

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

Date of decision: 17th OCTOBER, 2022

IN THE MATTER OF:

+ **LPA 315/2021**

DR JITARANI UDGATA

..... Appellant

Through: Mr. Anoop Chaudhari & Ms. June Chaudhari Senior Advocates with Mr. Samarth Chowdhary, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Vivekanand Mishra & Mr. Aayushmaan Vatsyayana, Advocates for Respondent No.1.

Mr. Jayant Mehta, Senior Advocate with Mr. Aman Raj Gandhi, Mr. Vardaan Bajaj & Mr. Abhishek Tiwari, Advocates for Respondent No.2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present appeal has been filed challenging the Judgment dated 09.07.2021 passed by the Ld. Single Judge of this Court in W.P.(C) No. 4733/2021 whereby the writ petition of the Appellant herein was dismissed on the ground that it was not maintainable as Gems & Jewellery Export Promotion Council ("GJEPC"), i.e. Respondent No.2, did not fall within the ambit of State under Article 12 of the Constitution of India, 1950 (*hereinafter referred to as the "Constitution"*).

2. The short question which had arisen before the learned Single Judge when the writ petition had been listed for the first time on 16.04.2021 was whether the same was maintainable. It had been argued on behalf of Respondent No.2 that it was not a statutory body, but was a company incorporated under Section 25 of the Companies Act, 1956 and, therefore, fell outside the parameters essential for Respondent No.2 to be declared as an entity within the meaning of “State” under Article 12. The Appellant had, however, argued vehemently that as GJEPC functioned under the sponsorship of the Ministry of Commerce and Industry (*hereinafter referred to as “MOCI”*), it could be deemed to be an instrumentality of the State within Article 12 due to the extent of the regulation, control and supervision that MOCI exercised over it.

3. *Vide* impugned Judgement dated 09.07.2021, the learned Single Judge held that the writ petition was not maintainable and stated the following:

“49. It must be held that GJEPC is not discharging any public/ state functions and as such not an ‘other Authority’ within the meaning of Article 12 of the Constitution of India and as such, the present petition under Article 226 of the Constitution of India is not maintainable. The plea of maintainability of the petition, advanced by learned counsel for the respondent No.2 need to be accepted and without going into the merits of the challenge to the termination of the petitioner, and the Judgments relied upon by the petitioner on the merits of the case, the present petition is liable to be dismissed. It is ordered accordingly.”

4. Aggrieved by the finding of the learned Single Judge in the impugned Judgment dated 09.07.2021, the Appellant herein has approached this Court

by way of an appeal in an attempt to establish the maintainability of W.P.(C) 4733/2021.

5. Mr. Anoop Chaudhuri, learned Senior Counsel appearing for the Appellant herein, at the outset, submits that the learned Single Judge has erred gravely by holding Respondent No.2 is not amenable to writ jurisdiction as it falls outside the purview of Article 12 of the Constitution. He states that Respondent No.2 exercises no autonomy and this is exemplified by the financial control that is exerted by the MOCI over it. He relies on the 73rd Report of the Rajya Sabha that was presented to the House on 04.05.2020 wherein the delay in the Annual Reports and Audited Accounts on the part of Respondent No.2 had been discussed by the Rajya Sabha. He states that the said Report iterates that the GJPEC was set up in 1966, operated under the supervision of the Ministry of Commerce, Government of India, and that it represented an industry which was India's largest foreign exchange earner. He further informs this Court of the objectives of the Council and particularly relies on Point 2 which states that, *"As per the recommendations of the Committee on Papers Laid on the Table, Rajya Sabha all Government companies/organisations are required to lay their Annual Reports and Audited Accounts on the Table of the House within 9 months from the date of closure of accounts. The Annual Accounts of the Gem & Jewellery Export Promotion Council, Mumbai close on the 31st March, every year. Hence papers are required to be laid on the Table of the House by 31st December"*. As per Mr. Chaudhuri, the only reason that the annual reports, along with the audited reports, are required to be placed before the Rajya Sabha, is because it is considered to be a *"Government company/organisation."*

