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Pradeep Kumar Biswas and Others Vs Indian Institute of Chemical Biology and Others

C.A. No.-000992-000992 / 2002

Court: Supreme Court of India

Date of Decision: April 16, 2002

Acts Referred:

Constitution of India, 1950 â€" Article 12, 13(2), 14, 14(2), 226, 309, 310,

311#AdministrationTribunals Act, 1985 â€" Section 14, 14(2), 14(3)#Societies Registration Act, 1860 â€" Section 14#Council of Scientific and Industrial Research Rules, 1999 &mdash Rule 2

Citation: (2002) 50 BLJR 1197: (2002) 4 JT 146: (2002) 3 SCALE 638: (2002) 5 SCC 111:

(2002) 3 SCR 100 : (2002) 2 UPLBEC 1798

Hon'ble Judges: S. P. Bharucha, C.J; S. S. M. Quadri, J; Ruma Pal, J; R. C. Lahoti, J; N.

Santosh Hedge, J; Doraiswamy Rajuu Raju, J; Arijit Pasayat, J

Bench: Full Bench

Advocate: Soli J. Sorabjee, Attorney General, Mukul Rohtagi and R.N. Trivedi, Additional Solicitor General, Sanjoy Kumar Ghosh, Deba Prasad Mukherjee, B.D. Sharma, Narottam Vyas, S.N. Tiwari, Deepshikha Bharti, Madhu Sikri, V.K. Rao, Piyush Sharma, Ravi Sikri, Ajay Verma, Anuradha Priyadarshni, Prateek Jalan, Manish Singhvi and S.N. Terdol, for the Appellant;

Final Decision: Dismissed

Judgement

Rama Pal, J.

In 1972 Sabhajit Tewary, a Junior Stenographer with the Council of Scientific and Industrial Research (CSIR) filed a write

petition under Article 32 of the Constitution claiming parity of remuneration with the stenographers who were newly recruited to the CSIR. His

claim was based on Article 14 of the Constitution.A Bench of five judges of this Court denied him the benefit of that Article because they held in

Sabhajit Tewari v. Union of India that the writ application was not maintainable against CSIR as it was not an ""authority"" within the meaning of

Article 12 of the Constitution. The correctness of the decision is before us for re-consideration.

2. The immediate cause for such re-consideration is a write application filed by the appellant in Calcutta High Court challenging the termination of

their services by the respondentNo. 1 which is a unit of CSIR. They prayed for an interim order before the learned Single Judge. That was refused

by the Court on the prima view that the writ application was itself not maintainable against the respondent No. 1. The appeal was also dismissed in

view of the decision of this Court in Sabhajit Tewary"s case.

- 3. Challenging the order of the Calcutta High Court, the appellants filed an appeal by way of special leave before thisCourt. On 5th August, 1986
- a Bench of two Judges of this Court referred the matter to a Constitution Bench being of the view that the decision in Sabhajit Tewary required re-

consideration ""having regard to the pronouncement of this Court in several subsequent decisions in respect of several other institutes of similar

nature set up by the Union of India"".

4. The questions therefore before us are - is the CSIR a State within the meaning of Article 12 of the Constitution and if it is should this Court

reverse a decision which has stood for over a quarter of a century?

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

the Government and Parliament of India and the Government and the Legislature of each of the State and all local or other authorities within the

territory of India or under the control of the Government of India"".

6. That an "inclusive" definition is generally not exhaustive is a statement of the obvious and as far as Article 12 is concerned, has been so held by

this Court. The words "State" and "Authority" used in Article 12 therefore remain, to use the words of Cardozo, among ""the great generalities of

the Constitution ""the content of which has been and continues to be supplied by Courts from time to time.

7. It would be a practical impossibility and an unnecessary exercise to note each of the multitude of decisions on the point. It is enough for our

present purposes to merely note that the decisions may be categorized broadly into those which express an arrow and those that express a more

liberal view and to consider some decisions of this Court as illustrative of this apparentdivergence. In the ultimate analysis the difference may

perhaps be attributable to different stages in the history of the development of the law by judicial decisions on the subject.

8. But before considering the decisions in must be emphasized that the significance of Article 12 lies in the fact that it occurs in Part III of the

Constitution which deals with fundamental rights. The various Articles in Part-III have placed responsibilities and obligations on the "State" vis-a-vis

the individual to ensure constitutional protection of the individual"s rights against the state, including the right to equality under Article 14 and

equality of opportunity in matters of public employment under Article 16 and most importantly the right to enforce all or any of the sefundamental

rights against the "State" as defined in Article 12 either under Article 32 by this Court or under Article 226 by the High Courts by issuance of writs

or directions or orders.

9. The range and scope of Article 14 and consequently Article 16 have widened by a process of judicial interpretation so that the right to equality

now not only means the right not to be discriminated against but also protection against any arbitrary or irrational act of the State. It has been said

that:

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

10. Keeping pace with this broad approach to the concept of equality under Article 14 and 16, Courts have wheneverpossible, sought to curb an

arbitrary exercise of power against individuals by "centers of power", and there was correspondingly an expansion in the judicial definition of

"State" in Article 12.

11. Initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read ejusdemgeneris with the

authorities mentioned in the definition of Article 12 itself. The next stage was reached when the definition of "State" came to be understood with

reference to the remedies available against it. For example, historically, a writ of mandamus was available for enforcement of statutory duties or

duties of a public nature. Thus a statutory corporation, with regulations farmed by such Corporation pursuant to statutory powers was considered

a State, and the public duty was limited to those which were created by statute.

12. The decision of the Constitution Bench of this Court in 273482 is illustrative of this. The question there was whether the Electricity Board -

which was a Corporation constituted under a statute primarily for the purpose of carrying on commercial activities could come within the definition

of "State" in Article 12.After considering earlier decisions, it was said:

These decisions of the Court support our view that the expression ""other authorities"" in Article 12 will include all constitutional or statutory

authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on

commercial activities"".

13. It followed that since a Company incorporated under the Companies Act is not formed statutorily and is not subject to any statutory duty via a

vis an individual, it was excluded from the preview of "State" In Praga Tools Corporation v. Shri C.A.Imanual and Ors. where the question was

whether an application under Article 226 for issuance of a writ of mandamus would lie impugning an agreement arrived at between a Company and

itsworkmen, the Court held that:

....there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a

mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High

Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company".

- 14. By 1975 Mathew, J. in Sukhdev Singh and Ors. v.Bhagatram Sardar Singh Raghuvanshi and Ors. noted that the concept of ""State"" in Article
- 12 had undergone ""drastic changes in recent year"". The question in that case was whether the Oil and Natural Gas Commission, the Industrial

Finance Corporation and the Life Insurance Corporation each of which were public corporations set up by statutes were authorities and therefore

within the definition of State in Article 12. The Court affirmed the decision in Rajasthan State Electricity Board v. MohanLal (supra) and held that

the Court could compel compliance of statutory rules. But the majority view expressed by A.N. Ray, CJ also indicated that the concept would

include a public authoritywhich:

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 privateprofit. Such an authority is not precluded from making profit for the publicbenefit"".

(emphasis added)

15. The use of the alternative is significant. The Court scrutinised the history of the formation of the three Corporations, the financial support given

by the Central Government, the utilization of the finances so provided, the nature of service rendered and noted that despite the fact that each of

the Corporations on profits earned by it nevertheless the structure of each of the Corporation showed that the three Corporations represented the

"voice and hands" of the Central Government. The Court came to the conclusion that although the employees of the three Corporations were not

servants of the Union or the State,""these statutory bodies are "authorities" within the meaning of Article 12 of the Constitution"".

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

A state is an abstract entity. It can only act through the instrumentality or agency ofnatural or juridical persons. Therefore, there is nothing strange in

the notion of the state acting through a corporation and making it an agency or instrumentality of the State.....

- 17. For identifying such an agency or instrumentality he propounded four indicia:
- (1) ""A finding of the state financial support plus an unusual degree of control over the management and policies might lead one to characterize an

operation as state action.

- (2) ""Another factor which might be considered is whether the operation is an important public function.
- (3) ""The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified

as a stateagency. If a given function is of such pubic importance and so closely related to governmental functions as to be classified as a

government agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of state action. If the function

does not fall within such a description then mere addition of state money would not influence the conclusion.

(4) ""The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for

carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on thebusiness?

18. Sabhajit Tewary was decided by the same Bench on the same day as Sukhdev Singh (supra). The contentions of the employee was the CSIR

is an agency of the Central Government on the basis of the CSIR Rules which, it was argued, showed that the Government controlled the

functioning of CSIR in all itsaspect. The submission was somewhat cursorily negatived by this Court on the ground that all this

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

and Industrial Research, the institution and financing of specific researches, establishment or development and assistance to special institutions or

departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the

researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsiblemanner.

19. Although the Court noted that it was the Government which was taking the ""special care" nevertheless the writ petition was dismissed

ostensibly because the Court factored into its decision two premises:

i) ""The society does not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation or Industrial

FinanceCorporation. It is a Society incorporated inaccordance with the provisions of the Society"s Registration Act"", and

ii) ""This Court has held in 290414 . 287472 and in 270193 that the Praga Tools Corporation, Heavy Engineering Mazdoor Union and Hindustan

Steel Ltd. are all companies incorporated under the Companies Act and the employees of these companies do not enjoy the protection available to

Government servants as contemplated in Article 311. the Companies were held in these cases to have independent existence of the Government

and by the law relating to corporations. These could not be held to be departments of the Government"".

