

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

**Present:- Hon'ble Justice Rajasekhar Mantha
Hon'ble Justice Tirthankar Ghosh**

**R.V.W. No. 231 of 2019
IN
M.A.T. No. 323 of 2019**

**ANDREW YULE HEAD OFFICE RETIRED EMPLOYEES'
ASSOCIATION**

VERSUS

UNION OF INDIA AND ANOTHER

For the Appellant: Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv.
Mr. R. Guha Thakurta, Adv.

(In RVW 231 of 2019)

For the Respondent No.2: Mr. Soumya Majumdar, Adv.
Ms. Shyantee Dutta, Adv.
Ms. Samaita Das Chowdhury, Adv.

Hearing Concluded On: 16.07.2021

Judgment On: 20.07.2021

Rajasekhar Mantha, J.

1. Review of the Judgement and Order dated 5th August 2019 passed in MAT No. 323 of 2019 (said appeal) is sought by the Petitioners/Appellants/ Writ Petitioners.
2. The said appeal (Intra Court/ Letters Patent Appeal) arose out of a Judgement and order dated 21st January 2019 passed by a Single Bench of this Court in W.P.No.18957 of 2019 (Andrew Yule Head Office Retired Employees' Association Versus Union of India and Ors.) (said writ petition).
3. In the said writ petition, mandamus was sought, to quash Memoranda of Settlement dated 21st December 1973 and 1983, to the extent they interfered with the petitioners' pension and gratuity.
4. The Ld. Single Judge held that the said writ petition was not maintainable against the Respondent No.2 for being bound by two Division Bench decisions of this Court i.e. **Anupam Ghosh Vs Union of India** reported in **1991 (2) CHN 451** and **Movewell Griha Nirman Ltd. Vs. Andrew Yule and Co Ltd.** being **APOT No.67 of 2008** dated **23rd July 2008**. In both the cases the Division Benches had held that Andrew Yule Company Ltd. was not "State" or "Other Authority" within the meaning Article 12 of the Constitution of India.

5. At paragraph 10 and 11 the Ld. Single bench held as follows :-

“(10) Mr. Bhattacharyya submitted that in view of the aforesaid, it is clear that the said company has undergone a complete structural metamorphosis. The Central Government is the only share holder. It has full, deep and pervasive control over the functioning of the company. The Government guidelines themselves recognize that the said company being a Central Public Sector Enterprises is ‘State’ within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of the High Court.

(11) I am impressed with the submission of Mr. Bhattacharyya, learned Senior Counsel appearing for the petitioner. Indeed, it appears that the structure, nature and character of the company have undergone a complete change. I would have accepted Mr. Bhattacharyya’s submissions that the company as it is today is an authority within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of the High Court but for the fact that the decision in Anupam Ghosh stares at my face. I am bound by the decision and by the subsequent decision of the Division Bench in the case of Movewell Griha Nirman Pvt. Ltd. and another versus The Andrew Yule Co. Ltd. and others which have both held that a writ petition is not maintainable against the company. Only a higher Forum can reconsider whether or not the said company is an authority within the meaning of Article 12 of the Constitution of India and, therefore, an application under Article 226 of the Constitution is maintainable against it” (Emphasis Added)

6. On said appeal being preferred, a Co-ordinate Bench found no reason to interfere with the order passed by the Single Judge.

7. It is argued that error is apparent on the face of the order dated 5th August 2019 as the Co-ordinate Bench has failed to notice the predicament expressed by the Ld. Single Judge. It is argued that, the Single Bench despite finding the arguments of the petitioners prima facie acceptable could not entertain the writ petition in view of the **Anupam Ghosh (Supra) and the Movewell (Supra)**

decisions rendered by Division Benches (said two decisions). It is argued that the Co-ordinate Bench ought to have reconsidered the legal status of Andrew Yule Co. Ltd. in view of the new facts that have come on record.

8. A preliminary objection raised by Mr. Soumya Mazumdar, Ld. Counsel for the Respondent No.2, Andrew Yule Co. Ltd., that Review under Order XLVII of the Code of Civil Procedure 1908, cannot lie merely for change in the law.
9. Reliance is placed on the case of **Lily Thomas and Ors. Vs. Union of India** reported in **(2000) 6 SCC Pg 224**, particularly paragraphs 52 and 56 thereof which are set out hereinbelow.

“52. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershiv. Pradyumansinghji Arjunsinghji* [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj v. State of Karnataka* [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448] held: (SCC pp. 619-20, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the

statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* [(1836) 1 Moo PC 117 : 2 MIA 181] that an order made by the Court was final and could not be altered:

‘... nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.”

10. On the same argument the decision in *State of West Bengal Vs. Kamal Sengupta and Ors.* reported in (2008) 8 SCC Pg. 612

is cited. At paragraphs 35 it was held as follows:-

“35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.”

