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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14th November 2018

Decided on: 27th November 2018

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LPA 663/2016 & CM APPL. 44465/2016

MOHIT MAHAJAN

.... Appellant

Through: Mr. Santhosh Krishnan,
Advocate.

versus

FOUNDATION FOR INNOVATION

AND TECHNOLOGY TRANSFER (FITT) & ORS.

..... Respondents

Through: Mr. Rahul Narayan, Advocate
for Respondents 1 and 2.

Mr. Bhagwan Swarup Shukla,
CGSC with Mr. Kamaldeep
and Mr. Sharvan, Advocates
for Respondent 3.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

JUDGMENT

Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 26th August, 2016 passed by the learned Single Judge dismissing the Appellant's Writ Petition (C) No. 7502/2016. This appeal raises important questions of law concerning the interpretation of the word 'establishment' under Section 2(k) of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the PWD Act') and Section 47 thereof.

Background facts

2. The background facts are that the Appellant applied in 2001 pursuant to an advertisement issued by the Respondent No.1, Foundation for Innovation and Technology Transfer ('FITT') for the post of Executive Consultant, Technology Transfer and IPR. The advertisement stated that the appointment would be on 'contract initially for a period of three years renewable with mutual consent'. The Appellant was selected and appointed on 30th October, 2001 for a period of three years which appointment was formalised by a contract dated 3rd December, 2001.

3. On 3rd December, 2004 the Appellant's contract was extended. It was again extended on 18th January 2008. On 27th November 2008 it was extended for two years. On 19th November 2010 his contract was further extended for three years. In the last mentioned extension FITT 'strongly advised' the Appellant to be more 'proactive'. It was stated that the three years' term was subject to 'satisfactory service review after one year'.

4. It is stated that from 2008 onwards the Appellant began to suffer from serious macular degeneration in his eyes with significant impairment of vision. He enclosed with his writ petition a certificate dated 28th June 2012 issued by Dr. Rajendra Prasad Centre for Ophthalmic Sciences, All India Institute of Medical Sciences ('AIIMS') certifying that he is 100% visually handicapped. FITT in the meanwhile decided not to renew his contract. On 7th November 2013 the Appellant was informed that his services would not be required with effect from 7th February, 2014. By that time he had served FITT continuously for over 12 years.

5. On 28th November 2013 the Appellant approached the Disabilities Commissioner under the PWD Act with an application claiming protection under Section 47 thereof. In defending itself in the said application, FITT *inter-alia* contended that:

- (i) it was not an 'establishment' under Section 2(k) of the PWD Act.
- ii) the Appellant was in fact not suffering from any disability;
- iii) the termination of the Appellant's services was not on account of such disability.

6. Simultaneously the Appellant also filed WP(C) No. 749/2014 in which the learned Single Judge issued notice on 31st January, 2014 and also passed an interim order that till the next date of hearing the order dated 7th November 2013 in effect staying the termination of his services. On 10th March 2014 the writ petition was disposed of with the direction to the Disabilities Commissioner to adjudicate and dispose of the complaint within a period of two weeks during which the interim order dated 31st January 2014 would continue. It was further directed that in case the decision was adverse to the Appellant no precipitate action would be taken by FITT for a period of two weeks to enable the Appellant to seek appropriate remedies.

7. The Appellant's complaint was disposed of by the Disabilities Commissioner by an order dated 2nd December, 2014. It was held that FITT was not an establishment under Section 2(k) of the PWD Act. It was further held that even if FITT was presumed to be an establishment for the purpose of PWD Act, the Appellant would not have the protection under Section 47 thereof as he had been serving in FITT purely on contract basis. He had duly

accepted the terms of services that were set out in the contract. According to the Disabilities Commissioner, the word 'employee' referred to in Section 47 of the PWD Act "is the one who is appointed to a post permanently, who had attained the age of superannuation".

8. Aggrieved by the order of the Disabilities Commissioner the Appellant filed Writ Petition (C) No. 8947/2014 before this Court. On 16th December, 2014 while directing notice to issue in the writ petition, the learned Single Judge passed an interim order restraining FITT from taking coercive steps for terminating the services of the Appellant.

