IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6512 OF 2021

1. Mukesh Kapoor	]
Age 56 years Residing at	]
Lily – 601, Green Valley,	]
Sector 41-42, Faridabad,	]
Haryana – 121 010.	]
2. Deepak Kumar Mathur	]
Age 56 years	]
Residing at 10-B, IFCI Hsg.	]
Co-op. Society,	]
Opposite Police Station,	]
Sector 9A, Gurgaon,	]
Haryana – 123901.	]
3. Prasad Yashwant Koyande	]
Age 54 years	]
Residing at A/19, 4th floor,	]
Kajal Kiran CHS,	]
Mulund (W), Mumbai – 400080.	]
4. Surya Kant Adiyta	]
Age 53 years	]
Residing at A-215,	]
Sector 31, Noida,	]
Uttar Pradesh – 201301.	]
5. Bijender Kumar	]
Age 54 years	]
Residing at 587-C (Regent),	]
Shipra Sun City,	]
Indrapuram, Ghazibad,	]
Uttar Pradesh – 201014.	]
6. Mohammad Shahid	]
Age 54 years	]
Residing at 3712, Street No. 36,	]
Zakir Nagar, Okhla,	]
New Delhi – 110025.	]

*Order modified as per Speaking to Minutes dated 05/07/2022

7. Rajesh Kumar Sankhla]
Age 51 years]
Residing at DB, 166,]
Siddharth Nagar,]
Malviya Nagar, Jaipur]
Rajasthan – 302017.] … Petitioners

Versus

1. Union of India]
Through Department of Investment and]
Public Asset Management,]
Ministry of Finance]
Room No. 407, Block No. 14,]
CGO Complex,]
Lodhi Road, New Delhi – 110 003.]

2. UTI Asset Management Company Ltd.,]
having its registered address at]
UTI Tower, 'Gn' Block,]
Bandra-Kurla Complex,]
Bandra (East), Mumbai – 400 051.] … Respondents

Mr. S. C. Naidu a/w Mr. P. M. Mokashi, Advocates for the Petitioners.
Mr. Yogeshwar S. Bhate, Advocate for Respondent No.1.
Mr. Sudhir Talsania, Senior Advocate a/w Vishal Talsania i/b Jigar Kamdar and Associates, Advocates for Respondent No.2.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

RESERVED ON : 14th DECEMBER, 2021
PRONOUNCED ON : 20th JUNE, 2022

JUDGMENT (Per S. M. Modak, J.) :-

1. In this writ petition the issue involved is whether the respondent no.2 UTI Asset Management Company Ltd. falls within the meaning of ‘State’ under Article 12 of Constitution of India? If answer to this issue is yes, whether the respondent no.2 can be directed to frame transfer policy for its officers and employees? Further issue involved is when the constitution of respondent no.2 has changed, still whether the petitioners can claim protection of Unit Trust of India (Transfer of undertaking and Repeal) Act 2002. There are various issues pending between the UTI AMC officers association and respondents no.2. But we are deciding this issue only in context of *‘right of petitioners to insist for framing of transfer policy’*. The present petitioners are the officers of respondent no.2. They were officers of erstwhile Unit Trust of India. Respondent no.2 was formed after bifurcation of erstwhile Unit Trust of India in the year 2002. After formation of respondent no.2, they have exercised the option of joining Respondent No.2.

2. Their grievance is even though they were assured by the Management of respondent no.2, they have abruptly transferred them to various part of India without framing transfer policy. That is why they have challenged the officer order dated 1/10/2021 thereby transferring them. Before going into the contentious issue, it will be relevant to know the background of formation of respondent no.2.

BACKGROUND

3. Unit Trust of India was created as per the provisions of Unit

Trust of India Act 1963. It was statutory corporation. It has got the business of accepting the investment from the public in mutual funds. It has floated various schemes. However, the Government of India has decided to bifurcate the business, assets and liabilities of UTI into two separate entities called as ‘specified company’ and ‘specified undertaking’. Parliament has enacted Unit Trust of India (Transfer of Undertaking and Repeal) Act 2002. The main features of Repeal Act are as follow: --

a. **Transfer of initial capital** – on the appointed day initial capital of the Trust (contributed by the Development Bank, LIC, SBI and subsidiaries) shall be refunded to the Central Government (Section 3).

b. **Specified Company** – is a company formed and registered as per Companies Act 1956 & whose entire capital is subscribed by financial institutions specified by the Central Government (section 2[h]).

c. **Specified Undertaking** –includes all business, assets, liabilities and properties of the Trust specified in the Schedule I (section 2[i]).

d. **Undertaking** -–includes all business, assets, liabilities and properties of the Trust specified in the Schedule II (section 2[i]).

e. **Administrator** – means a person/body of persons appointed under section 7.

f. **Transfer & vesting of undertaking/specified undertaking** – undertaking to be transferred and to be vested in favour of specified company (section 4[1(a)]). Specified undertaking to be transferred and to be vested in favour of Administrator (section 4[1(a)]).

g. **Officers/employees of the Trust** – the officers and employees of Trust will become officers and employees of the specified company on same terms and conditions (section 6[1]).

h. **Appointment of Administrator** – The central Government to appoint person or body of persons as Administrator for the purpose of taking over administration of the specified undertaking (section 7[1]).

i. **Appointed day** – means the date notified by the Central Government under section 4 (section 2[b]). As per notification dated 15/1/2003, 1/2/2003 is notified as appointed day (page no.73).

j. **Subscribers** – SBI, PUNJAB NATIONAL BANK, BANK OF BARODA AND LIC were notified as subscribers to the share capital of respondent no.2 to be contributed equally (page no. 72).