11. This Court notices that the order in Review has not addressed the dilemma expressed by the Ld. Single Judge. The continued application of the dicta in the said two decisions in the light of the new facts and evidence on record has not been addressed by the Co-ordinate Bench. The decisions, not considered in the above two cases, cited by Counsel for the petitioners are not necessarily in aid of Review. They have been cited after the relying upon the new evidence produced for the first time in the Writ Petition that were

hitherto not available while the said two decisions were pronounced.

12. Some of the decisions cited on behalf of the petitioners were in fact available when said two cases were being considered. It is the new facts that were needed to be addressed by the Co-ordinate Bench, which clearly has not been done. The Learned Single Judge was bound by the doctrine of precedent and judicial hierarchy. The Co-ordinate Bench has erroneously not addressed the issues raised in the light of the new evidence as regards the maintainability.

13. Counsel for the petitioner has taken us through various documents annexed to the writ petition to show the degree of governmental control on the Respondent No.2. Has also placed various decisions of the Supreme Court. The Respondent Company chose not to use any affidavit. The facts relating to maintainability are, therefore, undisputed and on record.

14. The Bombay Stock Exchange (BSE) has a wing that assists Central Public Sector Enterprises (CPSEs) in India and provides diverse advisory services to it. It is called the BSEPSU and has a website called BSEPSU.COM. It defines Central Public Sector Undertakings as those companies in which the Central Government has 51% or more shareholding. As on date the Central Government directly and through other CPSEs owns and controls more than 90% of the shareholding of Andrew Yule Co. Ltd.

15. The Ministry of Heavy Industries and Public Enterprises, of the Central Government, has on 22nd June 2007 issued “Guidelines for Corporate Governance and functioning of CPSEs as part of its National Common Minimum Program. The said Guidelines were to be followed by all CPSEs for the benefit of all Shareholders and Stakeholders. The employees of the CPSEs are definitely one of their Stakeholders.

16. Chapter 1.6 and of the said Guidelines stipulates as follows :-

“1.6 Apart from these instructions of DPE, the CPSEs are governed by the Companies Act, 1956 and regulations of various authorities like Comptroller and Auditor General of India (C&AG), Central Vigilance Commission, administrative Ministries, other nodal Ministries, etc. The Right to Information Act 2005 is also applicable to the CPSEs. The CPSEs fall under the definition of ‘State’ as provided in Article 12 of the Constitution of India. Further, some principles of corporate governance are already in vogue in public sector because (a) the Chairman, Managing Director and Directors are appointed independently through a prescribed procedure; (b) Statutory auditors are appointed independently by the C&AG; (c) Arbitrary actions, if any, of the Management could be challenged through writ petitions; (d) remuneration of Directors, employees, etc. are determined on the basis of recommendations of Pay Committees constituted for this purpose; etc.”

17. In “Revised Guidelines for Corporate Governance” for PSEs published in May 2010 at Chapter 1.4 and 1.7 it is stipulated as follows;-

“1.4 The Department of Public Enterprises (DPE) had issued guidelines on composition of Board of Directors of Central Public Sector Enterprises (CPSEs) in 1992 (Annex-I). According to these guidelines at least one-third of the Directors on the Board of a CPSE should be non-official Directors. The Maharatna, Navratna and Miniratna schemes provide that exercise of the enhanced powers delegated to these CPSEs is subject to the condition that their Boards are professionalised

by inducting adequate number of non-official Directors, with minimum of four in case of Maharatna, Navratnas and minimum of three in case of Miniratnas. The schemes for Maharatna, Navratna and Miniratna CPSEs also provide for setting up of Audit Committees.

1.7 Apart from these instructions of DPE, the CPSEs are governed by the Companies Act, 1956 and regulations of various authorities like Comptroller and Auditor General of India (C&AG), Central Vigilance Commission (CVC), Administrative Ministries, other nodal Ministries, etc. The Right to Information Act 2005 is also applicable to the CPSEs. The CPSEs fall under the definition of „State“ as provided in Article 12 of the Constitution of India. Further, some principles of Corporate Governance are already in vogue in public sector because (a) the Chairman, Managing Director and Directors are appointed independently through a prescribed procedure; (b) Statutory auditors are appointed independently by the C&AG; (c) Arbitrary actions, if any, of the Management can be challenged through writ petitions; (d) Remuneration of Directors, employees, etc. are determined on the basis of recommendations of Pay Committees constituted for this purpose; etc.”

