

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No.600 of 2010**

% *Reserved on: 4th April, 2012*
Pronounced on: 1st June, 2012

AR ABDUL GAFFAR . . . Appellant
through : Mr. Ashish Mohan (Amicus
Curie) along with appellant-in-
person.

VERSUS

UNION OF INDIA & ORS. . . . Respondents
through: Mr. Jatan Singh, CGSC for
UOI.
Mr. B.K. Satija, Advocate for
NBT.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

1. The reasons for referring this appeal to the Full Bench for consideration are contained in the orders dated 03.7.2012 passed by the Division Bench and for clear understating, we reproduce the same hereunder:

"1. The learned Single Judge has dismissed the writ petition filed by the appellant on the ground of non-maintainability holding that National Book Trust is not a 'State' within the meaning of Article 12 of the Constitution of India. While doing so, the learned Single Judge relied upon the judgment of the Division Bench of this Court in **J.S. Shamim Vs. National Book Trust**, (W.P.(C) 1446/1989).

2. A perusal of the said judgment in **J.S. Shamim** (supra) case would reveal that the Division Bench has

relied upon the judgment of Supreme Court in **Chander Mohan Khanna Vs. NCERT**, AIR 1992 SC 76.

3. Learned Counsel for the appellant states that judgment of **J.S. Shamim** is no longer a good law in view of Constitution Bench judgment (rendered by Seven-Judge Bench) of the Supreme Court in **Pradeep Kumar Biswas & ors. Indian Institute of Chemical Biology & ors. 2002 (5) SCC 111**. He further submits that in **J.M. Shamim (supra)** the Division Bench did not go into the status and character of National Book Trust and simply relied upon the judgment of Supreme Court in **Chander Mohan Khanna (supra)** which case related to NCERT.

4. We are of the opinion that the matter requires to be considered by Larger Bench. Accordingly, Registry is directed to place the matter before the Acting Chief Justice for constitution of the Larger Bench.”

2. It is apparent from the above that the issue is: Whether National Book Trust (hereinafter referred to as 'NBT') is a 'State' or 'another authority' within the meaning of Article 12 of the Constitution of India? Learned Single Judge dismissed the writ petition holding that NBT does not come within the purview of Article 12 of the Constitution of India relying upon the judgment of the Division Bench of this Court in **J.S. Shamim Vs. National Book Trust**, [W.P.(C) 1446/1989] which in turn placed sole reliance upon the judgment of the Supreme Court in **Chander Mohan Khanna Vs. NCERT**, AIR 1992 SC 76. However, **Chander Mohan Khanna (supra)** has been held to be no longer good law by the Constitution Bench in **Pradeep Kumar Biswas & Ors. Indian Institute of Chemical Biology & ors. 2002 (5) SCC 111**. Thus, the effect thereof has to be seen.

3. ***J.S. Shamim (supra)*** is a short order which does not discuss the issue independently or in detail as to why NBT is not a 'State'. It simply follows ***Chander Mohan Khanna (supra)*** as is without discussing anything more as can be seen from the following brief order passed in the following words therein:

"In view of the decision of the Supreme Court reported as Chander Mohan Khanna Vs. N.C.E.R.T., AIR 1992 Supreme Court 76, which has held that National Council of Educational Research & Training is not a State, we have to come to the conclusion that the National Book Trust is also not a State as there is no essential difference between the constitution of N.C.E.R.T., with which the Supreme Court was concerned, and the National Book Trust.

Because of that reason, this writ petition is dismissed with liberty to the petitioner to take action in accordance with law."

4. In ***Chander Mohan Khanna (supra)***, the Supreme Court held that NCERT was not a 'State' under Article 12 of the Constitution giving the following reason:

" The object of the NCERT as seen from the above analysis is to assist and advise the Ministry of Education and Social Welfare in the implementation of the Governmental policies and major programmes in the field of education particularly school education. The NCERT undertakes several kinds of programmes and activities connected with the coordination of research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes. It also undertakes preparation and publication of books, materials, periodicals and other literature. These activities are not wholly related to Government functions. The affairs of the NCERT are conducted by the Executive Committee comprising of Government servants and educationists. The Executive Committee would enter into arrangements with Government, public or private organizations or individuals in furtherance of the objectives for implementation of programmes. The funds of the NCERT consist of: (i)

grants made by the Government, (ii) contribution from other sources and (iii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The Government control is confined only to the proper utilization of the grant. The NCERT is thus largely an autonomous body.”