4. Respondent no.2 is a specified company which is formed as per the provisions of the Repeal Act 2002. The four subscribers have contributed to the share capital of respondent no.2. It is also true that the officers and employees of erstwhile Trust were transferred to the new entity. They were given an option not to continue with respondent no.2. This option is to be exercised within 6 months from the appointed day. The grievances of the petitioner are (a). as subscribers who have contributed to the share capital and as they worked under control and supervision of the Central Government, respondent no.2 falls within the meaning of 'State' under Article 12 of the Constitution of India and (b) they being employees of the erstwhile Trust, their services are protected as per the provisions of Section 6 of the Repeal Act. (c). By issuing the office order dated 1/10/2021 the management of respondent no.2 have breached the protection available to them. That is why they have filed this writ petition. They have asked for the following main reliefs:--

a. Seeking declaration that the office order dated 1/10/2021 is illegal and bad in law.
b. For issuing directions to respondent no.2 to permit the petitioners to remain present for duty at their present posting.
c. To direct respondent no.2 to frame a transparent Transfer Policy in consultation with the representatives of the All India UTI AMC Officers Association.

5. There are two respondents. One is Union of India and second is specified Company. Respondent no.2 through their representatives have filed affidavits and have opposed the petition on the ground of maintainability for the reason that they cannot be treated as State and secondly on merits. Union of India has supported the stand taken by respondent no.2. They have not filed any separate pleadings. On this background we have heard Mr. S. C. Naidu, the learned Advocate for the Petitioners, Mr. S. Y. Bhate, the learned Advocate for Respondent No.1 and Mr. Sudhir Talsania, the learned Senior advocate for Respondent No.2. Issues involved before us can be summarized as follows:--

a. Whether the respondent no.2 can be considered as 'State' within the meaning of Article 12 of the Constitution of India,

b. Whether directions can be given to respondent no.2 to frame a transfer policy.

c. Due to change in the constitution of respondent no.2, whether the petitioners can still claim protection under Section 6 of 2002 Repeal Act.

RESPONDENT NO.2 AS A STATE.

6. According to the petitioner the entire share capital of respondent no.2 is subscribed by three nationalized banks and by one statutory corporation and as such the respondent no.2 falls within the meaning of 'State' under Article 12. In support of the said contention learned advocate Shri Naidu relied upon following judgments: --

a. *Ajay Hasia v/s Khalid Mujib Sehravardi and others*[1].

b. *Pradeep Kumar Viswas v/s Indian Institute of Chemical Biology and others*[2].

7. Above judgments are celebrated judgments on this point. *Ajay Hasia's* judgment is delivered by 5 judge bench of Hon'ble Supreme Court. Issue was whether a Society registered under the provisions of Jammu and Kashmir Registration of Societies Act can be considered as State. The said society was running a regional engineering college and it was funded by the Central Government. There was an advertisement for admission in B.E. course. Written test and viva-voce test were conducted. The petitioners secured more marks in written test whereas they secured less marks in viva-voce test. The petitioners could not secure admission. They have challenged the process of admission. It was held that *"Society is an instrumentality or the agency of the State and the Central Government and it is an 'authority' within the meaning of Article 12"* (para no.15). Word 'State' has been used at different places in the Constitution. Article 12 comes in Part III whereas it is also used in Part XIV (para no.12). It is immaterial under which Statue the authority is created. What is important is 'whether it is an instrumentality or agency

1 (1981) 1 SCC 722
2 (2002) 5 SCC 111

of government' (para no.11). Various clauses in the memorandum of association including power of the society to make rules for the conduct of the affairs of the society, to add, amend and vary rules with the approval of state government, audited accounts to be forwarded to the state and central government, to appoint persons for inquiry by the government etc. On above facts it was held that the society in question is State.

8. Whereas the judgment in case of *Pradeep Biswas* was delivered by bench consisting of seven judges of Hon'ble Supreme Court. Request made by certain categories of stenographers working in Council of Scientific and Industrial Research for equal remuneration was rejected in case of *Sabhajit Tewary*[3] for the reason the CSIR is not a state. This view was put up for reconsideration in case of *Pradeep Biswas*. It was also the issue of parity of remuneration of stenographers working in a different unit of CSIR. Majority view overruled the earlier view taken in *Sabhajit case* and it was held that CSIR a society is a state within the meaning of Article 12 of the Constitution. Hon'ble Supreme Court has also considered the changes in the meaning of state after passage of time. The factors like creation of CSIR, its objects and functions, its management and control and financial aid were considered while arriving

3 reported in (1975) 1 SCC 485

at the conclusion. New fact about application of the provisions of Administrative Tribunal Act to the employees of CSIR was also considered. It was observed that *'the tests formulated in Ajay Hasia are not a rigid set of principle so that if a body falls within any one of them it must, 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'* (para no. 40).