18. Subsequently the Central Government ordered as follows in
2016

“The Department of Public Enterprises (DPE) issued guidelines on Corporate Governance in November 1992 on the inclusion of non-official directors on the Board of Directors. DPE issued further guidelines in November, 2001 providing for inclusion of independent directors on the Board of Directors. To bring in more transparency and accountability in the functioning of Central Public Sector Enterprises (CPSEs), the Government in June, 2007 introduced the guidelines on Corporate Governance for CPSEs. These guidelines were voluntary in nature. These guidelines were implemented for an experimental period of one year. On the basis of the experience gained during this period, it was decided to modify and reissue the DPE guidelines in May, 2010. These guidelines have been made mandatory and applicable to all CPSEs. The guidelines issued by DPE covered areas like composition of Board of Directors, composition and functions of Board committees like Audit Committee, Remuneration committee, details on subsidiary companies, disclosures, reports and the schedules for implementation. All references to DPE guidelines in this chapter refer to the DPE

guidelines issued in May, 2010 which are mandatory to all CPSEs. DPE has also incorporated Corporate Governance as a performance parameter in the MoUs of all CPSEs. In so far as listed CPSEs are concerned, they are required to comply with the SEBI's guidelines/regulations on Corporate Governance in addition to complying with provisions in DPE guidelines."

- 19.** The Board of Directors of the CPSEs comprise in Functional, Nominee and Independent Directors. The Central Government directly appoints 2 directors and the rest are appointed by other CPSUs controlled by the Central Government.
- 20.** Andrew Yule and Co. Ltd. (said company) is wholly funded by the Central Government and the latter has financial control over the former. All outstanding statutory dues of the Company were funded and paid by the Central Government in the year 2004 and regularly thereafter.
- 21.** The ultimate decision as regards all major employee benefits in the said company is taken by the Ministry of Heavy Industries, as evident from the letter dated 5th February 2009 annexed to the writ petition.
- 22.** The aforesaid facts were either not available or not placed before their Lordships of the Division Bench in the said two decisions.
- 23.** The tests to be applied to determine whether a Corporation is "other authority", within the meaning of Article 12 of the Constitution of India are now well settled. The issue is no longer *res integra*.

- 24.** Analysing most of the decisions from 1973 and changing trends, in **Pradeep Kumar Biswas Vs Indian Institute of Chemical Biology reported in (2002) 5 SCC Page 111**, it was stated as follows :-

“14. By 1975, Mathew, J. in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] noted that the concept of “State” in Article 12 had undergone “drastic changes in recent years”. The question in that case was whether the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation, each of which were public corporations set up by statutes, were authorities and therefore within the definition of State in Article 12. The Court affirmed the decision in *Rajasthan SEB v. Mohan Lal* [AIR 1967 SC 1857 : (1967) 3 SCR 377] and held that the Court could compel compliance of statutory rules. But the majority view expressed by A.N. Ray, C.J. also indicated that the concept would include a public authority which “is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit”. (SCC p. 440, para 39) (emphasis added)

16. Mathew, J. in his concurring judgment went further and propounded a view which presaged the subsequent developments in the law. He said: (SCC p. 449, para 82)

“A State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State.”

17. For identifying such an agency or instrumentality he propounded four indicia:

(1) “A finding of the State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action.” (SCC p. 454, para 96)

(2) “Another factor which might be considered is whether the operation is an important public function.” (SCC p. 454, para 97)

(3) “The combination of State aid and the furnishing of an important public service may result in a conclusion that the

operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion.” (SCC p. 454, para 97)

(4) “The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?” (SCC p. 458, para 111)

23. From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act, 1860. Neither the form of the corporation, nor its ostensible autonomy would take away from its character as “State” and its constitutional accountability under Part III vis-à-vis the individual if it were in fact acting as an instrumentality or agency of the Government.

25. The tests propounded by Mathew, J. in *Sukhdev Singh* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] were elaborated in *Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] and were reformulated two years later by a Constitution Bench in *Ajay Hasia v. Khalid Mujib Sehravardi* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] . What may have been technically characterised as *obiter dicta* in *Sukhdev Singh* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] and *Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] (since in both cases the “authority” in fact involved was a statutory corporation), formed the ratio decidendi of *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] . The case itself dealt with a challenge under Article 32 to admissions made to a college established and administered by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898. The contention of the Society was that even if there were an arbitrary procedure followed for selecting candidates for admission, and that this may have resulted in denial of equality to the petitioners in the matter of admission in violation of Article 14, nevertheless Article 14 was not available to the petitioners because the Society was not a State within Article 12.

27. *Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] was noted and quoted with approval *in extenso* and the tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised as follows: (SCC p. 737, para 9)

“(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)

(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 governmental 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)”

31. The tests to determine whether a body falls within the definition of “State” in Article 12 laid down in *Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] with the Constitution Bench imprimatur in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited.”

25. The Honble Supreme Court thereafter went on to analyse the cases of Non Statutory bodies and found that the **Ajay Hasia (Supra)** and **Ramanna Dayaram Shetty (Supra)** tests were deviated from in the case of various other Non Statutory

Government Bodies registered under the other laws like the Societies Registration laws, the Indian Trusts Laws. At paragraph 40 , a specific test was laid down for non statutory bodies as follows :-

“40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] 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.”