20. With respect, we are of the view that both the premises were not really relevant and in fact contrary to the "voice" and "hands" approach in

Sukhdev Singh . Besides reliance by the Court on decisions pertaining to Article 311 which is contained in Part XIV of the Constitution was

inapposite. What was under consideration was Article 12 which by definition is limited to Part III and by virtue of Article 36 to Part IV of the

Constitution. as said by another Constitution Bench later in this context:

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

of ""State"" for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of ""State"" in Article 12 which includes an

authority"" within the territory of India or under the control of the Government of India is (sic) in its application only to Part III and by virtue of

Article 36, to Part IV: it does note xtend to the other provisions of the Constitution and hence a juristic entity which may be ""State""for the purpose

of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. This is why the decisions of this Court

- in S.L. Aggarwal v. Hindustan SteelLtd., and other cases involving the applicability of Article 311 have no relevance to the issue before us".
- 21. Normally, a precedent like Sabhajit Tewary which has stood for a length of time should not be reversed, however erroneous the reasoning if it

has stood unquestioned, without its reasoning being "distinguished" out of all recognition by subsequent decisions and if the principles enunciated in

the earlier decision can stand consistently and be reconciled with subsequent decisions of this Court, same equally authoritative. In our view

Sabhajit Tewary fulfills both conditions.

22. Side-stepping the majority approach in Sabhajit Tewary, the "drastic changes" in the perception of "State" heralded in Sukhdev Singh by

Mathew, J and the tests formulated by him were affirmed and amplified in Ramana v. International Airport Authority of India . Although the

International Airport Authority of India is a statutory corporation and therefore within the accepted connotation of State, the Bench of three Judges

developed the concept of State, The rationale for the approach was the one adopted Mathew J in Sukhdev Singh:

....." In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service

and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government

multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the

new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came

to be realized and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these

circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm on the

Government"".

23. From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a

Corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act, 1860.

Neither the form of the Corporation, nor its ostensible autonomy would take away from its character as "State" and its constitutional accountability

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

24. As far as Sabhajit Tewary was concerned it was "explained" and distinguished in Ramana saying:

The Court no doubt took the view on the basis of facts relevant to the constitution and functioning of the Council that it was not an "authority", but

we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an "authority"

within the meaning of Article 12. This decision does not lay down any principle or test for the purpose of determining when a corporation can be

said to be an "authority". If at all any test can be gleaned from the decision, it is whether the Corporation is "really an agency of the Government".

The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an "authority"".

25. The tests propounded by Mathew, J in Sukhdev Singh were elaborated in Ramana and were re-formulated two years later by a Constitution

Bench in Ajay Hasia v. Khalid Mujib Sehravardi . What may have been technically characterised as "obiter dicta" in Sukhdev Singh and Ramana

(since in both cases the ""authority"" in fact involved was a statutory corporation), formed the ratio decidendi of Ajay Hasia . The case itself dealt

with a challenge under Article 32 to admissions made to a college established and administered by a Society registered under the Jammu &

Kashmir Registration of Societies Act 1898. The contention of the Society was that even if there were an arbitrary procedure followed for

selecting candidates for admission, and that this may have resulted in denial of equality to the petitioners in the matter of admission in violation of

Article 14, nevertheless Article 14 was not available to the petitioners because the Society was nota State within Article 12.

The Court recognised that:

.... "" Obviously the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local

authority and therefore, it must come within the expression ""other authorities"" if it is to fall within the definition of "State" "".

But it said that:

The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an

instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the

government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental

Rights"".

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

..... "" The concept of instrumentality or agency of the government is not limited to a corporation created by a statute but is equally applicable to a

company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is

an instrumentality or agency of the government so as to come within the meaning of the expression ""authority"" in Article 12"".

27. Ramana was noted and quoted with approval in extenso and the tests propounded for determining as to when a corporation can be said to be

an instrumentality or agency of the Government therein were culled out and summarised as follows:

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

corporation is an instrumentality or agency of Government.

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

of the corporation being impregnated with governmental character.

- (3) It may also be a relevant factor.....whether the corporation enjoys monopoly status which is State conferred or State protected.
- (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
- (5) If the functions of the corporation are of public importance and closely related a governmental functions it would be a relevant factor in

classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the

corporation being an instrumentality or agency of Government.

28. In dealing with Sabhajit Tewary the Court in Ajay Hasia noted that since Sabhajit Tewary was a decision given by a Bench of Five Judges of

this Court it was undoubtedly binding. The Court read Sabhajit Tewary as implicity assenting to the proposition that CSIR could have been an

instrumentality of agency of the Government even though it was a Registered Society and limited the decision to the facts of the case. It held that

the Court in Sabhajit Tewari:

did not rest its conclusion on the ground that the council was a society registered under the Societies Registration Act, 1860, but proceeded to

consider various other features of the council for arriving at the conclusion that it was not an agency of the government and therefore not an

"authority"".

29. The conclusion was then reached applying the test formulated to the facts that the Society in Ajay Hasia was an authority falling within the

definition of ""State"" in Article 12.

30. On the same day that the decision in Ajay Hasia was pronounced came the decision of Som Prakash Rekhi v. Union of India . Here too, the

reasoning in Ramana was followed and Bharat Petroleum Corporation was held to be a "State" within the ""enlarged meaning of Article 12"".

Sabhajit Tewary was criticised and distinguished as being limited to the facts of the case. It was said:

The rulings relied on are, unfortunately, in the province of Article 311 and it is clear that a body may be "State" under Part III but not under Part

XIV. Ray, C.J., rejected the argument that merely because the Prime Minister was the Present or that the other members were appointed and

removed by Government did not make the Society a "State". With great respect, we agree that in the absence of the other features elaborated in

272407 the composition of the Government Body alone may not be decisive. The laconic discussion and the limited ratio in 283171 hardly help

either side here.

31. The tests to determine whether a body falls within the definition of "State" in Article 12 laid down in Ramana with the Constitution Bench

imprimatur in Ajay Hasia form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from

a chronological consideration of the authorities cited.

32. In 272674, it was held that both the Indian Council of Agricultural Research (ICAR) and its affiliate Indian Veterinary Research Institute were

bodies as would be comprehended in the expression "other authority" in Article 12 of the Constitution. Yet another judicial blow was dealt to the

decision in Sabhajit Tewary when it was said:

Much water has flown down the Jamuna since the dicta in Sabhajit Tewary case and conceding that it is not specifically overruled in later decision,

its ratio is considerably watered down so as to be a decision confined to its own facts.

33. B.S. Minhas v. Indian Statistical Institute and Ors. held that the Indian Statistical Institute, a registered Society is an instrumentality of the

Central Government and as such is an "authority" within the meaning of Article 12 of the Constitution. The basis was that the composition of

respondent No. 1 is dominated by the representatives appointed by the Central Government. The money required for running the Institute is

provided entirely by the Central Government and even if any other moneys are to be received by the Institute it can be done only with the approval

of the Central Government, and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction.

The Society has to comply with all such directions as may be issued by the Central Government. It was held that the control of the Central

Government is deep and pervasive.

34. The decision in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguli held that theappellant company was covered by

Article 12 because it is financed entirely by three Governments and is completely under the control of the Central Government and is managed by

the Chairman and Board of Directors appointed by the Central Government and removable by it and also that the activities carried on by the

Corporation are of vital national importance.

35. However, the tests propounded in Ajay Hasia were not applied in Tekraj Vasandi alias K.S. Basandhi v. Union of India and Ors. 1988 (1)

SCC 237, where the Institute of Constitutional and Parliamentary Studies (ICPS), a society registered under the Societies Registration Act, 1860

was held not to be an ""other authority"" within the meaning of Article 12. The reasoning is not very clear. All that was said was:

Having given our anxious consideration to the facts of this case, we are not in a position to hold that ICPS is either an agency or instrumentality of

the State so as to come within the purview of "other authorities" in Article 12 of the Constitution"".

36. However, the Court was careful to say that ""ICPS is a case of its type - typical in many ways and the normal tests may perhaps not properly

apply to test its character"".

37. All India Sainik Schools Employees" Associationv. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi

and Ors. 1989 Supp. (1)SCC 205 held applying the tests indicated in Ajay Hasia that the Sainik School Society is a "State".

38. Perhaps this rather over - enthusiastic application of the broad limits set by Ajay Hasia may have persuaded this Court to curb the tendency in

281629 . The Court referred to the tests formulated in Sukhdev Singh, Ramana, Ajay Hasia, and Som Prakash Rekhi but striking a note of caution

said that ""these are merely indicative indicia and are by no means conclusive or clinching in any case"". In that case, the question arose whether the

National Council of Educational Research (NCERT) was a "State" as defined under article 12 of the Constitution. The NCERT is a society

registered under the Societies Registration Act. After considering the provisions of its Memorandum of Association as well as the rules of NCERT,

this Court came to the conclusion that since NCERT was largely an autonomous body and the activities of the NCERT were not wholly related to

governmental functions and that the Government control was confined only to the proper utilisation of the grant and since its funding was not

entirely from Governmentresources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. The Court relied

principally on the decision in Tekraj Vasandi @ K.S. Basandhi v. Union of India (supra) However, as far as the decision in Sabhajit Tewary v.

