

2022 LiveLaw (SC) 189

THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJIV KHANNA; BELA M. TRIVEDI, JJ.
FEBRUARY 10, 2022

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 6637 OF 2019)

KISHOR MADHUKAR PINGLIKAR
VERSUS
AUTOMOTIVE RESEARCH ASSOCIATION OF INDIA

Constitution of India, 1950 - Article 12 - State - The determination of a body as a 'State' is not a rigid set of principles. What is to be seen is whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government, albeit if the control is mere regulatory, whether under statute or otherwise, it will not serve to make the body a State. Also, the presence of some element of public duty or function would not by itself suffice for bringing a body within the net of Article 12. (Para 6)

Constitution of India, 1950 - Article 12 - State - Whether Automotive Research Association of India Is A State -The majority of the members of the Association are associated with the manufacturers of the automobiles or their components and are not in service of the government. They are private players and from the motor vehicle industry - The main objective and function of the association relate to motor vehicles which is not directly or indirectly a field connected with functions of the government - One function assigned to the Association, which is not the primary and forms a small fraction of their activities and functions performed by the Association, would not matter. An overall and holistic view of the functions and activities, including the primary function(s), should be taken into consideration- Association is not an agency or instrumentality of the Government. Further, the Government does not have deep and pervasive control over it. (Para 18- 24)

Constitution of India, 1950 - Article 226 - Writ Jurisdiction - Nature of the function performed by a body may be relevant for Article 226, considering the language of Article 226 which encapsulates a wide scope of legal right. (Para 22)

(Arising out of impugned final judgment and order dated 24-10-2018 in WP No. 5195/2015 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Abhay Anil Anturkar, Adv. Mr. Vaibhav Kulkarni, Adv. Mr. Harshvarshan Suryavanshi, Adv. Ms. Bhavya Pande, Adv. Mr. Dhruv Tank, Adv. M/S. Dr. R.R. Deshpande and Associates, AOR

For Respondent(s) Mr. Shekhar Naphade Sr. Adv. Mr. Dilip Annasaheb Taur, Aor Mr. Avinash K. Jalasatgi Adv.

ORDER

Leave granted.

2. Having heard the learned counsel for the parties, we are not inclined to interfere with the impugned judgment of the Bombay High Court dated 24th October 2018 in Writ Petition bearing No. 5195 of 2015. The impugned judgment relies upon the earlier coordinate bench judgment of the Bombay High Court in ***Nandkumar Nivrutti Baptiwale v. Automotive Research Association of India and others, 2002 (2) Mh.L.J 191*** which decision, notwithstanding the reliance placed upon ***Chander Mohan Khanna v. National Council of Educational Research and Training and others, (1991) 4 SCC 578*** a decision which has been expressly overruled in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others, (2002) 5 SCC 111*** correctly applies the tests for determining whether the respondent Association is a State.

3. In ***Pradeep Kumar Biswas*** (supra), the 7 Judge Bench of this Court explicated the tests for determining whether a body comes within the purview of Article 12. Same being:

- 1) the formation of the body;
- 2) objects and functions;
- 3) management and control
- 4) financial aid, etc.

4. The decision in ***Pradeep Kumar Biswas*** (supra) reiterated the law laid down by the 5 Judge Bench decision in ***Ajay Hasia and others v. Khalid Mujib Sehravardi and others, (1981) 1 SCC 722*** wherein this Court has observed that the existence of deep and pervasive State control affords an indication that the body or corporation is a state agency or instrumentality.

5. An earlier judgment of this Court in ***Ramana Dayaram Shetty v. International Airport Authority of India and others, (1979) 3 SCC 489*** had received the imprimatur of ***Ajay Hasia*** (supra) as to when a corporation can be said to be an instrumentality or agency of the government:

“(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

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

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

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)"

6. It is to be observed that the determination of a body as a 'State' is not a rigid set of principles. What is to be seen is whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government, albeit if the control is mere regulatory, whether under statute or otherwise, it will not serve to make the body a State. Also, the presence of some element of public duty or function would not by itself suffice for bringing a body within the net of Article 12 **[See, Zee Telefilms Ltd. and another v. Union of India and others, (2005) 4 SCC 649].**

7. We would now apply the aforesaid test to the respondent Association by referring to its Memorandum of Association and other relevant facts. In particular, we will examine the restrictions relied upon by the appellant.

