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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16688 of 2017

CNR No. ODHCO10422602017

In the matter of an application under Article-226 &
227 of the Constitution of India

.....

Priyabrata Swain

Petitioner

....

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. L. Samantaray, Sr. Adv.
with Mr. S. S. Tripathy, Adv.

For Opp. Parties : M/s. K.M.H. Niamati, Adv.
(for O.P. No.1)
Mr. B. Mohapatra, Adv.
(for O.P. Nos.3 & 4), Adv.

PRESENT:

THE HONBLE MR.JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 12.08.2026 & Date of Judgment: 23.09.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel appearing for the parties.
3. The present Writ Petition has been filed inter alia with the following prayer:



Under the circumstances stated above, the Petitioner therefore prays that the Hon'ble Court be pleased to admit the writ application, issue notice to the opposite parties and after hearing from advocates of the parties, issue an appropriate writ in nature of certiorari or any other suitable writ quashing the impugned order of termination vide Annexure-1 and further issue a writ in nature of Mandamus directing the opposite to reinstate the Petitioner in his post. And allow him to continue against his previous post.

And the Petitioner as in duty bound shall ever pray.

4. Since the Writ Petition has been filed inter alia challenging the impugned order of termination issued by Opp. Party Nos.3 & 4, terminating the Petitioner from his services on account of non-performance, learned Counsel appearing for Opp. Party No.1 as well as Opp. Party Nos.3 & 4 raised preliminary objection with regard to maintainability of the Writ Petition against the Opp. Parties, more particularly, against Opp. Party Nos.3 & 4.

5. Learned counsel appearing for Opp. Party Nos.3 & 4 contended that since Opp. Party Nos.3 is a Private Limited Company, registered under the provisions of the Companies Act, no Writ can be issued by this Court under Article 226 of the Constitution of India. It is also contended that Opp. Party Nos.3 & 4 being a Company



registered under the Companies Act, it cannot be held as a State within the meaning of Article 12 of the Constitution of India. Accordingly, preliminary objection was raised with regard to maintainability of the Writ Petition against Opp. Party Nos.3 & 4.

6. Even though Mr. L. Samantaray, learned Sr. Counsel appearing for the Petitioner along with Mr. S.S. Tripathy, learned counsel contended that the Writ is very much maintainable, but this Court taking into account the fact that Petitioner while continuing under Opp Party Nos.3 & 4, was terminated vide order issued under Annexure-1 and Opp. Party Nos.3 & 4 as found from the cause title as well as the documents enclosed to the Writ Petition, is a Private Limited Company, this Court thought it proper to decide the question of maintainability of the Writ Petition against Opp. Party Nos.3 & 4 at the first instance and heard the respective counsels at length on the question of maintainability.

7. Learned Sr. Counsel appearing for the Petitioner on the question of maintainability contended that even



though Petitioner is an employee under Opp. Party Nos.3 & 4, but since Opp. Party No.3 is a Company with Bank of Baroda-Opp. Party No.1 having 44% share and Andhra Bank-Opp. Party No.2 with 30% share and is under the direct control of Opp. Party Nos.1 & 2, Opp. Party No.3 is a State within the meaning of Article 12 of the Constitution of India and amenable to the writ jurisdiction of the Court. In support of such submission, reliance was placed to the documents annexed under Annexure-9 to the Writ Petition.

7.1. It is contended that since Opp. Party Nos.1 & 2 are having majority share in Opp. Party No.3-Company and Opp. Party Nos.1 & 2 have pervasive control over the management of Opp. Party No.3, Opp. Party No.3 can very well be held as a State within the meaning of Article 12 of the Constitution of India. Not only that, since Opp. Party No.3, is discharging public duty in providing insurance coverage to general public, it is amenable to the Writ jurisdiction of this Court under Article 226 of the Constitution of India. In support of



his submission, learned Sr. Counsel relied on the following decisions:

1. Ajay Hasia V. Khalid Kujib Sehravardi, (1981) 1 SCC 722
2. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani, (1982) 2 SCC 691
3. Biman Krishna Bose V. United India Insurance Co; . Ltd.,(2001) 6 SCC 477
4. Balmer Lawrie & Co. Ltd. V. Partha Sarathi Sen Roy, (2013) 8 SCC 345
5. Ravi Khokhar Vs. Union of India & Others, 2026 SCC Online SC 372
6. Pradipta Chadnra Singh V. Reliance General Insurance Company Limited, Mumbai & Others, 2014, SCC OnLine Ori 2107

7.2. In the case of **Ajay Hasia**, Hon'ble Apex Court in paragraph 9 & 11 of the said decision has held as follows:

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 [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not 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 International Airport Authority case [(1979) 3 SCC 489] 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 [(1979) 3 SCC 489] , be an “authority” and, therefore, ‘State’ within the meaning of the expression in Article 12.

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11. *We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and*



that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression “authority” in Article 12.

7.3. In the case of **Andi Mukta Sadguru Shree Muktajee Vandas**

Swami Suvarna Jayanti Mahotsave Smarak Trust, Hon’ble Apex

Court in paragraph 16 to 20 of the said decision has held as follows:

16. *The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission “to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure”. The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this “judicial review”:*

“At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scope for development. It uses the words “having



regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are — and who are not — public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing." [See The Closing Chapter by Rt. Hon. Lord Denning, p. 122]

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". 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". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

18. Article 226 reads:

"226. Power of High Courts to issue certain writs.—
(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

19. The scope of this article has been explained by Subba Rao, J., in *Dwarkanath v. ITO* [(1965) 3 SCR 536] : (SCR pp. 540-41)

"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide



language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power 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 owed 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.

7.4. In the case of **Biman Krishna Bose**, Hon’ble Apex Court in paragraph 3 of the said decision has held as follows:



3. Under Section 9 of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as “the Act”), General Insurance Corporation of India (in short GIC) was set up as a government company for the purpose of superintendence, control and carrying out the business of general insurance in the country. Under Section 24 of the Act, the acquiring companies were given the exclusive privilege to carry on general insurance business in India. Under Section 3(a) of the Act, an acquiring company has been defined to mean any Indian insurance company in which any other company has been merged in pursuance of the amalgamation scheme formulated under the Act. The respondent Insurance Company is one of such acquiring companies. A perusal of the provisions of the Act makes it evident that it is only the acquiring companies which have exclusive privilege of carrying on the general insurance business in India, under the supervision and control of General Insurance Corporation of India. Excepting the acquiring companies, no other company in the private sector has a right and privilege to carry on general insurance business in India and to that extent the acquiring companies have a monopoly over such business. In such a situation, acquiring companies have the trappings of “the State” being other authorities under Article 12 of the Constitution of India. The acquiring companies thus being “the State” under Article 12 of the Constitution are expected to act fairly and reasonably. In the present case, what we find is that the respondent Insurance Company refused to renew the insurance policy of the appellant on the ground of his past conduct. The past conduct attributed is that the appellant had gone in litigation for payment of his claim lodged by him with the respondent Insurance Company. If an insured lodges a claim with the company and the company does not honour the claim, the insured is left with no alternative but to knock the doors of a court of law. Merely because the appellant had approached the Consumer Forum and this Court for redressal of his grievance, can such an act be attributed as bad record as to disentitle the appellant to get his policy renewed? The answer is “no”. Where an insurance company under the provisions of the Act has assumed monopoly in the business of general insurance in the country and thus acquired the trappings of the “State” being other authorities under Article 12 of the Constitution, it requires to satisfy the requirement of reasonableness and fairness while