Union of India (supra) was concerned, it was noted that ""the decision has been distinguished and watered down in the subsequent decisions"".

39. Fresh off the judicial anvil is the decision in the 281823 which fairly represents what we have seen as a continuity of thought commencing from

thedecision in Rajasthan Electricity Board in 1967 upto the present time. It held that a company substantially financed and financially controlled by

the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important

functions of public interest under the control of the Government is "an authority" within the meaning of Article 12.

40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one

of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. Thequestion in each case would be - whether in the

light of thecumulative 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.

41. Coming now to the facts relating to CSIR, we have no doubt that it is well within the range of Article 12, a conclusion which issustainable when

judged according to the tests judicially evolvedfor the purpose.

The Formation of CSIR

42. On 27th April 1940 the Board of Scientific and Industrial Research and on 1st February 1941, the Industrial Research Utilisation Committee

were set up by the Department of Commerce, Government of India with the broad objective of promoting industrial growth in this country. On 14th

November1941, a resolution was passed by the Legislative Assembly and accepted by the Government of India to the following effect:

This Assembly recommends to the GovernorGeneral in Council that a fund called the Industrial Research Fund be constituted, for the purpose of

fostering industrial development in this country and that provision be made in the Budget for an annual grant of rupees ten lakhs to the fund for a

period of five years.

43. For the purpose of coordinating and exercising administrative control over the working of the two research bodies already set up by the

Department of Commerce, and to oversee the proper utilisation of the Industrial Research Fund, by a further resolution dated 26th September

1942, the Government of In diadecided to set up a Council of Industrial Research on a permanent footing which would be a registered society

under the Registration of Societies Act, 1860. Pursuant to the resolution, on 12th March,1942 the CSIR was duly registered. Bye-laws and Rules

were framed by the Governing Body of the Society in 1942 which have been subsequently revised and amended. Unquestionably this shows that

the CSIR was "created" by the Government to carry on in an organized manner what was being done earlier by the Department of Commerce of

the Central Government. In fact the two research bodies which were part of the Department of Commerce have since been subsumed in the

CSIR.

Objects and Functions:

- 44. The 26th September 1942 Resolution had provided that the functions of the CSIR would be:
- (a) to implement and give effect to the following resolution moved by theHon"ble Dewan Bahadur Sir A.R.Mudaliar and passed by the

LegislativeAssembly on the 14th Nov" 1941 and accepted by the Government of India.....(quoted earlier in this Judgment)

(b) the promotion, guidance and co-ordination of scientific and Industrial Research in India including the institution and the financing of specific

researches:

(c) the establishment or development and assistance to special institutions or Department of existing institutions for scientific study of problems

affecting particular industries and trade;

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

(e) the utilisation of the results of the researches conducted under the auspices of the Council towards the development of industrial in the country

and the payment of a share of royalties arising out of the development of the results of researches to those who are considered as having

contributed towards the pursuit of such researches;

(f) the establishment, maintenance and management of laboratories, workshops,institutes, and organisation to further scientific and industrial

research and utilise and exploit for purposes of experiment or otherwise any discovery or invention likely to be of use IndianIndustries.

- (g) the collection and dissemination or information in regard not only to research but to industrial mattersgenerally;
- (h) publication of scientific papers and a journal of industrial research anddevelopment, and
- (i) any other activities to promote generally the objects of the resolution mentioned in (a) above.
- 45. These objects which have been incorporated in the Memorandum of Association of CSIR manifestly demonstrate that CSIR was set up in the

national interest to further the economic welfare of the society by fostering planned industrial development in the country. That such a function is

fundamental to the governance of the country has already been held by a Constitution Bench of this Court as far back as in 1967 in Rajasthan

Electricity Board v. Mohan Lal (Supra) where it was said:

The State, as defined in Article 12, as thus comprehended to include bodies created for the purpose of promoting the educational and economic

interests of the people"".

46. We are in respectful agreement with this statement of thelaw. The observations to the contrary in Calender Mohan Khanna v. NCERT (supra)

relied on by the Learned Attorney General in this context, do not represent the correct legal position.

47. Incidently, the CSIR was and continues to be a non-profit making organization and according to clause (4) of CSIR"sMemorandum of

Association, all its income and property,however derived shall be applied only "towards the promotion of those objects subject nevertheless in

respect of the expenditure to such limitations as the Government of India may from time to time impose".

Management and Control:

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

following members:

- (1) The Honourable Member of the Council of His Excellency the Governor General incharge of the portfolio of Commerce (Ex-officio).
- (2) A representative of the Commerce Department of the Government of India, appointed by the Government of India.
- (3) A representative of the Finance Department of the Government of India, appointed by the Government of India.
- (4) Two members of the Board of Scientific and Industrial Research elected by the saidBoard.
- (5) Two members of the Industrial Research Utilisation committee elected by the saidCommittee.

- (6) The Director of Scientific and Industrial Research.
- (7) One or more members to be nominated by the Government of India to represent interests not otherwise represented.

The present Rules and Regulations 1999 of CSIR provide that:

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

President of the Society.

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

the Vice-President.

- (c) Ministers Incharge of Finance and Industry(ex-officio).
- (d) The members of the Governing Body.
- (e) Chairman, Advisory Board.
- (f) Any other person or persons appointed by the President, CSIR.

The Governing Body of the Society is constituted by the:

- (a) Director General,
- (b) Member Finance,
- (c) Directors of two National Laboratories,
- (d) Two eminent Scientists/Technologists, one of whom shall be from Academia;
- (e) Heads of two Scientific Departments/Agencies of the Government of India.
- 48. The dominant role played by the Government of India in the Governing Body of CSIR is evident. The Director-General who is ex-officio

Secretary of the Society is appointed by the Government of India [Rule 2(iii)]. The submission of the learned Attorney General that the Governing

Body consisted of members, the majority of whom were non-governmental members is, having regard to the facts on record, unacceptable.

Furthermore, the members of the Governing Body who are not there ex officio are nominated by the President and the irmembership can also be

terminated by him and the Prime Minister is the ex-officio President of CSIR. It was then said that although the Prime Minister was ex-officio

President of the Society but the power being exercised by the Prime Minister is as President of the Society. This is also the reasoning in Sabhajit

Tewary . With respect, the reasoning was and the submission is erroneous. An ex-officio appointment means that the appointment is by virtue of

the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an

officer, in this case the Prime Minister, which are not specifically conferred upon him, but are necessarily implied in his office (as Prime

Minister), these are ex-officio.

49. The control of the Government in the CSIR isubiquitous. The Governing Body is required to administer, direct and control the affairs and funds

of the Society andshall, under Rule 43, have authority "to exercise all the powers of the Society subject nevertheless in respect of expenditure to

such limitations as the Government of India may from time to time impose". The aspect of financial control by the Government is not limited to this

and is considered separately. The Governing Body also has the power to frame, amend or repeal the bye-laws or CSIR but only with the sanction

of the Government of India. Bye-law44 of the 1942 Bye-laws had provided "any alteration in the bye-laws shall require the prior approval of the

Governor General in Council".

50. Rule 41 of the present Rules provide that:

The President may review/amend/vary any of the decisions of the Governing Body and pass such orders as considered necessary to be

communicated to the Chairman of the Governing Body within a month of the Governing Body and such order shall be binding on the

Governing Body . The Chairman may also refer any question which in his opinion is of sufficient importance to justify such a reference for decision

of the President, which shall be binding on the Governing Body.

(emphasis added)

51. Given the fact that the President of CSIR is the Prime Minister, under this Rule the subjugation of the Governing Body to the will of the Central

Government is complete.

52. As far as the employees of the CSIR are concerned the Central Civil Services (Classification, Control & Appeal)Rules and the Central Civil

Services (Conduct) Rules, for the time being in force, are from the outset applicable to them subject to the modification that references to

thePresident" and "Government Servant" in the Conduct Rules would be construed as "President of the Society" and "Officer & establishments in

the service of the Society"respectively. (Bye Law 12). The scales of pay applicable to all the employees of CSIR are those prescribed by the

Government of India for similar personnel, save in the case of specialists (Bye Law 14) and in regard to all matter sconcerning service conditions of

employees of the CSIR, the Fundamental and Supplementary Rules framed by the Govt. of India and such other rules and orders issued by

theGovt. of India from time to time are also, under Bye Law15 applicable to the employees of the CSIR. Apart from this, the rules/Orders issued

by Government of India regarding reservation of posts for SC/ST apply in regard to appointments to posts to be made in CSIR. (Bye Law 19)The

CSIR cannot lay down or change the terms and conditions of service of its employees and any alteration in the bye-laws can be carried out only

with the approval of Government of India. (Bye Laws 20).

Financial Aid

53. The initial capital of the CSIR was Rs. 10 lakhs, made available pursuant to the Resolution of the Legislative Assembly on 14th November.

