it owe its Constitution as well as to companies or corporations to carry out their duties enjoined by the statutes, authorising their undertakings. In *Andi Mukta S.S.M. V.S.S. J.M.S. Trust vs V.R. Rudani* [1989(2) SCC 691], this court held that the words "any person or authority" used in Article 12 of the Constitution of India are not to be confined to only statutory authorities and instrumentalities of the State and that they may cover any other person or body performing public duties and the form of the body concerned is not very much relevant. The nature of duty imposed on the body to be adjudged in the light of positive obligation owed by the person or authority to the affected party, would be determinative of the question of issue of a writ of mandamus to compel its performance. While dealing with the Institute of Constitutional and Parliamentary Studies, registered under the Societies Registration Act, 1860, this Court in *Tekraj Vasandi @ K.L. Basandhi vs Union of India & Others* [1988(1) SCC 236], observed that there cannot be any strait-jacket formula for adjudging whether any person or authority answers the description of 'State' within the meaning of Article 12, and it would be necessary to look into the Constitution of the body, the purpose for which it has been constituted, the manner of its functioning including the mode of its funding and the broad features which have been found by this Court to be relevant for such purpose though it is not necessary that all those tests should be satisfied in every case to arrive at a conclusion either way.

In *Ajay Hasia & Others vs Khalid Mujib Sehravardi & Others* [1981(1) SCC 722], this Court while approving the tests laid down in *Ramana Dayaram Shetty vs International Airport Authority of India* [1979(3) SCC 489] as to when a corporation can be said to be an instrumentality or agency of Government observed as hereunder:

"9. 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* 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 realized that it should not be stretched so far as to bring in 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 *Internal Airport Authority* 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. (SCC p. 507, para 14)

(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. (SCC p. 508, para 15)

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(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. (SCC p. 509, para 16)

(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. (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

In Chander Mohan Khanna vs NCERT [1991(4) SCC 578], this Court while observing that there are only general principles but not exhaustive tests to determine whether a body is an instrumentality or agency of the Government and those which are not, emphasized that the powers, functions, finances and control of the Government are some of the indicating factors to answer such questions. The combination of State aid coupled with an unusual degree of control over the management and policies of the body and rendering of an important public service were considered vital to point out that the body is "State". Due caution was also administered that the wide enlargement of the meaning must be tempered by wise limitation and mere State control, however vast and pervasive is not by itself determinative and the financial contribution by the State is also not conclusive. In VST Industries Ltd. vs VST Industries Workers' Union & Another [2001(1) SCC 298], this Court was only concerned with the question as to whether, a canteen run in the factory of the company concerned pursuant to an obligation cast under Section 46 of the Industrial Disputes Act, can be said to constitute a person or authority to attract judicial review under Article 226 of the Constitution of India in respect of its action/activities and the answer was that the company concerned therein manufacturing and selling cigarettes or running the canteen for the welfare of workmen was not performing any public activity, function or duty so as to render it amenable to Article 226 of the Constitution of India. This, in our view, does not in any manner help to support the stand of the appellant before us.

Instead of multiplying reference to several authorities of decided cases, it would be useful to advert to a latest decision of this Court rendered by a Constitution Bench in Steel Authority of India Ltd. & Others vs National Union Waterfront Workers & Others [2001(7) SCC 1], wherein while dealing with a claim, whether all Central Government undertakings which fall within the meaning of "other authorities" in Article 12 of the Constitution of India are agents or instrumentalities of the State functioning under the "authority" of the Central Government to constitute such Government to be the "appropriate Government" for purposes of Section 2(1)(a) of the Contract Labour (Regulation and Abolition)

Act, 1970 and Section 2(a) of the Industrial Disputes Act, 1947, this Court adverted to the relevant decisions and after an analytical consideration of the principles therein observed as follows:

"31. In interpreting the said phrase, support is sought to be drawn by the learned counsel for the contract labour from the cases laying down the principles as to under what circumstances a government company or undertaking will fall within the meaning of "State or other authorities" in Article 12 of the Constitution. We shall preface our discussion of those cases by indicating that for purposes of enforcement of fundamental rights guaranteed in Part III of the Constitution the question whether a government company or undertaking is "State" within the meaning of Article 12 is germane. It is important to notice that in these cases the pertinent question is appropriateness of the Government which is the appropriate Government within the meaning of the CLRA Act; whether the Central or the State Government is the appropriate Government in regard to the industry carried on by the Central/State Government company or any undertaking and not whether such Central/State Government company or undertaking comes within the meaning of Article 12. The word "State" is defined in Article 12 which is quoted in the footnote.

32. In *Sukhdev Singh vs Bhagatram Sardar Singh Raghuvanshi* this Court, in the context whether service regulations framed by statutory corporations have the force of law, by majority, held that the statutory corporations like ONGC, IFFCO, LIC established under different statutes fell under "other authorities" and were, therefore, "State" within the meaning of that term in Article 12 of the Constitution. The Court took into consideration the following factors, (a) they were owned, managed and could also be dissolved by the Central Government; (b) they were completely under the control of the Central Government; and (c) they were performing public or statutory duties for the benefit of the public and not for private profit; and concluded that they were in effect acting as the agencies of the Central Government and the service regulations made by them had the force of law, which would be enforced by the Court by declaring that the dismissal of an employee of the corporation in violation of the regulations, was void.