Settlement dated 27th May 2015

9. On 27th May 2015 the said writ petition was disposed of in terms of the settlement agreement of that date entered into between the parties. The terms of the contract constituting the terms were set to form part of the order. Among the terms were the following:

(i) The contract would carry the same pay and benefits as per the expired contract 'but will be for one year (1 year) and renewable only at the option of FITT depending up on your performance, conduct and integrity'. (ii) The Appellant would not claim 'permanence/permanent employment' at FITT by virtue of the new offer or any previous contract. He would also not represent that he was 'employed by IIT Delhi, either contractually or in any permanent position'.

(iii) The Appellant was not to question the chain of command and disrupt the smooth functioning of the office; would not avail of leave unless he had the prior written approval or consent from the Managing Director over E-

mail/SMS/Telephone. There were other general conditions concerning the conducted work and ensuring discipline.

10. Para 6 of the contract read as under:

“6. You accept that all complaints made by you with respect to harassment within FITT, whether on the ground of disability or otherwise stand withdrawn and will not be repeated in the future. You accept that your work at FITT has not been impeded.”

11. While incorporating the said terms as part of the order dated 27th May 2015 this Court clarified as under:

“5. It is clarified that para-6 of the contract dated 27.5.2015 will not mean that any rights which the petitioner may have under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 will in any manner stand given up, and which right if the petitioner has will always be available to him in accordance with law.

It is stated that this clarification is being given as an abundant caution but none of the parties intend to litigate on this aspect as stated by the respective counsels before this Court, inasmuch as, both the parties agree to follow the terms of compromise, both in the letter and spirit.”

12. It must be mentioned here that the above para 6 was inserted in the context of the complaint the Appellant made as regards the harassment faced by him within the FITT after incurring the disability. According to the Appellant even after the above settlement, he was treated unfairly at his work place. When expiry of his contract was imminent, the Appellant received no word as to its extension. This triggered the second round of litigation.

Second round of litigation

13. On 1st February, 2016 the Appellant filed a fresh complaint before the Disabilities Commissioner. FITT challenged the maintainability of that complaint by filing WP (C) No 2846/2016 which was dismissed as withdrawn by a learned Single Judge of this Court on 1st April, 2016 with liberty to pursue the grounds urged therein before the Disabilities Commissioner.

14. The Appellant too filed WP (C) No. 4700/2016 for protection of his service during the pendency of the complaint before the Disabilities Commissioner. This writ petition was disposed of by this Court on 24th May 2016 after noting that the date of hearing before the Disabilities Commissioner had been advanced to 25th May 2016 and the contract period of one year was to expire on 26th May 2016. It was clarified that if the Appellant was aggrieved by the order of the Disabilities Commissioner, he could seek appropriate remedies available to him in law.

15. For the second time on 21st June 2016 the Disabilities Commissioner rejected the Appellant's complaint it was held that he was only a contractual appointee and therefore not covered under Section 47 of the PWD Act. It was further held that in any event the FITT was not an 'establishment' under Section 2(k) of the PWD Act. FITT then issued a letter dated 4th July 2016 stating that while the salary paid to him for the period from 8th November 2013 to 26th May 2015 would not be recovered, however, 'any service benefits, if paid during the period shall be recovered as there was no valid service contract'.

16. The Appellant then filed WP(C) No. 7502/2016 challenging the order dated 21st June 2016 of the Disabilities Commissioner and the communication dated 4th July 2016 of FITT. He also sought a mandamus for reinstatement in service.

Impugned judgment of the Single Judge

17. By the impugned judgment the learned Single Judge dismissed the writ petition holding as under:

(i) Under the scheme the PWD Act, Section 47 thereof was applicable ‘to a person who is a permanent employee and not a person who is a contractual employee’.

(ii) However, a contractual employee while in service would have a right to seek protection under the PWD Act for the tenure of his employment. In terms of the settlement arrived at between the parties the contract dated 27th May 2015 was only for a period of one year. That period had lapsed and the Appellant did not seek to enforce any rights apropos that one year.

