

CASE NO.:
Writ Petition (civil) 541 of 2004

PETITIONER:
M/S. Zee Telefilms Ltd. & Anr.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 02/02/2005

BENCH:
N Santosh Hegde, B P Singh & H K Sema

JUDGMENT:
J U D G M E N T
(With S.L.P. (c) No. 20186 of 2004)

Santosh Hegde, J.

I have had the benefit of reading the judgment of Sinha, J. I regret I cannot persuade myself to agree with the conclusions recorded in the said judgment, hence this separate opinion. The Judgment of Sinha, J. has elaborately dealt with the facts, relevant rules and bye-laws of the Board of Control for Cricket in India (the Board). Hence, I consider it not necessary for me to reproduce the same including the lengthy arguments advanced on behalf of the parties except to make reference to the same to the extent necessary in the course of this judgment.

Mr. K.K. Venugopal, learned senior counsel appearing for the Board has raised the preliminary issue in regard to the maintainability of this petition on the ground that under Article 32, a petition is not maintainable against the Board since the same is not "State" within the meaning of Article 12 of the Constitution of India. It is this issue which is being considered in this judgment.

In support of his argument Mr. K.K. Venugopal has contended the Board is not created by any statute and is only registered under the Societies Registration Act 1860 and that it is an autonomous body, administration of which is not controlled by any other authority including Union of India, (U.O.I.) the first respondent herein. He further submitted that it also does not take any financial assistance from the Government nor is it subjected to any financial control by the Government or its accounts are subject to the scrutiny of the Government. It is his submission that though in the field of Cricket it enjoys a monopoly status the same is not conferred on the Board by any statute or by any order of the Government. It enjoys that monopoly status only by virtue of its first mover advantage and its continuance as the solitary player in the field of cricket control. He also submitted that there is no law which prohibits the coming into existence of any other parallel organisation. The learned counsel further submitted that as per the parameters laid down by this Court in *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors.* (2002 5 SCC 111), the Board cannot be construed as a State for the purpose of Article 12 and the said judgment being a judgment of Seven Judge Bench of this Court is binding on this Bench. The argument of Mr. K.K. Venugopal is supplemented and supported by the arguments of Dr. A.M. Singhvi and Soli J. Sorabjee appearing for the other contesting respondents.

Mr. Harish N. Salve, learned senior counsel appearing on behalf of the petitioners opposing the preliminary objections submitted that the perusal of the Memorandum and Articles of the Association of the Board as also the rules and regulations framed by the Board indicate that the Board has extensive powers in selecting players for the Indian National team representing India in test matches domestically and internationally. He also pointed out that the Board has the authority of inviting foreign teams to play in India. He also further contended that the Board is the sole authority for

organising major cricketing events in India and has the disciplinary power over the players/umpires and other officials involved in the game and sports being a subject under the control of the States, in substance the Board exercises governmental functions in the area of Cricket. He submitted that this absolute authority of the Board is because of the recognition granted by the Government of India, hence in effect even though it is as an autonomous body the same comes under "other authorities" for the purpose of Article 12. He also contended that the Board has the authority to determine whether a player would represent the country or not. Further, since playing cricket is a profession the Board controls the fundamental right of a citizen under Article 19 (1) (g) of the Constitution. It is his further contention that many of the vital activities of the Board like sending a team outside India or inviting foreign teams to India is subject to the prior approval of the Government of India. Hence, the first respondent Union of India has pervasive control over the activities of the Board. For all these reasons, he submitted that the Board is "other authorities" within the meaning of Article 12.

Respondent No. 1-Union of India has filed a counter affidavit which is subsequently supplemented by an additional affidavit in which it is stated that the Board was always subjected to de-facto control of the Ministry of Youth Affairs and Sports in regard to international matches played domestically and internationally. In the said affidavit, it is also stated that the Government of India has granted de-facto recognition to the Board and continues to so recognise the Board as the Apex National Body for regulating the game of Cricket in India. In the said affidavit it is also stated that it is because of such recognition granted by the Government of India that the team selected by the Board is able to represent itself as the Indian cricket team and if there had not been such recognition the team could not have represented the country as the Indian cricket team in the international cricket arena. It is also stated that Board has to seek prior permission and approval from the Government of India whenever it has to travel outside the country to represent the country. Even in regard to Board's invitation to the foreign teams to visit India the Board has to take prior permission of the Government of India and the Board is bound by any decision taken by the Government of India in this regard. It is further stated that in the year 2002 the Government had refused permission to the Board to play cricket in Pakistan. It is also submitted that the Government of India accepts the recommendation of the Board in regard to awarding "Arjuna Awards" as the National Sports Federation representing cricket. In the said affidavit the Government of India has stated before this Court that the activities of the Board are like that of a public body and not that of a private club. It also asserted that it had once granted an amount of Rs. 1,35,000/- to the Board for the payment of air fares for nine members of the Indian cricket team which went to Kuala Lumpur (Malaysia) to participate in the 16th Commonwealth Games in September 1998. It is further stated that some of the State Cricket Associations which are members of the Board have also taken financial assistance of land lease from the respective State Governments. It is also stated that though the Government does not interfere with the day to day autonomous functioning of the Board, if it is required the Board has to answer all clarifications sought by the Government and the Board is responsible and accountable to the people of India and the Government of India which in turn is accountable to Parliament in regard to team's performance.