1941. Paragraph 5 of the 26thSeptember, 1942 Resolution of the Government of India pursuant to which CSIR was formed reads:

The Government of India have decided that afund, viz., the Industrial Research Fund, should be constituted by grants from the Central Revenues

to which additions are to be made from time to time as moneys flow in from other sources. These "other sources" will comprise grants, if any, by

Provincial Governments by industrialists for special orgeneral purposes, contributions from Universities or local bodies, donations orbenefactions,

royalties, etc., received from the development of the results of Industrial Research, and miscellaneous receipts. the Council of Scientific and

Industrial Research will exercise full powers in regard to the expenditure to be met out of the Industrial Research Fund subject to its observing the

Bye-laws framed by the Governing Body of the Council, from time to time, with the approval of the Governor General-in-Council, and to its annual

budget being approved by the Governor General-in-Council.

54. As already noted, the initial capital of Rs. 10 lakhs was made available by the Central Government. According to the statement handed up to

the Court on behalf of CSIR the present financial position of CSIR is that at least 70% of the funds of CSIR are available from grants made by the

Government of India. For example out of the total funds available to CSIR for the years 1998-99, 1999-2000, 2000-01 of Rs. 1023.68 crores.

Rs. 1136.69 crores and Rs. 1219.04crores respectively, the Government of India has contributedRs. 713.32 crores, Rs. 798.74 crores and Rs.

877.88 crores. Amaj or portion of the balance of the funds available is generated from charges for rendering research and development works by

CSIR for projects such as the Rajiv Gandhi Drinking Water Mission Technology Mission on oilseeds and pulses and maize or grant in aid projects

from other Government Departments. Funds are also received by CSIR from sale proceeds of its products, publications,royalties etc. Funds are

also received from investments but under Bye-Law 6 of CSIR, funds of the Society may be invested only in such manner as prescribed by the

Government of India. Some contributions are made by the state Governments and to a small extent by "individuals, institutions and other agencies".

The non-governmental contributions are a pittance compared to the massive governmental input.

55. As far as expenditure is concerned, under Bye-law (1)as it stands at present, the budget estimates of the Society are to be prepared by the

Governing Body "keeping in view the instructions issued by the Government of India from time to time in this regard". Apart from an internal audit.

the accounts of the CSIR are required to be audited by the controller and Auditor General and placed before the table of both Houses of

Parliament (Rule 69).

56. In the event of dissolution, unlike other registered societies which are governed by Section 14 of the Societies Registration Act, 1860. the

members of CSIR have no say in the distribution of its assets and under clause (5) of the Memorandum of Association of CSIR, on the winding up

or dissolution of CSIR any property remaining after payment of all debts shall have to be dealt with ""in such manner as the Government of India

may determine"". CSIR is therefore both historically and in its present operation subject to the financial control of the Government of India. The

assets and funds of CSIR though nominally owned by the Society are in the ultimate analysis owned by the Government.

57. From whichever perspective the facts are considered there can be no doubt that the conclusion reached in Sabhajit Tewary was erroneous. If

the decision of Sabhajit Tewary had sought to lay down as a legal principle that a societyregistered under the Societies Act or a company

incorporated under the Companies Act is, by that reason alone, excluded from the concept of State unde Article 12, it is a principle which has long

since been discredited. ""Judges have madeworthy, if shamefaced, efforts, while giving lip service to therule, to riddle it with exceptions and by

distinctions reduce it to a shadow"".

58. In the assessment of the facts, the Court had assumed certain principles, and sought precedential support from decisions which were irrelevant

and had ""followed a groove chased amidst a context which has long since crumbled"". Had the facts been closely scrutinised in the

properperspective, it could have led and can only lead to the conclusion that CSIR is a State within the meaning of Article 12.

59. Should Sabhajit Tewary still stand as an authority even on the facts merely because it has stood for 25 years? We think not. Parallels may be

drawn even on the fact sleading to an untenable interpretation of Article 12 and a consequential denial of the benefits of fundamental rights to

individuals who would otherwise be entitled to them and ""there is nothing in our Constitution which prevents us from departing from a previous

decision if we are convinced of its error and its baneful effect on the general interests of thepublic."" Since on a re-examination of the question we

have come to the conclusion that the decision was plainlyerroneous, it is our duty to say so and not perpetuate ourmistake.

60. Besides a new fact relating to CSIR has come to light since the decision in Sabhajit Tewary which unequivocally vindicates the conclusion

reached by us and fortifies us in delivering the coup de grace to the already attenuated decision in Sabhajit Tewary . On 31st October 1986 in

exercise of the powers conferred by Sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985, the Central Government specified

17th November 1986 as the date on and from which the provisions of Sub-section (3) of Section 14 of the 1985 Act would apply to CSIR "being

the Society owned and controlled by Government".

61. The learned Attorney General contended that the notification was not conclusive of the fact that the CSIR was a State within the meaning of

Article 12 and that even if an entity is not a State within the meaning of Article 12, it is open to the Government to issue a notification for the

purpose of ensuring the benefits of the provisions of the Act to its employees.

62. We cannot accept this. Reading Article 323(A) of the Const. (sic) Section 14 of the 1985 Act it is clear that no notification u/s 14(2) of the

Administrative Tribunals Act could have been issued by the Central Government unless the employees of the CSIR were either appointed to public

services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under

the control of the Government of India or of any corporation owned or controlled by the Government. Once such an otification has been issued in

respect of CSIR, the consequence will be that an application would lie at the instance of the appellants at least before the AdministrativeTribunal.

No new jurisdiction was created in the Administrative Tribunal. The notification which was issued by the Central Government merely served to

shift the service disputes of the employees of CSIR from the constitutional jurisdiction of the High Court under Article 226 to the Administrative

Tribunals on the factual basis that CSIR was amenable to the writ jurisdiction as a State or other authority under Article 12 of the Constitution.

63. Therefore, the notification issued in 1986 by the Central Government under Article 14(2) of the Administrative TribunalsAct, 1985 serves in

removing any residual doubt as to the nature of CSIR and decisively concludes the issues before us against it.

64. Sabhajit Tewary"s decision must be and is in the circumstances overruled. Accordingly the matter is remitted back to the appropriate Bench to

be dealt with in the light of ourdecision. There will be no order as to costs.

R.C. Lahoti, J.

(For Self and Behalf of Doraiswamy Raju, J.)

65. We have had the advantage of reading the judgment proposed by our learned sister Rama Pal, J. With greatest respect to her, we find

ourselves not persuaded to subscribe to her view overruling Sabhajit Tewary's case and holding Council for Scientific and Industrial Research

(CSIR) "the State" within the meaning of Article 12 of the Constitution. The development of law has travelled through apparently a zig-zag track of

judicial pronouncements, rhythmically traced by Rama Pal, J. in her judgment. Of necessity, we shall have to retread the track, for, we find that

though the fundamentals and basic principles for determining whether a particular body is "the State" or not many substantially remain the same but

we differ in distributing the emphasis within the principles in their applicability to the facts found. We also feel that a distinction has to be borne in

mind between aninstrument ality or agency of "the State" and an authority includible in other authorities". The distinction cannot be obliterated.

- 66. Article 12 of the Constitution reads as under:
- 12. In this part, unless the contexto therwise requires, ""the State"" includes the Government and Parliament of India and the Government and the

Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

67. This definition is for the purpose of attracting applicability of the provisions contained in Part III of the Constitution dealing with fundamental

rights. It is well-settled that the definition of "the State"in Article 12 has nothing to do with Articles 309, 310 and 311 of the Constitution which find

place in Part XIV. Merely because an entity is held to be the State within the meaning of Article 12, its employees do not ipso facto become

entitled to protection of Part XIV of the Constitution.

68. Dr. B.R. Ambedkar explaining the scope of Article 12 and reason why this Article was placed in the Chapter on Fundamental Rights so spoke

in the Constituent Assembly:

The object of the fundamental rights istwo-fold. First, that every citizen must be in a position to claim those rights. Secondly they must be binding

upon every authority--I shall presently explain what the word ""authority"" means -- upon every authority which has got either the power to make

laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they mustbe binding

not only upon the Central Government, they must not only be binding the ProvincialGovernment, they must not only be binding upon the

Governments established in the Indian States, they must also be binding upon District LocalBoards, Municipalities, even village panchayats and

taluk boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-

laws.

If that proposition is accepted - and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being

imposed upon every authority created by law -then, what are we to do to make our intentionclear? There are two ways of doing it.

One way is to

use a composite phrase such as ""the State"", as we have done in Article 7; or, to keep on repeating every time, ""the Central Government, the

Provincial Government the State Government, the Municipality, the Local Board, the Port Trust, or any other authority"". It seems to me not only

most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course

is to have this comprehensive phrase and to economise in words"".

(1948 (7) CAD 610

[emphasis supplied]

69. Thus the framers of the Constitution used the word ""the State"" in a wider sense than what is understood in the ordinary or narrowersense. So

far as "other authorities" are concerned they were included subject to their satisfying the test of being "within the territory of India" or being "under

the control of the Government of India". It is settled that the expression "under the control of the Government of India" in Article 12 does not

qualify the word "territory"; it qualifies "other authorities".