dealing with the customers. Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions. In the present case, what we find is that arbitrariness is writ large in the actions of the respondent Company when it refused to renew the mediclaim policy of the insured on the ground of his past conduct i.e. having gone into litigation for payment of his claim against the respondent Company. We are, therefore, in agreement with the view taken by the High Court that the order of the respondent Company refusing to renew the mediclaim policy of the appellant was unfair and arbitrary.

7.5. In the case of **Balmer Lawrie & Co. Ltd.**, Hon'ble Apex Court in paragraph 21 to 24 & 28 of the said decision has held as follows:

21. *A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the Government and the legislature alone, and it includes within its ambit, various other instrumentalities of State action. The law may bestow upon such organisation the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The "State" being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society. In a given case, the court must decide, whether such a company or society is an instrumentality or agency of the Government, so as to determine whether the same falls within the meaning of the expression "authority", as mentioned in Article 12 of the Constitution, upon consideration of all relevant factors.*



22. *In light of the aforementioned discussion, it is evident that it is rather difficult to provide an exhaustive definition of the term “authorities”, which would fall within the ambit of Article 12 of the Constitution. This is precisely why only an inclusive definition is possible. It is in order to keep pace with the broad approach adopted with respect to the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, that whenever possible courts have tried to curb the arbitrary exercise of power against individuals by centres of power, and therefore, there has been a corresponding expansion of the judicial definition of the term “State”, as mentioned in Article 12 of the Constitution.*

23. *In light of the changing socio-economic policies of this country, and the variety of methods by which government functions are usually performed, the court must examine, whether an inference can be drawn to the effect that such an authority is in fact an instrumentality of the State under Article 12 of the Constitution. It may not be easy for the court, in such a case, to determine which duties form a part of private action, and which form a part of State action, for the reason that the conduct of the private authority may have become so entwined with governmental policies, or so impregnated with governmental character, so as to become subject to the constitutional limitations that are placed upon State action. Therefore, the court must determine whether the aggregate of all relevant factors once considered, would compel a conclusion as regards the body being bestowed with State responsibilities.*

24. *When we discuss “pervasive control”, the term “control” is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word “regulate”, would mean to control or to adjust by rule, or to subject to governing principles. (Vide State of Mysore v. Allum Karibasappa [(1974) 2 SCC 498 : AIR 1974 SC 1863] , U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn. [(2004) 5 SCC 430 : AIR 2004 SC 3697] , Zee Telefilms Ltd. [Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649 : AIR 2005 SC 2677] and Union of India v. Asian Food Industries [(2006) 13 SCC 542 : AIR 2007 SC 750] .)*

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28. *In order to determine whether an authority is amenable to writ jurisdiction except in the case of habeas corpus or quo warranto, it must be examined, whether the company/corporation is an instrumentality or an agency of the State, and if the same carries on business for the benefit of the public; whether the entire share capital of the company is held by the Government; whether its administration is in the hands of a Board of Directors appointed by the Government; and even if the Board of Directors has been appointed by the Government, whether it is completely free from governmental control in the discharge of its functions; whether the company enjoys monopoly status; and whether there exists within the company, deep and pervasive State control. The other factors that may be considered are whether the functions carried out by the company/corporation are closely related to governmental functions, or whether a department of the Government has been transferred to the company/corporation, and the question in each case, would be whether in light of the cumulative facts as established, the company is financially, functionally and administratively under the control of the Government. In the event that the Government provides financial support to a company, but does not retain any control/watch over how it is spent, then the same would not fall within the ambit of exercising deep and pervasive control. Such control must be particular to the body in question, and not general in nature. It must also be deep and pervasive. The control should not, therefore, be merely regulatory.*

7.6. In the case of **Ravi Khokhar**, Hon'ble Apex Court in paragraph 7,7.1,16 & 17 of the said decision has held as follows:

7. *Since the advent of the Constitution, the question of whether a particular body can or cannot be recognised as 'State' within the meaning of Article 12¹¹ has arisen time and again. Initially, this Court adopted a narrow and formalistic approach focusing on whether the body concerned which was created under a statute was part of the traditional Government structure. Over the time however, as functions of the Government expanded multi-fold there was a shift in this approach. State*



instrumentalities, corporations and autonomous bodies were recognised as covered under this Article, with the shift to a functional and purposive analysis. The test to be satisfied pertained to the nature of functions, character of activity, degree of governmental control. This ensured that the breadth or scope of examination when this question arises is not limited to ownership/origin but is instead informed by accountability, the rule of law in furtherance of practical governance. It shall be useful to refer to certain cases to exemplify the requirements that need to be established for an organization be held to be “State”.

7.1. P.N Bhagwati J. (as His Lordship then was) writing for the Court in *Ramana Dayaram Shetty v. International Airport Authority of India*¹², observed:

“14. A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should

be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, 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. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.”

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16. *We are unable to accept this contention. It may be that in so far as financial aspects of AFGIS are concerned, the Government may not have a direct role however for a body to be held to be a ‘State’ it is the cumulative effect and impact of deep and pervasive control, financial and administrative control along with other factors such as carrying out of public duty.*

17. *We are of the considered view that AFGIS does indeed perform a public duty. The protection and welfare of armed forces personnel is a core government function. The role of the armed forces is directly linked to the sovereignty and security of the nation and in*



protecting the same members of the forces are required to adhere to, abide by, and maintain a strict set of rules, unquestionable conduct, and at times in the most severe and adverse circumstances. Thus, providing insurance coverage is a public function as it addresses a collective obligation the State has towards a defined public class whose service is indispensable. The body, in effect, becomes a conduit for the discharge of that obligation. The role of the State in protecting them does not end upon their superannuation from service for the life of a person from the forces is forever shaped by their time in service. Insurance to service members is a critical instrument for safeguarding their physical, mental well-being, dignity and economic security. It operates as an assurance of protection and support in case contingencies such as disability or illness befall them or even untimely death which is a real possibility in these services. The fact that healthcare, rehabilitation, support to dependants is available readily, is undoubtedly an aspect that gives great peace of mind to the member of service enabling them to carry out their duties without worry, at least in this regard.

