IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2796 OF 2005
WITH
WRIT PETITION NO. 1388 OF 2006

Kishor S. Bhat ...Petitioner
vs.
Indian Banks' Association ...Respondent

Mr. Mihir Desai, Senior Advocate a/w. Devyani Kulkarni for Petitioner in both Petitions.
Mr. Ashok Shetty for Respondent in both Petitions.

CORAM : A.A. SAYED &
M.S. KARNIK, JJ.

RESERVED ON : 31st JULY, 2017
PRONOUNCED ON : 6th SEPTEMBER, 2018

JUDGMENT (PER M.S. KARNIK, J.) *:-*

A common question is involved in these two Petitions filed by the same Petitioner.

2. In W.P.No. 2796 of 2005 the Petitioner seeks to challenge the order dated 6/1/2005 passed by the Respondent -Disciplinary Authority bringing down the pay of the Petitioner by two stages in the scale of payment for a period of two years with cumulative effect. In W.P.No. 1388 of 2005 the Petitioner seeks to challenge the order dated 23/11/2005 terminating the services of the Petitioner alleging illegal victimization.

3. The Petitioner was working as Vice President Taxation and Compliance with the Respondent – Indian Banks' Association and was *given the charge of Group VI-Taxation and Accounting Policy.*

4. At the time of admission of this Petition, this Court on 4th December, 2006 passed the following order :-

> *"P.C.*
>
> *It is contention of the respondents that respondent No.1 is not State within the meaning of Article 12 and consequently the petition as filed is not maintainable. That issue will have to be decided on merit and not at admission stage. The petitioner has impugned both the orders of dismissal as well as other punishments imposed earlier. Considering the controversy Rule in both the petitions.*
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> *2. Respondents waive service."*

5. After the matter was heard and closed for pronouncement of the judgment, the same was listed for further hearing on 8th August, 2018 by consent of the learned Counsel. We have accordingly heard learned Counsel on the issue whether Respondent is not State within the meaning of Article 12 and consequently the petition as filed is not maintainable.

6. Learned Senior Counsel for the Petitioner submits that Respondent is State within the meaning of Article 12 of the Constitution of

India. In his submission, the Respondent is an organization of both Public Sector and Private Sector Commercial Banks in India including the State Bank of India, nationalized banks and other scheduled banks. He submits that these commercial banks carry on Banking business, pursuant to a license under the Banking Regulations Act, 1949. According to him, the officials of the management of the Banks are the members of the Respondent organization from amongst whom the Managing Committee of the Respondent is constituted. Learned Senior Counsel submits that the managements of the Banks are generally represented by the executive heads of these Banks. It is his submission that the Chairman and Managing Director of the Public Sector Banks are appointed by the Government of India. He therefore submits that the Respondent is discharging public functions and duties and therefore, is a 'State' within within the meaning of Article 12 of the Constitution. In any case, learned Senior Counsel submits that the Respondent is an instrumentality or other authority of the State.

7. Learned Counsel for the Respondent on the other hand submits that the Respondent is not 'State' within the meaning of Article 12 of the Constitution. According to him, the Respondent viz. Indian Banks' Association is not a registered Association. He submits that Respondent is not statutory body established under any special legislation. It is a *completely autonomous body. He submits that merely because the Respondent is associated with State functionaries will not make it an instrumentality of the State. Learned Counsel submits that the Government does not exercise control over the functioning of this Association. In any case, he submits that the Petitioner has not produced any material on record to substantiate his plea that the Respondent is 'State' within the meaning of Article 12 of the Constitution. He further submits that the Managing Committee of the Respondent comprise of member banks of which are several banks, public sector banks, etc. The Respondent acts as an advisory body or think tank for Banks. Respondent tenders advice on several matters such as award of payment of the employees to banks, human resources of the banks, etc. According to him, though all the expenses of the Respondent which is a non profit making Association of the Banks are shared by the member banks comprising of public sector banks also, that does not by itself make the Respondent an instrumentality of the State.*

8. Learned Counsel relied upon the decision of this Court dated 7th May, 2014 in the case of **Mohan Laxman Gamare vs. Institute of Banking Personnel Selection (IBPS) & anr.** *in* **W.P. (L) No. 1042 of 2014** *in support of his submission. Learned Counsel submits that this Court was pleased to hold that an Institute of Banking Personal Selection*

(IBPS) which is completely autonomous body merely conducting examination for recruitment for personal banking and other organization and which is body similar to the present Respondent – Association was held not to be a "State" within the meaning of Article 12 of the Constitution of India.

