IN THE HIGH COURT OF ORISSA AT UTTACK

W.P.(C) No.21917 of 2023

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

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Anita Manjari Rout .... Petitioner

-versus-

President, Orissa Association the Blind, Odisha, Bhubaneswar & Others .... Opposite Parties

For Petitioner :M/s. N. Panda, J.K. Rout,Adv.

For Opp. Parties :M/s. B. Panigrahi, A.S.C

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 14.08.2023 and Date of Judgment: 22.09.2023

Biraja Prasanna Satapathy, J.

The present Writ Petition has been filed by the Petitioner inter alia with the following prayer.

> "*It is therefore, humbly prayed that this Hon'ble Court may be graciously pleased to admit the Writ Petition, issue notice to the Opp. Parties by considering the facts and the ground stated above the Opp. Parties may direct to allow the petitioner to resume her duty as "AIYA" in Utkal Blind Organization Vocational and training Centre in girls Hostel with all service benefits.*
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> *And pass any other order/orders as would be deemed fit and proper*
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> *And for which act of kindness, the petitioner as in duty bound shall ever pray."*

2. Since this Court taking into account the prayer made in the Writ Petition took a view that no writ can be issued as

against Orissa Association for Blind and raised the question of maintainability, learned counsel appearing for the petitioner was directed to satisfy this court on the said issue.

3. Pursuant to such direction of this Court, Mr. Niranjan Panda, learned counsel appearing for the Petitioner in support of maintainability of the Writ Petition against Orissa Association for Blind contended that Orissa Association for the Blind is a sister organization of National Association for the Blind, Mumbai and All India Confederation of Blind, New Delhi. Since the Petitioner is working as an "Aiya" in Utkal Blind Organization of Vocational and Training Centre, so run by Orissa Association for the Blind with consolidated remuneration of Rs.5000/- and the Petitioner was illegally terminated from her services in violation of the principle of natural justice, the said order of termination is not sustainable in the eye of law.

3.1. It is also contended that since principle of natural justice was not followed and challenging such illegal order of termination, the Petitioner has made a representation to the Collector, Khurda under Annexure-3 and no action was taken by the said authority, necessary direction be issued to

Opp. Party Nos.4 & 5 to allow the Petitioner to resume her duty in Utkal Blind Organization Vocational and Training Centre in the Girls Hostel.

3.2. On the question of maintainability of the Writ Petition against Orissa Association for Blind, learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court reported in the case of ***Vidya Dhar Pande Vs. Vydut Grih Siksha Samiti and Others***, reported in AIR ***1989 SC 341***. Hon'ble Apex court in Paragraph 7,9,11,14,15 & 16 of the said judgment has held as follows.

> ***7.*** *Two questions therefore fall for consideration namely whether the Regulations framed pursuant to a Statute can be said to have a statutory force the breach of which will entitle the aggrieved employee to get a declaration that the PG NO 448 impugned order was invalid and illegal and the employee should be allowed to continue in service or should be re- instated in service. The High Court has relied upon the decision of this Court in Dr. Ram Pal Chaturvedi v. State of Rajasthan and Ors.,(supra) as well as Indian Airlines Corporation v. Sukhdeo Rai, [1971] 2 SCC 192. In the case of Dr. Ram Pal Chaturvedi v. State of Rajasthan and Ors., the appointment of three respondents namely Dr. D.G. Ojha, Dr. P.D. Mathur and Dr. Rishi as Principal of Sr. Patel Medical College, Bikaner, Rabindra Nath Tagore Medical College, Udaipur and Medical College, Jodhpur respectively was challenged on the ground that though they fulfilled the qualifications prescribed by Rule 30(4) of the Rajasthan Medical Service (Collegiate Branch) Rules 1962 they had not the requisite experience as provided in Ordinance No. 65 framed under the University of Rajasthan Act of 1946 and as such their appointments were not valid and legal. The Syndicate of the Rajasthan University constituted under Section 21 of the Act is empowered under Section 29 read with Section 30 to make ordinances, consistent with the Act and statutes, to provide for the matters listed in Section.*
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> ***9.*** *The question whether a regulation framed under power conferred by the provisions of a Statute has got statutory power and whether an order made in breach of the said Regulation will be rendered illegal and invalid, came up for consideration before the Constitution Bench in the case of Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr., [1975] 3 SCR 619. In this case it was held that:*

