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

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Reserved on: 21.08.2019

Pronounced on: 9.12.2019

+ **LPA 627/2015**

SH. H.S. RAWAT

..... Petitioner

Through: Mr. Tarkeshwar Nath, Mr. B.K.
Pandey, Mr. Mahavir Rawat & Mr.
Rohit Prasad, Advocates

Versus

**CENTRAL BOARD OF IRRIGATION
AND POWER & ORS.**

..... Respondents

Through: Ms. Abha Kulshreshtha & Mr. R.K.
Gupta, Advocates for R-1 & 2
Mr. Arun Bhardwaj, Advocate for
UOI

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J.

1. Present appeal has been filed assailing the judgment dated 18.9.2013 passed in W.P.(C) No. 3934/1998.

2. At the outset, it is pertinent to mention that five writ petitions were filed before the learned Single Judge and they were dismissed by a common judgment on the ground that respondent no. 1 Board, not being an instrumentality of the State under Article 12 of the Constitution of India was not amenable to writ jurisdiction. The present appeal has been filed only with respect to the dismissal of the Writ Petition being W.P.(C) No.

3934/1998.

3. The brief facts which need mention for adjudication of the present appeal are that the appellant joined as LDC typist on 04.03.1967. On 14.1.1993 respondent no. 1 transferred the appellant to its Regional Information Centre, Hyderabad. The appellant remained on sanctioned leave up to 01.02.1993 and reported for duty on 24.09.1993.

4. On 28.09.1993, the appellant was asked to vacate the Government residential Accommodation. On 20.06.1994, a Charge-Sheet was issued against the appellant and an Inquiry Officer was appointed, subsequently. On 28.07.1995, the said charge-sheet was cancelled by respondent no.4 on the ground that Director, CBIP who had issued the charge-sheet was neither the Disciplinary Authority nor the Appointing Authority. The cancellation was without prejudice to the right to take any further action in accordance with law.

5. On 09.10.1995, another Charge-Sheet was issued. After an inquiry, on 21.08.1996 respondent no.4 imposed the penalty of Compulsory Retirement from service. An appeal made on 3.10.1996 to respondent no.2 was rejected and the rejection was conveyed to the appellant by respondent no.4 on 17.1.1997.

6. Aggrieved by the imposition of penalty and rejection of the appeal, the appellant approached this Court by filing the above-mentioned writ petition.

7. On 17.7.2013, the following order was passed by the learned Single Judge:

“1. The preliminary issue which is called for decision in the present writ petitions is as to whether respondent No.1/Central Board of Irrigation and Power is or is not the Union or the State Government or instrumentality of the State as per Article 12 of the Constitution of India. In order to determine this aspect, two crucial steps have to be addressed. First is the source of financing of the respondent No.1. If the major percentage of the financing of the respondent No.1 is not of the Union of India or any of the State Government or of instrumentalities of the State, this would be a relevant factor. It is also required to be known as to what is the constitution of the governing body of the respondent No.1 i.e. whether the same is controlled by the nominees of the Union or the State Governments or instrumentality of the State or by private persons.

2. Accordingly, for the present the issue with respect to financing of the respondent No.1 and control of the respondent No.1 needs to be seen for 10 years prior to today i.e. 10 years for which the audited accounts of the respondent No.1 are available.

3. Learned counsel for the respondent No.1 states that she will file a detailed affidavit on behalf of respondent No.1 giving the audited accounts of the last available 10 years and in such affidavit will make detailed averments with respect to the sources of finance/income of the respondent No.1, the total membership with particulars of the respondent No.1-society and lastly existing memorandum and rules of the respondent No.1 which will include the aspects with respect to control and Management of the respondent No.1. The additional affidavit be filed within four weeks from today. Reply thereto, if any, be filed within four weeks thereafter.

4. List on 09th September, 2013”.

8. In terms of the said order, an additional affidavit was filed by respondent No. 1 on 06.09.2013.

9. In the affidavit, respondent No.1 took a stand that the CBIP is an

autonomous Board. Its functions are not Government functions, which can be said to be 'public functions'. The accounts of the Board are audited by private Chartered Accountants and not by Government agencies. It was also averred that the Government of India had stopped providing funds from 1975 to the Board and before that a fixed sum of Rs.20,000/- per annum only was being provided for its up-keep. There was no contribution of the Government towards the expenses, nor was there any control of the Government. It was also stated that though the members of the Board included Government Organisations and State Boards but private membership was also permitted and in fact existed. There were 98 Government Organisations along with 63 private organisations who were members and they contributed subscription and other fee, which was the source of the Funds of respondent No.1. A stand was also taken that in a Public Interest Litigation being WP(C) 1370-71/2005, against the respondent No.1, on the directions of a Division Bench of this Court, the Ministry of Water Resources had filed an affidavit. It was clearly stated therein that it no longer controlled the Board and had no connection with it.

