AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3186 of 2015

1. Vinod Rathore, S/o. Shri R.L. Rathore, aged about 44 years, R/o. Shakuntala Villa, Talapara Road, Vinoba Nagar Bilaspur, District Bilaspur (Chhattisgarh) **---- Petitioner No.1**

2. Indrapal Singh, S/o. Late Shri Jagdish Prasad, aged about 47 years, R/o. C/o. Ram Lochan Singh (P.W.D.), Gali No.2, Behind Mahatma Gandhi Stadium, Shahdol, District – Shahdol (Madhya Pradesh) **---- Petitioner No.2**

3. Bhola Nath Ram, S/o. Late Shri Jagannath Ram, aged about 50 years, R/o. Village Narahi, Post – Phehna, District Ballia (Uttar Pradesh) **---- Petitioner No.3**

4. Mundrika Prasad, S/o. Late Shri Shalik Singh, aged about 46 years, R/o. Aadarsh Colony, Infront of B.S.N.L. Office, Jahanabad (Bihar) **---- Petitioner No.4**

5. Ashraf Alam, S/o. Shri Shafique Alam, aged about 35 years, R/o. C/2, Nature City, Mungeli Road, Bilaspur (Chhattisgarh) **---- Petitioner No.5**

6. Chandra Mohan Mehra, S/o. Late Shri Gopla Ji Mehra, aged about 62 years, R/o. Near Ghas Bhairv Chowk Laban, P.O. Laban, District Bundi (Rajasthan) **---- Petitioner No.6**

7. Deepak Dwivedi, S/o. Shri R.S. Dwivedi, aged about 45 years, R/o. Kasturba Nagar, Near Gitanjali Apartment, Bilaspur (Chhattisgarh) **---- Petitioner No.7**

8. Abhijeet Nathan, S/o. Shri O.J. Nathan, aged about 46 years, R/o. Q. No. D/23, Rever View Colony, Koni, Bilaspur, District Bilaspur (Chhattisgarh) **---- Petitioner No.8**

Versus

1. Commissioner, Bilaspur Municipal Corporation, Vikas Bhawan, Near Nehru Chowk, Bilaspur (Chhattisgarh) **---- Respondent No.1**

2. State of Chhattisgarh, through: Secretary, Department of Urban Administration & Development, Mahanadi Bhawan, Naya Raipur (Chhattisgarh) **---- Respondent No.2**

3. Chief Resident Engineer, Meinhart Singapore Pvt. Ltd. (Branch Bilaspur), Nehru Complex, Vyapar Vihar, 1st Floor, Right Wing Bilaspur, Bilaspur, District Bilaspur (Chhattisgarh) **---- Respondent No.3**

4. Country Director, Meinhart Singapore Pvt. Ltd. (India Branch), A-8, Sector-16, Noida (Uttar Pradesh) **---- Respondent No.4**

For Petitioners : Ms. Renu Kochar, Advocate.

For Respondent No.1 : Mr. Arvind Shrivastava, Advocate.
For Respondent No.2/State : Mr. Yashwant Singh Thakur, Dy. Advocate General.
For Respondent No.3 & 4 : Mr. Mukesh Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

16/11/2015

1. Chief question falling for consideration is whether the respondent No.3 Meinhart Singapore Pvt. Ltd., a Multinational Company, which has established place of business within India, under the provisions of the Indian Companies Act, 1956, is an “instrumentality of the State” or “other authority” under Article 12 of the Constitution of India?

2. The Municipal Corporation, Bilaspur respondent No.1 herein entered into agreement with Meinhart Singapore Pvt. Ltd. respondent No.3 herein, a multinational company having established place of business within India, under the provisions of the Indian Companies Act, 1956 on 09.11.2006 for construction of sanitary sewerage system in

Bilaspur city covering an area of 30.42 sq.km.. The petitioners were appointed as Engineers by order dated 05.09.2011 for providing consultancy service for planning, designing and supervision of execution of sanitary sewerage system for Bilaspur city till the completion of project, on a gross remuneration of ₹ 30,000 per month. The said Company/respondent No.3 did not pay salary to the petitioners since November, 2014, for which they have filed this writ petition stating *inter alia* that though they have worked from November, 2014 to August, 2015, yet the said respondent had not paid salary to them for last nine months despite several reminders claiming that salary were made to the said Company/respondent No.3 & 5, therefore writ(s) in the nature of mandamus be issued commanding the respondents including official respondents to release the salary for the aforesaid period.