"There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Oil and Natural Gas Commissionaire all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violations of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations h the cases under consideration give the employee a statutory status and impose restriction on the employer and the employee with no option to vary the condition."

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11. *In Indian Airlines Corporation v. Sukhodeo Rai (AIR 1971 SC 1828) the respondent who was an employee of the Indian Airlines Corporation Was found guilty of certain charges and dismissed from service after an enquiry held in breach of the procedure laid down by the Regulations made by the appellant under Section 45 of the Air Corporation Act, 1953. A suit was filed by the respondent challenging the order of termination It was decreed by the Trial Court holding that the dismissal was illegal and Granted a declaration that he be continued to remain he service. The Appellate Court as well as the High Court confirmed the decree. On appeal this Court held that the relationship between the appellant,Indian Air lines Corporation and the respondent would in such cases be contractual i.e. as between a master PG NO 450 and servant and the termination of that relationship would not entitle the servant to a declaration that his employment had not been validly determined. The termination though wrongful in breach of the terms and conditions which governed the relationship between the Corporation and the respondent yet it did not fall under any of the three well recognised exceptions and therefore the respondent was only entitled to damages and not to a declaration that this dismissal was null and void. The respondent has sought support from this decision. We are afraid the contention is wholly untenable. The decision in Indian Airlines' case has in terms been declared to be no longer good law and has in terms been overruled in Sukhdev Singh's case (1975) 3 SCR 619 by the Constitution Bench. C Says Ray, C.J. speaking for the Court:*

"In the Indian Airlines case this Court said that there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the employment could be exercised the employee could not contend that he was entitled to a declaration that the termination of his employment was null and void. In the Indian Airlines Corporation case reliance was placed upon the decision of Kruse v Johnson, [1898] 2 Q.B. 91 for the view that not all by-laws have the force of law. This Court regarded regulation as the same thing as by-laws. In Kruse v. Johnson the Court was simply describing the effect that the county by-laws have own the public. The observations of the

Court in Kruse v. Johnson, that the by-law "has the force of law within the sphere of its legitimate operation" are not qualified by the words that it is so "only when affecting the public or some section of the public .. ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance." In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validity made, as the Act passed by the competent legislature.

In U.P. Warehousing Corporation and Indian Air-lines PG NO 451 Corporation case the terms of the regulations were treated as terms and conditions of relationship between the Corporation and its employees. That does not lead to the conclusion that they are of the same nature and quality as the terms and conditions laid down in the contract employment. Those terms and conditions not being contractual are imposed by one kind of subordinate legislation, Viz. regulations made in exercise of the power conferred by the statute which constituted that Corporation. of the regulations are not terms of contract. In the Indian Airlines Corporation case under section 45 of the Air Corporations Act, 1953, the Corporation had the power to make regulations not inconsistent with the Act and the rules made by the Central Government thereunder. The Corporation bad no power to alter or modify or rescind the provisions of these regulations at its discretion which it could do in respect of the terms of contract that it may wish to enter with its employees independent of these regulations. So far as the terms of the regulations are concerned,the actions of the Corporation are controlled by the Central Government. The decisions of this Court in U.P. Warehousing Corporation and Indian Airlines Corporation are in direct conflict with decision of this Court in Naraindas Barot's case which was decided by the Constitution Bench.