8. It is an undisputed position that the government did not have any say in forming and establishing the respondent Association, which came into existence in 1966. The government had no role and had not made any capital contribution towards its setting up. The respondent Association is an autonomous body registered under the Societies Registration Act, 1860 and a Public Trust under the Maharashtra Public Trusts Act, 1950. Further, on a glance at the list of the first members of the Governing Council, it is to be found that the members consist of various companies engaged in the manufacture of auto vehicles. The said position continues to be true even today, as the majority of the members of the respondent Association are associated with the manufacturers of the automobiles or their components and are not in service of the government. They are private players and from the motor vehicle industry.

9. As per the Memorandum of Association, the respondent Association has four different 'Classes of Members':

1) Ordinary Members;

- 2) Affiliate Members;
- 3) Nominated Members;
- 4) Honorary Members;

10. The Council of the respondent Association, which manages the business and activities, [Article 24, Memorandum of Association] consists of not less than 10 members and not more than 30 members. [Article 25, Memorandum of Association]. The Department of Heavy Industry, Government of India is entitled to nominate only 3 members, of which one is Member (Finance) representing the Ministry of Finance, Government of India. [Ibid.] Ordinary Members are the signatories of the Memorandum of Association and those admitted to membership by the Council. [Article 5, Memorandum of Association] Affiliate Members consist of manufacturers whose products are in the opinion of the Council principally engineering products other than products having substantive automotive applications. [Ibid.] Honorary Members are persons who are elected to membership by the Council for special services or special cause. [Ibid.]

11. As per Article 24, the business of the Respondent Association is managed by the Council. In terms of Article 41, each member of the Council, including the President or the Chairman, has one vote, with the President or Chairman having the right to exercise a casting vote. In terms of Articles 42 and 43(a), a resolution approved by the majority prevails and is binding. However, when he considers it necessary, the President can refer a question to the Department of Heavy Industry, Government of India and place the comments received before the Council. As per Article 43(b), in the event of disagreement between the representative of the Ministry of Finance and the President of the Council on finance matters beyond the delegated powers of the Ministry/Department of the Government of India, the matter may be referred to the Ministry of Heavy Industries and Public Enterprises, Department of Heavy Industry and Government of India to process for an appropriate decision.

12. Article 49 states that the Council that shall have management of all the affairs and funds of the Association.

13. Article 50 of the Memorandum of Association reads:

“50. Subject to the provisions of Rules & Regulations the Council shall administer and manage the affairs of the association and in particular provide for the following matters.

(i) The preparation and sanction of budget estimates, the sanctioning of expenditure, making and execution of contracts, the investment of the funds of the Association and the sale or alteration of such investments and accounts and audit, subject to the following:

Any Scheme/project costing more than the amount specified by the Department of Heavy Industry, Govt. of India from time to time shall be referred by the Council for approval by Department of Heavy Industry, Govt. of India.

(ii) Procedure for appointment of employees under the Association subject to the following:

For proposals relating to emoluments structure i.e., adopting of pay scales, allowances and revision thereof and for creation of posts the maximum of the scale of which exceeds, Rs.67000/- as per 6th Pay Commission and as modified from time to time, prior approval of Department of Heavy Industry, Government of India shall be required. The Powers of the Council for creation of posts shall be further subject to observance of the band orders issued by Department of Heavy Industry, Govt. of India from time to time. No reference to the Department of Heavy Industry, Govt. of India would be necessary in regard to pay and allowances identical to those adopted for corresponding posts as per the Central Government orders issued from time to time.

(iii) The terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of services of the employees of the Association."

14. Thus, the Council administers and manages affairs of the respondent association and, in particular, preparation and sanction of budget estimates, sanctioning expenditure, making and executing contracts, accounts and audits, investment of the funds of the Association and the sale or alteration of such investment. It has the authority to exercise all powers of the Association subject to: A) limitations laid down by a resolution of the General Body and B) limitation in respect of the expenditure laid down by the Department of the Heavy Industry, Government of India from time to time. Further, any scheme/project costing more than the amount specified by the Department of Heavy Industry, Government of India from time to time shall be referred by the Council for approval of the said Ministry. Proposals relating to emoluments structure and creating posts of the maximum scale of which exceeds Rs. 67,000/- as per the 6th Pay Commission, prior approval of the Department of Heavy Industry, Government of India shall be required. The powers of the Council for the creation of the posts shall be subject to the observance of the band (sic. ban) orders issued by the Department of Heavy Industry, Government of India from time to time. Article 23 of the Memorandum of Association refers to the 'Authorities of the Association', which comprises: 1. President, 2. Vice-President, 3. Director, and 4. such other persons who may be declared by the Association or the Council. As per Article 29, the Director is a salaried employee of the Association, who is appointed by the Council and is the Chief Executive of the Association. He enters into an agreement with the respondent Association, and his terms of service are settled with the prior approval of the Department of Heavy Industry, Government of India.