10. The learned Single Judge after perusing the affidavit and other material on record, came to a finding that the Government had no control over the Board. The Rules and Regulations of the Board did not allow Government predominance, in running the functions of the Board. Only because majority of the Member Organisations were Government Organisations, it did not make the Respondent an Instrumentality of the State. The learned Single Judge relied on the specific stand taken by the Ministry in the Public Interest Litigation qua their control over the Board. The learned Single Judge came to a conclusion that respondent no.1 is not an

instrumentality of the State under Article 12 of the Constitution of India and nor was it performing the functions which can be said to be 'public functions'. Accordingly, the writ petition was dismissed as not maintainable under Article 226 of the Constitution of India giving liberty to the petitioners to approach the appropriate Court for redressal of their grievances.

11. It is this judgment which is assailed in the present appeal before us.

12. Learned counsel for the appellant at the outset submits that the respondent had filed an affidavit on 3.9.2013 but no response could be filed by the appellant rebutting the contents of the affidavit as the next date was 18.9.2013. The review petition was also dismissed on the same ground as the writ petition and therefore, in effect the appellant never got an opportunity to place his stand before the Court to rebut the stand of the respondents, taken in their affidavit.

13. Learned counsel next contends that the Government of India, that is the Ministry of Water Resources had the administrative, financial and functional control over respondent No.1 and this would be evident from the following:

- a. The Ministry of Irrigation & Power constituted the Central Board of Irrigation on 1.1.1927 with the object of examining the irrigation, hydroelectrical and river control projects, etc. including advising the Government on technical points involved in disputes between provincial Governments and Indian States. This is evident from page 220 of the paper book.
- b. In 1945, the Government of India established the Central Water

Power, Irrigation and Navigation Commission. In 1991, the said Commission was changed to Central Water & Power Commission, vide a Resolution dated 21/24.04.1951, with the responsibility of initiating, coordinating and furthering in consultation with the State Governments concerned, Functions of the said Commission were to advise the Government in respect of water and water power rights, etc.

- c. The Government of India assumed full financial responsibility for maintaining the library and the Information Bureau.
- d. Rules were framed in 1951 on constitution of CBIP to govern its activities and constitution. The constitution of the Board indicates that its members were officers of the PWD and other employees of the Central Government. The funding was from the annual contributions made by the Central Government as well as the States. The Auditor General of India was tasked with the responsibility of carrying out the audit of the Board. The property and effect of the Board under Section XVII of the Rules vested in the Government of India. Section XIX Clause 56 clearly indicates that the income of the Board would continue to be derived from the contributions from the Central and State Governments.

14. Learned counsel submits that a plethora of documents were placed on record to show that the control and finance of the Board was clearly with the Central Government and, therefore, it was erroneous on the part of the learned Single Judge to have dismissed the petition on the ground of maintainability. The learned counsel had also placed on record a photocopy

of Employment News in May, 2015 to point out that the Board is still functioning under the aegis of the Ministry of Power, Government of India.

15. Per contra, learned counsel for the respondent has contended that the respondents had clearly taken a stand in the affidavit that the functions of CBIP are not controlled by the Central or State Governments and no funds were given to CBIP. Respondent no.1 has filed on record a Notification issued by the President of India dated 30.09.1994 whereby in exercise of powers under Article 77(3) of the Constitution of India, acting under the Allocation of Business Rules, the Board has been deleted and was taken out of the control of the Government of India.

16. Learned counsel for the respondent further contends that Sh. G.N. Mathur, the then Secretary of CBIP had filed an affidavit in the writ petition clearly stating that CBIP is an autonomous body registered as society under the Society Registration Act. The primary object of the Board was to pool technical knowledge and experience in the field of Irrigation and Power and to utilise the same in advancement of knowledge in evolving economies in the planning, design and construction of future Irrigation and Power projects. This is so reflected in its own Memorandum of Association.

17. It is next contended that the grant of Rs.20,000/- per annum was stopped by the Government way back in the year 1975. No grant, whatsoever, is given by the Government and the Board has its own land on which it has constructed its office accommodation. The Government, therefore, neither has any administrative nor financial control over the Board. It is also contended that an additional affidavit was filed by Sh. P.P.Wahi, Director (IT) Central Board of Irrigation and Power clearly

mentioning that the Registration Certificate of the Board is dated 21.02.1975. The audited accounts detail for the years 2003 to 2012 by private Chartered Accountants were annexed with the additional affidavit. It is thus argued that the writ petition has been rightly dismissed and the appeal also deserves to be dismissed.

18. We have heard the learned counsels for the parties and examined their rival contentions.

19. The learned Single Judge had framed two issues in order to decide the question as to whether the CBIP is an instrumentality of the State or not under Article 12 of the Constitution of India. The first issue was (a) whether the majority funding of the entity is by the Government showing control of the Board by the Government and: (b) even if the funding was not substantial yet whether the Government exercised control through its nominees in the Board.