9. Learned Counsel submits that having regard to the tests laid down by the Apex Court in the following cases :

(i) Ramana Dayaram Shetty vs. The International Airport Authority of India & others – [1979 (3) SCC 489]

(ii) Ajay Hasia and others vs. Khalid Mujib Sehravardi and others - [(1981) 1 SCC 722]

(iii) Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and others – [(2002) 5 SCC 111) ;

(iv) Federal Bank Ltd. vs. Sagar Thomas and others – [(2003) 10 SCC 733] ;

(v) The Praga Tools Corporation vs. Shri C.A. Imanual and others - [1969 (1) SCC 585] ;

(vi) Anupama Naik vs. The Standard Chartered Bank & ors. - [2007 (5) ALL MR 278] ;

(vii) Uptron India Ltd. vs. Shammi Bhan and another – [(1998) 6 SCC 538], the Respondent – Association cannot be said to be a "State" so as to make it amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India. Learned Counsel also relied upon the decision of this Court in the case of **R.V. Dnyansagar vs. Maharashtra Industrial and Technical Consultancy Organization**

Limited and another *reported in* **[2003 (2) Mh.L.J. 547)** *and* **C. V. Madhavan & ors. vs. The Trustees, Williamson Magor & Co. Ltd. And Others in W.P. No.2661 of 2001** *to contend that the Respondents is not a "State". In any case he submits that no material has been produced on record by the Petitioner to satisfy any of the tests as formulated by the Apex Court for the Respondent – Association to be considered as a "State" within the meaning of Article 12 of the Constitution.*

10. We have heard learned Counsel for the parties. We have accordingly perused the material on record and the pleadings to arrive at the finding as to whether Respondent is not "State" within the meaning of Article 12 of the Constitution of India. Thus principles for determining as to whether particular body is a "State" is by now well settled by the Apex Court, some of the decisions of which are cited in the earlier part of this Judgment.

11. Learned Counsel for the Respondent has submitted that Respondent is not a State or other authority under Article 12 of the Constitution of India. He has submitted that the Respondent is an Association which is not formally registered under any statutory provision. It is not disputed that the present Association is not formally registered under any statutory provisions.

12. The only material placed on record is in the form of the rules of the Indian Banks' Association as adopted in the Special General Meeting held on 20th August, 2014. The objects of the Association are spelt out in the Rules which reads thus :

Chapter III *provides for, Membership of the Association.*

Clause 6 *provides that, any Bank, Corporation, Company or Society carrying on the business of Banking in India and governed by the Banking Regulation Act, 1949 shall be eligible to become an Ordinary Member of the Association.*

Clause 7 *provides for, any Society, Association or Organisation, which, in the opinion of the Managing Committee is connected with the banking industry or any financial institution approved by the Managing Committee or any Co-operative Bank or Foreign Bank having an office in India not eligible to become an Ordinary Member shall be eligible to become an Associate Member of the Association.*

Chapter IV*, Clause 27-a provides for, basic annual subscription and share in expenses.*

Chapter VI *provides for Managing Committee.*

Clause 48 *provides for, composition and tenure of the Managing Committee, which reads thus :-*

> *48. The Managing Committee shall consist of not more than 31 members as under :*

i)	*16*	*members representing Public Sector Banks and being Chief Executives of Public Sector banks.*
ii)	*4*	*members representing Foreign Banks incorporated outside India and carrying business in India and being Heads of Banks operating in India.*
iii)	*4*	*members representing Private Sector Banks and being Chief Executives of Private Sector Banks.*
iv)	*2*	*members representing Associate Banks of the State Bank of India of which at least one shall be a Managing Director of one of the Associate Banks.*
v)	*3*	*members representing Co-operative Banks and being Chief Executives of Co-operative Banks.*
vi)	*2*	*members co-opted by the Managing Committee.*
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13. The Rules called as 'Indian Banks' Association Staff (Amendment) Rules' are also produced on record. However, we find that the said Rules are not useful to decide the present controversy.

14. The Apex Court in the case of **Federal Bank Ltd.** *(supra) has held that no doubt a Mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The Apex Court has held that merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the* *interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. The Apex Court therefore held that a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. Their Lordships further held that a private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.*

15. A useful reference can be had to be decision of the Apex Court in the case of **Ajay Hasia v. Khalid Mujib Sehravardi and Ors.** *(supra) which is a Constitution Bench judgment wherein P.N. Bhagwati, J. spoke for the Court. The test which he had laid down in* **Ramana Dayaram Shetty's** *case were summarized by His Lordship as six in number and 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.

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 are of public importance and closely related to government functions, it would be a relevant factor in classifying the corporation as an 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."