70. The terms - "instrumentality" or "agency" of the State - are not to be found mentioned in Article 12. It is by the process of judicial

interpretation - nay, expansion - keeping in view the sweep of Article 12 that they have been included as falling within the net of Article 12 subject

to satisfying certain tests. While defining, the use of "includes" suggest - what follows is not exhaustive. The definition is expansive of the meaning of

the term defined. However, we feel that expanding dimension of "the State" doctrine through judicial wisdom ought to accompanied by wise

limitations else the expansion may go much beyond what even the framers of Article 12 may have thought of.

Instrumentality, Agency, Authority - meaning of

71. It will be useful to understand what the terms - instrumentality, agency and authorities mean before embarking upon a review of judicial

decisions dealing with the principal issue which arises for ourconsideration.

72. Black"s Law Dictionary (Seventh Edition) defines"instrumentality" to mean ""a means or agency through which a function of another entity is

accomplished, such as a branch of a governing body."" "Agency" is defined as ""a fiduciary relationship created by express or implied contract or by

law in which one party(the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.""
Thus

instrumentality and agency are the two terms which to some extent overlap in theirmeaning; "instrumentality" includes "means" also, which

"agency"does not, in its meaning. "Quasi- governmental agency" is ""a government - sponsored enterprise or Corporation (sometimes called a

government-controlled corporation)"". Authority, as Webster Comprehensive Dictionary (International Edition) defines, is ""the person or persons in

whom government or command is vested; often in the plural"". The applicable meaning of the word ""authority"" given in Webster's Third New

International Dictionary, is "a public administrative agency or corporation having quasi-governmental powers and authorized to administer a

revenue-producing publicenterprise". This was quoted with approval by Constitution Bench in RSEB"s case (infra) wherein the Bench held - ""This

dictionary meaning of the word ""authority"" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry

out governmental or quasi-governmental functions. The expression ""other authorities"" is 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; and we do not see any reason to narrow

down this meaning in the context in which the words ""other authorities"" are used in Article 12 of Constitution"".

(emphasisadded)

73. With the pronouncements in N. Masthan Sahib v. The ChiefCommissioner, Pondicherry and Anr., - (1962) Supp 1 SCR 981 and 282399 it is

settled that Article 12 of the Constitution has to be so read:

- 12. In this part, unless the context otherwise requires, the state" includes
- (i) the Government and Parliament of India,
- (ii) the Government and the Legislature of each State,
- (iii) (A) all local or other authorities within the territory of India,
- (b) all local or other authorities under the control of the Government of India.

The definition of the State as contained in Article 12 is inclusive and not conclusive. The net of Article 12 has been expanded by "progressive"

judicial thinking, so as to include within its ken several instrumentalities and agencies performing State function or entrusted with State action. To

answer the principal question in the context in which it has arisen, incidental but inseparable issue do arise: Wide expansion but how far wide?

Should such wide expansion be not subject to certain wise limitations? True, the width of expansion and the wisdom of limitations both have to be

spelled out from Article 12 itself and the fundamentals of constitutional jurisprudence.

74. We now deal with a series of decisions wherein tests werepropounded, followed (also expanded) and applied to different entities so as to find

out whether they satisfied the test of being ""the State".

A review of judicial opinion

75. Though judge-made law is legend on the issue, we need not peep too much deep in the past unless it becomes necessary to have a glimpse of

a few illuminating points thereat. It would serve our purpose to keep ourselves confined, to being with, to discerning the principles laid down in

273482, 265156, 272407, 270189 and Som Prakash Rekhi v. Union of India and Anr. - : : (1981)ILLJ79SC which have come to be known as

landmarks on the Stateconceptualisation. Out of these five decisions, R.D. Shetty and Som Prakash are three-Judge Bench decisions; the other 3

are each by Constitution Bench of five Judges.

76. The Constitution Bench decision in Rajasthan State Electricity Board (RSEB)"s case was delivered by a majority of 4:1.v. Bhargava, J. spoke

for himself and K. Subba Rao, C.J. and M.Shelat and G.K. Mitter, JJ. J.C. Shah, J. delivered his dissentingopinion. We will refer to majority

opinion only. The Court quoted the interpretation placed by Ayyangar, J. form the pronouncement of seven-Judges Bench of this Court in 284460

that the words "other authorities" employed in Article 12 are of wide amplitude and capable of comprehending every authority created under a

statute and though there is no characterisation of the nature of the ""authority"" in there siduary clause of Article 12 it must include every authority set

up under a statue for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duties to make

decisions in order to implement those laws. The Court refused to apply the doctrine of ejusdem generis for interpretation of the other authorities" in

Article 12. ""Other authorities"" in Article 12 include, held the Court, ""all constitutional or statutory authorities on whom powers are conferred by

law"" without regard to the fact that some of the powers conferred may be for the purpose of carrying on commercial activities or promoting the

educational and economic interests of the people. Regard must be had (i) not only to the sweep of fundamental rights over the power of the

authority, (ii) but also to the restrictions which may be imposed upon the exercise of certain fundamental rights by the authority. This dual phase of

fundamental rights would determine ""authority"". Applying the test formulated by it to Rajasthan State Electricity Board, the Court found that the

Board though it was required to carry on some activities of the nature of trade or commerce under the Electricity Supply Act, yet the statutory

powers conferred by the Electricity Supply Act on the Board included power to give directions, the disobedience of which is punishable as a

criminal office and therefore the Board was an authority for the purpose of Part III of the Constitution.

77. 290414 may not be of much relevance. The question posed before the Court was not one referable to Article 12 of the Constitution. The

question was whether a prayer seeking issuance of a mandamus or an order in the nature of mandamus could lie against a company incorporated

under the companies Act wherein the Central and the state Governments held respectively 56 and 32 per cent shares. The two Judge Bench of this

Court held that the company was a separate legal entity and could not be said to be either a government Corporation or an industry run by or

under the authority of the UnionGovernment. A mandamus lies to secure the performance of a public or statutory duty in the performance of which

the petitioner has a sufficient legal interest. A mandamus can issue to an official or a society to compel him to carry out the terms of the Statute

under or by which the society is constituted or governed and also to companies or Corporation to carry out duties placed on them by the Statute

authorizing their undertaking. A mandamus would also lie against a company constituted by a Statute for the purpose of fulfilling

publicresponsibilities. The Court held that the company being a non-statutory body with neither a statutory nor a public duty imposed on it by a

Statute, a writ petition for mandamus did not lie against it. The limited value of this decision, relevant for our purpose, is that because a writ of

mandamus can issue against a body solely by this test it does not become "State" within the meaning of Article 12.

78. In Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr. (supra), question arose whether Oil and Natural Gas

Commission, the Industrial Finance Corporation and Life Insurance Corporation are "authorities" within the meaning of Article 12. The case was

decided by a majority of 4:1. A.N. Ray, CJ speaking for himself and on behalf of Y.V. Chandrachud and A.C.Gupta, JJ. held that all the three

were statutory Corporation, i.e., given birth by Statutes. The circumstance that these statutory bodies were required to carry on some activities of

the nature of trade or commerce did not make any difference. The Life Insurance Corporation is (i) an agency of the Government (ii) carrying on

the exclusive business of Life Insurance (i.e. in monopoly), and (iii) each and every provision of the Statute creating it showed in no uncertain terms

that the Corporation is the voice and the hands of the Central Government. The Industrial Financial Corporation is in effect managed and

controlled by the Central Government, citizens cannot be its shareholder. ONGC (i) is owned by the Government, (ii) is a statutory body and not a

company and (iii) has the exclusive privilege of extracting petroleum. Each of the three, respectively under the three Acts under which they are

created, enjoy power to do certain acts and to issue directions obstruction in or breach whereof is punishable asan offence. These distinguish them

from a mere company incorporated under the Indian Companies Act. The common features of the three are (i) rules and regulations framed by

them have the force of law, (ii) the employees have a statutory status, and (iii) they are entitled to declaration of being in employment when the

dismissal or removal is in contravention of statutory provisions. The learned Chief Justice added, by way of abundant caution, that these provisions

did not however make the employees as servants of the Union or the state though the three statutory bodies are authorities within the meaning of

Article 12 of the Constitution.

79. Mathew, J. recorded his separate concurring opinion. As to ONGC he hastened to arrive at a conclusion that the Commission was invested

with sovereign power of the State and could issue binding directions to owners of land and premises, not to prevent employees of the Commission

from entering upon their property if the Commission so directs. Disobedience of its direction is punishable under the relevant provisions of the

Indian Penal Code as the employees are deemed to be public servants. Hence the Commission is an authority. As to the other two Corporations,

viz., LIC and IFC,Mathew, J. entered into a short question and began by observing that in recent years the concept of State has undergone drastic

change ""Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority"". Having reviewed some

decisions of United States and English decisions and some other authorities, he laid down certain principles with which we will deal with a little later

and at appropriate place. He observed that institutions engaged in matters of high public interest or performing public functions are, by virtue of the

nature of the function performed by them, governmental agencies. He noticed the difficulty in separating vital government functions from non-

governmental functions in view of the contrast between governmental activities which are private and private activities which are governmental. For

holding Life Insurance Corporation ""the State"" he relied on thefollowing features: (i) the Central Government has contributed the original capital of

the Corporation, (ii) part of the profit of the Corporation goes to Central Government, (iii) the Central Government exercises control over the

policy of the Corporation, (iv)the Corporation carries on a business having great public importance, and (v) it enjoys a monopoly in the business.