3. The Municipal Corporation, Bilaspur/respondent No.1 has not filed any return and has raised an objection that the Municipal Corporation has not been impleaded as party in the writ petition and the petitioners are employees of respondents No.3 & 4, and as such the respondent No.1 not being the employer of the petitioners has no legal responsibility to make payment of salary to the petitioners and it is the obligation of their employer respondents No.3

and 4 to make payment of their salary. Rights and liabilities, between the parties are governed by the agreement entered into by them and as such there is an arbitration clause (Clause-17) in the agreement and present writ petition as framed and filed is not maintainable in law and deserves to be dismissed as not maintainable.

4. Respondents No. 3 & 4 have filed a counter affidavit stating *inter alia* that the petitioners were employed by the respondent No.3 for execution of work as per terms of the contract executed between Municipal Corporation, Bilaspur and the respondent No.3 for construction and supervision of the sanitary sewerage system vide agreement dated 06.11.2006. It has further been pleaded that Municipal Corporation, Bilaspur has imposed penalty of ₹ 2,03,51,000/- against respondents No. 3 & 4 illegally and therefore the salary claimed by the petitioners could not be paid in time to them. Alternatively it has also been pleaded that primary responsibility of payment of wages to the workmen is that of the principal employer *i.e.* respondent No.1/Municipal Corporation, Bilaspur. In sum and substance respondents No.3 & 4 have supported the case of the petitioners herein.

5. Ms. Renu Kochar, learned counsel for the petitioners would submit that though respondent No. 3 is a multinational

company established a place of business within India under the provisions of the Companies Act, 1956 and engaged *inter alia* for providing service in the nature of integrated engineering planning and management in the area of civil/structural engineering and other related disciplines and the said company has entered into agreement with the respondent No.3 on 09.11.2006 and in order to complete the work, the petitioners were appointed as engineers by the respondent No.3 and the project in question under taken by the respondent No.3 is being completed under the instruction and supervision of the respondent No.1 and as such, the project in question *i.e.* sanitary sewerage system is a Governmental project undertaken by the respondent No.3 under the instruction of respondent No.1 therefore, the whole cost of the project has been disbursed by the State Government to the respondent No.1/Municipal Corporation, Bilaspur and therefore the writ petition as framed and filed is maintainable in law and appropriate writ in nature of mandamus be issued commanding the respondents to release the salary of the petitioners for the period mentioned in the writ petition.

6. Mr. Arvind Shrivsatava, learned counsel for the respondent Municipal Corporation, would submit that the respondent No.3 which is a multinational company only having place of

business within India, would not fall within the meaning of "other authority" under Article 12 of the Constitution of India and as such writ petition filed for enforcing the contractual obligation is not maintainable in law and liable to be dismissed with cost.

7. Mr. Mukesh Sharma, learned counsel for respondents No.3 & 4, would support the case of petitioners and would submit that respondent No.1 has illegally imposed huge penalty over the respondent No.3 and has not released the due amount in favour of the respondent No.3, therefore salary could not be paid to the petitioners right in time.
8. I have heard the learned counsel for the parties and also perused the records of the case with utmost circumspection.
9. Article 12 is included in Part-III of the Constitution of India, which pertains to fundamental rights. Article 12 provides that 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. The definition contained in Article 12 is for the purpose of application of provisions contained in Part-III, whereas Article 226 of the Constitution of India provides for power of the High Court to

issue directions, orders or writ(s) to any person or authority including, in appropriate cases any Government for enforcement of any of the rights conferred by Part-III and for any other purpose.