9. On the other hand learned senior advocate Shri Talsania relied upon the following judgments :-

(i) *Zee learn limited Vs. UTI Asset Management Company limited in W.P., L.D.V.C No.88 of 2020.*

(ii) *All India IDBI SC ST Nav Buddhist and OBC Officers Welfare Association Vs. IDBI Bank limited Writ Petition No.1235 of 2013.*

(iii) *All India IDBI SC ST Nav Buddhist and OBC Officers Welfare Association Vs. IDBI Bank Limited. A Review petition No.53 of 2017.*

(iv) *All India IDBI SC ST Nav Buddhist and OBC Officers Welfare Association Vs. IDBI Bank Limited. Special Leave Petition (civil) Diary No. 42451/2017.*

(v) *R.V.Dnyansagara Vs Maharashtra Industrial and Technical Consultancy Organization Limited reported in 2003 (2) Maharashtra law Journal page 547.*

(vi) *Mrinmayee Rohit Umrotkar Vs. Union of India Writ Petition (L) No.6704 of 2020.*

(vii) *All India UTI AMC Officers Association Vs. Union of India Contempt Petition lodging No.3109 of 2020.*

(viii) *Arun Kumar Agrawal v/s Union of India reported in (2014)2 SCC 609.*

10. In *Zee Learn Limited*, the issue was whether UTI Asset Management Companies Limited can be considered as a public financial institution as defined in Section 2 (72) of Companies Act. The issue involved was on the background of issuance of notice by respondent no.1 therein to the Petitioner thereby demanding certain amount. The Petitioners have made a private placement of redeemable non-convertible debentures from Respondent No. 1. The Petitioner could not pay the amount. That is why the demand notice was issued and the Petitioner has claimed reliance on two circulars issued by the Reserve Bank of India thereby granting moratorium to certain institutions. Petitioner claims that they fall within the purview of those circulars. This Court turned down the case put up by the Petitioner and it was held that the Respondent No. 1 UTI Asset Management Company is not a public financial institution. Accordingly, the Petition was dismissed.

11. In case of All India IDBI SC/ST NAV Buddhist and OBC Officers Welfare Association, issue involved before the Division Bench of this Court was whether IDBI Bank Limited was a State within the meaning of Article 12 of the Constitution of India. The issue was involved on the background that IDBI has issued a Circular thereby curtailing the sick leave from 540 days to 360 days. The said circular was challenged by the association. Grievance of the Petitioner was that IDBI Bank falls within the meaning of other Public Sector bank and the Union of India is holding more than 51 % shares and as such the Government is having pervasive control and supervision over the affairs of the bank. IDBI was earlier governed by the Act of Parliament, namely IDBI Act 1964. In the year 2004 after the enactment of IDBI (Transfer of Undertaking and Repeal) Act 2003, IDBI was converted into a banking company.

12. There was a provision in Section 5 of the IDBI Act, 1964 (for short 'the IDBI Act') relating to the employees of earlier IDBI and their continuance in the new entity. Those provisions are *pari materia* similar to the provisions of Section 6 of the Repeal Act, 2002. There was an issue whether the employees were having pre-existing legal right and whether *writ of mandamus* can be issued. Under what circumstances a *writ of mandamus* can be issued is also discussed in para No. 16 of the said judgment. Division Bench of this Court considered the provisions of Section 5 of IDBI Act and observed that "by any stretch of imagination it does not mean that terms and conditions of service as prevailing earlier would remain and continue in the same form despite the vesting of the company. The undertaking vests in different legal entity and if that different entity decides to operate on business principle so as to face other competitors in the market then it was open to take decisions as deem fit and proper. It was observed that there is pre-established right and it is violated (para No 21). This Court also considered the rule of estoppel and this doctrine is based on fairness. This Court also considered what is the concept of legitimate expectation (para No. 23). It was observed that "this concept has no role to play where the state's action is as a public policy or in public interest unless the action which cannot amounts to an abuse of power. The Court cannot by invoking this doctrine usurp the discretion of the public authority which is empower to take decision under the law and the Court is expected to apply an objective standard which leaves to the deciding authority a full range of choice which the legislature has presumed as intended" (para No. 23). For the above discussion this Court has refused to interfere in the circular and dismissed the petition. The said decision was also not interfered in the review petition No. 53 of 2017 filed by the Association. So also, Hon'ble Supreme Court refused to interfere in those decisions.

13. Similarly, in a Writ Petition (L) No. 6704 of 2020 filed by Mrinmayee Umrotkar the issue as to whether the IDBI Ltd. is an undertaking of Government of India or not was involved. It was involved on the background of taking admission in MBBS course. The petitioner is a daughter of an employee working with IDBI Ltd. and she was posted outside Maharashtra. The issue involved was whether the daughter of such an employee can take the benefit of 85% State quota. Several issues were raised including referring the letters issued by Ministry of Finance. There was also an argument that more than 51% share capital of IDBI was held by Government undertakings. The circular says that IDBI is to be treated at par with other nationalized bank.

14. The reliance is also placed on the Vigilance Control by Central Vigilance Commission over IDBI. Reliance is placed on the information available on financial website of Ministry of Corporate Affairs wherein

IDBI is shown as Union Government Company. This Court has also referred to the provisions of Section 5 of 2003 Act (para No. 17). This Court has observed in para No. 20 that merely because Life Insurance Corporation of India (for short 'the LIC') is considered as a State as per Article 12 of the Constitution IDBI Ltd. does not attain the status of State within the meaning of Article 12. For the above discussion the petition was dismissed.