7.7. In the case of **Pradipta Chandra Singh**, Hon'ble Apex Court in paragraph 10,11 & 12 of the said decision has held as follows:

10. Now, health insurance has become a fundamental component of India's healthcare ecosystem, playing a pivotal role in ensuring that individuals have access to necessary medical services and are protected from the financial burdens associated with healthcare. Given its essential nature, the issuance and management of health insurance--whether by private companies or public entities--should be regarded as a "public function" under [Article 12](#) of the Constitution of India. This classification is vital because health insurance directly contributes to the realization of the right to health, which is an integral part of the right to life under [Article 21](#) of the Constitution.



11. [Article 21](#) guarantees the right to life, which the Supreme Court of India has expansively interpreted to include the right to health. Health insurance, by providing financial access to healthcare, enhances the ability of individuals to secure timely and adequate medical treatment, thereby upholding their right to health. The act of issuing health insurance, therefore, transcends mere commercial activity and becomes a matter of public duty. Entities engaged in this activity--whether they are public bodies or private insurers--must be seen as performing a public function because they are instrumental in fulfilling a constitutionally protected right.

12. Recognizing the issuance of health insurance as a public function under [Article 12](#) ensures that these entities are subject to constitutional scrutiny, requiring them to operate with fairness, equity, and accountability. This classification also mandates that they align their operations with the broader goal of ensuring that healthcare is accessible and affordable for all citizens, thereby contributing to the protection of the right to health under [Article 21](#). By bringing health insurance under the ambit of public function, the state reinforces its commitment to safeguarding the health and welfare of its people, making health insurance an indispensable tool in the realization of fundamental rights.

8. Mr. K.M.H Niamati, learned counsel appearing for Opp. Party No.1 and Mr. B. Mohapatra, learned counsel appearing for Opp. Party Nos.3 & 4 on the other hand while opposing the submission made by the learned Sr. Counsel appearing for the Petitioner, contended that Opp. Party No.3 being a Private Limited Company, it is neither a State within the meaning of Article 12 of the Constitution of India nor any Writ can



be issued by this Court under Article 226 of the Constitution of India.

8.1. It is contended that though Opp. Party Nos.1 & 2 are having 44% and 30% share in Opp. Party No.3-Company, but Opp. Party No.3 being a Private Limited Company and Petitioner being in service under a contract, no Writ can be issued with regard to the action taken by Opp. Party Nos.3 & 4, in terminating the Petitioner from his services vide Order under Annexure-1.

8.2. It is contended that Opp. Party No.3 is having operational independence and manages its own fund and resources, Pay roll and Disciplinary actions. Neither Bank of Baroda-Opp. Party No.1 nor Andhra Bank-Opp. Party No.2 have any control with regard to the employment and disciplinary action taken by Opp. Party Nos.3 & 4 against any of its employee.

8.3. Since Petitioner admittedly was under employment in the establishment of Opp. Party Nos.3 & 4 and because of his non-performance, the appointment letter issued by Opp. Party No.3 was cancelled with



termination of the Petitioner from his services vide order under Annexure-1, no Writ can be issued against Opp. Party Nos.3 & 4. It is further contended that as found from Annexure-2, Petitioner was appointed by Opp. Party Nos.3 & 4 and because of non-performance, he was terminated vide order dtd.15.05.2017 under Annexure-1.

8.4. It is also contended that Petitioner by accepting terms and conditions of the appointment, accepted the offer so issued vide Annexures-2 & 3. However, it is contended that since Opp. Party No.3 is a Private Limited Company, because of non-performance of the Petitioner, Petitioner was issued with a show-cause by Opp. Party No.3 on 08.05.2016 under Annexure-8 and was terminated vide order dtd.15.05.2017 under Annexure-1.

8.5. It is further contended that Petitioner is neither an employee under Opp. Party No.1 or Opp. Party No.2 and Opp. Party Nos.1 & 2 being not the employer of the Petitioner, they have nothing to say with regard to the order of termination issued by Opp. Party No.3.



8.6. In support of the submission, learned Counsel appearing for Opp. Party No.1 as well as opp.Party 3 & 4 relied on the following decisions.

1. Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421

2. Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489

3. Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449

4. M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395

5. Dileep Kumar Pandey versus Union of India & Ors

8.7. In the case of **Sukhdev Singh**, Hon'ble Apex Court in paragraph 25,30,31,33,34,36 & 39 of the said decision has held as follows:

25. The Additional Solicitor-General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act. The fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the statutes creating such bodies. Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement. A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise powers unless the company follows the statutory provisions. The provision in the Registration



Act requires registration of instruments. The provisions in the Stamp Act contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. The source of the power for making rules and regulations in the case of corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

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30 In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent legislature.

31. In *U.P. Warehousing Corporation* [(1969) 2 SCC 838 : (1970) 2 SCR 250] and *Indian Airlines Corporation cases* [(1971) 2 SCC 192 : 1971 Supp SCR 510] the terms of the regulations were treated as terms and conditions of relationship between the Corporation and its employees. That does not lead to the conclusion that they are of the same nature and quality as the terms and conditions laid down in the contract of employment. Those terms and conditions not being contractual are imposed by one kind of subordinate legislation viz. regulations made in exercise of the power conferred by the statute which constituted that Corporation. Terms of the regulations are not terms of contract. In the *Indian Airlines Corporation case* [(1971) 2 SCC 192 : 1971 Supp SCR 510] under Section 45 of the Air Corporations Act, 1953, the Corporation had the power to make regulations not inconsistent with the Act and the rules made by the Central Government thereunder. The Corporation had no power to alter or modify or rescind the provisions of these regulations at its discretion, which it could do in respect of the terms of contract that it may wish to enter with its employees independent of these regulations. So far as the terms



of the regulations are concerned, the actions of the Corporation are controlled by the Central Government. The decisions of this Court in *U.P. Warehousing Corporation* [(1969) 2 SCC 838 : (1970) 2 SCR 250] and *Indian Airlines* [(1971) 2 SCC 192 : 1971 Supp SCR 510] Corporation are in direct conflict with the decision of this Court in *Naraindas Barot case* [AIR 1966 SC 1364 : (1966) 3 SCR 40 : (1966) 1 Lab LJ 437] which was decided by the Constitution Bench.

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33. There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute.

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In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

34. On behalf of the State it is contended that these corporations cannot be said to be "other authority" contemplated in Article 12 for two principal reasons. First, one of the attributes of a State is making laws. The State exercises governmental functions and the executive power of the State is co-extensive with the legislative power of the State. Second, authority as contemplated in Article 12 means a body of persons established by statute who are entitled as such body to command obedience and enforce directions issued by them on pain of penalty for violation. On these grounds it was said that these corporations cannot make laws like a State and cannot enforce directions.