5. The ratio of the aforesaid decision was commented upon by the Seven-Judge Bench of the Supreme Court in ***Pradeep Kumar Biswas (supra)***. This Seven-Judge Bench judgment of the Supreme Court settles the parameters which have to be taken into consideration for determining as to whether an authority can be called ‘State’ within the meaning of Article 12 of the Constitution. In ***Pradeep Kumar Biswas (supra)***, the Court held that:

“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.”

6. Therefore, the mere fact that a body is largely autonomous as held in ***Chander Monhan Khanna (supra)*** is held to be of no significance. As a matter of fact, the reasoning of the Court in ***Chander Mohan Khanna (supra)*** has, to that extent, been specifically disapproved as is clear from the following passage:

“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 the law. The observations to the contrary in **Chander Mohan Khanna v. NCERT** (supra) relied on by the Learned Attorney General in this context, do not represent the correct legal position."

7. The effect of the aforesaid, insofar as the instant case is concerned, would be as follows:

Since the Division Bench of this Court in ***J.S. Shamim (supra)*** followed ***Chander Mohan Khanna (supra)*** and that judgment has been held to be not representing correct legal position, ***J.S. Shamim (supra)*** also stands overruled. As a fortiori, the impugned order of the learned Single Judge which follows ***J.S. Shamim (supra)*** has to be necessarily set aside.

8. In this backdrop, the issue as to whether the NBT is an authority under Article 12 of the Constitution of India will have to be examined afresh keeping in view the test laid down by the Supreme Court in various judgments and applying those tests in the case of NBT. Article 12 of the Constitution of India gives the definition of 'the State', which is inclusive one, as under:

"12. Definition. – In this part, unless the context otherwise 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.”

9. Formation of NBT was on the basis of decision of the Government of India which decided to establish NBT vide resolution dated 15.6.1957. Thereafter, the Government of India had taken a decision to reorganize the NBT vide resolution No.F.14-9/62-S.W. 2, dated 28.9.1962 thereby enlarging the objectives which it seeks to achieve. Para 2 of these objectives states that the Trust shall be an autonomous body, created by and supported by funds placed at its disposal by the Government, though at the same time, permitted to receive donations and bequests as well.
10. NBT is not ‘Government of India’ or ‘Government of a State’. It is not a ‘local authority’ as well. We, therefore, have to determine as to whether it falls within the ambit of ‘Other Authorities’ under control of the Government of India. The ambit and scope of ‘other authorities’ got a paradigm shift in the case of **Ramana Dayaram Shetty Vs. The International Airport Authority of India and Ors.**, (1979) 3 SCC 489 wherein the Supreme Court held that even a non-statutory body like a society registered under the Societies Registration Act, 1860 would come within the purview of Article 12 once it is found that it is under the control of the Government of India. The tests laid down in **Ramana Dayaram Shetty (supra)** were further expanded in **Ajay Hasia etc. Vs. Khalid Mujib Sehravardi and Ors. etc.**, [(1981) 1 SCC 722]. In this judgment expounding the law on the subject, the Court formulated six tests are as under:

- (i) One thing is clear that if the entire share capital of the Corporation is held by the Government, it would go a lone way towards indicating that the Corporation is an instrumentality or agency of the Government.
- (ii) 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 Government character.
- (iii) It may also be a relevant factor, whether the corporation enjoys monopoly status which is the State conferred or State protected.
- (iv) Existence of "deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
- (v) If the functions of the Corporation of public importance and closely related to the Government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.
- (vi) "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.

11. The aforesaid tests to determine whether a body falls within the definition of 'State' in Article 12 laid down in ***Ramana***

Dayaram Shetty (supra) with the Constitution Bench imprimatur in **Ajay Hasia (supra)** form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject.

12. In **Chander Mohan Khanna (supra)**, however, the Supreme Court added a word of caution observing that Article 12 should not be stressed so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression 'State'. Reference was made to some other judgments, wherein a discordant note was struck with the observations that a wide enlargement of the meaning must be tempered by a wise limitation. The line of thinking was that it must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State Control. The State control does not render such bodies as 'State' under Article 12 and the State Control, however, vast and pervasive is not determinative. Even 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 point out that the body is 'State'. On this touchstone, the two-Judge Bench of the Supreme Court discussed various provisions on Memorandum of Association and the rules of the NCERT and came to the conclusion that its activities are not wholly related to Governmental functions and affairs of NCERT are conducted by executive committee comprising of Government servants

and educationists. The funds of the NCERT were coming from various sources. NCERT is free to apply its income for achievement of its objectives and implementation of programmes. Thus, the Government control was confined only to the proper utilization of the grant and it was otherwise autonomous body. On that basis, it was held that the case did not satisfy the requirements of 'State' under Article 12 of the Constitution.

