CHANDER MOHAN KHANNA

v.

NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING AND ORS.

SEPTEMBER 17,1991

[K. JAGANNATHA SHETTY AND YOGESHWAR DAYAL, JJ.]

Constitution of India:

Art. 12 — NCERT whether "State" — Indicative indicia and determinative factors — What are.

In a writ petition challenging the termination of services of the appellant, who was an employee in the National Council of Educational Research & Training (NCERT), the High Court upheld the preliminary objection that the writ petition was not maintainable as NCERT was not an instrumentality or authority within the meaning of Art. 12 of the Constitution. Aggrieved, the appellant filed the appeal by special leave to this Court.

On the question whether NCERT is "State" as defined under Article 12 of the Constitution,

Dismissing the appeal, the Court,

HELD: 1.1. Like all societies, having a Memorandum of Association and Rules for internal management, the National Council of Educational Research and Training is a society registered under the Societies Registration Act. [168 E]

1.2. Having regard to the object, functions, activities, sources of funds of NCERT, freedom of application of its income and property towards the promotion of its objectives and implementation of programmes, confinement of Government control only to proper utilisation of the grant, and largely being an autonomous body, the institution does not satisfy the requirements of "State" under Article 12 of the Constitution. [169 G-H; 170A-C; 171 C-D]

Tekraj Vasandhi alias K.L. Basandhi **v.** *Union of India* **[1988] 2 SCR-260,** *Sabhjit Tewari* **v.** *Union of India and Ors.*, **[1975] 1 SCC 485, referred to.**

A *Ajay Hasia* v. *Khalid Mujib Sehravardhi,* [1981] 1 SCC 722 *P.K. Ramachandra Iyer* v. *Union of India,* [1984] 2 SCC 141 distinguished.

2. Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must B be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State ; independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12.

C The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. [168 A-B]

3. The powers, functions, finances and control of the government are some of the indicating factors to answer the question whether a body is "State" or not. These are merely indicative indicia and are by no means D conclusive or clinching in any case. Each case should be handled with care and caution. [167 E-G]

Sukhdev Singh v. *Bhagat Ram,* [1975] 1 SCC 421; *R.D. Shetty* v. *International Airport Authority,* [1979]3 SCC 489, and *Som Prakash Rekhi* v. E *Union of India,* [1981] 1 SCC 449, referred to .

4.1 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 being the obligatory functions of the State may largely point out that the body is "State". [168 B-C]

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4.2. If the Government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State", within the meaning of Article 12 of the Constitution. [168 C]

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Central Inland Water Transport Corporation v. *Brojonath Gangoli,* [1986] 3 SCC 156, *Tekraj Vasandhi alias K.L. Basandhi* v. *Union of India,* [1988] 2 SCR 260, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1699 of H 1981.

From the Judgment and order dated 10.4.1980 of the Delhi High Court in Civil Writ No. 450 of 1971. A

H.K. Puri for the Appellant.

The Judgment of the Court was delivered by

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K. JAGANNATHA SHETTY, J. Whether the National Council of Educational Research and Training (NCERT) is "State" as defined under Article 12 of the Constitution ? This is the only question that calls for decision in this appeal. The appellant was an employee of the NCERT. His services were terminated by the Secretary of NCERT. Challenging the termination he moved the Delhi High Court under Article 226 of the Constitution.The NCERT raised a preliminary objection as to the maintainability of the writ petition. The objection was that the NCERT is not amenable to the writ jurisdiction of the High Court as it is not an instrumentality or other authority within the meaning of Article 12 of the Constitution. The High Court has upheld the preliminary objection and dismissed the writ petition. The decision of the High Court has been challenged in this appeal. C D

There are only general principles but not exhaustive test to determine whether a body is an instrumentality or agency of the Government. Even in general principles , there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the Government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case See *Sukhdev Singh* v. *Bhagat Ram*, [1975] 1 SCC 421; *R.D. Shetty* v. *International Airport Authority*, [1979]3 SCC 489; *Ajay Hasia* v. *Khalid Mujib Sehravardhi*, [1981]1 SCC 722 and *Som Prakash Rekhi* v. *Union of India*, [1981]1 SCC 449. E F G H

A Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State; independent institution, corporation and agency are generally subject to State control. The State control does not render such B bodies as "State" under Article 12. The State control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. 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 being the obligatory functions of the State may largely point out that the body is "State". If the Government C operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution. See: *P.K. Ramachandra Iyer* v. *Union of India,* [1984]2 SCC 141 *Central Inland Water Transport Corporation* v. *Brojonath Gangoli,* [1986] 3 SCC 156 and *Tekraj Vasandhi alias K.L. Basandhi* v. *Union of* D *India*, [1988]2 SCR 260.