Mr. K.K. Venugopal, learned senior counsel has taken serious objections to the stand taken by the Government of India in its additional affidavit before this Court on the ground that the Government of India has been taking contrary positions in regard to the status of the Board in different writ petitions pending before the different High Courts and now even in the Supreme Court, depending upon the writ petitioners involved. He pointed out that in the stand taken by the Government of India in a writ petition filed before the Delhi High Court and before the Bombay High Court as also in the first affidavit filed before this Court it had categorically stated that Government of India does not control the Board and that it is not

a State under Article 12 of the Constitution of India. He pointed out from the said affidavits that the first respondent had taken a stand in those petitions that the Government plays no role in the affairs of any member association and it does not provide any financial assistance to the Board for any purpose. It had also taken the stand before the Delhi High Court that the Board is an autonomous body and that the government had no control over the Board. The learned counsel has also relied upon an affidavit filed by the Board in this Court wherein the Board has specifically denied that the first respondent has ever granted any recognition to the Board.

Hence the question for consideration in this petition is whether the Board falls within the definition of "the State" as contemplated under Article 12 of the Constitution. Article 12 reads thus :-

"12. Definition\027In this part, unless the context otherwise requires, "the State" includes 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."

A perusal of the above Article shows that the definition of State in the said Article includes the Government of India, Parliament of India, Government of the State, Legislatures of the States, local authorities as also "other authorities". It is the argument of the Board that it does not come under the term "other authorities", hence is not a State for the purpose of Article 12. While the petitioner contends to the contrary on the ground that the various activities of the Board are in the nature of public duties. A literal reading of the definition of State under Article 12 would not bring the Board under the term "other authorities" for the purpose of Article 12. However, the process of judicial interpretation has expanded the scope of the term "other authorities" in its various judgments. It is on this basis that the petitioners contend that the Board would come under the expanded meaning of the term "other authorities" in Article 12 because of its activities which is that of a public body discharging public function.

Therefore, to understand the expanded meaning of the term "other authorities" in Article 12, it is necessary to trace the origin and scope of Article 12 in the Indian Constitution. Present Article 12 was introduced in the Draft Constitution as Article 7. While initiating a debate on this Article in the Draft Constitution in the Constituent Assembly, Dr. Ambedkar described the scope of this Article and the reasons why this Article was placed in the Chapter on fundamental rights as follows :-

"The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority \026 I shall presently explain what the word 'authority' means \026 upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted \026 and I do not

see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law \026 then, what are we to do to make our intention clear ? There are two ways of doing it. One way is to use a composite phrase such as 'the State', as we have done in Article 7; or, to keep on repeating every time, 'the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority'. It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words." (1948 (Vol. VII) CAD 610]

(Emphasis supplied)

From the above, it is seen that the intention of the Constitution framers in incorporating this Article was to treat such authority which has been created by law and which has got certain powers to make laws to make rules and regulations to be included in the term "other authorities" as found presently in Article 12.