13. However, as pointed out above, in ***Pradeep Kumar Biswas (supra)***, Seven-Judge Bench of the Supreme Court has categorically held that the aforesaid observations do not represent correct legal position. At the same time, the Court agreed to the tests laid down in ***Ajay Hasia (supra)***, and expounded the meaning of those tests in the following words:

"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 hypothesis, 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."

14. Interestingly, counsel for both the parties before us agreed that we have to apply these tests while determining the status of NBT in the present case. It is the application of these tests to the facts of the instant case where the counsel for the parties differ. Mr. Ashish Mohan, learned Amicus Curie

appointed by us, made a passionate submission that NBT would constitute a 'State' under Article 12 of the Constitution of India on the application of the principles laid down in the aforesaid judgment. Mr. Jatan Singh, learned counsel appearing for the respondents, on the other hand, submitted that NBT does not fall in any of the categories enumerated by the Supreme Court in ***Ajay Hasia (supra)***. At the outset, it was submitted that NBT is not constituted under the constitutional or statutory provisions and is not a sovereign authority, but is in fact, a registered society. The financial assistance approved by the Government is not to the extent so as to meet almost entire expenditure of the NBT. It was submitted that the Government control is confined only to the proper utilization of the grant. It is further pertinent to note that though the Government funding does form a part of the resources of the NBT, the share of financial assistance is very limited as NBT's funding is not entirely from Government resources and other private sources form a major part of its funding. Mr. Jatant Singh submitted that the Government funding forms one out of the five sources of the funding available with the NBT. He further submitted that as far as the activities undertaken by the NBT are concerned, the same are enlisted as objects of the Trust in the Memorandum of Association and Rules of the NBT. A plain reading of the objectives makes it clear that although some of the activities undertaken by the NBT are for public welfare, yet the activities of the NBT as a whole are not closely related to Governmental/sovereign functions. It is also submitted that

the functions/objectives as enumerated can otherwise be performed by the NBT. According to him, the ultimate test is that of existence of "deep and pervasive State control" over the functioning of a Corporation. In this regard, he submitted that having regard to foregoing submissions of limited financial assistance provided by the Government and also the functions of the NBT which are not Governmental functions or functions of public importance, etc., it cannot be said that the State exercises a "deep and pervasive" control over the functioning of the NBT.

15. Learned counsel for the respondent also relied upon the judgment of the Supreme Court in ***M/s. Zee Tele Films Ltd. and Another Vs. Union of India and Others*** [AIR 2005 SC 2677] wherein the Court held that the Board of Control for Cricket in India was not a State under Article 12 of the Constitution of India. Following passages from that judgment are specifically submitted:

"30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organizing cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board.

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the

aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.

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36. In the above view of the matter, the second respondent-Board cannot be held to be a State for the purpose of Article 12. Consequently, this writ petition filed under Article 32 of the Constitution is not maintainable and the same is dismissed.”

16. It was, thus, argued that not every autonomous body like the NBT, with some of Government involvement shall be construed to be State within the meaning of Article 12 of the Constitution, as the same would lead to a chaotic situation where every employee (as in the instant case as well) would seek entitlement to various benefits such as retirement benefits, etc. which are otherwise available only to Government employees. It is also argued that a Corporation is designated as an autonomous body for a specific reason. Such bodies have their own set of Rules and regulations and are not governed by Article 309 of the Constitution. In this regard, reliance is placed on the judgment of this Court in ***O.P. Gupta Vs. Delhi Vidyut Board & Anr.***, 2000 (54) DRJ, wherein the Court held that the Delhi Vidyut Board is a body constituted and being an autonomous body, it is governed by its own set of Rules and Regulations. It was further held that the Pension Rules as relied upon in the case are not automatically applicable on

Delhi Vidyut Board and the employees of the Delhi Vidyut Board are not governed by Article 309 of the Constitution.