15. If we consider the above two judgments dealing with the status of IDBI it was held that IDBI cannot be treated as a State as per Article 12 of the Constitution. In both these judgments the issue was discussed on different background.

16. In case of R.V. Dnyansagar v/s Maharashtra Industrial and Technical Consultancy Organization Ltd. as referred above this Court has laid down various criteria for deciding whether a particular authority can be considered as State within meaning of Article 12. It was observed that the Court has to see *"the cumulative effect as established and whether such body is financially, functionally and administratively dominated and under the control of government. If the control was merely regulatory the body would not be a State"*. These observation are on the basis of facts. It was observed that there was nothing on record to indicate that the State

Government had deep and pervasive control over the company in question. Accordingly the petition was dismissed.

17. While dealing with the petition this Court has dealt with the provisions of Sections 617, 619 and 619(B) of the Companies Act, 1956. Section 619 lays down the appointment of auditor of a Government Company by Comptroller and Auditor General of India. Whereas the provisions of Section 619 (B) of the said Act lays down that the provisions of Section 619 about appointment of Auditor are applicable to a company wherein the paid up share capital to the extent of 51% is held by the entities laid down in Clause (a) to (g) of Section 619 (B) of the said Act. This Court has observed that merely because a particular entity falls within the purview of Section 619(B) and as such the provisions of Section 619 (B) of the Act are applicable, it does not make that entity as a deemed Government Company and falls within the purview of Article 12 of the Constitution of India. Such company is treated as Government Company only for the purpose of Section 617 of the Companies Act.

18. In case of Arun Kumar Agrawal there is challenge to the appointment of Shri U. K. Sinha who was earlier working as Chairman and Managing Director of respondent no.2 was appointed as head of SEBI. Court has taken a note of absence of pleading by the petitioner that UTI

Asset Management Company is a government owned company under section 617 of Companies Act. There was also an argument that it is a government-controlled company as the shares are all held by instrumentalities of the state. However, it was not accepted.

19. If we consider the ratios laid down in all above judgements following principles can be culled out: --

a. Whether the entity is created as per any specific statute or not. That is to say particular entity is the outcome of particular statute.

b. How the entity is raising finance? whether that entity is getting any grants from any Government.

c. What type of functions/business that entity is performing/carrying?

d. Whether earlier those functions/business was carried out by the Government?

e. What is the nature of that entity that is to say Company, Society, Corporation etc?

f. What are the provisions of rules/memorandum of association of that entity?

g. Who is dominating financial, functional and administrative aspects?

h. What is the background of litigation that is to say that whether the dispute pertains to service or admission or employment etc?

On this background the provisions of Repeal Act 2002 and facts of this petition need to be considered. Both the parties also relied upon certain documents.

Provisions of Repeal Act

20. The Repeal Act is a very short Act consisting of only 25

Sections and two schedules schedule I and Schedule II. The Unit Trust of India was a statutory corporation. As the Unit Trust of India was no more in existence after the Repeal Act of 2002, Section 3 provides for transfer of the capital of Unit Trust of India to the Central Government. At the same time when new entity to be described as a Specified Company has to be constituted, there has to be a share capital provided by certain persons. Section 2(h) of the Repeal Act gives the meaning of Specified Company. The following are the ingredients: -

a. It is a Company formed and registered as per the provisions of Companies Act 1956.
b. Its entire share capital is subscribed by the financial institutions/banks and which are specified by the Central Government by notification in the official gazette.
c. It is for the purpose of transfer and vesting of the said undertaking.

21. Section 4 lays down how there shall be a vesting of the undertaking and Specified undertaking. The undertaking of a Trust which includes business assets, liabilities and properties as specified in Schedule-II vest in the Specified Company. What will be the terms and consideration will be decided mutually in between the Central Government and subscribers to the capital of Specified Company. Whereas the Specified undertaking of the Trust vests in the Administrator. This Specified undertaking includes the business, assets, liabilities and properties as prescribed in Schedule - I attached to the Repeal Act.

22. The Government as per the Notification dated 15th August 2003 has prescribed four entities to be the subscribers of the Specified Company. All the four have to subscribe to the share capital of the Specified Company in equal proportion. The copy of the said notification is filed at page number 72. According to said Notification, following are the four subscribers:-

a) State Bank of India

b) Punjab National Bank

c) Bank of Baroda and

d) The Life Insurance Corporation of India

23. No doubt all these four entities are the Government Companies/Government undertaking. When these four subscribers to the share capital of the Respondent No. 2 are nationalized banks / undertaking, does it mean to say that Respondent No. 2 has also become a Government Company/undertaking?

24. The following are the other relevant Sections from 2002 Repeal Act:-

(a) Section 6 which deals with the provision in respect of officers and other employees of the Trust.

(b) Section 7 deals with appointment of administrator to manage specified undertaking.

(c) Section 9 deals with board of advisers so as to assist the administrator of specified undertakings.

(d) Section 19 deals with power of Central Government to alter Schedule-I and Schedule II.

(e) Schedule-I lays down different schemes which are transferred to Specified undertaking.

