

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9327/2024

(Arising out of impugned judgment and order dated 19-01-2024 in WA No. 691/2023 passed by the High Court of Kerala at Ernakulam)

KERALA INDUSTRIAL AND TECHNICAL CONSULTANCY
ORGANISATION (KITCO)

Petitioner(s)

VERSUS

WELFARE ASSOCIATION OF KITCO EMPLOYEES (WAKE) & ORS. Respondent(s)

(IA No.97110/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.97113/2024-EXEMPTION FROM FILING O.T.)

Date : 29-04-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Vikas Upadhyay, AOR
Mrs. Ankita Kashyap, Adv.
Ms. Nimish Swarup, Adv.
Mr. Arjun Singh Tomar, Adv.
Mr. Nitin Gaur, Adv.
Mr. Alok Shankar, Adv.
Mr. Ashwin Kumar Nair, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

1. Heard Mr. Vikas Upadhyay, learned counsel appearing for the petitioner.

2. The counsel takes exception to the finding that the Kerala Industrial and Technical Consultancy Organisation (KITCO) is held to be a State, under Article 12 of the Constitution as an instrumentality of the Union of India, under the impugned judgment.

To say so, the Division Bench in the impugned judgment relied on

the judgment of the Madhya Pradesh High Court in *Shanti Construction v. Avantika Gas Limited & Ors.* (Annexure P/13) reported in 2021 SCC OnLine MP 1666 and also the ratio in *Ashok Kumar Singh & Anr. v. Bihar Industrial and Technical Consultancy Organisation Ltd. & Ors.* reported in 1997 SCC OnLine Pat 239. It is then pointed out that notice was issued on 10.12.2021 by this Court in the SLP (Civil) No. 19808 of 2021 filed by M/s. Avantika Gas Limited & Ors.

3. The basic issue in these cases is whether a company where the shares are held by various Public Sector Undertakings, would be an instrumentality of the State, under Article 12 of the Constitution or not.

4. Issue notice.

5. Tag with SLP (Civil) No. 19808 of 2021.

6. In the meantime, there shall be stay of operation of the impugned judgment of the High Court.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR