

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.369-378 OF 2023
(ARISING OUT OF SLP(C) NOS. 23905-23914 OF 2018)**

PUSHAN MAJUMDAR ETC.

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

ORDER

After taking note of the substance of submissions made in I.A. D. No. 58539 of 2020 and while ignoring defects therein, the name of deceased petitioner No. 1 is ordered to be deleted from the array of the parties. Cause title be amended accordingly.

Leave granted.

In view of a short point involved in the matter, we have heard learned counsel for the parties finally at this stage itself.

These appeals are directed against the common judgment and order dated 10.05.2018 insofar as relating to the respective intra-court appeals, whereby the Division Bench of High Court of Calcutta has declined to interfere with the conclusion in the judgment and order dated 17.08.2010, as passed by a learned Single Judge of the High Court, dismissing the writ petitions filed by the present appellants. The writ petitions came to be dismissed essentially for the reason that in a previous Division Bench decision, the Indian Association for the Cultivation of Science ("IACS"- respondent No. 2 herein) was held to be not "the State" within the meaning of Article 12 of the Constitution of India and, therefore, no writ would be issued against it.

After having heard learned counsel for the parties and after taking note of fair stand taken on behalf of the respondents by the learned ASG as also after examining the material placed on record, we are clearly of the view that these appeals deserve to be allowed and, the respective writ petitions deserve to be restored for consideration on their merits.

As the respective writ petitions are proposed to be restored for consideration on merits by the High Court, dilation on all the facts is not necessary. Only a brief reference to the background aspects would suffice.

In the batch of writ petitions decided by the impugned order dated 17.08.2010, the writ petitioners, being the academic staff of the Indian Association for the Cultivation of Science, raised various issues with respect to their service conditions. However, on behalf of the contesting respondents, a preliminary objection was raised on the maintainability of writ petitions, essentially on the ground that IACS was not “the State” within the meaning of Article 12 of the Constitution of India and hence, was not amenable to the writ jurisdiction of the High Court. In this regard, reliance was placed on a Division Bench decision of that High Court in the case of ***Indian Association for the Cultivation of Science, Jadavpur & Ors. v. Ashoke Kumar Roy : (1992) 1 CLJ 319.***

The learned Single Judge examined the rival contentions and particularly took note of the view taken by the Division Bench of the High Court in the decision in ***Ashoke Kumar Roy*** (supra) holding that IACS was not “the State” within the meaning of Article 12 of the Constitution of India or its agency or instrumentality. The learned Single Judge, in the impugned order

dated 17.08.2010, though expressed his own opinion otherwise but, being bound by the decision of the Division Bench, found it impermissible to render a contrary decision and hence, proceeded to dismiss the writ petitions.

The pertinent observations of the learned Single Judge in the order dated 17.08.2010 could be reproduced for ready reference as under: -

“The Hon’ble Division Bench in the case of Ashoke Kumar Roy (supra) primarily declined to invoke the constitutional writ jurisdiction of this Court over IACS on two grounds. It was held that control of the State was not deep and pervasive over IACS as the composition of the Council was dominated by private persons and not by persons appointed or nominated by the Central Government.

Secondly, the Hon’ble Division Bench observed that the money required for running the said institute was not provided by the Central Government or the State Government alone, but from various other sources and the Council might or might not have had accepted such grant given by the Government. The Hon’ble Division Bench took notice of the fact that there was no provision that the society could accept money only with the approval of the Central Government and the Central Government had no manner of control over the receipts and disbursement of the money by the society. There was no necessity of having accounts of the society audited by the Auditor or Comptroller General or any other governmental agency, except the grant received from the Central Government.

In the event it was not held by the Hon’ble Division Bench that the society is not State or other authority within the meaning of Article 12 of the Constitution of India, I would have had held that it was “other authority” within the meaning of Article 12. In my own opinion, it is not necessary that the State should provide the entire expenditure of a corporation or society to impregnate it with the governmental character....”

The learned Single Judge, thereafter, referred to the tests laid down by this Court in the case of ***Raman Dayaram Shetty v. International Airport Authority of India: (1979) 3 SCC 489*** and observed as under: -

“This being the test, I think that in the event in a given point of time, the State assistance goes beyond 90 per cent of the total receipt by a society and in near future or past also same level of financial assistance flows, I am of the view that such a society would become an instrumentality or agency of the State, and would have to bear the same constitutional obligations including scrutiny of the Writ Court, as substantial amount of public money is utilized by the society. The mere fact that a society could accept fund from sources within the State ought

not to shelter it from such scrutiny. The fact that the institute largely depends on State funding is apparent from the Annual Report of the society itself for the years 2008-2009, a copy of which was made available to this Court. In the chapter entitled "IACS Profile", it has been recorded:-

"The Department of Science and Technology (New Delhi) and Government of West Bengal are the principal fund-giving agencies supporting research in IACS. It also generates funding through various research projects from several funding agencies in India and abroad including projects supported by DST..."

So far as the composition of Council is concerned, out of fourteen members, six are admittedly appointed or nominated the Central or the State Government. But rest of the council, as it appears from the Regulations, are not purely private persons. The Director of the association is an ex-officio members of the Council. Two eminent scientists are to be nominated by the Council itself. If these three members are not counted, then direct governmental nominees become majority in the Governing Council. In any event, the Director of the society and the two scientists to be nominated by the Council would bear queasy-governmental character, given the composition of the Council, as at the time of their nomination, the governmental nominees would have been majority in the Council, and thus influence the nomination of the two scientists. The appointment of Director is to be done after the names of the incumbents are forwarded to the Secretary, Department of Science & Technology by the Council. Thereafter, his appointment is to be processed in the same manner as required for appointment of Directors of Central Autonomous Organisations of the Government of India.

However, since on these very two grounds the Hon'ble Division Bench has found that the society does not fulfil the character of "State", I do not think I can take a contrary view.

Since I have the sanction of a Full Bench to express my own views on an issue upon going through the issue in details, which view may be different from the opinion of a Division Bench, but I do not have the jurisdiction to deliver judgment contrary to the ratio laid down by the Hon'ble Division Bench on the same issue, I dismiss this batch of writ petitions as being not maintainable in view of the decision of the Hon'ble Division Bench that IACS is not "State" within the meaning of Article 12 of the Constitution of India or its instrumentality or agency. The preliminary objection of Mr. Sengupta thus stands sustained.

These writ petitions are accordingly dismissed."

Aggrieved by dismissal of their writ petitions, the present appellants preferred respective intra-court appeals before the Division Bench of the High

Court. A few pending writ petitions including W.P. No. 28123 (W) of 2012 filed by Shri Ashoke Kumar Roy was also tagged alongwith those intra-court appeals and the matters were decided by the impugned common judgment and order dated 10.05.2018. The Division Bench of the High Court reproduced a few paragraphs from the aforesaid previous decision in the case of the same person Shri Ashoke Kumar Roy; and finding no reason to interfere with the order passed by the learned Single Judge, dismissed the appeals as also the said connected writ petitions. The material aspects of reasoning, as noticeable from paragraphs 7 and 16 of the said previous decision, which have been reproduced in the impugned judgment and order dated 10.05.2018, read as under:-

“7. In the instant case the Indian Association for the Cultivation of Science, Jadavpur is an association registered under the societies Registration Act and is dominated by private persons. It was free to accept grants from the Governments and is only answerable to the Governments in respect of the grants received from the Governments and that so long the Association continues to receive grants from the Government the accounts were required to be audited by the comptroller and Auditor General of India. It is also free to apply its income and property towards the promotion of its objectives and implementation of its programmes. It was pointed out by the learned Advocate appearing for the respondents relying on various documents that the society received much grants from the Central Government. But receiving of grants is not the sole test for determining whether it is an ‘authority’ under Article 12 or not. There is no provision that the society has to comply with all directions as may be issued by the Central Government in this behalf. It is true that the Association is free to dispose of its moveable and immoveable properties and obtain loans but from this it is clear that there was no absolute control of the Central Government over the affairs of the society. It cannot be said by any stretch of imagination that is the Central Government who is functioning through the said society and that if the veil is lifted, it could not be seemed that though it is a body registered under the societies Registration Act really the Central Government is running its affairs through a society. It is not controlled by the Government in any manner whatsoever. The word ‘state’ or instrumentality of the State means that the Government is functioning though it is in the form of a society or a cooperative society or a company and this is a decisive factor for the purpose of determining whether it is an authority under Article 12 of the

Constitution or not.

16. In the instant case, admittedly, the service of the respondents is not controlled or regulated by any statute or rule having the force of law. It was a purely contractual and outside the domain of public law. Only in case where there are some statutory protection to the service condition of an employee, in that event it would be open for judicial review by the court. In the absence of any statutory protection or Rules and Regulations having statutory flavor, judicial review by a writ of mandamus is not available. In this connection reference was made by the Supreme Court to the decision in the case of Executive Committee of Valsh Degree College, Shamll v. Lakshmi Narain, AIR 1976 SC 888. In that case a dismissed lecturer of a private college was seeking reinstatement in service. The court refused to grant the relief although it was found that the dismissal was wrongful. The Supreme Court instead granted substantial monetary benefits to the lecture. This appears to be the preponderant judicial opinion because of the common law principle that a service contract cannot be specifically enforced.”

In challenge to the decision aforesaid, it has essentially been contended on behalf of the appellants, with reference to various decisions of this Court, including that in the case of ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology: (2002) 5 SCC 111***, that the respondent IACS answers to all the relevant parameters so as to be directly falling within the scope of Article 12 of the Constitution of India. It has, *inter alia*, been contended that the majority of members of the IACS are appointed with prior approval of the Government; financial assistance by the Government to IACS goes beyond 90% and indisputably, IACS is substantially funded by the Central Government through the Department of Science and Technology; the Government has deep and pervasive control over IACS; and IACS is a Deemed Research University with primary function to foster high quality research in frontier disciplines of basic science. It is submitted that IACS is “the State” within the meaning of Article 12 of the Constitution of India as it is financially, functionally and administratively dominated by, and is under the control of, the Government.

The learned ASG appearing for the respondents, even while maintaining that the respondents seek to contest the reliefs claimed by the appellants in relation to their service conditions, and even while submitting that objectives of IACS are essentially to advance the scientific research, in all fairness, has placed before us a communication dated 12.12.2022 from the Department of Science and Technology in the Ministry of Science and Technology stating, *inter alia*, as under: -

“1) That IACS is one of the Autonomous Bodies (Abs) under the administrative control of Department of Science & Technology (DST), Ministry of Science & Technology, Government of India.

2) That it is substantially (99%) funded by Government of India.

3) That constitution of the Governing Board is also approved by the Government of India. Copy of the present constitution of Governing Council is also enclosed.

4) As the institute is substantially funded by Government of India, all the provisions relating to financial rules of the GoI, viz. General Financial Rules 2017 has to be followed by the Institute. All the expenditure which are met on the salaries etc. of the employees are met by the grants given by the Government of India.

5) That the institute has no power to create posts or to modify the service conditions of the employees without the explicit approval of Government.

6) The appointment of the Director of the Institute is done through the process of ACC by the Government of India, however, the Department is not involved in micro managing and day-to-day affairs of the Institute and the appointment of other staff of the IACS is vested with the Director, IACS and Governing Council, as the case may be, depending on the level of the post.

7) After declaration of this Institute i.e. IACS as Deemed to be University, the Memorandum of Association (MoA) and Rules of Management have been recently approved by the Government of India on 23.06.2020, a copy of the forwarding letter of the said MoA to IACS and also copy of the MoA and Rules of Management are enclosed. (Presently the IACS is governed as per this approved MoA/Rules of Management).”

We are not elaborating on the other contents of the said communication dated 12.12.2022 and would prefer leaving all other aspects to be examined by the High Court in the writ petition. Suffice it would be to observe for the present purpose that in the undeniable fact situation that IACS is under the administrative control of the Department of Science and Technology in the Ministry of Science and Technology, Government of India; IACS gets nearly 99% funds from the Government of India; the Governing Body of IACS is also approved by the Government of India; the General Finance Rules of the Government of India are required to be followed by IACS; and IACS cannot of its own create any post or modify the service conditions of the employee without approval of the Government of India, in our view, the tests recognised and laid down by this Court in **Pradeep Kumar Biswas** (supra) directly apply herein. This Court has laid down the tests for determining as to whether a particular body is “the State” within the meaning of Article 12 of the Constitution of India, in the following: -

“40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

Taking the totality of factors into account, we have no hesitation in observing that the approach of the Division Bench of High Court in its earlier decision in **Ashoke Kumar Roy** (supra), as produced hereinabove, cannot be

said to be in accord with law. Rather it appears that the essential parameters for examining the question concerning status of the particular body/institution have not gone into consideration of the Division Bench. The learned Single Judge, while passing the order dated 07.08.2010, had taken pains to specify as to how the respondent-IACS would be “the State” within the meaning of Article 12 of the Constitution of India, so as to be amenable to writ jurisdiction. Though, while maintaining judicial discipline, the Single Judge, even after expressing his opinion, was rather constrained to dismiss the writ petitions because of the view taken by the Division Bench of that High Court. However, the Division Bench of the High Court, while passing the order impugned, has not adverted to the thoughts projected by the learned Single Judge.

Be that as it may, we need not elaborate on the shortcomings in the views of the Division Bench of the High Court, whether in the earlier decision in ***Ashoke Kumar Roy*** (supra) or in the order impugned because, in our view, there is hardly any scope for reaching to any other conclusion but the one in favour of upholding the submission that IACS answers to the description of “the State” within the meaning of Article 12 of the Constitution of India, for it being financially, functionally and administratively under the control of the Government of India.

That being the position, the impugned judgment and order dated 10.05.2018 is set aside and the concluding part of the order dated 17.08.2010, as passed by the learned Single Judge is also set aside; and, while affirming the opinion expressed by the learned Single Judge, the respondent-IACS is held to be the “State” within the meaning of, and for the purpose of, Article 12

of the Constitution of India and thereby, being amenable to the writ jurisdiction of the High Court.

Consequently, these appeals are allowed to the extent and in the manner indicated above; the writ petitions decided by the order dated 17.08.2010 stand restored for consideration on merits.

The appeals are, accordingly, allowed.

The parties through their respective counsel shall stand at notice to appear before the High Court in the restored writ petitions on 27.02.2023.

.....,J.
(DINESH MAHESHWARI)

.....,J.
(HRISHIKESH ROY)

**NEW DELHI;
JANUARY 16, 2023.**

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).23905-23914/2018
(Arising out of impugned final judgment and order dated 10-05-2018
in FMA No.16/2011 10-05-2018 in FMA No.28/2011 10-05-2018 in FMA
No.29/2011 10-05-2018 in FMA No.30/2011 10-05-2018 in FMA No.
32/2011 10-05-2018 in FMA No.33/2011 10-05-2018 in FMA No.34/2011
10-05-2018 in FMA No.35/2011 10-05-2018 in FMA No.36/2011 10-05-
2018 in FMA No.38/2011 passed by the High Court At Calcutta)

PUSHAN MAJUMDAR ETC

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.58539/2020 - DELETING THE NAME OF PETITIONER/RESPONDENT, IA
No.180778/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 16-01-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Prashant Bhushan, AOR
Ms. Alice Raj, Adv.
Ms. Suroor Mander, Adv.
Mr. Rahul Gupta, Adv.

For Respondent(s) Mr. Sanjay Jain, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Rupesh Kumar, Adv.
Mr. S.A. Haseeb, Adv.
Mr. Padmesh Mishra, Adv.
Mr. Arkaj Kumar, Adv.
Ms. Meena Devi, Adv.
Mr. Prasenjit Sarkar, Adv.
Mr. Piyush Beriwal, Adv.
Ms. Tanya Aggarwal, Adv.

Mr. Yatin Grover, Adv.
Mr. Kumarjit Das, Adv.
Mr. Parminder Singh Bhullar, AOR

UPON hearing the counsel the Court made the following
O R D E R

After taking note of the substance of submissions made in
I.A. D. No. 58539 of 2020 and while ignoring defects therein,

the name of deceased petitioner No.1 is ordered to be deleted from the array of the parties. Cause title be amended accordingly.

Leave granted.

The appeals are allowed in terms of the signed order.

All pending applications stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

(signed order is placed on the file)