Till about the year 1967 the courts in India had taken the view that even statutory bodies like Universities, Selection Committee for admission to Government Colleges were not "other authorities" for the purpose of Article 12 (See The University of Madras vs. Shantha Bai & Anr. (AIR 1954 Madras, 67), B.W. Devadas Vs. The Selection Committee for Admission of Students to the Karnatak Engineering College and Ors. (AIR 1964 Mysore 6). In the year 1967 the case of Rajasthan State Electricity Board Vs. Mohan Lal & Ors. (AIR 1967 SC 1857) a Constitution Bench of this Court held that the expression "other authorities" is wide enough to include within it every authority created by a Statute on which powers are conferred to carry out governmental or quasi-governmental functions and functioning within the territory of India or under the control of the Government of India.(Emphasis supplied) Even while holding so Shah, J. in a separate but concurring judgment observed that every constitutional or, statutory authority on whom powers are conferred by law is not "other authority" within the meaning of Article 12. He also observed further that it is only those authorities which are invested with sovereign powers, that is, power to make rules or regulations and to administer or enforce them to the detriment of citizens and others that fall within the definition of "State" in Article 12 : but constitutional or statutory bodies invested with power but not sharing the sovereign power of the State are not "State" within the meaning of that Article. (Emphasis supplied)

Almost a decade later another Constitution Bench of this Court somewhat expanded this concept of "other authority" in the case of Sukhdev Singh & Ors. Vs. Bhagatram Sardar Singh Raghuvanshi & Anr. (1975 3 SCR 619), in this case the Court held the bodies like Oil and Natural Gas Commission, Industrial Finance Corporation and Life Insurance Corporation which were created by statutes because of the nature of their activities do come within the term "other authorities" in Article 12. Even though in reality they were really constituted for commercial purposes while so holding Mathew J. gave the following reasons for necessitating to expand the definition of the term "other authorities" in the following words:- "The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a

service Corporation. A State is an abstract entity. It can only act through the instrumentality or agency or natural or juridical persons. There is nothing strange in the notion of the State acting through a Corporation and making it an agency or instrumentality of the State. With the advent of a welfare State the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. The distrust of Government by civil service was a powerful factor in the development of a policy of public administration through separate Corporations which would operate largely according to business principles and be separately accountable. The Public Corporation, therefore, became a third arm of the Government. The employees of public Corporation are not civil servants. In so far as public corporations fulfil public tasks on behalf of government they are public authorities and as such subject to control by Government. The public Corporation being a creation of the State is subject to the constitutional limitation as the State itself. The governing power wherever located must be subject to the fundamental constitutional limitations. The ultimate question which is relevant for our purpose is whether the Corporation is an agency of instrumentality of the Government for carrying on a business for the benefit of the public."

From the above, it is to be noticed that because of the change in the socio-economic policies of the Government this Court considered it necessary by judicial interpretation to give a wider meaning to the term "other authorities" in Article 12 so as to include such bodies which were created by Act of Legislature to be included in the said term "other authorities".

This judicial expansion of the term "other authorities" came about primarily with a view to prevent the Government from by-passing its constitutional obligations by creating companies, corporations etc. to perform its duties.

At this stage it is necessary to refer to the judgment of Sabhajit Tewary vs U.O.I. & Ors. [(1975) 3 SCR 616] which was delivered by the very same Constitution Bench which delivered the judgment in Sukhdev Singh & Ors. on the very same day. In this judgment this court noticing its judgment in Sukhdev Singh & Ors (supra), rejected the contention of the petitioner therein that council for Scientific and Industrial Research the respondent body in the said writ petition which was only registered under the Societies Registration Act would come under the term "other authorities" in Article 12.

The distinction to be noticed between the two judgments referred to hereinabove namely Sukhdev Singh & Ors and Sabhajit Tewary (supra), is that in the former the Court held that bodies which were creatures of the statutes having important State functions and where State had pervasive control of activities of those bodies would be State for the purpose of Article 12. While in Sabhajit Tewary's case the Court held a body which was registered under a statute and not performing important State functions and

not functioning under the pervasive control of the Government would not be a State for the purpose of Article 12.

Subsequent to the above judgments of the Constitution Bench a Three Judge Bench of this Court in the case of Ramana Dayaram Shetty Vs. The International Airport Authority of India & Ors. (1979 3 SCR 1014) placing reliance on the judgment of this Court in Sukhdev Singh (supra) held that the International Airport Authority which was an authority created by the International Airport Authority Act, 1971 was an instrumentality of the State, hence, came within the term "other authorities" in Article 12, while doing so this Court held :-

"To-day the Government, in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kind : leases, licenses, contracts and so forth. With the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, it cannot be said that they do not enjoy any legal protection nor can they be regarded as that they do not enjoy any legal protection nor can they be regard as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure.

The law has not be slow to recognize the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interest in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will.