20. The learned Single Judge in order to answer the said questions, relied on the affidavit filed by respondent No. 1 which clearly stated that the Government of India had stopped providing funds to the Board since 1975 and even prior thereto a sum of Rs. 20,000/- per annum was only provided, merely for its up-keep. There was no overwhelming contribution by the Government as revealed from the Balance Sheets and Profits & Loss Accounts. The affidavit also stated that while some Government Organisations were members of the Board but there was also a large scale private membership and all members contributed subscriptions and other fees which was a source of funds. In our view, the factors examined by the learned Single Judge clearly indicated that the CBIP was not under the

control of the Government of India. The categorical stand taken by the Government in the Public Interest Litigation referred to above is a clear pointer to the fact that the CBIP is an autonomous body and not under the control of the Government of India. Learned counsel for the appellant could not dispute that the Accounts of the Board are audited by private Chartered Accountants and not by the Government Agency.

21. Another important fact which cannot be overlooked is that by a Notification issued by the President of India dated 30.09.1994 in exercise of powers under Article 77(3) of the Constitution of India, the Board was taken out of the control of the Government of India. This Notification, in our view, is the best evidence of the fact that the CBIP is not under the control of the Government of India. Merely because some Government Organisations are members of the Board or that the Government at an earlier point of time was contributing a small amount per annum towards its up-keep would not lead to a conclusion that the Board is under the pervasive control of the Government of India.

22. The Supreme Court in the case of ***K.K.Saksena vs. International Commission on Irrigation and Drainage & Ors. I*** (2015) SLT 162, has summarised the legal position on Article 12 of the Constitution of India relying on several earlier judgments wherein certain guidelines had been laid down, on the touchstone of which it could be determined as to whether a body is an Instrumentality of the State under Article 12 of the Constitution of India. Relevant para reads as under:

“17. Before arriving at the aforesaid conclusion, the Court had summarized the legal position, on the basis of earlier judgments, in para 22, which reads as under:-

“22. Above is the ration 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 Prardeep 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 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 State”.

23. The Supreme Court has in para 29 of the judgment analysed the provisions of Article 12 of the Constitution of India and which reads as under:

“29. If the authority/body can be treated as a ‘State’ within the meaning of Article 12 of the Constitution of India, indubitably writ petition under Article 226 would be maintainable against such an authority/body for enforcement of fundamental and other rights. Article 12 appears in part III of the Constitution, which pertains to ‘Fundamental Rights’. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in part III. Article 226 of the Constitution, which deals with

powers of High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by part III and for any other purpose.”

24. It has been clearly held that if the Authority or a Body can be treated as a State within the meaning of Article 12 of the Constitution of India then a Writ Petition under Article 226 of the Constitution of India would be maintainable. Reliance was placed by the Supreme Court in the earlier judgment by the Apex Court in ***G. Bassi Reddy vs. International Crops Research Institute &Anr. (2003) 4 SCC 225***, where the alternate test of “public function” was in issue. The Court had examined if the function performed by the Institute involved in that matter was a public function or a public duty. In the said case, the Supreme Court held that merely because the activity of an Institute enures to the benefit of the public, it cannot be a guiding factor to determine the character of the Institute so as to bring it within the sweep of ‘Public Function’ or ‘Public Duty’.

25. Finally, the Supreme Court after examining the constitution and functions of the ICID held that the ICID was not funded by the Government and was not discharging any function under any Statute. Nor was the ICID discharging any public function or public duty which would make it amenable to a writ jurisdiction.

26. In the case of ***Tekraj Vasandi vs. Union of India AIR 1988 SC 469***, the Apex Court was dealing with an Institute which was a Society registered under the Societies Registration Act. The Supreme Court held as under:

“20. We have several years of societies registered under Societies Registration Act which have been treated as ‘State’ but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the ‘State’ had been undertaken to be performed as a part of the Society’s function. In a Welfare State, as has been pointed out on more than one occasion by this Court, Governmental control is very pervasion and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of the case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of ‘other authorities’ in Art. 12 of the

Constitution. We must say that ICPS is a case of its type-typical in many ways and the normal tests may perhaps not properly apply to test its character”.

27. Applying these tests in our opinion CBIP cannot be termed as an Instrumentality of State under Article 12.

28. We are also fortified in our view by a judgment of the Coordinate Bench of this Court in ***S.D. Siddiqui v. University of Delhi & Ors. 2006 III AD (Delhi) 290***, the relevant paras of which read as under:

“29. In view of the above discussion, we are clearly of the opinion that the DUTA is not a State or an

instrumentality of the State under Article 12 of the Constitution of India and it does not also perform any public functions. It is a purely private body working for the welfare of teachers of the University and affiliated colleges. There is no deep or pervasive control of the State over it. There is no averment that it is largely financed by the State. Hence, in our opinion, no writ lies against DUTA”.

29. Having examined the judgments referred to above, as well as the facts of the present case we are also of the view that the Board is not performing any public function as envisaged in the judgment ***K.K. Saksena (supra)***. Thus, the Learned Single Judge has rightly held that CBIP is not a State under Article 12 of the Constitution of India and is not amenable to writ jurisdiction.

30. There is no infirmity in the impugned judgment.

31. The appeal is dismissed being devoid of merits.

JYOTI SINGH, J

G.S.SISTANI, J

DECEMBER 9th, 2019

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