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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5195 OF 2015

Shri Kishor Madhukar Pinglikar .. Petitioner
Vs.
Automotive Research Association of India .. Respondent

Mr. A. V. Anturkar, Sr. Advocate a/w. Ms. Kalyani Tulankar I/b Mr. S. V. Marne for the Petitioner.

Mr. Avinash K. Jalisatgi a/w. Mr. T. R. Yadav for the Respondent.

**CORAM : R. M. SAVANT AND
NITIN W. SAMBRE, JJ.**
DATE : 24th OCTOBER, 2018.

P. C.

1. The above Writ Petition takes exception to the letter dated 29.05.2015 issued by the Respondent by which the Petitioner was informed that his services have been terminated with effect from 02.06.2015. The termination of the services of the Petitioner has its genesis in a complaint made against the Petitioner of sexual harassment at the workplace. However, it is the case of the Petitioner in the above Petition that without following the modality of enquiring into the said complaint, the Petitioner's services have been terminated.

2. On behalf of the Respondent, preliminary objection has been raised as regards the maintainability of the above Writ Petition on the ground that

the Respondent-Automotive Research Association of India is not a State within the meaning of Article 12 of the Constitution of India. The said objection is founded on the Division Bench Judgment of this Court dated 11.01.2002 in Writ Petition No. 3607 of 2001 in the case of **Nandkumar Nivrutti Baptiwale Vs. Automotive Research Association of India** reported in **2002 (2) Mh.L.J. 191** wherein as can be seen the Respondent in the instant Petition was also Respondent in the said Petition and the maintainability of the said Writ Petition was challenged on the ground that the Respondent i.e. Automotive Research Association of India is not a State within the meaning of Article 12 of the Constitution of India.

3. In view of the said objection raised on behalf of the Respondent in the said Writ Petition, the Division Bench of this Court Coram : R. M. Lodha and S. M. Bobde, JJ.(as their Lordships then were) carried out an indepth analysis as regards whether the Respondent is a State within the meaning of Article 12 on the touch stone of the tests laid down by the Apex Court in the case of **Ajay Hasia Vs. Khalid Mujib Sehravardi** reported in **(1981) 1 SCC 722**. The Division Bench has also considered the statutory provisions as contained in the Motor Vehicles Act and the Rules therein by which certain duties and obligations have been cast on the Respondent. The test of effective and pervasive control of the Central Government, as also the test of financial involvement of the Government, the manner in

which the affairs of the Respondent are managed, the functions of the Respondent was also considered and on such indepth analysis the Division Bench held that the Respondent was not a State within the meaning of Article 12 of the Constitution and therefore the said Writ Petition was not maintainable.

4. The learned Senior Counsel appearing on behalf of the Petitioner Shri A. V. Anturkar fairly accepted the fact that there is already a adjudication by a Division Bench of this Court as regards whether the Respondent was State or not within the meaning of Article 12. However, the learned Senior Counsel would seek to sound a different note by contending that after the Judgment of the Division Bench in **Nandkumar's case** (supra) there has been a change in law on account of the constitution Bench Judgment of the Apex Court in the case of **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology**, (2002) 5 SCC 111 and thereafter in **Zee Telefilms Ltd. & Anr. Vs. Union of India & Ors.** (2005) 4 SCC 649 which refers to the Judgment in the case of **Pradeep Kumar Biswas** (supra). It was the submission of the learned Senior Counsel that the Apex Court in **Zee Telefilms Ltd.** (supra) has diluted the rigours of the tests to be applied in terms of **Ajay Hasia's case** (supra). The learned Counsel sought to draw our attention to excerpts of the said Judgment especially paragraphs 31 and 33 thereof. It was, therefore, the submission

of the learned Senior Counsel that in view of change in law, this Court may not consider the issue as concluded. The learned Senior Counsel thereafter sought to draw our attention to the provisions of Motor Vehicles Act and the Rules and on the said basis sought to submit that the Respondent carries out a public duty in as much as the vehicles which are to be introduced for sale in the country are first tested by the Respondent. It was also the alternative submission of the learned Senior Counsel that assuming that the Respondent is not a State in terms of paragraph 33 of **Zee Telefilms Ltd.** (supra), a writ would lie against the Respondent in view of the public duty which the Respondent is required to perform.

5. The aforesaid submission of the learned Senior Counsel Shri Anturkar appears to be attractive but we are afraid in view of the earlier adjudication in **Nandkumar's case** (supra) does not have merit. We have perused the Judgment in **Zee Telefilms Ltd.** (supra) and especially paragraphs 31 and 33. No doubt, the Apex Court in **Pradeep Kumar Biswas** (supra) which has been relied upon in **Zee Telefilms Ltd.** (supra) has observed that the principles laid down in **Ajay Hasia's case** (supra) 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. Though the said observation has been made by the Apex Court in so far as **Ajay Hasia's case** is concerned, we do not find that the tests

laid down to consider whether an entity is a State within the meaning of Article 12 are diluted in any manner. The well settled and well ingrained tests laid down over the years still hold good. The Division Bench of this Court in **Nandkumar's case** (supra) has applied all the said tests and has thereafter come to a conclusion that the Respondent is not a State within the meaning of Article 12. We are, therefore, not in a position to take a different view than the view taken by the Division Bench in **Nandkumar's case** (supra).

6. In that view of the matter, the above Writ Petition is not maintainable. The same is, accordingly, dismissed. However, it would be open for the Petitioner to avail of such remedy as is otherwise available in law for redressal of his grievance.

[NITIN W. SAMBRE, J.]

[R. M. SAVANT, J.]