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36. This Court in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal* [AIR 1967 SC 1857 : (1967) 3 SCR



377 : (1968) 1 Lab LJ 257] said that an “authority” is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. The expression “other authorities” in Article 12 has been held by this Court in the *Rajasthan Electricity Board case* to be wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India. This Court further said referring to earlier decisions that the expression “other authorities” in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. The State itself is envisaged under Article 298 as having the right to carry on trade and business. The State as defined in Article 12 is comprehended to include bodies created for the purpose of promoting economic interests of the people. The circumstance that the statutory body is required to carry on some activities of the nature of trade or commerce does not indicate that the Board must be excluded from the scope of the word “State”. The Electricity Supply Act showed that the Board had power to give directions, the disobedience of which is punishable as a criminal offence. The power to issue directions and to enforce compliance is an important aspect.

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39. A public authority 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. (See *Halsbury's Laws of England* 3rd Edn., Vol. 30 para 1317 at p. 682).

112. I do not think there is any basis for the apprehension expressed that by holding that these public corporations are “State” within the meaning of Article 12, the employees of these corporations would become government servants. I also wish to make it clear that I express no opinion on the question whether private corporations or other like organizations, though they exercise power over their employees which might violate their fundamental rights, would be “State” within the meaning of Article 12.



117. The original concept of employment was that of master and servant. It was therefore held that a court will not specifically enforce a contract of employment.

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He must face the prospect of discharge for failing or refusing to do his work in accordance with his employers directions. Such control by the employer over the employee is fundamental to the employment relationship.

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. From the contractual principle of mutuality of obligation, it was reasoned that if the employee can quit his job at will, then so too must the employer have the right to terminate the relationship for any or no reason.

8.8. In the case of ***Ramana Dayaram Shetty***, Hon'ble Apex Court in paragraph 14,15,16,18,19 & 29 has held as follows:

14. A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what



should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, 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. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.

15. The analogy of the concept of State action as developed in the United States may not, however, be altogether out of place while considering this question. The decisions of the courts in the United States seem to suggest that a private agency, if supported by extraordinary assistance given by the State, may be subject to the same constitutional limitations as the State. Of course, it may be pointed out that “the State's general common law and statutory structure under which its people carry on their private affairs, own property and contract, each enjoying equality in terms of legal capacity, is not such State assistance as would transform private conduct into State action”. But if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of



Government. The leading case on the subject in the United States is *Kerr v. Enock Pratt Free Library* [149 F 2d 212] . The library system in question in this case was established by private donation in 1882, but by 1944, 99 per cent of the system's budget was supplied by the city, title to the library property was held by the city, employees were paid by the city payroll officer and a high degree of budget control was exercised or available to the city government. On these facts the Court of Appeal required the trustees managing the system to abandon a discriminatory admission policy for its library training courses. It will be seen that in this case there was considerable amount of State control of the library system in addition to extensive financial assistance and it is difficult to say whether, in the absence of such control, it would have been possible to say that the action of the trustees constituted State action. Thomas P. Lewis has expressed the opinion in his article on "The Meaning of State Action" [60 Columbia Law Review 1083] that in this case "it is extremely unlikely that absence of public control would have changed the result as long as 99 per cent of the budget of a nominally private institution was provided by Government. Such extensive governmental support should be sufficient identification with the Government to subject the institution to the provisions of the Fourteenth Amendment". It may, therefore, be possible to say that 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. But where financial assistance is not so extensive, it may not by itself, without anything more, render the corporation an instrumentality or agency of government, for there are many private institutions which are in receipt of financial assistance from the State and merely on that account, they cannot be classified as State agencies. Equally a mere finding of some control by the State would not be determinative of the question "since a State has considerable measure of control under its police power over all types of business operations". But "a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action". Vide *Sukhdev v. Bhagatram* [(1975) 1 SCC 421,



454 (para 96) : (1975) 3 SCR 619, 650] . So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporations' ties to the State. Vide the observations of Douglas, J., in *Jackson v. Metropolitan Edison Co.* [419 US 345 : 42 L Ed 2d 477]

16. There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: "*The Constitutional Law of the 'Security State'*" [10 Stanford Law Review 620 at 664] . It was pointed out by Douglas, J., in *Evans v. Newton* [382 US 296 : 15 L Ed 2d 373] that "when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State". Of course, with the growth of the welfare State, it is very difficult to define what functions are governmental and what are not, because, as pointed out by Villmer, L.J., in *Pfizer v. Ministry of Health* [(1964) 1 Ch 614, 641 : (1963) 1 All ER 590 (affirmed in 1965 AC 512 : (1965) 1 All ER 450)] there has been since mid-Victorian times, "a revolution in political thought and a totally different conception prevails today as to what is and what is not within the functions of Government". Douglas, J., also observed to the same effect in *New York v. United States* [326 US 572] : "A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit." Cf. *Helvering v. Gerhardt* [304 US 405, 426, 427] . A State may deem it as essential to its economy that it own and operate a railroad, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or



even dangerous extension of State activities may today be deemed indispensable. It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. 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. This is precisely what was pointed out by Mathew, J., in *Sukhdev v. Bhagatram* where the learned Judge said that “institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions”.

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18. We find that the same test of public or governmental character of the function was applied by the Supreme Court of the United States in *Evans v. Newton* and *Smith v. Allwright* [321 US 649] . But the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. (Mathew, J., *Sukhdev v. Bhagatram* at p. 652: SCC pp. 452, 456, para 103). But the public nature of the function, if impregnated with governmental character or “tied or entwined with Government” or fortified by some



other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference.

19. It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarised as under: whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance, whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions. This particularisation of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency.” Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. “The dispositive question in any State action case”, as pointed out by Douglas, J., in *Jackson v. Metropolitan Edison Company* “is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compels a finding of State responsibility”. It is not enough to examine seriatim



each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding of that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

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29. The second decision to which we must refer is that in *Heavy Engineering Mazdoor Union v. State of Bihar* [(1969) 1 SCC 765 : (1969) 3 SCR 995]. The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Limited (hereinafter referred to as the “Corporation”) and the Union made by the State of Bihar under Section 10 of the Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry in question was “carried on under the authority of the Central Government” and the reference could, therefore, be made only by the Central Government. The Court held that the words “under the authority” mean “pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master” and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously ‘no’ because the Corporation was carrying on business in virtue of the authority derived from its memorandum and articles of association and not by reason of any authority granted by the Central Government. The Corporation, in carrying on business, was acting on its own behalf and not on behalf of the Central Government and it was therefore not a servant or agent of the Central Government in the sense that its actions would bind the Central Government. There was no question in this case whether the Corporation was an instrumentality of the Central Government and therefore an “authority” within the meaning of Article 12. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the



Government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action. This decision dealing with an altogether different point has no bearing on the present issue.