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14. *Manmohan Singh Jaitla v. Commissioner, U. T. of Chandigarh and Ors., [1984] (Supp) SCC 540 the appellant was appointed as Head Master of an aided School. He was later confirmed by the competent authority. A charge- sheet was served on the appellant and disciplinary enquiry was held against him under section 3 of the Punjab Aided Schools (Security of Service) Act. The enquiry was however, withdrawn later on and his seven years service was terminated by invoking the service agreement on ground that his service was no more required by the School. This order was challenged by a writ petition before the High Court which rejected the same in limine but by a speaking order observing that as the School cannot be said to be 'other authority' under Article 12, it was not amenable to the writ jurisdiction of the High Court. The Supreme Court negatived the said finding of the High Court and held as follows:*

"The matter can be viewed from a slightly different angle as well. After the decision of the Constitution Bench of this Court in Ajay Hasia v. Khalid Mujib Sehravardi, [1981] 1 SC 722 the

aided school receiving 95% of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of Headmaster to be valid must be PG NO 453 approved by the Director of Public Instructions, would certainly be amenable to the writ jurisdiction of the High Court. The High Court unfortunately, did not even refer to the decision of the Constitution Bench in Ajay Hasia, case rendered on November 13, 1980 while disposing of the writ petition in 1983. in 1983. In Ajay Hasia case, Bhagwati, J. speaking for the Constitution Bench inter alia observed (SCC p. 737, para 9) that "where the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation, it would afford some indication of the Corporation being impregnated with governmental character". Add to this "the existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality". Substituting the words 'public trust' in place of the 'corporation' and the reasons will mutatis mutandis apply to the School. Therefore, also the High Court was in error in holding that the third respondent-School was not amenable to the writ jurisdiction of the High Court."

15. *In Indra Pal Gupta v. Managing Committee, Model Inter College, Thora [1984] 3 SCC 384 the appellant was appointed on probation for one year as Principal of Model Inter College, Thora, District Bullandshahr in accordance with the procedure prescribed by the Intermediate Education Act, 1921 (U.P. Act No. 2 of 1921) and the Regulations made thereunder. The period of probation was however, extended by the Managing Committee of the said Model Inter College for a further period of one year. On April 27, 1969 the Managing Committee adopted a resolution to terminate the services of the appellant in consideration of the report of the Manager of the College to the effect that due to his unsatisfactory services, it would not be in the interest of the Institution to permit him to continue as probationer any longer. The service of the appellant was thus terminated without complying with the mandatory procedure laid down in Regulations 35 to 38 which provided for forming a sub-committee to enquire into the allegations against the Principal and to frame definite charges against the Principal and to give him opportunity of hearing. It was held that the order of termination made in breach of the provisions of the said Regulations which were made in pursuance of the provisions of the said Act, is illegal and invalid and as such the same was quashed. The appellant was further declared to be in service of the College.*

16. *On a conspectus of these decisions the irresistible conclusion follows that the impugned order of termination of PG NO 454 the appellant from the post of Principal of the Higher Secondary School in breach of the Regulation 79 framed under the said Act is illegal and as such the same is liable to be quashed as the Regulations have got statutory force. The appellant is liable to be re-instated in the service as Principal of the said College. We also hold that the Higher Secondary School in question though run by a private trust receives 100% grant from the Government as in evident from the affidavit sworn on behalf of the appellant and as such it is amenable to the writ jurisdiction for violation of the provisions of the said Regulations in passing*

the impugned order of termination of service of the appellant. We therefore, set aside the order passed by the High Court which, in our opinion, is unsustainable and direct the respondents to re-instate the appellant in the service of the said College. Considering the facts and circumstances of the case we are of the opinion that the ends of justice would be met by directing the respondents to pay to the appellant a sum equal to 50% of the salaries and allowances from the date of termination till his re-instatement in service as it appears that the appellant was not in employment during this period. The appeal is, therefore. allowed with costs.

3.3. Learned counsel for the Petitioner also relied on another decision of the Hon'ble Apex Court in the case of ***Manmohan Singh Jaitla Vs. Commissioner, Union Terriotory, Chandigarh & Others,*** reported in ***AIR 1985 (SC) 364***. Honble Apex court in paragraphs-7 & 8 of the said judgment has held as follows.