(f) Schedule-II deals with the schemes and plans which are transferred to Specified Companies.

25. Section 6 which is very relevant for deciding the issues involved before us. There is a great emphasis on provisions of this Section. The provisions of Section 6 are as follows:-

(i) Every Officer and employee of the Trust who were serving with the Trust immediately before the appointed day - shall become the Officer / employee of Specified Company.

(ii) They will hold the office/service by the same tenure, at the same remuneration, upon the same terms and conditions and with the same obligations and with the same rights and privileges.

(iii) They will continue to be the officers/employees of the specified company.

26. They are given an option not to continue to be the officers/ employees of the specified company provided this option has to be exercised within the period of six months from the appointed date.

27. According to the learned advocate Shri Naidu for the Petitioners Section 6 gives a statutory protection to present Petitioners and Respondent No. 2 is under obligation to protect the same terms and conditions of service which the Petitioners were enjoying prior to 2002. According to learned advocate Shri Naidu, it includes a protection from unjustified transfer.

28. For understanding what is the intention of the legislatures while passing 2002 Repeal Act, it will be material to consider the provisions of a Repeal Act which deals with the specified undertaking also. We have to see why such difference is made by bifurcating the business, assets and liabilities of erstwhile Unit Trust of India into two entities i.e. to say specified company and specified undertaking. For creating this bifurcation, whether there was any intention on the part of the legislature will have to be seen. We can gather such intention after reading some of the provisions of 2002 Repeal Act. Section 6 (2) of the said Act empowers the Administrator of specified undertaking to requisition the services of the officer or employees. That has to be done in consultation with specified company and it will depend upon the mutual agreement in between the administrator and specified company. If a particular employee or officer opts not to go into the employment or service of the specified company, such staff shall be deemed to have resigned. This provision finds place in Section 6 (3) of the Repeal Act. It is important to note that when a particular officer/employee is transferred to the employment of specified company, such staff is not entitled to claim compensation as contemplated under the provisions of Industrial Dispute Act. So also, such staff cannot ask for the compensation and even there is a bar on any Court, tribunal or authority to entertain any claim for such compensation. It is included in Section 6(4) of the Repeal Act.

29. Section 7 empowers the Central Government to appoint a person or body of persons to be the Administrator to look after the business of specified undertaking. Even Section 10 of the said Act lays down, what are the powers and functions of the Administrator. Section 7 (2) empowers the Central Government to issue necessary directions to the Administrator depending upon the situation and the Administrator is supposed to conduct the management of the specified undertaking. If we consider all these provisions relating to specified undertaking on one hand and the provisions relating to specified company on the other hand, we may find that the provisions similar to the administration of specified undertaking does not find place so far as the functioning of the specified company is concerned. This absence of provision cannot be said to be an accidental omission. There has to be some intention of the legislature while not incorporating similar provision so far as future conduct of business of specified company is concerned.

30. When the Repeal Act 2002 has laid down the meaning of the entity specified company, the legislators have considered specified company as a company formed and registered under the provisions of Companies Act 1956. It will be material to see the provisions of 1956 Act. The reason is there is an argument advanced on behalf of the petitioner that the respondent No.2 can be treated as a government company. Section 2(10) of 1956 act lays down meaning of company. Company means a company as defined in section 3. Whereas Section 2(18) lays down meaning of government company. Government company means a government company within the meaning of the provisions of Section 617 of the said Act. The criteria for deciding whether a company is a government company or not is holding of paid up share capital. If the paid up share capital of a company is not less than 51% percent and it is held either by (a) Central government (b) By State government (c) By Governments (d) Partly by the central government or partly by any one or more state governments (e) and includes a company which is subsidiary of government company. So the meaning is very clear. The test laid down is who holds the paid share capital of the company. If at least 51% of the paid-up share capital is held by above said agency or any of them, the company is to be treated as government company. The emphasis of the petitioner is that the subscribers who have contributed to the share capital of specified company are the government companies/undertakings. They have subscribed equally to the paid up share capital and as such the Respondent No.2 is a government company. Whereas the arguments on behalf of Respondent No.2 is that whatever was the situation when specified company was created does not remain the same after a passage of time. Whereas time and again the central government has permitted the specified company to dis-invest and if these events are considered, Respondent No.2 no more remains a government company.

31. On the background of above quoted provisions of the Repeal Act, the facts of this petition need to be considered. We have to see whether the facts of this petition satisfy the test laid down in various judgments referred above.

32. The entire controversy rest upon the meaning of Article 12 and its application to the facts before us. For ready reference Article 12 of the Constitution is reproduced below.

Article 12 :-

> *"In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within*

the territory of India or under the control of the Government of India.”

33. From above categories, category applicable is 'other authorities'. We will verify the pleadings and documents on the background of various tests laid down in above referred judgments.

CREATION AS PER STATUTE

34. No doubt the respondent no.2 is created as per the Repeal Act 2002. It is also true that four subscribers have contributed equally to the share capital of the Company. However this much factor is not conclusive. We have also to look into subsequent developments.

35. There is a Writ Petition No.1968 of 2008 filed by Respondent No.2 against the order passed by central information commission. The commission has held that the provisions of the Right to Information Act are applicable to Respondent No.2. This Court has granted *ad interim* relief in terms of prayer 11 (c) as per the order dated 10th September, 2008 in that petition filed by present Respondent No.2. They are at page No.181 and 186. However the observations of Information Commissioner are stayed.