8.9. In the case of **Som Prakash Rekhi** , Hon'ble Apex Court in paragraph 26,27,28,29, 32,34,37 & 41 has held as follows:

26. If we distil the essence of Article 12 textually and apprehend the expanded meaning of “State” as interpreted precedentially, we may solve the dilemma as to whether Bharat Petroleum is but a double of Bharat Sarkar. Let us be clear that the jurisprudence bearing on corporations is not myth but reality. What we mean is that corporate personality is a reality and not an illusion or fictitious construction of the law. It is a legal person. Indeed, “a legal person” is any subject-matter other than a human being to which the law attributes personality. “This extension, for good and sufficient reasons, of the conception of personality. . . is one of the most noteworthy feats of the legal imagination.” [Salmond : JURISPRUDENCE, 10th Edn, pp 324-25] Corporations are one species of legal persons invented by the law and invested with a variety of attributes so as to achieve certain purposes sanctioned by the law. For those purposes, a corporation or company has a legal existence all its own. The characteristics of corporations, their rights and liabilities, functional autonomy and juristic status, are jurisprudentially recognised as of a distinct entity even where such corporations are but State agencies or instrumentalities. For purposes of the Companies Act, 1956, a government company has a distinct personality which cannot be confused with the State. Likewise, a statutory corporation constituted to carry on a commercial or other activity is for many purposes a distinct juristic entity not drowned in the sea of State, although, in substance, its existence may be but a projection of the State. What we wish to emphasise is



that merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, we should not scan the real character of that entity; and if it is found to be a mere agent or surrogate of the State, in fact owned by the State, in truth controlled by the State and in effect an incarnation of the State, constitutional lawyers must not blink at these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Article 12 that any authority controlled by the Government of India is itself State. Law has many dimensions and fundamental facts must govern the applicability of fundamental rights in a given situation.

27. Control by Government of the corporation is writ large in the Act and in the factum of being a government company. Moreover, here, Section 7 gives to the Government company mentioned in it a statutory recognition, a legislative sanction and status above a mere government company. If the entity is no more than a company under the Company law or society under the law relating to registered societies or cooperative societies you cannot call it an authority. A ration shop run by a cooperative store financed by Government is not an authority, being a mere merchant, not a sharer of State power. “Authority” in law belongs to the province of power: “Authority (in administrative law) is a body having jurisdiction in certain matters of a public nature.” [P Ramanatha Aiyar : THE LAW LEXICON OF BRITISH INDIA (1940) p 101] Therefore, the “ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons” [Salmond : JURISPRUDENCE, 10th Edn 243] must be present ab extra to make a person an “authority”. When the person is an “agent or instrument of the functions of the State” the power is public. So the search here must be to see whether the Act vests authority, as agent or instrument of the State, to affect the legal relations of oneself or others.

28. Sometimes the test is formulated, over-simplified fashion, by asking whether the corporation is



formed *by* a statute or *under* a statute. The true test is functional. Not *how* the legal person is born but *why* it is created. Nay more. Apart from discharging functions or doing business as the proxy of the State, wearing the corporate mask there must be an element of ability to affect legal relations by virtue of power vested in it by law.

29. In the present instance, the source of both, read in the light of Sections 3 and 7, is saturated with State functions. Avowedly, the statutory contemplation, as disclosed by Section 7, is that the Company should step into the shoes of the executive power of the State. The legislative milieu in which the second respondent came to be the successor of Burmah Shell suggests that the former is more than a mere company registered under the Companies Act. It has a statutory flavour acquired under Section 7. Moreover, everything about the second respondent in the matter of employees, their provident, superannuation and welfare funds, is regulated statutorily unlike in the case of ordinary companies. Sections 9 and 10 deal with these aspects. These two provisions which regulate the conditions of service and even provide for adjudication of disputes relating to employees indicate that some of the features of a statutory corporation attach to this government company. Sections 9 and 10, in terms, create rights and duties vis-a-vis the Government company itself apart from the Companies Act. An ordinary company, even a government company simpliciter has not the obligations cast on the second respondent by Sections 9 and 10. And, Section 11 specifically gives the Act primacy vis-a-vis other laws. Section 12, although it has no bearing on the specific dispute we are concerned with in this case, is a clear pointer to the statutory character of the Government company and the vesting of an authority therein. This provision clothes the Government company with power to take delivery of the property of Burmah Shell from every person in whose possession, custody or control such property may be. There are other powers akin to this one in Section 12. The provision for penalties if any person meddles with the property of the second respondent emphasises the special character of this Government company. Equally unique is the protection conferred by Section 16 on the



Government company and its officers and employees “for anything which is, in good faith, done or intended to be done under this Act”. Such an immunity does not attach to employees of companies simpliciter, even if they happen to be Government companies. In the same strain is the indemnity conferred by Section 18. This review, though skeletal, is sufficient strikingly to bring home the point that the Corporation we are concerned with is more than a mere government company. Whatever its character antecedent to the Act, the provisions we have adverted to have transformed it into an instrumentality of the Central Government with a strong statutory flavour superadded and clear indicia of power to make it an “authority”. Although registered as a company under the Indian Companies Act, the second respondent is clearly a creature of the statute, the Undertaking having vested in it by force of Section 7 of the Act. The various provisions to which our attention was drawn, an elaboration of which is not called for, emphasise the fact that the second respondent is not a mere company but much more than that and has a statutory flavour in its operations and functions, in its powers and duties, and in its personality itself, apart from being functionally and administratively under the thumb of Government. It is a limb of Government, an agency of the State, a vicarious creature of statute working on the wheels of the Acquisition Act. We do not mean to say that for purposes of Article 309 or otherwise this Government company is State but limit our holding to Article 12 and Part III.