17. We have given our thoughtful consideration to the aforesaid submissions made by the counsel for the parties on either side. To find an answer, naturally, first task is to scan through various provisions of the Memorandum of Association of NBT to determine as to whether **Ajay Hasia (supra)** tests are satisfied. The NBT is a society registered under the Societies Registration Act. Its primary object is to produce and to encourage the production of good literature and to make such literature available at moderate prices to the public. In furtherance of this object, the NBT has undertaken the task to publish books in English, Hindi and other languages recognized in the Constitution of India, particularly, of the following types:
- i) The classical literature of India;
 - ii) Outstanding works of Indian authors in Indian languages and their translation from one Indian language to another;
 - iii) Translation of outstanding books from foreign languages; and
 - iv) Outstanding books of modern knowledge for popular diffusion.
18. In the aid of these objectives, it is also the function of the NBT to bring out book-lists, arrange exhibitions and seminars and take all necessary steps to make the people book-minded. The income of property of the Trust, however derived, has to be applied towards the promotion of the objects. However, insofar as grants made by the Government are concerned, in

respect of the expenditure of those grants, the Government is empowered to impose conditions. The Government of India is also given power to appoint one or more persons to work and progress of the Trust in such manner as the Government of India may stipulate. On receipt of any such report, the Government is also empowered to take such action and issue such directions as it may consider necessary in respect of any of the matters dealt with in the report and the Trust shall be bound to comply with such directions. Rule 3 of Rules of the National Book Trust, India stipulates as to who would be the members of the Trust, which is as follows:

"3. *Members of the Trust:* The Trust shall consist of the following members:

- a) The Chairman to be appointed by the Government of India;**
- b) One representative of the Ministry of Education;**
- c) One representative of the Sahitya Akademi;**
- d) One representative of the Ministry of Finance;**
- e) One representative of the Ministry of Information and Broadcasting;**
- f) Such other persons, not exceeding 14, as the Government of India may, from time to time, nominate. "**

19. The term of the Member appointed by the Government of India is three years (Rule 7). All outgoing Members are eligible for – reappointment (Rule 8). The Chairman of the Trust shall hold office at the pleasure of the Government of India (Rule 13). Functions and powers of the Chairman are stipulated in Rules 41 to 52 which read as under:

"48. The Chairman shall be the chief executive officer of the Trust.

49. The Chairman shall preside over all the meetings of the Trust and its Executive Committee.
 50. The Chairman shall have all necessary powers for carrying on the day-to-day functions of the Trust.
 51. In the event of disagreement between representatives of the Ministry of Finance and the Chairman on financial matters beyond the delegated powers of the National Book Trust, India, the matter may be referred to the Minister of Education and the Finance Minister for a decision."
20. The Annual Report of the working of the Trust as well as audited statement of the accounts of the preceding year are to be submitted to the Government together with audit report by the end of December every year (Rule 19).
21. Executive Committee is also constituted under the Rules and it can be seen that Members of the Executive Committee representatives of the Government:
- "26. *Members:* The affairs of the Trust shall be administered, directed and controlled, subject to rules and regulations and overall guidance of the Trust, by an Executive Committee, which shall consist of the following:
- i) Chairman of the Trust who shall be ex-officio Chairman of the Executive Committee;
 - ii) A representative of the Ministry of Education;
 - iii) A representative of the Ministry of Finance who shall also be the financial Advisor of the Trust;
 - iv) A representative of the Ministry of Information and Broadcasting;
 - v) Not more than three non-official members of the Trust to be nominated by the Government."
22. The function of the Executive Committee is to carry out the objects of the Trust as the said Memorandum of Association also manage the affairs of funds of the Trust and to generally exercise of the powers of the Trust. The Executive Committee

also has the power to frame regulations for the administration and management of the affairs of the Trust, with the previous approval of the Government of India. The source of the funds of the NBT are stipulated in Rule 54.

23. Rule 57 is also relevant and we reproduce the same:

"57. All matters relating to the affairs of the Trust having financial implication shall be referred to the Financial Adviser for his advice in cases where powers may be delegated to the officers of the Trust under the Regulations.

Subject to the provisions of Rule 51 (a), when the advice of the Financial Adviser is not proposed to be accepted, the matter shall be rendered to the Trust which shall take such decision as may be deemed fit after the Financial Adviser has been given an opportunity to express his point of view."