(iii) In the case of ***Adarsh Kumar Khanna v. Union of India 2011 (4) SCT 460 (Delhi)*** the legislative intent behind Section 47 of the PWD Act was held “not to accord extraordinary benefit” to people specifically excluded from the purview of the PWD Act.

(iv) The continuation of the Appellant’s employment was entirely in the discretion of FITT. The reason for non-renewal of the contract was not justiciable. The Court could not re-write contracts of the employment. The

Appellant had not shown how any rights under the PWD Act had been violated. Further the Appellant had accepted under Clause 2 of the Settlement Contract that he would not claim to be in permanent employment either with FITT or with IIT.

18. Aggrieved by the aforementioned decision the present appeal was filed. On 17th May 2018 this Court directed the Central Government standing counsel to obtain instructions whether FITT was funded by the Government of India. On 23rd October 2018 the additional documents sought to be placed on record both by the Appellant as well as the FITT were taken on record. At the hearing on 14th November 2018 the Court is informed by the Central Government Standing Counsel that he had instructions to state that the Ministry of Human Resources Development was not giving any funds to the FITT.

Is FITT an establishment under the PWD Act?

19. Mr. Santosh Krishnan, learned counsel appearing for the Appellant first addressed the Court on the question whether under Section 2(k) of the PWD Act FITT could be stated to be an ‘establishment’ to which the PWD Act would apply. He submitted that the documents placed on record both by the Appellant as well as FITT bore out the contention that at the outset it is pointed out that before the learned Single Judge this issue was not examined and therefore FITT should not be permitted to raise it. It was only in the counter affidavit filed in the appeal that FITT had raised the issue. Without prejudice to the submission he pointed out that FITT was set up and established by IIT Delhi and the Government of India.

20. Mr. Krishnan referred to the letters dated 14th February 1989, 29th March 1989 and 22nd June 1993 exchanged between the IIT and Government of India which is placed on record. He then referred to the Memorandum of Association ('MoA') dated 16th April, 1992 of FITT which according to him showed that the objects are tied to the work at IIT, Delhi. He pointed out on dissolution the assets of FITT are to vest in IIT Delhi on a "first right refusal basis." Further according to him in terms of the letter dated 21st January 2000 from the IIT, Director, Delhi to Ministry of HRD, Government of India it was revealed that in the specific area concerning the Appellant i.e. IPR & Technology Transfer, the proposal to expand FITT's work was first made to the Government of India.

21. Mr. Krishnan drew attention to the advertisement of 2001 inviting applications for the post of Executive Consultant (TT and IPR) stated that "FITT was set up by the IIT Delhi ('IITD') with a view to achieving quantum jump in the level of interaction and collaboration with industry". The job profile was set out as providing marketing perspective "in selection and implementation of R & D Projects and technology transfer of the research outputs at the IIT Delhi." Thus FITT had itself held out to be an organisation established by IIT for work relating to IIT Delhi.

22. It was further submitted that FITT has received in the past and continues to receive Governmental Aid in the form of grants was for specific purposes. He submitted that irrespective of whether most of the funds at IIT did not come from the Government the fact that it did receive grants in the dispute

and he submitted that FITT was therefore aided by the Government. He referred to the documents submitted by FITT itself which showed that there was a close and continuing interdependence between the parent and the subsidiary.

23. According to Mr. Krishnan the regulations showed that FITT's Governing Council was controlled by IIT, Delhi/Government of India. Of the 15 persons in the Governing Council, seven were representatives or nominees of the Government/IIT Delhi. Out of the remaining eight, four were appointed on the recommendation of the IIT, Director. The Managing Director of IIT, Delhi was selected by Governing Council which in turn was controlled by IIT Delhi. He submitted that the Disabilities Commissioner finding dated 2nd December 2014 had merged with this Court's order dated 27th May 2015 and in any event there was no declaration of the legal position by this Court in its order dated 27th May 2015 that FITT was not an establishment.