As to Industrial Financial Corporation he relied on the circumstances catalogued in the judgment of A.N. Ray, J. The common feature of the two

Corporations was that they were instrumentalities or agencies of the state for carrying on business which otherwise would have been run by the

State departmentally and if the State had chosen to carry on these businesses through the medium of government departments, there would have

been no question that actions of these departments would be ""state actions"". At the end Mathew, J. made it clear that he was expressing no

opinion on the question whether private Corporation or other like organizations though they exercise power over their employees which might

violate their fundamental rights would be the State within the meaning of Article 12. What is "state action" and how far the concept of "state action"

can be expanded, posing the question, Mathew J. answered - "".....it is against that fundamental rights are guaranteed. Wrongful individual acts

unsupported by State authority in the shape of laws, customs, or judicial or executive proceeding are not prohibited. Articles 17, 23 and 24

postulate that fundamental rights can be violated by private individuals and that the remedy under Article 32 may be available against them. But by

the large, unless an act is sanctioned in someway by the State, the action would not be State action. In otherwords, until some law is passed or

some action is taken through officers or agents of the State, there is no action by the State." So also commenting on the relevance of "state help"

and "state control" as determinative tests, Mathew, J. said -- ""It may be stated generally that State financial aid alone does not render the institution

receiving such aid a state agency. Financial aid plus some additional factor might lead to a different conclusion. A mere finding of state control also

is not determinative of the question, since a state has considerable measure of control under its police power over all types of businessoperations.

80. Alagiriswami, J. recorded, a dissenting opinion which however we propose to skip over. It is pertinent to note that the dispute inSukhdev

Singh v. Bhagat Ram was a service dispute and the employees were held entitled to a declaration of being in employment when their dismissal or

removal was in contravention of statutoryprovisions; the rules and regulations framed by corporations or commission were found having the force

of law, being delegated legislation and these statutory bodies were held to be "authorities" within the meaning of Article 12.

81. In Ramanna Dayaram Shetty v. The International Airport Authority of India and Ors. (supra), the dispute related to trends within the domain of

administrative law. A question arose whether International Airport Authority of India (IA. for short) was within the scope of "other authorities" in

Article 12 so as to be amendable to Article 14 of the Constitution. P.N. Bhagwati, J. who delivered the judgment for the three-Judge Bench stated

the ratio of Rajasthan State Electricity Boards case, in these words:

The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the meaning of the expression other

authorities", if it i has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal

consequence or it has the sovereign power to make rules and regulation shaving the force of law"".

82. He then referred to what he termed as a "broad test" laid down by Mathew, J. in Sukhdev Singh"s case and said that judgment by Mathew, J.

provided "one more test and perhaps a more satisfactoryone" for determining whether a statutory corporation, body or other authority falls within

the definition of "the State" and the test is--""If a statutory corporation, body or other authority is an instrumentality or agency of government, it

would be an authority and therefore "the state" within the meaning of the expression in Article 12."" Having minutely examined the provisions of the

International Airport Authority Act, 1971 he found out the following features of IA:- (i)The Chairman and Members are all persons nominated by

the Central Government and Central Government has power to terminate the appointment or remove them: (ii) The Central Government is vested

with the power to take away the management of any airport from theIA; (iii) The Central Government has power to give binding directions in

writing on questions of policy; (iv) The capital of IA needed for carrying out its functions is wholly provided by Central Government;(v) The

balance of net profit made by IA, after making certain necessary provisions, does not remain with the IA and is required tobe taken over to the

Central Government; (vi) The financial estimates, expenditure and programme of activities can only be such as approved by Central Government;

(vii) The Audit Accounts and the Audit Report of IA, forwarded to the Central Government, are required to be laid before both Houses of

Parliament; (viii) It was a department of the Central Government along with its properties, assets, debts, obligations, liabilities, contracts, cause of

action and pending litigation taken over by the IA; (ix) IA was charged with carrying out the same functions which were being carrying out by the

Central Government; (x) The employees and officials of IA are public servants and enjoy immunity for anything done or intended to bedone, in

good faith, in pursuance of the Act or any rules or regulations made by it; (xi) IA is given (delegated) power to legislate and contravention of

certain specified regulations entails penalconsequences. Thus, in sum, the IA was held to be an instrumentality or agency of the Central

Government falling within the definition of the State both on the narrower view propounded in the judgment of A.N. ray, CJ and broader view

propounded by Mathew, J. in Sudh dev Singh"s case .

83. Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors. etc. (supra), is a Constitution Bench judgment wherein P.N. Bhagwati, J.spoke for the

Court. The test which he had laid down in Ramanna"s case were summarized by him as six in number and as under:

1. One thing is clear that if the entire share capital of the Corporation is held by Government it would go a lone way towards indicating that the

Corporation is an instrumentality or agency of Government.

2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of

the corporation being impregnated with governmental character.

- 3. It may also be a relevant factor.... whether the corporation enjoys monopoly status which is the State conferred or Stateprotected.
- 5. If the functions of the Corporation of public importance and closely related to government functions, it would be a relevant factor in classifying

the corporation as an instrumentality or agency of Government.

6. ""Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the

corporation being an instrumentality or agency of Government.

The footnote to the tests, as put by him, is -- ""if on a consideration of all these relevant factors it is found that the corporation is aninstrument ality

or agency of government, it would..... be anauthority, and therefore, "the State" within the meaning of Article 12.Bhagwati, J. placed a prologue to

the above said tests emphasizing the need to use care and caution, ""because while stressing the necessity of a wide meaning to be placed on the

expression ""other authorities"", it must be realized that it should not be stretched so far asto 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.

84. In Ajay Hasia, the "authority" under consideration was asociety registered under the Jammu & Kashmir Registration of Societies Act, 1898,

administering and managing the Regional Engineering College, Srinagar. The College was sponsored by the Government of India. The prominent

features of the society indicatedcomplete financing and financial control of the Government, complete administrative control over conducting of the

affairs of the society and administration and assets of the College being taken over by the State Government with the prior approval of the Central

Government. These are some of the material features. Some of the observations made by the Court during the course of its judgment are pertinent

and we proceed to notice them quickly. The society could not be equated with the Government of India or the Government of any State nor could

it be said to be "local authority", and therefore, should have come within the expression of "other authorities" to be "the State". The Government

may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its

functions. With the enlargement of governmental activities, specially those in the field of trade and commerce and welfare, corporation is most

resourceful legal contrivance resorted to frequently by the Government. Though a distinct juristic entity came into existence because of its certain

advantages in the field of functioning over a department of the Government but behind the formal ownership cast in the corporatemould, the reality

is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the

Corporation and the juristic veil of corporate personality is worn for the purpose of convenience of management and administration which cannot

be allowed to obliterate the true nature of the reality behind which is the Government. Dealing at length with the corporate contrivance, the Court

summed up its conclusion by saying that if a Corporation is found to be a mere agency or surrogate of the Government, 3 tests being satisfied viz.,

(i)in fact, owned by the Government, (ii) in truth, control by the Government, and (iii) in effect , an incarnation of the Government, then the Court

would hold the Corporation to be Government, and therefore, subject to constitutional limitations including for enforcement of fundamental rights.

The Court went on to say that where a Corporation is an instrumentality or agency of the Government, it must be held to be an "authority" for

Article 12.

85. Here itself we have few comments to offer. Firstly, the distinction between "instrumentality and agency" on the one hand, and "authority (for the

purpose of "other authorities")" on the other, was totally obliterated. In our opinion, it is one thing to say that it an entity veiled or disguised as a

Corporation or a society or in any other form is found to be an instrumentality or agency of the State then in that case it will be the State itself in

narrower sense acting through it sinstrumentality or agency and therefore, included in "the State" in the wider sense for the purpose of Article 12.

Having found an entity whether juristic or natural to be an instrumentality or agency of the state, it is not necessary to call it an "authority". It would

make a substantial difference to find whether an entity is an instrumentality or agency or an authority. Secondly, Ajay Hasia was the case of are

gistered society; it was not an appropriate occasion for dealing with corporations or entities other than society. On the inferences drawn by reading

of the Memorandum of Association of the society and rules framed thereunder, and subjecting such inferences to the tests laid down in the decision

itself, it was found that the society was aninstrument ality or agency of the State and on tearing the veil of society what was to be seen was the

State itself though in disguise. It was not thereafter necessary to hold the society an "authority" and proceed to record ""that the society is an

instrumentality or the agencyof the State and the Central Government and it is an "authority" within the meaning of Article 12"", entirely obliterating,

the dividing line between "instrumentality or agency of the State" and "other authorities". This has been a source of confusion and misdirection in

thought process as we propose to explain a little later. Thirdly, though six tests are laid down but there is no clear indication in the judgment

whether in order to hold a legal entity the State, all the tests must be answered positively and it is the cumulative effect of such positive answers

which will solve the riddle or positive answer to one or two or more tests would be enough to find out a solution. It appears what the court wished

was reaching a final decision on an overall view of the result of the tests. Compare this with what was said by Bhagwati, J. in Ramanna"s case.