33. In *Ramana Dayaram Shetty vs International Airport of India* a three-Judge Bench of this Court laid down that corporations created by the Government for setting up and management of public enterprises and carrying out public functions, act as instrumentalities of the Government; they would be subject to the same limitations in the field of constitutional and administrative laws as the Government itself, though in the eye of the law they would be distinct and independent legal entities. There, this Court was enforcing the mandate of Article 14 of the Constitution against the respondent a Central Government corporation.

34. *Managing Director, U.P. Warehousing Corpn. vs Vijay Narayan Vajpayee* dealt with a case of dismissal

of the respondent employee of the appellant Corporation in violation of the principles of natural justice. There also the Court held the Corporation to be an instrumentality of the State and extended protection of Articles 14 and 16 of the Constitution to the employee taking the view that when the Government is bound to observe the equality clause in the matter of employment the corporations set up and owned by the Government are equally bound by the same discipline.

35. In *Ajay Hasia vs Khalid Mujib Sehravardi* the question decided by a Constitution Bench of this Court was: whether Jammu and Kashmir Regional Engineering College, Srinagar, registered as a society under the Jammu and Kashmir Registration of Societies Act, 1898, was "State" within the meaning of Article 12 of the Constitution so as to be amenable to writ jurisdiction of the High Court. Having examined the memorandum of association and the Rules of the Society, the Court decided that the control of the State and the Central Government was deep and pervasive and the Society was a mere projection of the State and the Central Government and it was, therefore, an instrumentality or agency of the State and the Central Government and as such an authority-State within the meaning of Article 12.

36. The principle laid down in the aforementioned cases that if the Government acting through its officers was subject to certain constitutional limitations, a fortiori the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations, was approved by the Constitution Bench and it was pointed out that otherwise it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its function through the instrumentality or agency of a corporation while retaining control over it. That principle has been consistently followed and reiterated in all subsequent cases see *Delhi Transport Corpn. vs D.T.C.*, *Mazdoor Congress, Som Prakash Rekhi vs Union of India*, *Manmohan Singh Jaitla vs Commr., Union Territory of Chandigarh*, *P.K. Ramachandra Iyer vs Union of India*, *A.L. Kalra vs Project and Equipment Corpn. of India Ltd.*, *Central Inland Water Transport Corpn. Ltd. vs Brojo Nath Ganguly*, *C.V. Raman vs Bank of India*, *Lucknow Development Authority vs M.K. Gupta*, *Star Enterprises vs City and Industrial Development Corpn. of Maharashtra Ltd.*, *LIC of India vs Consumer Education & Research Centre* and *G.B. Mahajan vs Jalgaon Municipal Council*. We do not propose to burden this judgment by adding to the list and referring to each case separately.

37. We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law constitutional or administrative law as the Government itself, does not lead to the

inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law."

A careful consideration of the principles of law noticed supra and the factual details not only found illustrated from the memorandum as well as Articles of Association of the appellant but enumerated from the day-to-day running of the business and administration of the company leave no room for any doubt as to the identity of the appellant-company being "other authority" and consequently "the State" within the meaning of Article 12 of the Constitution of India. The said definition has a specific purpose and that is part III of the Constitution, and not for making it a Government or department of the Government itself. This is the inevitable consequence of the "other authorities" being entities with independent status distinct from the state and this fact alone does not militate against such entities or institutions being agencies or instrumentalities to come under the net of Article 12 of the Constitution. The concept of instrumentality or agency of the Government is not to be confined to entities created under or which owes its origin to any particular statute or order but would really depend upon a combination of one or more of relevant factors, depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be, by piercing the corporate veil of the entity concerned.

The indisputable fact that the appellant-company is a Government company as envisaged in Section 617 attracting Section 619 of the Companies Act, that more than 97% of the share capital has been contributed by the State Government and the financial institutions controlled and belonging to the Government of India on the security and undertaking of the State Government, that the amendments introduced to the Memorandum of Association in the year 1994 introducing Articles 5A and 5B, entrusts the appellant-company with important public duties obligating to undertake, permit, sponsor rural development and for social and economic welfare of the people in rural areas by undertaking programmes to assist and promote activities for the growth of national economy which are akin and related to the public duties of the State, that out of 12 directors 5 are Government and departmental persons, besides other elected directors also are to be with the concurrence and nomination of the Government and the various other form of supervision and control, as enumerated supra, will go to show that the State Government has deep and pervasive control of the appellant company and its day-to-day administration, and consequently confirm the position that the appellant-company is nothing but an instrumentality and agency of the State Government and the physical form of company is merely a cloak or cover for the Government. Despite best and serious efforts made on behalf of the appellant, the decision under challenge has not been shown to suffer any infirmity whatsoever to call for interference in our hands.

The appeals, therefore, fail and shall stand dismissed. No costs.

J.
(G.B. Pattanaik)

J.
(Doraiswamy Raju)

January 8, 2002.