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32. Let us dilate a little on the living essence of constitutional fundamentals if we are not to reduce fundamental rights to paper hopes and people's dupes! The judicial branch shall not commit breach of faith with the bill of rights by interpretative exoneration of the State from observance of these founding faiths. The higher values enacted into Part III of the Constitution certainly bind the State in its executive and legislative branches. They are constitutional guarantees to the Indian people, not fleeting promises in common enactments. So long as they last in the National Charter they should not be truncated in their application unless



a contra-indication is clearly written into the prescription, a la Articles 31-A, 31-B and 31-C. Article 12 is a special definition with a broader goal. Far from restricting the concept of State it enlarges the scope to embrace all authorities under the control of Government. The constitutional philosophy of a democratic, socialist republic mandated to undertake a multitude of socio-economic operations inspires Part IV and so we must envision the State entering the vast territory of industrial and commercial activity, competitively or monopolistically, for ensuring the welfare of the people. This expansive role of the State under Part IV is not played at the expense of the cherished rights of the people entrenched in Part III since both the sets of imperatives are complementary and coexist harmoniously. Wherever the Constitution has felt the need to subordinate Part III to Part IV it has specified it and absent such express provision, both the Parts must and can flourish happily together given benign judicial comprehension a la *Kerala v. Thomas* [*State of Kerala v. NM Thomas*, (1976) 2 SCC 310 : 1976 SCC (L&S) 227]. There is no inherent conflict between the two parts if orchestrated humanely. We are at pains to emphasise this perspective because the substance of Part III, save where the Constitution says so, shall not be sacrificed at the altar of Part IV by the stratagem of incorporation. It is well known, and surely within the erudite and experienced ken of our “founding fathers”, that government embarks on myriad modern commercial activities by resort to the jurisprudential gift of personification through incorporation. This contrivance of carrying on business activities by the State through statutory corporations, government companies and other bodies with legal personality, simplifies and facilitates transactions and operations beyond the traditional and tardy processes of Governmental desks and cells noted for their red tape exercise and drowsy *dharma*. But to use the corporate methodology is not to liberate the State from its basic obligation to obey Part III. To don the mantle of company is to free the State from the inevitable constraints of Governmental slow motion, not to play truant with the great rights. Otherwise, a cunning plurality of corporations taking over almost every State business — the post and the rail-road, the T.V. and the radio, every



economic ministry's activity, why, even social welfare work — will cheat the people of Part III rights by the easy plea: “No admission for the bill of rights; no State here”. From Indian Posts and Telegraphs Limited to Indian Defence Manufacturers Limited, from Social Welfare Board to Backward Classes Corporation, the nation will be told that “the State has ceased to be, save for the non-negotiable sovereign functions”; and fundamental rights may suffer eclipse only to be viewed in museum glass cases. Such a situation will be a treachery on the founding fathers, a mockery of the Constitution and a government by puppetry because the crowd of corporations which have carved out all functions will still be controlled completely by the switchboards of bureaucrats and political bosses from remote control rooms in government secretariats. The extended definition of “the State” in Article 12 is not to be deadened but quickened by judicial construction. Before our eyes the corporate phenomenon is becoming ubiquitous. What was archaically done yesterday by Government departments is alertly executed today by Government companies, statutory corporations and like bodies and this tribe may legitimately increase tomorrow. This efficiency is not to be purchased at the price of fundamental rights. As Mathew, J., stated in *V. Punnen Thomas v. State of Kerala* [AIR 1969 Ker 18 (FB) : ILR (1968) 2 Ker 1 : 1968 Ker LT 800 : 1968 Ker LT 619] :

“The Government is not and should not be as free as an individual in selecting the recipients for largess. Whatever its activity, the Government is still the Government and will be subject to restraints inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.

‘What's in a name? That which we call a rose by any other name would smell as sweet.’ [OMEO AND JULIET, II. ii 43] And the State is fragrant with fundamental rights whatever the legal hue or jural cloak of its surrogate. And, to alter the imagery, Maricha is Ravana, the misleading golden deer mask notwithstanding.”

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34. Article 12 gives the cue to forbid this plea. “Other authorities. . . under the control of the Government of India” are comprehensive enough to take care of Part III without unduly stretching the meaning of “the State” to rope in whatever any autonomous body which has some nexus with Government. A wide expansion coupled with a wise limitation may and must readily and rightly be read into the last words of Article 12.

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37. The conclusion is impeccable that if the corporate body is but an “instrumentality or agency” of Government, then Part III will trammel its operations. It is a case of quasi-governmental beings, not of non State entities. We have no hesitation to hold that where the chemistry of the corporate body answers the test of “State” above outlined it comes within the definition in Article 12. In our constitutional scheme where the commanding heights belong to the public sector of the national economy, to grant absolution to government companies and their ilk from Part III may be perilous. The court cannot connive at a process which eventually makes fundamental rights as rare as “roses in December, ice in June”. [As Lord Byron lamented in English Bards and Scottish Reviewers] Article 12 uses the expression “other authorities” and its connotation has to be clarified. On this facet also, the *Airport Authority case* [*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] supplies a solution: [(1979) 3 SCC 489, 517] (SCC p. 517, para 27) “If a statutory corporation, body or other authority is an instrumentality or agency of the Government, it would be an ‘authority’ and therefore “State” within the meaning of that expression in Article 12.”

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41. This divagation explains the ratio of the *Airport Authority* [*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] in its full spectrum. There the main contention was that the said authority, a statutory corporation, was not State and enforcement of fundamental rights against such a body was impermissible. As is apparent from the extensive



discussion above, the identical issue confronting us as to what are the “other authorities” contemplated by Article 12 fell for consideration there. Most of the rulings relied on by either side received critical attention there and the guidelines and parameters spelt out there must ordinarily govern our decision. A careful study of the features of the Airport Authority and a government company covered by Sections 7, 9, 10 and 12 of the Act before us discloses a close parallel except that the Airport Authority is *created by a statute* while Bharat Petroleum (notified under Section 7 of the Act) is *recognised by and clothed with rights and duties by the statute*.

8.10. In the case of **M.C. Mehta** Hon’ble Apex Court in paragraph-29,30 & 33 has held as follows:

29. *That we in no way consider ourselves bound by American exposition of constitutional law is well demonstrated by the fact that in R.D. Shetty [(1979) 3 SCC 489 : AIR 1979 SC 1628 : (1979) 3 SCR 1014] this Court preferred the minority opinion of Douglas, J. in Jackson v. Metropolitan Edison Company [42 L Ed (2d) 477] as against the majority opinion of Rehnquist, J. And again in Air India v. Nergesh Meerza [(1981) 4 SCC 335 : 1981 SCC (L&S) 599 : (1982) 1 SCR 438] this Court whilst preferring the minority view in General Electric Company v. Martha V. Gilbert [50 L Ed (2d) 343] said that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution and whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured, because the social conditions in our country are different.*

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But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth.

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33. *Since we are not deciding the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21, we do not think it would be justified in setting up a special machinery for investigation of the claims for compensation made by those who allege that they have been the victims of oleum gas escape.*

8.11. In the case of **Dillip Kumar Pandey**, Hon'ble Apex Court in paragraph-9,12,15,16,17 & 19,20,21 & 23 has held as follows:

9. Learned senior counsel submitted that IAF has functional and administrative control over the said Society and the said school. Therefore, he submitted that Air Force Schools are "authority" within the meaning of Article 12 of the Constitution of India and thus, are amenable to writ jurisdiction under Article 226 of the Constitution of India.