24. Mr. Rahul Narayan, learned counsel for FITT and IIT (Respondents 1 and 2 respectively) submitted that FITT is not an establishment within the meaning of Section 2(k) of the PWD Act. According to him, the findings of the Disabilities Commissioner in this regard have not been overturned and in any event by virtue of the Settlement dated 27th May 2015 the Appellant was estopped from raising the issue. Reference is made to the decision in ***Dalco Engineering v. Satish Prabhakar (2010) 4 SCC 378*** where it was held that private society is not an establishment for the purposes of the PWD Act. It is pointed out that FITT is a lean organisation "consisting of only 12 full time

employees (9 on standard service contract including 3 executives, 2 probationers on consolidated pay and 1 office boy – again on consolidated pay) retainable on proven performance.”

25. Mr. Narayan stated that when FITT was set up it received a one-time seed capital grant of Rs.1.62 crores from the Ministry of Home Affairs, Government of India which is held in the corpus of FITT. Further FITT operated from the campus of IIT Delhi as a commercial establishment for which it continues to pay market rent to IIT Delhi. The budget and accounts of FITT would show that the predominant source of income was from service charges for completed projects, royalty from technology transfers and membership fees from corporate members. It is pointed out that FITT receives no governmental funding to sustain its manpower or support its own operational expenses. It is stated that FITT has received a one-time grant from the Technology Development Board of Department of Industrial and Scientific Research for supporting start up units in the incubator through seed loans. It is not authorised to use this money for any of its own purposes. Similarly one time grants were also received from DIET and BIRAC (Department of Biotechnology). These grants were not to sustain FITT but only for disbursement to start up units. These were undertaken as part of FITT’s charitable activities to promote science, technology and entrepreneurship.

26. The above submissions have been considered. The question of FITT being an establishment under the PWD Act was decided in the first round against the Appellant by the Disabilities Commissioner. This finding was not upset in the judgment dated 25th May 2015 which recorded a settlement

between the parties. Although it was clarified that para 6 of the settlement would not mean that any rights which the Appellant may have under the PWD Act “will in any manner stand given up” and which right if the Appellant has “will always be available to him in accordance with law”, the said judgment also noted that that this was being said out of “abundant caution” and that “none of the parties intend to litigate on this aspect as stated by the respective counsels before this Court, inasmuch as, both the parties agree to follow the terms of compromise, both in the letter and spirit.”

27. It is, therefore, a moot point, whether after the aforementioned settlement the Appellant could have once again raised a dispute under the PWD Act before the Disabilities Commissioner. It must be pointed out that while the learned Single Judge in the impugned judgment has examined whether Section 47 PWD Act would apply to a contractual employment, the question whether FITT can be said to be an ‘establishment’ within the meaning of Section 2 (k) PWD Act was not addressed. Nevertheless, with the Appellant having unsuccessfully done so for the second time, the issue whether the PWD Act would apply does arise for determination, and requires to be decided.

28. Section 2(k) of the PWD Act, which defines ‘establishment’, reads as under:

"2(k) "Establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of 'the Companies Act, 1956 and includes Departments of a Government;"

29. FITT is a society registered under the Societies Registration Act, 1860. Could it be said to be a 'corporation established by or under a' central Act? In *Dalco Engineering Pvt. vs. Satish Prabhakar Padhye* (*supra*) the Supreme Court was seized of the question whether the PWD Act applied *vis-a-vis* employment in the private establishment. Question No.1 that was formulated in the said case by the Supreme Court is set out in para 11 of the judgment and reads as under:

“(i) Whether a company incorporated under the Companies Act (other than a government company as defined in Section 617 of the Companies Act, 1956) is an “establishment” as defined in Section 2(k) of the Act?”

30. The Supreme Court answered that question by holding that a private company incorporated under the Companies Act is not 'established' under the Companies Act and does not 'owe' its existence to the Companies Act. It was held that merely because the Company was registered under the Companies Act it would not be an establishment for the purposes of Section 2(k) of the PWD Act. It was observed as under:

“20. A 'company' is not 'established' under the Companies Act. An incorporated company does not 'owe' its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a 'company' is incorporated and registered under the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and National

Company Law Appellate Tribunal, and those two statutory authorities owe their existence to the Companies Act.