FUNCTIONS OF NEW ENTITY

36. It accepts deposits from the public and invest it in appropriate securities and gives return to the investors. No doubt it is true that prior to 2002, erstwhile UTI was performing the same function. UTI was a statutory corporation. Now this function is continued by respondent no.2. At this stage it will be material to note that the business mentioned in Schedule II is transferred to respondent no.2 and the business mentioned in Schedule I is transferred to administrator. If we can have a look at the schemes and plans mentioned in those two schedules, we may find that the schemes mentioned in Schedule II are market driven schemes and the schemes mentioned in Schedule I return is guaranteed by the Government. Certainly, there is definite purpose behind distributing the schemes and allocating it to different entities.

FUNDING OF NEW ENTITY.

37. As said above initial share capital is subscribed by four subscribers. It will also be important to note that in due course of time stakes of these four subscribers in the share capital is reduced and it is sold to private entities. In the letter dated 29/9/2008 Ministry of Finance has permitted changes in the stipulations made in earlier communication dated 14/9/2007 (page no. 77). The respondent no.2 has sought permission of Department of Investment and Public Asset Management

(DIPAM) for disinvestment and for an IPO of 30.75%. Its copy filed at page 80. There is approval dated 12/9/2019 filed on record. This disinvestment was permitted for ensuring the compliance of Regulation 7B of SEBI (MUTUAL FUNDS) (Amendment). As per the said approval the stakes of all subscribers have reduced to 9.99% (except Punjab National Bank. Its stake is 15.24%). The petitioner in the affidavit -in-Rejoinder para no. 38 has also clarified this fact. As per Regulation 7B of SEBI Regulations, any sponsor of mutual fund should hold not more than 10% stake in voting rights of asset management company.

38. Furthermore there is table filed showing shareholding pattern of UTI asset management company limited. It shows the position as on 30th September, 2021. Our attention is invited to the category of shareholders of Respondent No.2 company. It is shown as public shareholder. There is no dispute that LIC, SBI, Punjab National Bank and Bank of Baroda hold share of Respondent No.2 Company. In fact they are the original subscribers to the capital of Respondent No.2 Company. Initially they were holding hundred percent of the share capital. It is a matter of record that by passage of time they have reduced their stakes in the share capital of the company. As on 30th September, 2021 the share held by these sponsors are as follows:-

a) Bank of Baroda 9.99%.

b) Punjab National Bank 15.23%.

c) State Bank of India 9.99%.

d) LIC 9.99%.

e) T ROWE Price International Limited 22.99%.

39. These are the major shareholders. From above details one fact is clear that the original sponsors do not hold the same stakes which they were holding at the inception. Even in the master data of Companies filed by the respondent no.2, the respondent no.2 is shown as *"Non-govt company"*.

CONTROL OF THE GOVERNMENT

40. We may find that the specified company is described as a Company formed and registered as per the Companies Act, 1956. As said above there is no provision in the Repeal Act, 2002 which empowers the Central Government to issue instruction. Similar provision we may find in case of specified undertaking. Approval of Government (DIPAM) is taken when there is disinvestment by the original sponsors. There is a copy of letter dated 4/7/2013 on record (page no. 75) sent by Principal Director of Commercial Audit to respondent no.2. It was informed to place comments of Comptroller and Auditor General of India in the Annual General Meeting and to report compliance. At the same time there is copy of letter dated 8/2/2021 sent by the Office of Comptroller and Auditor General of India addressed to respondent no.2. It is informed that appointment of statutory auditors and supplementary audit by CAG are not applicable to respondent no.2 and its three subsidiaries. The second letter is latest in point of time. There is one more that is letter dated 24th July, 2007 sent by ministry of finance department of economic affairs addressed to the chairman and managing director of Respondent No.2 is filed on record. It was informed that Respondent No.2 does not come under the regulatory jurisdiction of chief vigilance commission. As per the said letter the internal mechanism of Respondent No.2 is sufficient to deal with grievances made.

NATURE OF MUTUAL FUND

41. The respondent no.2 is managing the schemes and plans described in the Schedule II attached to Repeal Act 2002. There are certain correspondence on record. One of such letter dated 10/9/2007 sent by Association of Mutual Funds in India on record (page no. 78). It says that respondent no.2 is owned by four who are public sector undertakings. Letter further mentions that as per SEBI website UTI Mutual Fund is classified under *'public sector'*. However annual report for the year 2020-21 published by SEBI is also filed on record by the respondent no.2. It mentions that UTI Mutual Funds is considered as Private Sector Mutual

Funds.

EMPLOYER-EMPLOYEE RELATIONSHIP

42. There is more emphasis on the provisions of Section 6 of the Repeal Act, 2002. Those provisions give protection to the employees of erstwhile UTI when they will be continued with respondent no.2. There are UTI Asset Management Company (Staff) Rules, 2003. The petitioners relied upon registration of officer's association with the Office of Labour Commissioner, Mumbai (page no. 81). Article 12 falls under Part III relating to fundamental rights. Whereas Article 311 falls under Part XIV. It deals with protection from dismissal to persons serving with Central or State Government. This protection can be made applicable only when the employees are the members of the services of Union or State. The present petitioners cannot be said to be employees working with Union or State.