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12. By way of rejoinder, learned counsel appearing for the appellants submitted that the cases of Army Welfare Education Society⁸ and St.Mary's Education Society & Ors.⁹ stand on a different footing. He tried to distinguish the decisions in the cases of Army Welfare Education Society⁸ and St.Mary's Education Society & Ors.⁹ and submitted that the said decisions will not apply.

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15. Now, we will refer to the law laid down on this aspect. Paragraphs 15 and 20 of the decision of this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust read thus: "15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be



appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See The Evolving Indian Administrative Law by M.P. Jain (1983), p. 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power 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 owed 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.

16. In the case of Pradeep Kumar Biswas , this Court dealt with the aspect of control over the institution. This Court relied upon the decision in the case of Ajay Hasia⁵ . In paragraph 40, this Court held thus: “40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib



Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] 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.”

17. In the case of All India Sainik Schools Employees Association, as a matter of fact, it was found that the entire funding for running the school was provided by the State and Central Governments. Even the overall control was found vested in governmental authority.

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19. Now, we turn to the decision of this Court in the case of St.Mary’s Education Society. It is true that this Court did not consider the decision of this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust of this Court. However, this Court has discussed all relevant principles. The principles laid down in the said decision in the case of St.Mary’s Education Society & Ors. are in paragraphs 75.1 to 75.5, which read thus:

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or



breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a nonteaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and nonteaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of



breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

20. The law laid down in this decision was followed by this Court in the case of Army Welfare Education Society, In that case, this Court dealt with a school taken over by the Army Welfare Education Society, which required existing teachers to requalify under new conditions. The High Court held that the school could not impose service conditions to the teachers' disadvantage. In the said decision, this Court was concerned with a case where a school was taken over by the petitioner – the Army Welfare Education Society. A letter was sent to the teachers in the school run by St. Gabriel's Academy indicating that those among the teachers who are eligible in terms of CBSE guidelines would be considered for appointment on ad hoc basis for one year and thereafter, they will have to appear and qualify written test conducted by the Army Welfare Education Society. The teachers approached the High Court. Learned Single Judge held that the school cannot impose the service conditions on the teaching staff to their disadvantage. The issue before this Court in the said case was whether the Army Welfare Education Society was a "state" or "authority" within the meaning of Article 12 of the Constitution. This Court found that the Society was a purely unaided private Society established for the purpose of imparting education to the children of the army personnel. This Court applied the law laid down in the case of St. Mary's Education Society & Ors.⁹ and held that though the Society was imparting education, which involves public duty, the relationship between the respondents and the Army Welfare Education Society was that of an employee and private employer arising out of a private contract. Therefore, a breach of contract does not touch any public law element, and the school cannot be said to be discharging any public duty in connection with the employment of the teachers.

21. We have perused the application made to CBSE for affiliation. The application was made on 22nd August 1985. It was in the name of the Air Force Primary School. Although it is stated that the school was fully financed by the IAF,



there is no evidence to show that the school was actually financed by the IAF. The Education Code, which applies to Air Force Schools, is not a statutory code that has the force of law. It is issued under the authority of the Chairman of the Board of Governors of the IAF Educational and Cultural Society. It provides that all Air Force Schools are administered under the Society. As per the Memorandum of Association of the Society, the members of the Society are IAF officers who hold their posts ex-officio. The Command Schools Managing Committees do not have control over the day-to-day running of Air Force Schools. The day-to-day control is with the School Managing Committee. Even if the school building is constructed out of Public funds, there is no record to show that it receives a grant from Public Funds. There is nothing in the Education Code to show that the IAF has control over the said school. The audited accounts of the school for the period from 2019-20 to 2023-24 indicate that no public funds or grants were received by the school. Even if pay scales applicable to all IAF schools are determined by the IAF, that by itself will not amount to pervasive control by the IAF over the functioning of the schools.

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23. In the impugned judgment, the Division Bench recorded the undisputed position that the appellants are employees of the said school, which is not governed by any statutory regulations. The Education Code, which applies to the said school, does not have any statutory sanction or force. A finding of fact was recorded that there is no material to show that the Government or the IAF has any control over the management of the school. It is not possible for us to take a contrary view.

8.12. Reliance was also placed to a decision of the Hon'ble Apex Court reported in **2003 AIR (SC) 4325, Federal Bank Ltd., Vs. Sagar Thomas and Others.**

In the said decision, Hon'ble Apex Court placing reliance on various decisions of the Apex Court while setting aside the order passed by the High Court, allowed the appeal filed by the appellant-bank. Hon'ble



Apex Court in para-1,2,7,27,29,30,31,32 & 34 has held as follows:

1. Respondent 1 Sagar Thomas was working as a Branch Manager in Karunagappally Branch of the appellant Bank, namely, Federal Bank, having its registered office at Alwaye, Kerala. He was, however, suspended on 29-5-1982, since a disciplinary enquiry was ordered into some charges against him for having exceeded his authority in grant of loans and advances to different parties. The inquiry officer found him guilty of the charges and ultimately punishment of dismissal was awarded to the respondent.

2. Respondent 1 challenged the order of his dismissal by filing a writ petition in the High Court. A preliminary objection about maintainability of writ petition seems to have been taken in defence by Federal Bank, saying that it is a private bank and not a State or its agency or instrumentality, within the meaning of Article 12 of the Constitution of India, hence a writ petition under Article 226 of the Constitution is not maintainable against it. The learned Single Judge, however, found that Federal Bank performs public duty and observed thus:

“As per statutes, Reserve Bank and the Central Government exercise all-pervading functional, fiduciary and managerial control over the banking industry. Every banking company is duty-bound to carry on banking business as per the banking policy under stringent control of Reserve Bank in the interest of banking system or in the interest of monetary stability of sound economic growth, having due regard to the interest of the depositors. The activities carried on by the Bank are vital to public interest and have potential to affect the socio-economic development and growth of the nation. Banking companies are therefore, public institutions, accepting deposits from the public, financial assistance from the State through its



agencies/instrumentalities, for the purpose of lending or investment, pursuing banking policy and engaged in matters of high public interest or performing public functions, ensuring monetary stability, sound economic growth, equitable allocation of various funds to efficient use, for the promotion and growth of economy and welfare of the State. The first respondent is thus, performing a public duty and a positive obligation towards its employees and customers exists. Therefore, it is amenable to writ jurisdiction.”

Ultimately, the order passed by the learned Single Judge is:

“... In the light of the above decisions of the Apex Court, I can very well find that Federal Bank Ltd. is performing public duty and as such it comes under the definition of ‘other authority’ within the meaning of Article 12 of the Constitution of India and as such the writ petition is maintainable before this Court.”