21. Where the definition of 'establishment' uses the term 'a corporation established by or under an Act', the emphasis should be on the word 'established' in addition to the words 'by or under'. The word 'established' refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between 'established by a central Act' and 'established under a central Act'? The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation.Therefore, when the words "by and under an Act" are preceded by the words "established", it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. In short, the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act."

31. The above part of the decision in *Dalco* may not apply in *stricto sensu* here because it is not the case of the Appellant that FITT is an establishment on account of the first part of the definition of that expression in Section 2 (k) of the PWD Act. What the Appellant seeks to demonstrate is that it falls in the second part of the definition viz., that it is synonymous with "State" under Article 12 of the Constitution. This in turn would give rise to the question whether FITT is "a body owned or controlled or aided by the Government or local authority". The test would be whether the body is 'financially, functionally and administratively dominated by or under the control of the Government.' This emerges from the decision of the

Constitution in Supreme Court in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002) 5 SCC 111 where the position in law was explained thus:

"40. The picture that ultimately emerges is that the tests formulated in *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." (emphasis supplied)

32. In that case after examining the manner of formation, the objects and functions, the management in control and financial aid, the Supreme Court declared CSIR to be 'State' under Article 12 of the Constitution. In *Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy* (2013) 8 SCC 345 the Supreme Court observed as under:

"38. In order to determine whether the appellant Company is an authority under Article 12 of the Constitution, we have considered factors like the formation of the appellant Company, its objectives, functions, its management and control, the financial aid received by it, its functional control and administrative control, the extent of its domination by the Government, and also whether the control of the Government over it is merely regulatory, and have come to the conclusion that the cumulative effect of all the aforesaid facts in reference to a particular company i.e. the appellant, would render it as an authority amenable to the writ jurisdiction of the High Court."

33. Specific to the PWD Act, the Supreme Court in *Dalco* (*supra*) stated that Section 47 thereof would not apply to private employers but “only to employment under the State.” The precise observations read thus:

“25. It is clear that the legislative intent was to apply section 47 of the Act only to such establishments as were specifically defined as “establishment” under section 2(k) of the Act and not to other establishments. The legislative intent was to define “establishment” so as to be synonymous with the definition of “State” under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than Government companies) are clearly excluded from the “establishments” to which section 47 of the Act will apply.

26. There is yet another indication in section 47 that private employers are excluded. The caption/marginal note of Section 47 describes the purport of the section as non-discrimination in Government employment. The word “government” is used in the caption, broadly to refer to “State” as defined in Article 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as “non-discrimination in employment” and subsection (1) of section 47 would have simply used the word “any employer” instead of using the word “establishment” and then taking care to define the word “establishment”. The non-use of the words “any employer”, and “any employment” and specific use of the words “Government employment” and “establishment” (as defined), demonstrates the clear legislative intent to apply the provisions of Section 47 only to employment under the State and not to employment under others. While the marginal note may not control the meaning of the body of the section, it usually gives a safe indication of the purport of the section to the extent possible. Be that as it may.”

Formation and objects of FITT

34. For determining whether the employment is under the 'State' it is necessary to examine whether the 'establishment' in question satisfies the definition of the term in Section 2 (k) of the PWD Act. Which then brings us back to the question whether it is under the 'control' of the government?

Pradeep Kumar Biswas (*supra*) emphasises that such control must be 'pervasive' across at least four facets: (a) manner of formation (b) objects and functions (c) management and control and (d) financial aid.

35. First the Court will take up for examination aspects (a) and (b) above. Examining the correspondence between IIT Delhi (IITD) and the Government of India preceding the formation of FITT, it is apparent that FITT was conceptualized by IITD with the seed money of the Government of India. That FITT was meant to carry forward the research output of IITD is evident from the following clauses of the Memorandum of Association (MoA) of FITT:

“3.1 To foster, promote and sustain, the cultivation of science and technology and scientific research in all its aspects - pure, applied and educational and to engage in result oriented industrial R&D both at industrial premises and at IITD;