24. The NBT is to maintain proper accounts in such forms as may be prescribed the Government of India in consultation with the Comptroller and Auditor General of India ('CAG' in short) or any person authorized by him in his behalf. It is mandatory that these accounts are audited annually by CAG or any person authorized in this behalf. CAG or other person authorized by him for auditing the accounts is given the same rights, privileges and authority, which it has in connection with the audit of the Government accounts. It is specifically spelt out that these rights include the right to demand the production of books, accounts cash vouchers and other documents and papers, and inspect any of the offices of the Trust. The accounts of the Trust as certified by the CAG or any person authorized by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Government of India (Rule 58).

25. As per Rule 59, the Executive Committee is required to prepare annual report of the proceedings of the Trust for the information of the Government of India and the members of the Trust. Rule 60 which provides for amendment of rules and regulations states that this has to be with the previous concurrence with the Government of India. Such a sanction is not mandatory, but a pre-condition which has to be obtained prior to the enforcement of the amendment, is provided in Rule 62.
26. From the aforesaid provisions, without any cavil of doubt, we can conclude that there is a “deep and pervasive” control over the functioning of NBT. The society owes its existence to the resolution passed by the Government. It is primarily run by the funds provided by the Government. The all-pervasive administrative control rests with the Government at every stage in respect of the functioning of the NBT which is evident from the following:
- i) The Chairman of the Trust is appointed by the Government of India (Rule 3) and holds office during the Governments pleasure (Rule 13). Two of its members are representatives of the Ministry of Finance and the Ministry of Information and Broadcasting respectively (Rule 3).
 - ii) The meeting of the Trust is convened by the Chairman, i.e., the representative of the Government (Rule 18).

- iii) The Annual Report and the audited statement of accounts is required to be submitted to the Government of India (Rule 19).
- iv) The record of proceedings of the Trust are required to be sent to the Ministry of Education, Government of India (Rule 19).
- v) The Constitution of the Executive Committee of the Trust also indicates the pervasive administrative control of the Government. All the members of the Executive Committee are appointed/nominated by the Government (Rule 26).
- vi) The proceedings of the Executive Committee are also required to be sent to the Government of India (Rule 40).
- vii) The regulation making power of the Executive Committee is subject to prior approval of the Government of India (Rule 42).
- viii) Any alteration or extension of the purposes of the Society requires previous concurrence of the Government (Rule 60).
- ix) Sanction of the Government of India is required to be obtained before the Rules and Regulations of the Trust or any amendment to them is brought into force (Rule 62).

27. Learned counsel for the respondent has tried to play down the role of the Government by submitting that it is confined to the proper utilization of the grant. This argument stands negatived

by the provisions of the Memorandum of Association and Rules highlighted above. No doubt, every autonomous body with some kind of Government involvement cannot be construed to be 'State' within the meaning of Article 12 of the Constitution. However, when we find that NBT is within the tight grip of the Government and the control of the Government runs through at every stage right from the creation of the NBT, to the appointment of the members, to the fundings, to the appointment of various functionaries, to the controlling of the functioning through those appointed members and also through means of audit, etc. and further that the parameters within which NBT is to function, and even when the amendments are to be carried out, there cannot be any other conclusion but to say that it is an altar ego of the Government's instrumentality.

28. Submission of Mr. Jatan Singh that if NBT is treated an authority under Article 12 of the Constitution, then its employees would seek entitlement to the various benefits as available to Government employees is an unnecessary fear. Merely because NBT is declared an authority under Article 12, its employees would not be governed by Article 309 of the Constitution, which position is clarified in **O.P. Gupta (supra)** relied upon by the learned counsel himself.
29. We also do not find any merit in the contention of the learned counsel for the respondent that the NBT should not be treated as authority under Article 12 of the Constitution merely because Notification under Section 14 of the Administrative Tribunal Act covering NBT under this Act has not been issued.,

which has been issued in the case of NCERT. Section 14 of the Act enables the Government to issue Notification covering such authorities within the jurisdiction of Administrative Tribunal. Reverse, however, would not be true. A particular authority is not to be adjudged as authority under Article 12 of the Constitution on the basis as to whether there is such notification or not.

30. We, thus, conclude that the National Book Trust is 'other authority' and thus, 'State' within the meaning of Article 12 of the Constitution. Accordingly, we set aside the impugned order of the learned Single Judge and remit the case back to decide the same on merit.
31. Before we part with, we would like to put on record our appreciation for the useful assistance rendered by Mr. Ashish Mohan as an Amicus.

ACTING CHIEF JUSTICE

**(HIMA KOHLI)
JUDGE**

**(RAJIV SAHAI ENDLAW)
JUDGE**

JUNE 01, 2012
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