It is in the above context that the Bench in Ramana Dayaram Shetty's case laid down the parameters or the guidelines for identifying a body as coming within the definition of "other authorities" in Article 12. They are as follows :-

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (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 \005 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)" (extracted from Pradeep Kumar Biswas's case (supra)

The above tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government was subsequently accepted by a Constitution Bench of this Court in the case of *Ajay Hasia & Ors. Vs. Khalid Mujib Sehravardi & Ors.* (1981 1 SCC 722). But in the said case of *Ajay Hasia* (supra) the court went one step further and held that a society registered under the Societies Registration Act could also be an instrument of State for the purpose of the term "other authorities" in Article 12. This part of the judgment of the Constitution Bench *Ajay Hasia* (supra) was in direct conflict or was seen as being in direct conflict with the earlier Constitution Bench of this Court in *Sabhajit Tewary's* case (supra) which had held that a body registered under a statute and which was not performing important State function or which was not under the pervasive control of the State cannot be considered as an instrumentality of the State for the purpose of Article 12.

The above conflict in the judgments of *Sabhajit Tewary* (supra) and *Ajay Hasia* (supra) of two coordinate Benches was noticed by this Court in the case of *Pradeep Kumar Biswas* and hence the said case of *Pradeep Kumar Biswas* (supra) came to be referred to a larger Bench of seven Judges and the said Bench, speaking through Ruma Pal, J. held that the judgment in *Sabhajit Tewary* (supra) was delivered on the facts of that case, hence could not be considered as having laid down any principle in law. The said larger Bench while accepting the ratio laid down in *Ajay Hasia's* case (supra) though cautiously had to say the following in regard to the said judgment of this Court in *Ajay Hasia* :- "Perhaps this rather overenthusiastic application of the broad limits set by *Ajay Hasia* may have persuaded this Court to curb the tendency in *Chander Mohan Khanna vs. National Council of Educational Research and Training*. 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 (at SCC p.580, para 2) "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. 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 NCERT were not wholly related to governmental functions and that the governmental 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 v. Union of India*. However, as far as the decision in *Sabhajit Tewary v. Union of India* was concerned, it was noted (at SCC p.583 para 8) that the "decision has been distinguished and watered down in the subsequent decisions."

(para38)

Thereafter the larger Bench of this Court in *Pradeep Kumar Biswas* (supra) after discussing the various case laws laid down the following parameters for gauging whether a particular body could be termed as State for the purpose of Article 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." (para 40)

Above is the ratio decidendi laid down by a seven Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touch stone of the parameters laid down in *Pradeep Kumar Biswas's* case (supra). Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in *Pradeep Kumar Biswas's* case (supra) for a body to be a State under Article 12. They are :-

(1) Principles laid down 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.

(2) The Question in each case will have to be considered on the bases of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in

question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.

The facts established in this case shows the following :-

1. Board is not created by a statute.
2. No part of the share capital of the Board is held by the Government.
3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.
4. The Board does enjoy a monopoly status in the field of cricket but such status is not State conferred or State protected.
5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.
6. The Board is not created by transfer of a Government owned corporation. It is an autonomous body.

To these facts if we apply the principles laid down by seven Judge Bench in Pradeep Kumar Biswas (supra), it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the parameters laid down by this Court in Pradeep Kumar Biswas's case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions even then as per the judgment of this Court in Pradeep Kumar Biswas (supra) that by itself would not suffice for bringing the Board within the net of "other authorities" for the purpose of Article 12.

The learned counsel appearing for the petitioners, however, contended that there are certain facets of the activities of the Board which really did not come up for consideration in any one of the earlier cases including in Pradeep Kumar Biswas case (supra) and those facts if considered would clearly go on to show that the Board is an instrumentality of the State. In support of this argument, he contended that in the present day context cricket has become a profession and that the cricketers have a fundamental right under Article 19 (1) (g) to pursue their professional career as cricketers. It was also submitted that the Board controls the said rights of a citizen by its rules and regulations and since such a regulation can be done only by the State the Board of necessity must be regarded as an instrumentality of the State. It was also pointed out that under its Memorandum of Association and the rules and regulations and due to its monopolistic control over the game of Cricket the Board has all pervasive powers to control a person's cricketing career as it has the sole authority to decide on his membership and affiliation to any particular Cricketing Association, which in turn would affect his right to play cricket at any level in India as well as abroad.

Assuming that these facts are correct the question then is, would it be sufficient to hold the Board to be a State for the purpose of Article 12?