26. The said decision was followed and the test was applied in respect of another similarly situated CPSE registered under the Companies Act in the case of **Balmer Lawrie and Co. Ltd. and Ors Vs Partha Sarathi Sen Roy and Ors. reported in (2013) 8 SCC Pg 345.** At Paragraphs 20 21 and 28 it was held as follows:-

“20. Every governmental function need not be sovereign. State activities are multifarious. Therefore, a scheme or a project, sponsoring trading activities may well be among the State's essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, corporates and companies. Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon, etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would

not render an enterprise sovereign in nature. (Vide *Agricultural Produce Market Committee v. Ashok Harikuni* [(2000) 8 SCC 61 : AIR 2000 SC 3116] , *State of U.P. v. Jai Bir Singh* [(2005) 5 SCC 1 : 2005 SCC (L&S) 642] , *Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals* [(2005) 13 SCC 19 : AIR 2006 SC 131] and *Haryana State Industrial Development Corpn. v. Hari Om Enterprises* [(2009) 16 SCC 208 : AIR 2009 SC 218] .)

21. A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the Government and the legislature alone, and it includes within its ambit, various other instrumentalities of State action. The law may bestow upon such organisation the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The “State” being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society. In a given case, the court must decide, whether such a company or society is an instrumentality or agency of the Government, so as to determine whether the same falls within the meaning of the expression “authority”, as mentioned in Article 12 of the Constitution, upon consideration of all relevant factors.

28. In order to determine whether an authority is amenable to writ jurisdiction except in the case of habeas corpus or quo warranto, it must be examined, whether the company/corporation is an instrumentality or an agency of the State, and if the same carries on business for the benefit of the public; whether the entire share capital of the company is held by the Government; whether its administration is in the hands of a Board of Directors appointed by the Government; and even if the Board of Directors has been appointed by the Government, whether it is completely free from governmental control in the discharge of its functions; whether the company enjoys monopoly status; and whether there exists within the company, deep and pervasive State control. The other factors that may be considered are whether the functions carried out by the company/corporation are closely related to governmental functions, or whether a department of the

Government has been transferred to the company/corporation, and the question in each case, would be whether in light of the cumulative facts as established, the company is financially, functionally and administratively under the control of the Government. In the event that the Government provides financial support to a company, but does not retain any control/watch over how it is spent, then the same would not fall within the ambit of exercising deep and pervasive control. Such control must be particular to the body in question, and not general in nature. It must also be deep and pervasive. The control should not, therefore, be merely regulatory.”

27. Applying the aforesaid tests to the instant case it is seen that the said company is listed as a CPSE along with the said Balmer Lawrie and Co., [Appellant in the **Balmer Laurie Case** (Supra)]. 51% of the shareholding of the said company is directly owned by the Central Government. More 40% of the balance shares are owned by other CPSEs. The Central Government therefore directly and or indirectly controls 90% of the shareholding of the said Company.
28. The Central Government appoints the Managing Director and all other functional and non functional directors are appointed based on Guidelines for Management of CPSEs that has been referred to in the preceding paragraphs hereinabove.
29. The Central Government funds all financial deficits of M/s Andrew Yule Co. Ltd. including payment of Statutory dues. The said Guidelines prescribe that CPSEs be audited by the Controller and Auditor General of India. The said company admittedly comes under the purview of the Right to Information Act 2005.

30. All major policy decisions including matters relating to employment and service of members of the said company are to be vetted and finally decided by the Ministry of Heavy Industries of the Central Government.

31. The Central Government thus has complete administrative, financial and all pervasive control over the said Company. Andrew Yule and Co. Ltd. is thus “Other Authority” within the meaning of Article 12 of the Constitution of India. The **Anupam Ghosh (Supra)** and **Movewell (Supra)** decisions are no longer good law. The writ petition was and is maintainable.

32. This Court is conscious that incase one Bench is inclined to differ with the views of an earlier Bench or Benches it should record reasons for the same and placed before the Hon’ble Chief Justice for reference to a larger bench. This is normal judicial discipline. This Court has still chosen to proceed and decide the main appeal itself in Review, since a large number of new facts placed before us, were either not available or not placed or not considered in the said two decisions. This Court also notes that the appellants are retired employees with limited resources who could not have the merits of their grievances tested, for 2 years now.

33. The application for Review is therefore allowed. The order dated 5th October 2019 is recalled. The Appeal being MAT No.323 of 2019 is allowed. The impugned order dated 21st January 2019 is set aside. W.P. 18957 (w) of 2017 shall stand restored to its file and shall be heard on merits by the Single Bench.

34. In the facts of the case however there shall be no order as to costs.

35. Urgent Photostat certified copy of this Order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

(Rajasekhar Mantha, J.)