We have already noticed that in Ajay Hasia, Bhagwati, J. has in his own words summarized the test laid down by him in Ramanna"s case. In

Ramanna"s case he had said that The question whether a corporation is governmental instrumentality or agency would depend on a variety of

factors which defy exhaustive enumeration and moreover even amongst these factors described in Ramanna's case ""the Court will have to consider

the cumulative effect of these various factors and arrive at its decision."" ""It is the aggregate or cumulative effect of all the relevant factors that

iscontrolling"".

86. Criticism of too broad a view taken of the scope of the State under Article 12 in Ramanna"s case invited some criticism which was noticed in

Som Prakash Rekhi"s case (infra). It was pointed out that the observations in Ramanna"s case spill over beyond there quirements of he case and

must be dismissed as obiter; that IA is a Corporation created by a statute and there was no occasion to go beyond the narrow needs of the

situation and expand the theme of the state in Article 12 vis-a-vis government companies, registeredsociety, and what not; and that there was

contradiction between Sukhdev Singh"s case and Ramanna"s case .

87. On 13.11.1980, the Constitutional Bench presided over by Y.V.Chandrachud, C.J. and consisting of P.N. Bhagwati, V.R. Krishnalyer, S.

Murtaza Fazal Ali and A.D. Koshal, JJ. delivered the judgment in Ajay Hasia"s case, speaking through P.N. Bhagwati, J..lt is interesting to note

that on the same day another three-Judges Bench consisting V.R. Krishna Iyer, O. Chinnappa Reddy and R.S.Pathak, JJ. delivered judgment in

Som Prakash Rekhi v. Union of India and another (supra). V.R. Krishna Iyer, J. speaking for himself and O. Chinnappa Reddy, J. delivered the

majority opinion.R.S. Pathak, J. delivered a separate opinion.

88. The Court in Som Prakash Rekhi v. Union of India and another (supra), was posed with the question - whether Bharat Petroleum Corporation

Ltd., a statutory corporation, was an"authority", and therefore "the State" under Article 12. Certain observations made by Krishna Iyer, J. are

pertinent. To begin with, hesaid, ""any authority under control of the Government of India comes within the definition."" While dealing with the

corporate personality, it has to be remembered that ""while the formal ownership is cast in the corporate mould, the reality reaches down to State

control"". The care fact is that the Central Government chooses to make over for bettermanagement, its own property to its own offspring. A

Government Company is a mini-incarnation of Government itself, made up of its blood and bones and given corporate shape and status for defined

objectives and not beyond. The device is too obvious for deception. A Government Company though, is but he alter ego of the Central

Government and tearing of the juristic veil worn, would bring out the true character of the entity being "the State". Krishna lyer, J. held it to be

immaterial 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."" He further held that both the things are essential: (i) discharging functions or doing business as the proxy of the State by wearing the

corporate mask, and (ii) an element of ability to effect legal relations by virtue of power vested in it by law. Thesetests, if answered in positive,

would entail the Corporation being aninstrument ality or agency of the State. What is an "authority"? Krishna Iyer, J. defined "authority" as one

which in law belongs to the province of power and the search here must be to see whether the Act vests authority, as agent or instrumentality of the

State, to affect the legal relations of oneself or others. He quoted the definition of "authority" from the Law Lexicon by P. Ramnath lyer to say

Authority is a body having jurisdiction certain matters of a public nature" and from Salmond"s Jurisprudence, to say that 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" must be present ab extra to make a person an "authority"."" He held BPL to be ""a limb of Government andagency of the State, a

vicarious creature of statute"", because of thesecharacteristics, which he found from the provisions of the Act which created it and other

circumstances, viz., (i) it has a statutory flavour in its operations and functions, in its powers and duties and in its personality itself,(iii) it is

functionally and administratively under the thumb of Government; and (iv) the Company had stepped into the shoes of the executive power of the

State and had unique protection, immunity andpowers. In conclusion Krishna Iyer, J. held that the case of BPL was a close parallel to the Airport

Authority"s case (Ramananna"s case) excepting that Airport Authority is created by a statute while BPL is recognized by and clothed with rights

and duties by the statute. Krishna Iyer, J. having called out the several tests from Ramanna" scase added a clinching footnote - the finale is reached

when the cumulative effect of all the relevant factors above set out is assessed and once the body is found to be an instrumentality or agency of

Government, the further conclusion emerges that it is "the State" and is subject to the same constitutional limitations as Government and itis this

divagation which explains the ratio of Ramanna"s case .

89. The three-Judges Bench in 275453 held Food Corporation of India to be an instrumentality of the State covered by the expression "other

authority" in Article 12. It was found: (i) FCI was set up under the Food Corporation Act. 1964 (ii)initial capital was provided by Central

Government and capital could be increased in such manner as the government may determine; (iii)the Board of Directors in whom the management

of the Corporation is to vest shall act according to instructions on question of policy given by the Central Government; (iv) the annual net profit of

FCI is to be paid to the Central Government; (v) annual report of its working and affairs is to be laid before the Houses of Parliament; (vi)

statutorypower conferred to make rules and regulations for giving effect to the provisions of the parent act as also be provide for service matters

relating to officers and employees.

90. The Mysore Paper Mills Ltd. has been held by a two-Judges Bench in 281823, to be aninstrument ality and agency of the State Government,

the physical form of company being a mere cloak or cover for the Government. What is significant in this decision is that the conclusion whether an

independent entity satisfies the test of instrumentality or agency of the Government is not whether it owes its origin to any padicular Statute or

Order but really depends upon a combination of one or more of the relevant factors, depending upon the essentiality and overwhelming nature of

such factors in identifying the real source of governingpower, if need be, by piercing the corporate veil of the entityconcerned.

What is "Authority" and when includible in "other authorities", re: Article 12

91. We have, in the earlier part of this judgment, referred to the dictionary meaning of "authority", often used as plural, as in Article 12 viz. "other

authorities". Now is the time to find out the meaning to be assigned to the term as used in Article 12 of the Constitution.

92. A reference to Article 13(2) of the Constitutions apposite. It provides - ""The State shall not make any law which takes away or abridges the

right conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void"". Clause (3) of Article

13 defines "law" as including any Ordinance order, bye-law, rule, regulation, notification, custom or uses having in the territory of India the force of

law. We have also referred to the speech of Dr. B.R. Ambedkar in Constituent Assembly explaining the purpose sought to be achieved by Article

12. In RSEB"s case, the majority adopted the test that a statutory authority ""would be within the meaning of "other authorities" if it has been

invested with statutory power to issue binding directions to theparties, disobedience of which would entail penal consequences or ithas the

sovereign power to make rules and regulations having the force of law"". In Sukhdev Singh"s case, the principal reason which prevailed with A.N.

Ray, CJ for holding ONGC, LIC and IFC as authorities and hence "the State" was that rules and regulations framed by them have the force of

law. In Sukhdev Singh"s case, Mathew J. held that the test laid down in RSEB"s case was satisfied so far as ONGC is concerned but the same

was not satisfied in the case of LIC and IFC and, therefore, he added to the list of tests laid down in RSEB"s case, by observing that though there

are no statutoryprovisions, so far as LIC and IFC are concerned, for issuing binding directions to third parties, the disobedience of which would

entail penal consequences, yet these corporations (i) set up under statutes,(ii) to carry on business of public importance or which is fundamental to

the life of the people - can be considered as the State within the meaning of Article 12. Thus, tit is the functional test which was devised and utilized

by Mathew J. and there he said, ""the question for consideration is whether a public corporation set up under a special statute to carry on a

business or service which Parliament thinks necessary to be carried on in the interest of the nation is an agency or instrumentality of the State and

would be subject to the limitations expressed in Article 13(2) of the Constitution. The State is an abstract entity. It can only act through the

instrumentality or agencyof natural or juridical persons. Therefore, there is nothing strange in the notion of the State acting through a corporation

and making it agency or instrumentality of the State"". It is pertinent to note that functional tests became necessary because of the State having

chosen to entrust its own functions to an instrumentality or agency in absence whereof that function would have been a State activity on account of

its public importance and being fundamental to the life of the people.

93. The philosophy underlying the expansion of Article 12 of the Constitution so as to embrace within its ken such entitles which would not

otherwise be the State within the meaning of Article 12 of the Constitution has been pointed out by the eminent jurist H.M.Seervai in Constitutional

Law of India (Silver Jubilee Edition, Vol.1).""The Constitution should be so interpreted that the governing power, wherever located, must be

subjected to fundamental constitutionallimitations..... Under Article 13(2) it is State action of a particular kind that is prohibited. Individual invasion

of individual rights is not, generally speaking, covered by Article 13(2). For although Article 17, 23 and 24 show that fundamental rights can be

violated by private individuals and relief against them would be available under Article 32, still, by the large, Article 13(2) is directed against State

action. A public corporation being the creation of the state, is subject to the same constitutional limitations as the Stateitself. Two conditions are

necessary, namely, that the Corporation must be created by the State and it must invade the constitutional rights of individuals" (Para 7.54). "The

line of reasoning developed by Mathew J. prevents a large-scale evasion of fundamental rights by transferring work done in Govt. Departments to

statutoryCorporations, whilst retaining Govt. control. Company legislation in India permits tearing of the corporate veil in certain cases and to look

behind the real legal personality. But Mathew J. achieved the same result by a different route, namely, by drawing out the implications of Article

13(2)"" (Para 7.57 ibid).