CONCLUSION

43. If we consider all above factors, we may find that earlier the Central Government was having control over the activities of respondent no.2. However further developments show that the Government has given an autonomy to the management of respondent no.2. Over a period of time, Government has permitted its instrumentalities to disinvest and reduce its stake in the share capital of respondent no.2. As of now the original subscribers do not hold 51% of total paid up share capital of the respondent no.2. Ultimately business can be carried out through a natural person or through an artificial person which may include Company, Corporation and Society. In this case it is a Company. The management of the Company is run by the Board of Directors. Ultimately whether the board of directors have an autonomy to take decision or not is an issue. Nothing is pointed that board of directors cannot take any decision without the approval of the Government. The events do suggest that the Government through its instrumentalities have withdrawn from the ownership/management of the respondent no.2. Central Government is not having financial, functional and administrative control over the activities of the respondent no.2.

44. The observations made by division bench of this Court in All India IDBI SC ST Nav Buddhist and OBC Officers Association are more relevant. It reads thus *"when the undertaking vest in different legal entity and if that different entity decides to operate on business principles so as to face other competitors in the market, then it was open for it to take such decisions as it deems fit and proper".* So when new entity has formulated its own policies and its constitution has changed, the petitioners cannot treat the respondent no.2 as it originally existing. The petitioners have forgotten to consider further development. But Court cannot overlook the same.

45. For the above discussion we are unable to satisfy ourselves that the respondent no.2 falls within meaning of 'other authority' under Article 12 of the Constitution. Hence we reject all the contentions taken in that behalf by the petitioners and uphold the objection taken about maintainability of the petition by the respondent no.2.

DIRECTION ABOUT FRAMING TRANSFER POLICY

46. As we have already held that the respondent no.2 does not fall within the meaning of State, certainly the petitioners cannot be justified in seeking any directions for framing of transfer policy. But the case of the petitioner is also based on the doctrine of legitimate expectation. Hence, we are scrutinizing the case of the petitioner from that angle also. In this petition, there is a challenge to the office order dated 1/10/21. However earlier to that there was also an occasion for the employees of the Association to approach this Court when some of the employees were transferred by the management of respondent no.2 vide an order passed on 15th April, 2011 page 82. The officers of the petitioners were transferred to the various parts of India. However, by subsequent office order dated 16th March, 2012 the Respondent No.2 company has revoked the said order. There was Writ Petition No.1904 of 2011 filed by the officers association of Respondent No.2 company. This

Court as per the order dated 10th July, 2017 was pleased to dispose of the said petition. One of the reliefs claimed in that Petition was issuance of a direction to consider the grievances made by the petitioner in the said Petition. This Court as per the said order directed Union of India to look into those grievances within time limit and accordingly the Writ Petition was disposed of. However at the same time the contention raised by Respondent No.4 and 5 in that Petition on the ground that they are not covered within the term state within the meaning of article 12 of the constitution was kept open. There was Contempt Petition (L) 31093 of 2020 filed when the order dated 10th July, 2017 passed in Writ Petition No.1904 of 2011 was not complied with. However as per order dated 15/9/2020 the petitioner therein was granted liberty to file fresh contempt Petition and the said contempt petition was disposed of.

47. After the order dated 10/7/2017 Department of Investment and Public Asset Management has heard the representatives of the petitioner and given a report dated 26th April, 2018. It was filed at page 88. Point No.I of the said report mentions that transfer policy for officers is being drafted and will be shared with the board/NRC during their meeting of April, 2020. Instead of putting up the transfer policy for consideration, Respondent No.2 company has amended UTI AMC (Staff)

Rules 2003 and more specifically rule number 26. The amended rule 26 empowers the Respondent No.2 company to transfer the officers anywhere in India or abroad. The Petitioner's association is aggrieved by the said amendment and accordingly they have made a protest by approaching deputy chief labour commissioner. However as they could not get any justice, the Petitioners have filed this Writ Petition before this Court. There are relevant documents filed on record. They are as follows :

A. Department of Investment and Public Asset Management constituted a committee consisting of officers of their department and officers of Ministry of Finance. The committee heard the officials of Respondent No.2-Company, Chief Executive Officer of specified undertaking of Unit Trust of India, the Officers Association and even the four subscribers. After that they gave a report dated 26th April, 2018 (page no. 88).

B. Thereafter internal committee was constituted by Respondent No.2 and it interacted with the officers of the association and several meetings were conducted. The common minutes of the meetings (held on 27/3/2019, 10/6/2019,11/6/2019, 25/7/2019 and on 10/8/2019) is filed on page No.105.

C. There is Action Taken Report dated 22nd October, 2019 at page No.114.

D. If we will read the report dated 26th April 2018, we may find that various issues relating to service matter were discussed. It includes issue relating to pay and allowance, payment of incentives, seniority, gratuity payment, payment of pension, third pension option, dilution in medical benefits, retirement age, transfer policy and rule No.26, denying equal opportunity for career, official language, reservation policy and other issues. On certain issue the committee has given its own opinion whereas on certain issues the committee has left the issue to be decided by Board of Directors.