16. As indicated earlier, Respondent is neither a statutory body nor is a registered Association. Respondent Association comprises of members viz. Bank, Corporation, Company or Society carrying on the business of Banking in India. Even any Society, Association or Organisation, which, in the opinion of the Managing Committee is *connected with the banking industry or any financial institution approved by the Managing Committee or any Co-operative Bank or Foreign Bank having an office in India not eligible to become an Ordinary Member shall be eligible to become an Associate Member of the Association. The rules of the Association provides that the affairs, business and funds of the Association shall vest in and shall be managed by a Managing Committee consisting of not more than 31 members of which 16 members are representing Public Sector Banks and being Chief Executives of Public Sector banks ; 4 members representing Foreign Banks incorporated outside India and carrying business in India and being Heads of Banks operating in India ; 4 members representing Private Sector Banks and being Chief Executives of Private Sector Banks ; 2 members representing Associate Banks of the State Bank of India of which at least one shall be a Managing Director of one of the Associate Banks and 3 members representing Co-operative Banks and being Chief Executives of Co-operative Banks and 2 members co-opted by the Managing Committee.*

17. Having regard to the objects of the Association, which are inter alia to promote and develop in India sound and progressive banking principles, practices and conventions and to contribute to the developments of creative banking, to render assistance and to provide various common services to Members and to the banking industry, to *develop and implement new ideas and innovations in banking services, operations and procedures, to project a good public image of banking as a service industry and develop good public relations, to act as an agent or a representative of a member or members in respect of matters connected with any of their operations working or administration, in our opinion that this by itself cannot make the Association a "State" within the meaning of the Constitution.*

18. Having regard to the tests laid down by the Apex Court, in our opinion, the Respondent – Association cannot be said to an instrumentality or agency of the State. We find that the member has to pay basic annual subscription and share in expenses as set out in the Rules. We further notice that the members have to apply to the Association and if admitted as members shall pay an entrance fee of an amount equivalent to its Basic Annual Subscription and Share in Expenses and non payment of Basic Annual Subscription and Share in Expenses shall result in cessation of membership in accordance with the Rule 23 of the Rules. From the 31 members who constitute the Managing Committee, though 16 members are to be from the Public Sector Banks, the Rules provide that for meetings of the Committee any six members of the Managing Committee shall constitute Coram. It is nobody's case that Government is in any way rendering any financial assistance to the Association. The membership of *the Association is also not compulsory. The material on record is not all sufficient to indicate that an Association enjoys monopoly status which is State conferred or State protected. The Association is not created under some statute. It is not pointed out as to by which statute the Association is governed or what are the duties and responsibilities which are fastened on the Association statutorily which they are bound to comply with, in which case for violation thereof a writ can certainly be issued. The Apex Court has held that even in respect of any non compliance or violation of any statutory provision by the private body a difficulty may arise in issuing a writ as in that event the writ may not be issued at all and other remedies as may be available, may be resorted to.*

19. Taking into consideration the materials on record, this aspect which has been enumerated in the case of **Ajay Hasia v. Khalid Mujib Sehravardi and Ors.** *(supra) and referred to in the decision of* **Ramana Dayaram Shetty's** *Case (supra) and in the case of* **Pradeep Kumar Biswas** *(supra) may be applied to the facts of the present case to see as to whether those tests apply to the Respondent - Association or not. As indicated earlier, no kind of financial assistance is provided by the State. The Association does not enjoy monopoly status which is State conferred or State protected. So far as control over the affairs of the Association is concerned, the affairs, business and funds of the Association are vested in* *and are managed by a Managing Committee. As discussed earlier, though out of these 31 members representing Managing Committee 16 members are to be from those representing public sector banks, nevertheless for meetings of the Committee any six members of the Managing Committee constitute the Coram at the meeting of the Committee. It is not as if the representatives of the public sector banks have absolute control over the Management of the Association. No governmental agency or officer is connected with the affairs of the Association nor anyone is member of the Managing Committee. In the normal functioning of the Association there is no participation or interference of the State or its authorities. The object of the Respondent Association which can be seen from the objects enumerated in the Rules is to promote and develop in India sound and progressive banking principles, practices and conventions and to contribute to the development of creative banking amongst others. Neither do we find that there is existence of deep and pervasive State control over the affairs of the Association so as to indicate that the Association is a State agency or instrumentality. The Association is formed for the objects set out hereinbefore and having regard to the functions and activities it cannot be said that it closely related to the governmental functioning. Undoubtedly, some of the functions of the Associations though appear to be of public importance but that by itself will not be sufficient to conclude that Respondent-Association is a "State" within the meaning of the Article*

12 of the Constitution of India. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We do not find such conditions are fulfilled in respect of the Respondent association.

20. The burden of proof that the Association is an instrumentality or agency of the "State" is on the Petitioner. On the basis of the materials on record viz. Rules of Indian Banks' Association, in our opinion, it cannot be said that the tests which are relevant for determining whether Respondent Association is an instrumentality or the agency of the State are satisfied. The Association is admittedly an unregistered body. The Association is a private body over which Government has no deep and pervasive control. Having given due consideration to the determinative tests laid down by the Apex Court and in the light of the settled legal position as well as the facts in the present case, we are of the view that Respondent Association is not a "State" within the meaning of the Article 12 of the Constitution of India so as to make it amenable to the writ jurisdiction of this Court.

21. Hence Writ Petitions are dismissed with no order as to costs.

22. Needless to mention we have not gone into the merits of the matter. All contentions in that regard are kept open. The Petitioner is at a liberty to take recourse to the remedy as may be available in law.

(M.S. KARNIK, J.) **(A.A. SAYED, J.)**