There is no doubt that Article 19(1)(g) guarantees to all citizens the fundamental right to practise any profession or to carry on any trade occupation or business and that such a right can only be regulated by the State by virtue of Article 19(6). Hence, it follows as a logical corollary that any violation of this right will have to be claimed only against the State and unlike the rights under Articles 17 or 21 which can be claimed against non state actors including individuals the right under Article 19(1)(g) cannot be claimed against an individual or a non State entity. Thus, to argue that every entity, which validly or invalidly arrogates to itself the right to regulate or for that matter even starts regulating the fundamental right of the citizen under Article 19(1)(g), is a State within the meaning of Article 12 is to put the cart before the horse. If such logic were to be applied every employer who regulates the manner in which his employee works would also have to be treated as State. The pre-requisite for invoking the enforcement of a fundamental right under Article 32 is that the violator of that right should be a State first. Therefore, if the argument of the learned counsel for the petitioner is to be accepted then the petitioner will have to first establish that the Board is a State under Article 12 and it is violating the fundamental rights of the petitioner. Unless this is done the petitioner cannot allege that the Board violates fundamental rights and is therefore State within Article 12. In this petition under Article 32 we have already held that the petitioner has failed to establish that the Board is State within the meaning of Article 12. Therefore assuming there is violation of any fundamental right by the Board that will not make the Board a "State" for the purpose of Article 12.

It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it and that the Board is discharging these functions on its own as an autonomous body.

However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board.

Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.

This Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors.* (1989 2 SCC 691) has held :

"Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". The term "authority" used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers powers on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas* case (supra), hence there is force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable.

At this stage, it is relevant to note another contention of Mr. Venugopal that the effect of treating the Board as State will have far reaching consequences in as much as nearly 64 other national sports federations as well as some other bodies which represent India in the international forum in the field of art, culture, beauty pageants, cultural activities, music and dance, science and technology or other such competitions will also have to be treated as a "State" within the meaning

of Article 12, opening the flood gates of litigation under Article 32. We do find sufficient force in this argument. Many of the above mentioned federations or bodies do discharge functions and/ or exercise powers which if not identical are at least similar to the functions discharged by the Board. Many of the sport persons and others who represent their respective bodies make a livelihood out of it (for e.g. football, tennis, golf, beauty pageants etc.). Therefore, if the Board which controls the game of Cricket is to be held to be a State for the purpose of Article 12, there is absolutely no reason why other similarly placed bodies should not be treated as State. The fact that game of Cricket is very popular in India also cannot be a ground to differentiate these bodies from the Board. Any such differentiation dependent upon popularity, finances and public opinion of the body concerned would definitely violate Article 14 of the Constitution, as any discrimination to be valid must be based on hard facts and not mere surmises (See *State of Kerala v. T.P. Roshana*, (1979) 1 SCC 572) Therefore, the Board in this case cannot be singly identified as "other authority" for the purpose of Article 12. In our opinion, for the reasons stated above none of the other federations or bodies referred to hereinabove including the Board can be considered as a "State" for the purpose of Article 12.

In conclusion, it should be noted that there can be no two views about the fact that the Constitution of this country is a living organism and it is the duty of Courts to interpret the same to fulfil the needs and aspirations of the people depending on the needs of the time. It is noticed earlier in this judgment that in Article 12 the term "other authorities" was introduced at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under the Statute and which discharge State functions. However, because of the need of the day this Court in *Rajasthan State Electricity Board (supra)* and *Sukhdev Singh (supra)* noticing the socio-economic policy of the country thought it fit to expand the definition of the term "other authorities" to include bodies other than statutory bodies. This development of law by judicial interpretation culminated in the judgment of the 7-Judge Bench in the case of *Pradeep Kumar Biswas (supra)*. It is to be noted that in the meantime the socio-economic policy of the Government of India has changed [See *Balco Employees' Union (Regd.) v. Union of India & Ors.* (2002 2 SCC 333)] and the State is today distancing itself from commercial activities and concentrating on governance rather than on business. Therefore, the situation prevailing at the time of *Sukhdev Singh (supra)* is not in existence at least for the time being, hence, there seems to be no need to further expand the scope of "other authorities" in Article 12 by judicial interpretation at least for the time being. It should also be borne in mind that as noticed above, in a democracy there is a dividing line between a State enterprise and a non-State enterprise, which is distinct and the judiciary should not be an instrument to erase the said dividing line unless, of course, the circumstances of the day require it to do so.

In the above view of the matter, the second respondent-Board cannot be held to be a State for the purpose of Article 12. Consequently, this writ petition filed under Article 32 of the Constitution is not maintainable and the same is dismissed.