10. Now, the question would be what are the tests which are to be applied to arrive at the decision as to whether particular authority can be termed as "State" or "other authority" within the meaning of Article 12?

11. Way back in the year 1981 the Constitution Bench decision of Supreme Court in **Ajay Hasia v. Khalid Mujib Sehravardi**[1], culled out following six tests to arrive at the decision. Paragraph nine of the report states as under:-

> " (*1*) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)
>
> (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)
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> (3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)
>
> (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)
>
> (5) If the functions of the corporation are of public importance and closely related to Gov-

1 (1981) 1 SCC 722

ernmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

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

If on a consideration of these 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 case*, be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

12. The tests laid down in **Ajay Hasia's** case (supra) were considered by the Supreme Court in the matter of **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**[2], and it has been held that the control of the Government would be the decisive factor to hold whether particular body is "State" within the meaning of Article 12. Paragraph 40 of the report states as under:-

"40. 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 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

2 (2002) 5 SCC 111

> statute or otherwise, it would not serve to make the body a State."

13. In the matter of **Zee Telefilms Ltd. & another v. Union of India and others**[3], Their Lordships of the Supreme Court considered the question whether "BCCI" is a "State" within the meaning of Article 12 of the Constitution of India. The Constitution Bench summarized the legal position after taking note of **Pradeep Kumar Biswas** (supra) in paragraph 22 which states as under:-

> "22. Above is the *ratio decidendi* laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in *Pradeep Kumar Biswas case*. Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in *Pradeep Kumar Biswas case* for a body to be a State under Article 12. They are:
>
> *(1)* Principles laid down in *Ajay Hasia* 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.
>
> *(2)* The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.
>
> *(3)* Such control must be particular to the body in question and must be pervasive.
>
> *(4)* Mere regulatory control whether under statute or otherwise would not serve to make a body a State."

3 (2005) 4 SCC 649

Their Lordships finally concluded that BCCI is not a "State" under Article 12 by holding as under:-

> "30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising 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 case* is not a factor indicating a pervasive State control of the Board."

Their Lordships also held that Board is discharging activities akin to public duties or State functions and if there is any breach of constitutional or statutory obligation, the aggrieved party is entitled to seek redress under ordinary law or by way of writ petition under Article 226 of the Constitution of India. Paragraph 31 of the report states as under: -

> "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 the 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."

14. The statement of law laid down in **Zee Telefilms Ltd.** (supra) that BCCI is amenable to writ jurisdiction of the High Court under Article 226, even though it is not "State" within the meaning of Article 12, has been followed by Their Lordships of the Supreme Court recently in the matter of **Board of Control for Cricket in India v. Cricket Association of Bihar**[4] by holding as under: -

> "30......... Suffice it to say that if the government not only allows an autonomous/ private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a non-government body to undertake such function which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action. Our answer to question No.1, therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be State under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Contitution of India."

15. Very recently, in the matter of **K.K. Saksena v. International Commission on Irrigation and Drainage and others**[5], Their Lordships of the Supreme Court

4 AIR 2015 SC 3194
5 (2015) 4 SCC 670

considered and took note of the earlier judgments in the matters of **Ajay Hasia** (supra), **Pradeep Kumar Biswas** (supra) and **Zee Telefilms Ltd.** (supra) and have held that under Article 226 of the Constitution of India, power of the High Court is not limited to the Government authority which qualified to the State under Article 12. Power is extended to issue directions or order or writ(s) to any other person or authority, and the power of the High Court, takes within its sweep more authorities than stipulated in Article 12 by holding in paragraph 33 of the report as under:-

> "33. In this context, when we scan through the provisions of Article 12 of the Constitution, as per the definition contained therein, the "State" includes the Government and Parliament of India and the Government and legislature of each State as well as "all local or other authorities within the territory of India or under the control of the Government of India". It is in this context the question as to which body would qualify as "other authority" has come up for consideration before this Court ever since, and the test/principles which are to be applied for ascertaining as to whether a particular body can be treated as "other authority" or not have already been noted above. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be "State" under Article 12. Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by

> Part III, but also "for any other purpose". Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject-matter which can be dealt with under this article is also wider in scope."