7. *The High Court declined to grant any relief on the ground that an aided school is not 'other authority' under Act. 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. TheHigh Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 969, Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression 'Tribunal' as used in Art. 227 of the Constitution which confers power of superintendence over all courts and tribunals by theHigh Court throughout the territory in relation to which it exercises jurisdiction.Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Art.227 of the Constitution.The decision questioned before the High Court was of the DeputyCommissioner and the Commissioner exercising power under Sec. 3 of the 1969 Act. And these statutory authorities are certainly amenable to the writ jurisdiction of the High Court*

8. *The matter can be viewed from a slightly different angle as well. After the decision of the Constitution Bench of this Court in Ajay Hasia etc.v. Khalid Mujib Sehrvardi & Ors. etc-(l) the aided school receiving 95%- of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulations made the Education Department of the Union Territory of Chandigarh as also the appointment*

of Head Master to be valid must be approved by the Director of public Instructions, would certainly be amenable to the writ jurisdiction of the High Court. The High Court unfortunately, did not even refer to the decision of the Constitution Bench in Ajay Hasia's case rendered on November 13, 1980 while disposing of the writ petition in 1983. In Ajay Hasia's case, Bhagwati, J. speaking for the Constitution Bench inter alia observed that '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.' Add to this the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality Substituting the words 'public trust' in place of the 'corporation' and the reasons will mutatis mutandis apply to the school. Therefore, also the High Court was in error in holding that the third-respondent school was not amenable to the writ jurisdiction of the High Court.

3.4. Mr. N. Panda, learned counsel for the Petitioner also relied on a decision of the Calcutta High Court reported in the case of ***Smt. Dipali Ghosh Vs. State of West Bengal,*** reported in ***1994 LAB IC 1300***. The Calcutta High Court in Paragraphs- 29, 30 & 33 of the said judgment has held as follows:

29. *Lastly it was contended that the writ will not lie against the Administrator. It is too late in the day to urge this contention. Writ may also lie even against an individual. Primary education is entirely controlled by the State under the Urban Primary Education Act and Rules made thereunder. Prosecution of education is a policy of the State and any agency which promotes such policy should be treated an authority within the meaning of Art.12 of the Constitution.*

30*. In this connection, the following observations of the Supreme Court from the judgment in the Comptroller and Auditor General of India v. K.S. Jagannathan reported in AIR 1987 SC 537: (1987 Lab IC 262), throw light on the width of the extraordinary writ powers of the High Court:*

"Under Art.226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases any Government throughout the territories in relation to which it exercises jurisdiction, directions, orders or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari, or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath V. Income Tax Officer, Special Circle,Kanpur (1965) 3 SCR

> *536, 540: (AIR 1966 SC 81 at p. 84) this Court pointed, out that Art.226 is designedly couched I a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country."*
> *There is thus no doubt that the High Courts in India exercising their jurisdiction under Art.226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised he discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or an irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing whih such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Art.226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."*
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> ***33**. For the foregoing reasons, this application is allowed and the Rule is made absolute to the extent indicated above. The respondents are directed to approve appointment of the Petitioner within two weeks from the date of communication of this order. Such approval shall be effected from 16th January, 1976 when her appointment was approved by the Managing Committee upon retirement of one or more teacher of the school. The Petitioner will not be entitled to any arrear salary but her salary shall be fixed in the scale notionally from 16th January,1976 as is admissible to a primary teacher. However, she shall be paid her salary upon such notional fixation from June 1993 onwards.*

4. Mr. B. Panigrahi, learned Additional Standing Counsel with regard to maintainability of the Writ Petition against the Orissa Association for the Blind, relied on the decision of this Court Court reported in the case of ***Nagendra Nath Mohapatra Vs. State of Orissa & Others, 2014 (Suppl. – II) OLR 927***. It is contended by the learned Addl. Standing

Counsel that this Court in the above noted case placing reliance on various decisions of the Hon'ble Apex Court, while deciding the meaning of State or an instrumentality of the State or other authorities within the meaning of Article 12 of the Constitution of India, ultimately held that the guideline issued by the Hon'ble Apex court in the case of ***Ajay Hasia Vs. Khalid Mujib Sehravardi & Others,*** reported in ***1981 S.C 487*** is to be followed while deciding the issue in question.