3.2 To act as an institution drawing upon the intellectual and infrastructural resources of Indian Institute of Technology Delhi (IITD) as the primary resource, supplemented by expertise and facilities in other institutes of science and technology, educational institutions, R&D organizations, consulting engineers, marketing and management experts and harness them for the service of industry and other user organisations”

3.5 To improve communication between IITD and other

educational and research institutions and public at large and to provide an effective delivery system for technology development through various stages of the research pipeline, i.e., to transfer a research idea to the 'market place'”

“3.10 To encourage exchange between IITD, other educational institutions and public at large and institute fellowships for leading Indian scholars/ professionals to carry out studies on development projects of their own choice but in the areas of interest to the Foundation & IITD.

3.13 To educate and impart training to industry personnel & IITD UG/PG/ Research students as also of other technical institutes to become technical experts on specific products and processes;

3.14 To explore developments both in and outside IITD with-a view to identifying in-house developments with a potential for industrial applications as well as industrial needs for products, processes and services that the Foundation may provide;

3.15 To foster exploratory work in identified generic areas of technology that may lead to commercial products on a long term basis;

3.16 To promote Science & Technology incubation programme in IIT Delhi for entrepreneurship development and to provide assistance to young entrepreneurs to develop their enterprise;

3.17 To organise technology- strategy awareness programmes for industry and other user organisation in generic technology areas of strength of IITD”

36. In other words, it is evident that FITT was to work to advance the industrial research initiatives of IIT Delhi. As regards what should happen to the assets and FITT on its dissolution, the MoA states that the assets would

be distributed to a society having similar objects and that no liability should be passed on to IIT Delhi.

37. The aspects of (a) manner of formation and (b) objects and function have been examined. While these may indicate some degree of participation of the Government in the formation of FITT and shaping its objects, these are of historical and not contemporaneous significance when one speaks of 'control' of FITT. Even if one goes by the disjunctive 'or' in Section 2(k) that a body must be owned or controlled or aided by the Government or a local authority, it still brings us back the question of 'control'. For this purpose the remaining two factors viz., (c) management and control and (d) financial aid are relevant.

Management control

38. Under Clause 19 of the FITT Regulations, the Governing Council has the power to manage all the affairs of the foundation. The Ex-Officio Chairman of FITT is the Director of the IITD. In terms of Clause 17(a) and 23 (a), the Governing Council consists 15 persons of which 7 members are representatives or nominees of the Government/IIT Delhi. Of the remaining eight were "non ex-officio members" four members were appointed on the recommendation of the Director, IITD, who in turn is appointed upon the recommendation of a panel comprised of officials of the IIT Delhi and the MD, FITT. Incidentally, the MD himself is selected by the Governing Council. If the post falls vacant, a member of the Faculty of IIT Delhi is appointed.

39. If one goes by the actual composition of the Governing Council, it is not

possible to discern a more than 50% participation of the Government of India. The composition of the Governing Council of FITT from 1994 onwards has been placed on record by the FITT. As on 27th April, 2016 in the 15 member Governing Council 7 are academics from IIT Delhi. Positions 8 and 9 were vacant. The remaining were representatives of various industries. The member Secretary was the MD of FITT. Therefore of the 13 occupied positions 5 were from the industry and not connected with IIT Delhi. When one turns the Governing Council as on 8th October, 2015 there is one Director of the MHRD was a member, 6 professors of IIT Delhi and the MD of FITT. 6 other members are from the Non-Government private sector. If one goes to the Governing Council as on 28th October, 2014 of the 15 member council, 8 are the combination of IIT Delhi and one of the Ministry of Human Resources Development and 9 are from the private sector and 6 are those not associated with the Government.

40. From the governance structure, therefore, it is not possible to conclude that there is 'pervasive' control or a domination of the Governing Council by the Government nominees. The presence of Professors of IIT Delhi on the Board is different from nominees of the Government of India and this distinction has to be borne in mind while deciding whether the government control over the Governing Council is 'pervasive'.

Financial control

41. If one next turns to the aspect of financial control, FITT has placed on record copies of its budget and balance sheets and has contended that its finances are predominantly from money received for projects. It is further

emphasized, and fact has been confirmed by the Central Government Standing counsel, that it receives no Governmental funding as at present to sustain its manpower or to support its own operational expenses.