48. The observation of the committee on the issue of transfer policy finds place on page No.98. It reads as follows :

> *"Strictly speaking the issue of transfer of employees is not covered under Section 6 of the Repeal Act. However, having transparent policy on transfer of officers is beneficial for organization and the committee suggests that UTI AMC may consider the same."*

49. Finally the committee gave its conclusion on page No.104. It is as follows :

A. Respondent No.2 is Board controlled entity as per the Companies Act.

B. The entitlement of all officers of erstwhile UTI are protected under Section 6 of the Repeal Act.

C. Grievances which have arisen over a period of time have to be given due regard and to be addressed by the Respondent No.2 and its board after due deliberations.

D. The communications between officers and management has to be such that grievances are resolved through mutual understanding in the complete spirit of 2002 Act.

50. If we see the minutes of the meetings of the internal committee constituted by the management of Respondent No.2, we may find that in every meeting the issue of transfer policy was discussed. The committee agreed that the transfer policy needs to be based on the discretion of the Management. Furthermore, Mr. Rahman, Chairman of Committee Respondent No.2 has advised the Human Resources Department to formulate a transfer policy for its officers. It finds place on page No.108. In further meeting the Chairman has even inquired with the Human Resources Department about formulation of transfer policy and it was assured that the draft will be discussed in forthcoming meeting. It finds place on page No.111. If we read the Action Taken Report dated 22nd October, 2019 page No.114 and more specifically Point No.I we may find that the transfer policy for officers is being drafted and there is noting that it will be shared with the Board/NRC during the ensuing meeting of April, 2020.

51. The grievance of the Petitioners is that instead of taking a decision on the transfer policy, the management of Respondent No. 2 had chosen a different path and instead they have amended Rule No. 26 of UTIAMC (Staff) Rules 2003. It will be material to consider the Rule No. 26. In 2013 also there was amendment to Rule No. 26. Earlier to 2013 the employee was supposed to serve at any such place as he may be directed.

However as per 2013 amendment, sub-rule was incorporated in the Rule 26. Sub Rule (b) of Rule 26 mentions that the employees shall be liable to be transferred anywhere in India or abroad. Whereas as per the 2021 amendment Rule No. 26 was further amended. Sub Rule - (b) was bifurcated into two parts. (i) It says about the officers. The officers is liable to be transferred anywhere in India or abroad. Whereas (ii) provides that any other employee shall be liable to be transferred anywhere in India in the same city of posting.

52. According to the Petitioners this action of Respondent No. 2 is unjustified and it is irrational.

53. From the above facts, one may certainly say that the issue of framing of transfer policy was being discussed in the meetings referred above. We can also say that the representative of respondent no.2 has instructed the concerned department to prepare transfer policy. Now the grievance of not framing transfer policy has got two dimensions. One is whether it amounts to contempt of court order dated 10/7/2017. Even though one contempt petition is withdrawn, the petitioners in earlier petition were granted liberty to file fresh contempt petition. We are not supposed to make any comment on that issue. We are supposed to look into the grievance from the point of view of submission based on legitimate expectation. We are sorry to say that on this ground also directions as sought cannot be given. We are fortified in this view on the basis of observations in case of All India IDBI SC ST Nav Buddhist and OBC Officers Association. The relevant observations are as follows :--

> *"we do not see how in the above circumstances the principles of either legitimate expectation or promissory estoppel can be invoked. The tests for applicability of the same are salutary. They have been set out in several decisions of the Hon'ble Supreme Court of India. Even if we refer to the decision relied upon and copy of which is annexed to the written submissions, what we find is, in that decision itself, (Pratima Chowdhury v/s Kalpana Mukherjee and another reported in [2014]4 SCC 196), the Hon'ble Supreme Court clarifies that rule of estoppel is a doctrine based on fairness. It postulates the exclusion of the truth of the matter. All for the sake of fairness. For section 115 to apply firstly one party should make a factual representation to the other and secondly the other should accept and rely upon the factual representation. Thirdly, having relied on the same, the second or other party should alter its position. The instant altering of position should be that it would be inequitable to require him to revert back to the original position. Thus, for the principles to apply, certain preconditions and prerequisites have to be satisfied. We do not think that they are satisfied in the facts and circumstances of the present case" (para no. 22).*

54. Above observations are perfectly applicable to the grievance raised before us. Even though there are documents to suggest that the representative of the respondent no.2 Company has instructed to draft transfer policy, we do not think that any pre-existing right of the petitioners is violated. The instructions to draft transfer policy has not reached to such a stage so as to give a vested right to the petitioners to seek directions from this Court. Hence on this count also, we are not inclined to give any directions to the respondent no.2.

55. Hence on both the counts, no case is made out by the petitioners. Hence the petition is dismissed. Parties to bear their own costs. Interim relief granted by this Court on 8/10/2021 stands vacated.

(S.M.MODAK, J.) **(PRASANNA B. VARALE J.)**

AFTER PRONOUNCEMENT

1. The learned counsel Mr. S. C. Naidu, prayed for continuation of interim Order passed by this Court. Though the prayer for continuation is opposed by the learned counsel for the Respondents considering the fact that the interim Order was passed by this Court on 08/10/2021 and is continued till date, the same to continue for further period of six weeks.

(S.M.MODAK, J.) **(PRASANNA B. VARALE J.)**

*Order modified as per Speaking to Minutes dated 05/07/2022