94. The terms instrumentality or agency of the State are not to be found mentioned in Article 12 of the Constitution. Nevertheless they fall within

the ken of Article 12 of the Constitution for the simple reason that if the State chooses to set up an instrumentality or agency and entrusts it with the

same power, function or action which would otherwise have been exercised or undertaken by itself, there is no reason why such instrumentality or

agency should not be subject to same constitutional and public law limitations as the State would have been. In different judicial pronouncements,

some of which we have reviewed, any company, corporation, society or any other (sic)having a juridical existence if it has been held to be

aninstrument ality or agency of the State, it has been so held only on having found to be an alter ego, a doubt or a proxy or a limit or an off-spring

or a mini-incarnation or a vicarious creature or a surrogate and so on -- by whatever name called -- of the State. In short, the material available

must justify holding of the entity wearing a mask or a veil worn only legally and outwardly which on piercing fails to obliterate the true character of

the State in disguise. Then it is aninstrument ality or agency of the State.

95. It is this basic and essential distinction between an"instrumentality or agency" of the State and "other authorities" which has to be borne in

mind. An authority must be an authority sui juristo fall within the meaning of the expression "other authorities" under article 12. A juridical entity,

though an authority, may also satisfy the test of being an instrumentality or agency of the State in which event such authority may be held to be an

instrumentality or agencyof the State but not the vice versa.

96. We sum up our conclusions as under:-

(1) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of

"other authorities" in Article 12, To be anauthority, the entity should have been created by a statute or under a statute and functioning with liability

and obligations to public. Further the statute creating the entity should have vested that entity with power to make law or issue binding direction

samounting to law within the meaning of Article 13(2) governing its relationship with other people or the affairs of other people --their rights, duties,

liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either

case, it should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being

fundamental to the life of the people and hence governmental. Such authority would be the State, for, one who enjoys the powers or privileges of

the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power --

constitutional or statutory and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority:

though in a even case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and

to that extent they may overlap. Tests 1, 2 and 4 in Ajay Hasia enable determination of Governmental ownership or control. Tests 3, 5and 6 are

"functional" tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was

instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this

fallacy has occurred because of difference between "instrumentality and agency" of the state and an "authority" having been lost sight of sub-

silentio, unconsciously and un-deliberated. In our opinion, and keeping in view the meaning which "authority" carries, the question whether an entity

is an "authority" cannot be answered by applying Ajay Hasia tests.

(2) The tests laid down in Ajay Hasia"s case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the

State. Neither all the tests are required to beanswered to positive nor a positive answer to one or two tests would suffice. It will depend upon a

combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real

source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an

independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the Court of brooding presence of

government or deep and pervasive control of the government so as to hold it to be aninstrument ality or agency of the State.

CSIR if "the State"?

97. Applying the tests formulated hereinabove, we are clearly of the opinion that CSIR is not an "authority" so as to fall within the meaning of

expression "other authorities" under Article 12. It has no statutory flavour -- neither it owes its birth to a statute nor is there any other statute

conferring it with such powers as would enable it being branded an authority. The indicia of power is absent. It does not discharge such functions

as are governmental or closely associated therewith or being fundamental to the life of the people.

98. We may now examine the characteristics of CSIR. On a careful examination of the material available consisting of the memorandum of

association, rules and regulations and bye-laws of the society and its budget and statement of receipts and outgoings, we proceed to record our

conclusions. The Government does not hold the entire share capital of CSIR. It is not owned by the Government. Presently, the Government

funding is about 70% and grant by Government of India is one out of five categories of avenues to derive its funds. Receipts from other sources

such as research, development, consultation activities, monies received for specific projects and jobwork, assets of the society, gifts and donations

are permissible sources of funding of CSIR without any prior permission/consent/sanctionfrom the Government of India. Financial assistance from

the Government does not meet almost all expenditure of the CSIR andapparently it fluctuates too depending upon variation from its ownsources of

income. It does not enjoy any monopoly status, much lessconferred or protected by Government. The governing body does not consist entirely of

Government nominees. The membership of the Society and the manning of its governing body - both consistsubstantially of private individuals of

eminence and independencewho cannot be regarded a hands and voice of the State. There is no provision in the rules or the byelaws that the

government can issuesuch directives as it deems necessary of CSIR and the latter is boundto carry out the same. The functions of the CSIR cannot

be regardedas governmental or of essential public importance or as closely related to governmental functions or being fundamental to the life of

thepeople or duties and obligations to public at large. The functionsentrusted to CSIR can as well be carried out by any private (sic)organization.

Historically it was not a department of governmentwhich was transferred to CSIR. There was a Board of Scientific and Industrial Research and an

Industrial Research Utilisation Committee. The CSIR was set up as a society registered under the Societies Registration Act, 1860 to coordinate

and generally exerciseadministrative control over the two organizations which would tendertheir advice only to CSIR. The membership of the

society and the Governing body of the counsel may be terminated by the President notby the Government of India. The governing body is headed

by the Director General of CSIR and not by the President of Society (i.e. the Prime Minister). Certainly the board and the committee, taken overby

CSIR, did not discharge any regal, governmental or sovereignfunctions. The CSIR is not the offspring or the blood and bones or thevoice and

hands of the government. The CSIR does not and cannot make law.

99. However, the Prime Minister of India is the President of the Society. Some of the members of the society and of the governing body are

persons appointed ex-officio by virtue of their holding someoffice under the Government also. There is some element of controlexercised by the

government in matters of expenditure such as on thequantum and extent of expenditure more for the reason that financialassistance is also granted

by the Government of India and the laterwishes to see that its money is properly used and not misused. The President is empowered to renew,

amend and vary any of the decisions of the governing body which is in the nature of residualpower for taking corrective measures vesting in the

President but thenthe power is in the President in that capacity and not as Prime Minister of India. On winding up or dissolution of CSIR

anyremaining property is not available to members but "shall be dealtwith in such manner as Government of India may determine". Thereis nothing

special about such a provision in Memorandum of Association of CSIR as such a provision is a general one applicable to all societies u/s 14 of the

Societies Registration Act, 1860. True that there is some element of control of the government but nota deep and pervasive control. To some

extent, it may be said that Government's presence or participation is felt in the society but such presence cannot be called a brooding presence or

the overlordship of government. We are satisfied that the tests in Ajay Hasia"s case arenot substantially or on essential aspects even satisfied to call

CSIR aninstrument ality or agency of the State. A mere governmentalpatronage, encouragement, push or recognition would not make an entity "the

State".

100. On comparison, we find that in substance CSIR stands on afooting almost similar to the Institute of Constitutional and Parliamentary Studies

(in 277382 and National Council of Educational Research and Training (in 281629, and those cases were correctly decided.

101. Strong reliance was placed by the learned counsel for the appellants on a notification dated 31.10.1986 issued in exercise of the powers

conferred by Sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985 whereby the provisions of Sub-section(3) of Section 14 of

the said Act have been made applicable to the Council of Scientific and Industrial Research, ""being the societyowned or controlled by

government"". On point of fact we may statethat this notification, though of the year 1986, was not relied on orreferred to in the pleading of the

appellants. We do not find itmentioned anywhere in the proceedings before the High Court and noteven in the SLP filed in this Court. Just during

the course of hearingthis notification was taken out from this brief by the learned counseland shown to the Court and to opposite counsel. It was

almostsprung as a surprise without affording the opposite party anopportunity of giving an explanation. The learned Attorney Generalpointed out

that the notification was issued by Ministry of Personal, Public Grievances and Pensions (Department of personnel and Training) and he appealed to

the Court not to overlook the practicalside in the working of the government where at times on departmentdoes not know what the other

department is doing. We do not propose to enter into a deeper scrutiny of the notification. For our purpose, it would suffice to say that Section 14

of the AdministrationTribunals Act, 1985, and Articles 323A of the Constitution to whichthe Act owes its original, do not apparently contemplate a

society beingbrought within the ambit of the Act by a notification of Central Government. Though, we guardedly abstain from expressing

anyopinion on this issue as the present one cannot be an occasion forentering into that exercise. Moreover, on the material available, we have

recorded a positive finding that CSIR is not a society ""owned or controlled by Government"". We cannot ignore that finding solely byrelying on the

contents of the notification wherein we find the user of relevant expression having been mechanically copied but factually unsupportable.

102. For the foregoing reasons, we are the opinion that Councilfor Scientific and Industrial Research (CSIR) is not the State within the meaning of

Article 12 of the Constitution. Sabhajit Tewary's case was correctly decided and must hold the field. The High Court hasrightly followed the

decision of this Court in Sabhajit Tewary . Theappeal is liable to be dismissed.