The NCERT is a society registered under the Societies Registration Act. Like all societies, it has a Memorandum of Association. It has Rules for internal management. The High Court has elaborately examined the Memorandum of Association and the rules of the NCERT. The relevant E part of the discussion by the High Court is as follows:

> "The NCERT is governed by a Memorandum of Association subscribed to by seven officers of the Government of India on 6.6.1961. Under clause 3.1 of the Memorandum of Association F the object of the Council is to assist and advise the Ministry of Education and Social Welfare in the implementation of its policies and major programmes in the field of education particularly school education. Under clause 3.2 the Council is empowered for the realisation of the above objectives to undertake several kinds of programmes and activities which G include coordination or research, extension services and training, dissemination of improved educational techniques and practices in schools, collaboration in educational programmes, distribution of ideas and information, preparation and publication of books, materials, periodicals and other literature and allied activities. Under clause 5 the income and property of H the Council is to be applied towards the promotion of its ob-

jects and cannot be disposed of by way of dividends, bonus etc. But under this clause, the Council is free to apply the income and property towards its objectives in such manner as it may think fit. It is subject to the limitations placed by the Government of India in this regard only in respect of the expenditure of grants made by the Government. Under clause 6 the Government of India could review the work and progress of the Council and take appropriate action to give effect to the reports received on enquiries. In addition, the Government could at any time issue directions to the Council on important matters of policy and programmes." Rule 3 of the Rules of the Council provides for Constitution of the Council which consists mainly of various Government officials but also includes the Chairman of the University Grants Commission, four Vice Chancellors and a number of nominees, four from school teachers and several others. Rule 7 enables the Government to fix the period of appointment of the members and to extend it from time to time. The council's affairs are conducted by the Executive Committee whose constitution is outlined in Rule 23. This includes various Government servants but it also includes four educationists and three Professors and Heads of Departments who may be nominated by the President. Rule 37 provides that if there is any difference of opinion the view of the majority will prevail subject to a veto which could be exercised by the Government of India within a month. It also enables the President to refer any question for the decision of the Government. Rule 40 enables the Executive Committee to frame and amend Regulations not inconsistent with the rules. Rule 42 empowers the Executive Committee to enter into arrangements with Government, public or private organisations or individuals in furtherance of its objectives and implementation of its programmes. Rule 57 provides that the funds of the council shall consist of (i) grants made by Government; (ii) contribution from other sources; (iii) Income from the assets of the Council; and (iv) Receipts of the Council from other sources."

The object of the NCERT as seen from the above analysis is to assist and advise the Ministry of Education and Social Welfare in the implementation of the Governmental policies and major programmes in the field of education particularly school education. The NCERT undertakes several kinds of programmes and activities connected with the coordination of

A research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes. It also undertakes preparation and publication of books, materials, periodicals and other literature. These activities are not wholly related to Government functions. The affairs of the NCERT are conducted by the Executive Committee comprising of Government servants and educationists. The B Executive Committee would enter into arrangements with Government, public or private organisations or individuals in furtherance of the objectives for implementation of programmes. The funds of the NCERT consist of : (i) grants made by the Government, (ii) contribution from other sources and (iii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the C programmes. The Government control is confined only to the proper utilisation of the grant. The NCERT is thus largely an autonomous body.

Almost a similar case was considered by this Court in *Tekraj Vasandhi alias K.L. Basandhi* v. *Union of India,* [1988]2 SCR 260. This Court was required to determine whether the Institute of Constitutional D and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was the then Speaker of the Lok Sabha. Out of the five vice- presidents three were the then central ministers ; the other two were the then Chief Justice of India and the Attorney General. The ob- E jects of the society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation . It found further that though the annual financial F contribution from the State was substantial, it was entitled to receive aid from the public and in fact received contributions from other sources. Its objects were not governmental business. As regards the argument that the government exercised pervasive control over ICPS , the Court said :

> "In a Welfare State..... Governmental control is very G pervasive and touches all aspects of social existence..... A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

In the light of all these factors it has held that ICPS was not "State".

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In the present case, the High Court has relied upon the Constitution Bench decision of this Court in *Sabhjit Tewari* v. *Union of India and Ors.*, [1975] 1 SCC 485. There it was held that the Council of Scientific and Industrial Research (CSIR), which was sponsored and controlled by the Central Government and registered under the Societies Registration Act was not "State" within the meaning of Article 12. But this decision has been distinguished and watered down in the subsequent decisions particularly in *Ajay Hasia* and *Ramchandra Iyer* cases (supra).

Counsel for the appellant strongly relied upon the decision in *P.K. Ramchandra Iyer* case where this Court held that Indian Council for Agricultural Research (ICAR) was "State" under Article 12. But it may be noted that ICAR was originally an attached office of the Government of India and its position was not altered when it was registered as a society. That case, therefore is clearly distinguishable.

In our opinion, the case on hand, having regard to the indications to which we have called attention earlier, does not satisfy the requirements of "State" under Article 12 of the Constitution. We, therefore, agree with the conclusion of the High Court and dismiss the appeal. In the circumstances of the case, we make no order as to costs.

R.P. Appeal dismissed.