Aggrieved by the aforesaid judgment of the learned Single Judge, the appellant preferred a writ appeal but referring to a decision of this Court in *U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey* [(1999) 1 SCC 741 : 1999 SCC (L&S) 389 : AIR 1999 SC 753] the Division Bench observed that in an identical fact situation it was held that writ application would be maintainable, minor distinctions on facts, here and there, would not make the aforesaid decision inapplicable to scheduled banks. With such observations the appeal was dismissed providing that the learned Single Judge shall decide the writ petition on merits. Federal Bank Ltd. has preferred this appeal against the aforesaid judgment of the High Court.

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7. However, so far as the above proposition is concerned, the learned counsel for the respondent submitted that the point relates to the merits of the matter which is yet to be gone into by the learned



Single Judge in case it is found that a writ petition is maintainable.

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27. *Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.*

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29. *There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, maybe banking,*



manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258]. Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant company. For the sake of argument, even if it may be assumed that one or the other test as provided in the case of *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] may be attracted, that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection, observations made in the case of *Pradeep Kumar Biswas* [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] quoted earlier would also be relevant.

30. We may now consider the two decisions i.e. *Andi Mukta* [(1989) 2 SCC 691] and *U.P. State Coop. Land Development Bank Ltd.* [(1999) 1 SCC 741 : 1999 SCC (L&S) 389 : AIR 1999 SC 753] upon which much reliance has been placed on behalf of the respondents to show that a writ would lie against the appellant company. So far as the decision in the case of *U.P. State Coop. Land Development Bank Ltd.* [(1999) 1 SCC 741 : 1999 SCC (L&S) 389 : AIR 1999 SC 753] is concerned, it stands entirely on a different footing and we have elaborately discussed it earlier.

31. The other case which has been heavily relied upon is *Andi Mukta* [(1989) 2 SCC 691]. It is no doubt held that a mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the ordinances, casting certain obligations which it owed to



that petitioner. But it is not the case here. Our attention has been drawn by the learned counsel for the appellant to paras 12, 13 and 21 of the decision (*Andi Mukta* [(1989) 2 SCC 691]) to indicate that even according to this case no writ would lie against the private body except where it has some obligation to discharge which is statutory or of public character.

32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority.

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34. In the result, the appeal is allowed and the judgment and order passed by the High Court is set aside and the writ petition is held to be not maintainable. There will, however, be no order as to costs.

8.13. Reliance was placed to another decision of the

Apex Court reported in **AIR 2005 SC 3202, Binny**

Limited and Another Vs. V. Sadasivan and Others .



Hon'ble Apex Court Para-5,6,9,29 & 32 of the said decision has held as follows:

5. The contention of the appellant in Civil Appeal No. 1976 of 1998 was that the decision of the High Court invoking the extraordinary jurisdiction under Article 226 of the Constitution was incorrect and that the Court should not have interfered with the decision of a private limited company and that the powers under Article 226 cannot be invoked against a private authority who is discharging its functions on the basis of the contract entered into between the employer and the employees. It was contended that the remedy available to the workers was only ordinary civil litigation. It was also contended that there was no public law element in the action taken by the appellant against the employees and, therefore, the public law remedy of judicial review had no application.

6. The employees who are respondents in that appeal contended that their contract with the appellant was per se illegal and void as it was opposed to Section 23 of the Contract Act. It was argued that under similar circumstances, this Court had given direction to redress the grievances of the employees. Reference was made to Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] and it was contended by the respondent employees that the decision to terminate their services was based on a specific clause in the contract which by itself is void in view of Section 23 of the Contract Act. Therefore, the High Court was justified in giving a declaratory relief in their favour.

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9. The superior court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction the High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on



the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing a public law function. Before considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subba Rao, J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in Dwarkanath v. ITO [(1965) 3 SCR 536 : AIR 1966 SC 81] (SCR, pp. 540 G-541 A):

“This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

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29. *Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their*



duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p. 682,

“1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.”

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

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32. *Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not “State” within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be*



exercised to enforce purely private contracts entered into between the parties.

9. Having heard learned counsel appearing for the parties, considering the submission made, materials available on record and the citations relied on by both the sides, this Court finds that Petitioner was appointed with issuance of the offer letter on 22.06.2012 under Annexure-2 and appointment letter issued on 09.07.2012 under Annexure-3. Both the letters under Annexures-2 & 3, were issued by Opp. Party No.3. Petitioner by accepting the terms and conditions of the appointment so reflected in Annexure-3, continued under the Opp Party Nos.3 & 4. As found from the terms and conditions available under Annexure-3, Opp. Party No.3 has framed the disciplinary norms to be followed by its employees.

9.1. As further found, because of non-performance of the Petitioner, Petitioner was issued with a show-cause by Opp. Party No.3 on 08.05.2016 under Annexure-8. Pursuant to such show-cause issued under Annexure-8, Petitioner was terminated from his services vide



order dtd.15.05.2017 under Annexure-1 of Opp. Party No.3.

9.2. Placing reliance on the decisions cited by both the parties, this Court is of the view that Petitioner was appointed, with the order of appointment issued in his favour by Opp. Party No.3 under Annexure-3. As per the terms and conditions of the Contract, Opp. Party No.3 has its own set of Rules and Regulations as well as disciplinary norms to be followed by its employees. Basing on such rules and regulations with issuance of the show-cause under Annexure-8, Petitioner was terminated vide order dtd.15.05.2017 under Annexure-1 of Opp. Party No.3

9.3. This Court placing reliance on the decisions relied on by the learned Counsel appearing for Opp. Party No.1 as well as Opp. Party Nos.3 & 4 and the available materials, is of the prima facie view that Opp. Party No.3 is a Private Limited Company and Petitioner as per the Contract entered in between him and Opp. Party No.3, joined in his service. Hence, no writ can be issued by this Court in exercise of its power under



Article-226 of the Constitution of India against Opp Party Nos.3 & 4, being a private limited Company with no control over its management, whatsoever, either by Opp. Party No.1 or by Opp. Party No.2. It is also the view of this Court that Opp. Party No.3 being a Private Limited Company doing non-banking business, is not a State within the meaning of Article 12 of the Constitution of India and not coming under any of the tests laid down in the case of **Ajay Hasia** cited supra.

9.4. In view of the aforesaid analysis and the fact that impugned order of termination has been issued by Opp. Party No.3, this Court is of the view that no Writ can be issued against Opp. Party Nos.3 & 4. The issue accordingly is decided.

10. List this matter under the heading "For Orders" in the week commencing 28th September, 2026.

(Biraja Prasanna Satapathy)
Judge

Signature Not Verified
Digitally Signed Date: 25-Sept-2026 17:54:36
Signed by: SANGITA PATRA
Reason: authentication of order
Location: high court of orissa, cuttack
Date: 25-Sep-2026 17:54:36