15. The restrictions mentioned in the Memorandum of Association are limited and confined to the post of the Director, where again the selection is left to the Council, and only the terms of service require approval from the government. Notwithstanding the checks and specific restrictions, the power and functions of the Councils are ubiquitous and all permeating. These include the power to exercise and do all acts, even if not specifically conferred. The creation of posts and appointments is mainly left to the Council, and even in specified cases, the Council has a significant say in

the matter. Further, the role of the Department of Heavy Industry in addition, alteration or amendment to the Memorandum of Association is limited to prior consultation. [Article 99, Memorandum of Association]

16. Article 52 reads:

“52. Without prejudice to the general powers conferred by the last preceding clause and the other powers conferred by those present, it is hereby expressly declared that the Council shall have the following powers, that is to say:

- (a) To make addition, variation, amendment or repeal of rules and regulations for the administration and governance of the Association and for carrying its objects into effect. Provided always that the same shall not in any way affect, vary or alter the provisions contained in the Rules of Association.
- (b) To pay all expenses incurred in carrying out the objects of the Association.
- (c) To purchase or otherwise acquire for the Association any property, rights or privileges which the Association is authorized to acquire at such price and generally on such terms and conditions as they think fit.
- (d) To secure the fulfillment of any contracts or engagements entered into by the Association or in such manner as they think fit.
- (e) To institute, defend, compound or abandon any legal proceedings by or against the Association or otherwise concerning the affairs of the Association.
- (f) To refer any claims or demands, or by or against the Association to arbitration and observe and perform the awards.
- (g) To make and give receipts, releases and other discharges for money payable to the Association and for the claims and demands of the Association.
- (h) To invest and deal with any of the money of the Association, not immediately required for the purposes thereof, upon such securities for the time being authorized by laws for the investment to trust funds and in such manner as they may think fit, and from time to time to vary or realize such investments subject nevertheless to the provisions contained in the Memorandum of Association.
- (i) To enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Association in relation to any of the matters aforesaid or otherwise for the purpose of the Association.
- (j) To set up, constitute and organize local branches and units of the Association in India or Abroad in such a manner and on such terms, as may be considered necessary in the interest of the Association.
- (k) To appoint and delegate, subject to such conditions as the Council thinks fit, any of their powers to Committees of sub-committees, consisting of two or more persons whether permanent or temporary or for special purpose as the Council may determine. The Committee so formed may include persons who are not the members of the Association. To provide for compliance with terms and conditions attached to the payment of grants-in-aid.
- (l) To affix the seal of the Association to all deeds and documents requiring the same.

(m) To determine who shall be entitled to sign on the Association's behalf bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts and other documents in physical or in electronic form.

(n) To appoint at any time and from time to time, by powers of attorney under the seal of the Association, any persons to be the attorneys of the Association for such purposes, with such powers and for such period and subject to such conditions as the Council may from time to time, think fit, but so that the Council shall not be at liberty to delegate to any such attorneys any of the discretions vested in the Council by these presents. Any such appointment may (if the Council thinks fit) be in favour of the members or any of the member of any local branch and/or Advisory Committee established as aforesaid, or in favour of any company or of the members, directors, nominees or managers of any company or firm, and any such power of attorney may contain such provisions for the protection of convenience of persons dealing with such attorney as the Council think fit, and they authorize any such delegates or attorneys aforesaid to sub-delegate all or any of the powers, for time being vested in them."

17. Articles 55 to 68 deal with the General Meetings, where all ordinary and nominated members have the right to vote, albeit the opinion of the majority prevails. Articles also provide for the election of the Council members. [Articles 62-72, Memorandum of Association]

18. Financial assistance given by the state in the form of grants is limited as the respondent Association primarily relies upon subscriptions given by the members. As per Article 84 of the Memorandum, the respondent Association has its own sources of income, *inter alia* entrance fees, income from investments, consultancy charges, fees on account of testing, research and development etc. Further, in the counter affidavit, the respondent Association avers that no grants have been received from the government during the period of the last 15-20 years. Only when the Central Government or any other Government wants the respondent Association to develop or execute a particular project, it gives the funds exclusively for the infrastructural development of the said project. The accounts of the respondent are not required to be submitted with the government for prior scrutiny and approval. The Council, in terms of Articles 88 and 89, is required to keep proper books of accounts which are at all times open to inspection by members of the Council. The accounts are to be audited, and copies of the balance sheet and report are to be served on every member of the Association and the Department of Heavy Industries, Government of India.