42. The affidavit filed by FITT clarifies that:

(i) It did receive one time grant from the Technology Development Board of the Department of Industrial and Scientific Research for supporting start up units through seed loans.

(ii) Similarly one time grants were received from DIET and BIRAC, which are again Departments of Government of India although it is contended that these grants are not for sustaining the FITT but for disbursement to start up units.

43. The contention of learned counsel for the Appellant in this regard is that the budget is not an actual record of accounts but only of rejection and that the word 'predominant' is misleading. According to the analysis by the Appellant the actual income is from interest on bank receipts which is Rs.345.86 lacs (for the year 2014-15) as against the operating income of Rs.84.50 lacs. It is contended in that year FITT in fact had an operating loss. FITT further contributed Rs.10 crores to the corpus of the infrastructure set up in IIT Delhi. It is contended that FITT's assets infrastructure existence 'is dependent on government grants, aid and government contracts'.

44. However, this appears to be a broad sweeping statement, not evident on a mere examination of the balance sheets of FITT. What is evident and is

undisputed is that:

- (i) FITT pays commercial rent to IITD for using space in the latter's campus;
- (ii) IITD does not contribute any funds to FITT; it has no monetary control over FITT;
- (iii) FITT's income is from service charges for completed projects;

45. FITT emphasises, and this again is unable to be disputed by the Appellant, that while it has bid for and secured Government of India projects for disbursement of funds to innovators and entrepreneurs, FITT itself has never received grants in aid from the Government of India for its sustenance. The grant that IITD received from the Government of India for setting up FITT, or the one-time seed fund for its corpus, are by themselves insufficient to conclude that it is under the financial control of the Government of India for all times to come.

46. On a consideration of all of the above factors, the Court is of the view that applying the control test spoken of in *Pradeep Kumar Biswas (supra)*, FITT cannot be said to be "a body owned or controlled or aided" by the Government of India. Therefore, it cannot be said to be an 'establishment' as defined by Section 2 (k) of the PWD Act.

47. The PWD Act undoubtedly is a socio-economic legislation deserving a liberal interpretation. The Supreme Court in *Dalco* dwelt on this aspect as well and observed:

"31. We agree that the socio-economic legislations should be interpreted liberally. It is also true that Courts should adopt

different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes, and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of 'state' under Article 12). Express limitations placed by the socio-economic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socio-economic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to overruling the clear enunciation in *S.S. Dhanoa v. MCD (1981) 3 SCC 41* which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are 'state' and non-statutory bodies and corporations, for purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of Indian Penal Code and Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of 'State' thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations etc."

Conclusion

48. With this Court concurring with the view off the Disabilities Commissioner that FITT is not an ‘establishment’ under Section 2 (k) of the PWD Act, the further question whether Section 47 of the PWD Act would apply to the contractual employment of the Appellant is rendered academic as far as the present case is concerned and, therefore, need not be answered.

49. Although the learned Single Judge has agreed with the Disabilities Commissioner that Section 47 of the PWD Act does not apply to contractual employment but only a permanent employment, and has relied on the decision *Adarsh Khanna (supra)*, the Court leaves that question open for decision in an appropriate case, particularly in view of the decision of the Division Bench of this Court in *Chitra Sharma v. Airline Allied Services Limited 244 (2017) DLT 649*, which was delivered subsequent to the impugned decision of the learned Single Judge in the present case.

50. It is clarified that the Appellant is free to seek any other remedy he may have in accordance with law, other than invoking the PWD Act, for the redressal of his grievances. In this context it must be noted that the repeated assertion of FITT is that its decision not to renew the contract of the Appellant was based on the review of his performance and had nothing to do with his disability. As observed in *State Bank of Patiala v. Vinesh Kumar Bhasin (2010) 4 SCC 368*, the PWD Act “cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to

discrimination based on disability.”

51. The appeal is accordingly dismissed with no order as to costs. The application is also dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA J.

NOVEMBER 27, 2018

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