16. In the matter of **<u>Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani</u>**[6], Their Lordships of the Supreme Court have considered the meaning of authority different from under Article 12 and held that any person or authority performing public duty and owing positive obligation to the affected party would be amenable to the writ jurisdiction subject to twin exceptions (i) If the right are purely of private character no mandamus can issue (ii) If the management of College is purely a private body with no public duty, mandamus will not lie and held as under in paragraphs 15, 17, 20 and 21:-

> "15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities

6 (1989) 2 SCC 691

are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not

> very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.
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> 21. In *Praga Tools Corpn. v. C.A. Imanual* this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed: (SCC p. 589, para 6 : SCR p. 778)
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>> "It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (*Cf. Halsbury's Laws of England*, 3rd Edn., Vol. II, p. 52 and onwards.)""

17. In the matter of **K.K. Saksena** (supra), Their Lordships have considered the matter in great detail in this regard and held that writ would not lie to enforce private law rights by observing in paragraph 43 as under:-

> "43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary

> to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

18. Keeping in view the law laid down by the Supreme Court, in above-stated judgments coming back to the facts of the case it would appear that respondent No.3 is a Multinational Company and respondent No.3 has entered into agreement with the Municipal Corporation, Bilaspur for construction of sanitary sewerage system and said work in question is governed by agreement so entered between them and the State has no say in the functions of the Company as such State has no either deep or pervasive control over the respondent No.3/Company and said Company is performing only private function and it cannot be characterised as public authority and it doesn't answer any of the test laid down in **Ajay Hasia's case** (supra). In a decision reported in **S. S. Rana v. Registrar, Co-operative Society and another**[7], Their Lordships of the Supreme Court have held that in case of a non-statutory body, the

7 (2006) 11 SCC 634

control of the State required thereover would mean that the same must satisfy the tests laid down by the Supreme Court in **Ajay Hasia case** (supra), as affirmed in **Pradeep Kumar Biswas** (supra) and held in paragraph 12 as under:-

> "12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

19. Way back, in the year 1969, in the matter of **The Praga Tools Corporation v. Shri C. A. Imanual and others**[8], Their Lordships of the Supreme Court have clearly held that writ petition would not lie against the company incorporated under the Companies Act. Paragraph 7 of report provides as under:-

> "7. The Company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a *mandamus*, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a *mandamus* or an order in the nature of *mandamus* could lie against the company."

20. Thus, the petitioners who were the employees of respondent No.3 company and said company is not

8 (1969) 1 SCC 585

discharging any public duty and there is no control of Government either financially, functionally or administratively or it is not dominated by any action of the Government and merely because the work in question sanitary sewerage system has been funded by the Government, it doesn't clothes the respondent-Company with the character and status of "other authority" under Article 12 of the Constitution and accordingly it is held that Meinhart Singapore Pvt. Ltd. is neither an instrumentality of the State nor "other authority" within the meaning of Article 12 of Constitution of India and consequently the writ petition would not be maintainable to enforce private law right of the petitioners.

21. As a fallout and consequence of the aforesaid discussion writ petition as framed and filed against the respondent No.3 not being an "other authority" within the meaning of Article 12 of Constitution of India deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3186 of 2015

Vinod Rathore and others

Versus

Commissioner, Bilaspur Municipal Corporation and others

HEAD NOTE

M/s. Meinhart Singapore Pvt. Ltd., a Multinational Company, is not State / other authority under Article 12 of the Constitution of India.

मेसर्स मेनहार्ट सिंगापुर प्रायवेट लि0, जो कि एक बहुराष्ट्रीय कंपनी है, भारतीय संविधान के अनुच्छेद 12 के अंतर्गत राज्य/अन्य प्राधिकारी नही है।