Mr. Panigrahi, learned Addl. Standing Counsel relied on Paragraphs-11 to 19 of the said order, which reads as follows-:

> ***11.*** *In Sabhaijit Tewarry v. Union of India, AIR 1975 SC 1329 the apex Court has held in no undertain terms, that a society registered under the Societies Registration Act, 1860 can never be regarded as an 'authority' within the meaning of Article 12.*
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> ***12.*** *If the Society is an 'authority' and therefore, "State" within the meaning of 'Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them and it is sufficient to State that the content and reach of Article 14 must be confused with the doctrine of classification because the view taken was that Article forbids discrimination and there would be no discrimination where the classification making the differential fulfils two conditions, namely, (i) that the classification is founded on an intellilgble differential which distinguishes persons or things that are grouped ogether from others left out of the group; (ii) that the differentia has a rational relation to the object sought to the achieved by the impugned legislative or executive action. Reference can also be made to other judgments of the apex Court in Gulam Abbas and others v. State of U.P and Others AIR 1981 SC 2198, Som*

Prakash v. Union of India, AIR 1981 SC 212. But all these questions have been considered by the Constitution Bench of the apex Court in Ajay Hasia v. Khalid Mujib Sehravardi and others, AIR 1981 SC 487.

13. *In Tekraj Vasandi alia Basandi v. Union of India, AIR 1988 SC 469 (paragraphs 17-A and 20), with the approval, the observations of Justice Shah in Uajm Bai case, it is held that the expression 'authority' in its etymologicalsense means a body invested with power to command or give an ultimate decision, or enforce obedience, or having a legal right to command and be obeyed. But in paragraph 20 of the Court observed as followed:*

> *"In a Welfare State, as has been pointed out on more than one occasion by this Court, Governmental control is very pervasive and in fact touches all aspects of social existence in the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into agency or instrumentally of the State. That obviously would not serve the purpose and may be far from reality."*

14. *In Chandra Mohan v. NCERT, AIR 1992 SC 76, in paragraph-3, the apex Court held as follows:*

"It must not be lost sight of that in the modern concept of Welfare State, independnent institutioin, corporation and agency are generally subject to State control. The State Control, however, vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body and rendering of an important public service being the obligatory functions of the State may largely pont out that the body is 'State'."

15. *In Ajay Hasia (supra) the Constitution Bench summarized the relevant tests gathered from the decision in R.D Shetty for determining whether any entity is a 'State' or " Instrumentality of the State" 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 or 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 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 of public importance and closely related to governmental functions, it would be a relevant factor in classified the corporation as a 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."

It was held in Ajay Hasia that if on consideration of the relevant factors, it is found that the Corporation is an instrumentality or agency of Government, it would as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12. The same view has also been taken into consideration by the apex Court in U.P. Warehousing Corporation v. Vijay Narain, AIR 1980 SC 840.

16. *The test, which have been determined in Ajay Hasia (supra) are also held not rigid set out of principles so that a body falling within any one of them must be considered to be 'State'. The question in case would be " whether on facts, the body is financially, functionally and administratively dominated by or under the control of Government and such control must be particular to that body and must be pervasive. Therefore, the decision in Sabhaijit Tewary (supra) has been overruled by the 7 Bench judgment of the apex Court in Pradip Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 and the apex Court by over-ruling Sabhaijit Tewary (supra) held as follows:*

"(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 an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to the public. Further, the statute creating the entity should have been vested that entity with power to make law or issue binding directions amounting 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. It 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 funcamental 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 flavor 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 given 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, 5 and 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. Therefore, the question whether an entity is an "authority" cannot be answered by applying Ajay Hasia tests.