19. In our opinion, the restrictive stipulations would not affect the overwhelming and pervading role of the Council and to some extent, the General Body in the functioning, administration and management of the respondent Association. The procedural restrictions are limited and confined primarily to seeking approval and opinion in specific situations, rather than indicating that the State i.e., Central Government has a deep and pervasive control over the respondent Association or on its functions and management. The respondent Association is not functionally and administratively

dominated or controlled by the government. On the other hand, the Memorandum indicates that the Council enjoys significant and substantive freedom and independence. The respondent Association is not under the control of the central government and the supervision is limited and confined to specific aspects, which do not have the effect of deep and pervasive control of the Central Government.

20. We would now examine the functions performed by the respondent Association. The objectives of the Association are to promote research and scientific work connected with the design, development, manufacture, testing and operation of motor vehicles, internal combustion engines etc. The Association is required to establish, own, manage, run and maintain laboratories, research establishments, workshops to conduct research and development activities and experiments therein to generate a base of knowledge in various related fields. It also undertakes the activities to encourage and foster education and training of persons engaged in or likely to be engaged in the said trades or industries. Clearly, the main objective and function of the association relate to motor vehicles which is not directly or indirectly a field connected with functions of the government. The activities are for the benefit of the members of the association, which primarily consists of various companies engaged in the manufacture of motor vehicles or allied products.

21. Learned counsel for the appellant, however, had relied upon Rule 126 of the Central Motor Vehicles Rules, 1989, which requires that every manufacturer or importer of the motor vehicle shall submit the prototype of the vehicle to be manufactured or imported by him to specified Associations/Authorities for issuance and grant of certificate by that agency for compliance of the provisions of the Motor Vehicle Act and Rules. In our opinion, the High Court rightly observed that the aforesaid task has been performed by a large number of agencies and the Central Government is entitled to take help and avail services of these specialized agencies/associations. The respondent Association and other agencies must undertake the test in accordance with the procedure laid down by the Central Government. It is pointed out that the certificates issued by the respondent Association are recommendatory in nature. The aforesaid function performed by the respondent has to be read along with the other functions which the respondent Association is obliged to perform as per the Memorandum of Association, which we have referred to briefly.

22. Learned counsel for the appellant relying upon paragraphs 32 and 33 of the decision authored by N. Santosh Hegde, J. in ***Zee Telefilms Ltd. and another. v. Union of India and others, (2005) 4 SCC 649*** submits that the respondent Association is performing public functions and thus would be amiable to Writ proceedings under Article 226 of the Constitution of India. In our opinion, the nature of the function performed by a body may be relevant for Article 226, considering the

language of Article 226 which encapsulates a wide scope of legal rights. However, the learned counsel for the appellant accepts that this issue of law was not raised before the High Court. Though in ***Nandkumar*** (supra), it appears that the said contention was not directly raised, but the Division Bench of the High Court did observe, and in our opinion rightly, that functions of the respondent Association are not government or public functions. One function assigned to the respondent Association, which is not the primary and forms a small fraction of their activities and functions performed by the respondent Association, would not matter. An overall and holistic view of the functions and activities, including the primary function(s), should be taken into consideration. The writ petition filed by the appellant has no connection with the exercise of power by the respondent Association under Rule 126 of the Central Motor Vehicle Rules, 1989.

23. In light of the aforesaid discussion, the factums highlighted by the appellant are not sufficient to evince that the respondent's formation and functioning are under the control and management of the government or that its objects and purpose in Memorandum of Association enable one to categorize its operation as a state function.

24. In light of the law as accentuated and facts as presented, it is clear that the respondent Association is not an agency or instrumentality of the Government. Further, the Government does not have deep and pervasive control over it. The writ petition was rightly not entertained.

25. In the aforesaid position, we do not find any merit in the present appeal. Hence, the civil appeal is dismissed. There shall, however, be no order as to costs.

26. We clarify that we have not commented and made any observation with respect to the letter of termination dated 29th May 2015, and legal rights of the appellant, if any, under the law.

27. Pending application(s), if any, stand disposed of.

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