(2) The tests laid down in Ajaya Hasia case relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in the 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."

17. *Taking into consideration Pradip Kumar Biswas (supra) the apex Court in Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam and another, AIR 2005 SC 411 has held that the question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State. Applying the test laid down in Pradip Kumar Biswas (supra), Ajay Hasia (supra), and Virendra Kumar Srivastava (supra) to the present context and on the aims and objectives of the Rules and constitution of Samiti, it does not satisfy the test to come within the meaning of State or Instrumentality of the State or other authorities so that writ can be issued against the opposite parties 2 and 3. Merely because out of 13 members of the Board of Directors, three members belong to Government. It cannot be construed that the Government has got pervasive control with the management of the Samiti, rather the Rules and Regulations of the Samiti have given its power and functions with funding management vested with the Board on which the Government has got no control merely because some funding is received from the Government, that ipse facto cannot be characterized as Governmental function In General Manager, Kisan Sahkari*

Chini Mills Ltd (supra) applying the tests laid down by the apex Court, it is held that the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be applied and considered cumulatively and as such, there can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution: In this context, the bye-law, Rules and Regulations of the Samiti have been taken into consideration for coming to such conclusion.

18. *Applying the decision in Ajay Hasia (supra) to the present facts of the case, even if it is taken into consideration that the State Government has granted some grant-in-aid, but there are other source of income as per the provisions of the Rules, the 1st test laid down is not fulfilled by the Samiti So far as the 2nd test is concerned, receiving some money in the shape of grant-in-aid from the Government does not itself construe that the State Government has control over the same, rather funds are being collected from different sources as per the Rules over which the Government has got no control. More so, the entire regulatory system is managed by a body formulated under the said Rules and Regulations. Applying the test-3, there is nothing to show that the Samiti enjoys monopoly status which is state conferred and state protected in the matter of achieving its aims and objects. Now coming to test-4, it appears that the membership of the Samiti is open to different categories and the management is consisting of 13 members out of which 3 are Government officials and 10 are elected representatives from different categories. Therefore, the management of the Committee is dominated by the non-Government members. Therefore, under the Rules and Regulations, the State Government can neither issue any direction to the Samiti nor determine its policy as it is an autonomous body and as such the State has got no control at all in the functioning of the Samiti much less deep and pervasive one.*

19. *Therefore, considering the above facts and position and applying the tests envisaged by the apex Court in Ajay Hasia (supra), the Samiti cannot be considered as an "instrumentality of the State" or "agency of the Government" and cannot be said to be 'authority'. Thus, it is not a 'State' within the meaning of Article 12 of the Constitution."*

4.1. Mr. Panigrahi, learned A.S.C accordingly contended that since principle decided by the Hon'ble Apex Court in the case of Ajay Hasia is not being fulfilled by the Orissa Association for Blind, it cannot be treated as a State within the meaning of Article 12 of the Constitution of India and

accordingly no writ can be issued as against Orissa Association for Blind.

5. Having heard learned counsel for the parties and taking into account the submission made and the decisions relied on by the learned counsel for the parities, this Court is of the view that in order to be covered within the definition of Article-12 of the Constitution of India, the guideline framed by the Hon'ble Apex Court in the case of Ajay Hasia as cited (supra) has to be fulfilled.

Since in the present case, no material has been placed showing fulfillment of the guideline so framed by the Hon'ble Apex Court in the case of Ajay Hasia, showing that Orissa Association for Blind is coming within the said guideline, this Court is of the view that the Orissa Association for Blind is not a State within the meaning of Article-12 of the Constitution of India. Accordingly, while holding so, this Court is not inclined to issue any direction as prayed for in the Writ Petition and dismiss the Writ Petition on that ground.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 22nd Sept. 2023/sangita