6. Mr. Chaudhuri submits that the fact that GJEPC is a public authority is evident from the Reply dated 09.02.2021 of the Department of Commerce to an RTI application filed by the Appellant herein which demonstrates that MOCI exerts a substantial degree of control over the activities and the finances of Respondent No.1. He submits that the response to the information sought states that GJEPC had participated in the Kimberley Process Certification Scheme (KPCS) in the capacity of a designated Importing and Exporting Authority within the meaning of Section IV(b) of the KPCS Core Document. The learned Senior Counsel brings to the attention of this Court the website of MOCI to showcase that GJEPC is mentioned under the category of Export Promotion Council and that it performs an important function of promoting exports of Gems and Jewellery (G&J) products as well as appraisal of imports of commodities relating to this sector. Furthermore, the Office Memorandum dated 10.11.1997 issued by the Government of India states that Export Promotion Councils, FIEO, IIP, etc. may create new posts and recruit staff without taking prior approval of the Government, but only within 10% of their overall approved budget and on the explicit understanding that no compensation/grant would be available from the Government in case they are unable to meet these expenses within their budget at any subsequent date. It also states that these Organisations would not be permitted to recruit Group 'D' employees against their position in any case.

7. Referring to the Memorandum of Association ("MoA") of Respondent No.2, Mr. Chaudhuri argues that the objects of Respondent No.2 demonstrate that it performs a public function. He further relies upon Clause 9 of the MoA and Article 48 of the Articles of Association ("AoA") to state that no alteration, modification or deletion can be made to either the

MoA or the AoA of the GJEPC unless the alteration has been previously submitted to and approved by the Central Government, and upon Clause 3(c)(vi) to state that any deposit or investment of moneys made by the GJEPC in any securities or bank must be done with the approval of the Union Government. He states that a perusal of the MoA and AoA reveals that the Committee of Administrators (“CoA”) of GJEPC has maximum 27 members, and 3 members are nominated by the Central Government. Mr. Chaudhuri, therefore, submits that these clauses reveal the pervasiveness of State control over the actions of Respondent No.2, thereby rendering it as an instrumentality of the State.

8. The learned Senior Counsel then relies upon Clause 1.4 of the AoA to submit that the application of the General Clauses Act, 1897, to the interpretation of the articles in the AoA indicates that the structure of Respondent No.2 is akin to that of a statutory authority and, therefore, it must be subject to writ jurisdiction. Furthermore, Clause 2.1 states that the articles shall be subject to the Export-Import Policy that is notified by the Central Government from time to time. To demonstrate the amount of control exercised by the Central Government over the GJEPC, Mr. Chaudhuri points at Clause 9.2 to state that if GJEPC fails to ensure timely elections as provided in Clause 9.1, then the Central Government, after giving it a reasonable opportunity to be heard, order a fresh election to be held and may make such arrangements as may be necessary for that purpose. With regard to the extent of administrative and financial control of the Central Government, reliance is placed on proviso to Clause 39.3 to showcase that Respondent No.2 is not an autonomous body as its accounts and books are open for inspection by an officer duly authorised by the Central Government for ascertaining or verifying the income and

expenditure of Respondent No.2 or for such other purposes as may, by agreement between Respondent No.2 and the Central Government, be specified in this regard.

9. The learned Senior Counsel also refers to Clause 44.1 to submit that the funds of Respondent No.2 which are not required for current expenditure may be placed in a fixed deposit with any scheduled bank or may be invested in any security, but this investment shall be subject to instructions that may be issued from time to time by the Government of India, in the Department of Public Enterprise. Thereafter, citing Clause 47, Mr. Chaudhuri delineates the wide-ranging powers of the Central Government to give directions to Respondent No.2 in public interest, or interest of national security or national economy. He submits that the Central Government, when it deems necessary, also has the power to call for such reports, returns and other information with respect to the property and affairs of Respondent No.2, the conduct of its business and other matters connected with the performance of its functions, and that Respondent No.2 is bound to comply with the same. Furthermore, any agreement between Respondent No.2 and any foreign collaborator requires prior approval of the Central Government. He lastly refers to Clause 51 to state that the Central Government inhabits the general power to modify which is telling of the power that is exercised by the Central Government over Respondent No.2

10. Mr. Chaudhuri, learned Senior Counsel, then states that the elections of Respondent No.2 for all posts are controlled by the MOCI as is exemplified by the Notice dated 30.10.2017 issued by the MOCI and signed by the Jt. Director General of Foreign Trade, who was the Election Authority of GJEPC for the years 2017-2019. Moreover, the results regarding the candidates elected as Panel Members, Regional Chairman and

Vice Chairman of the Committee of Administration (“CoA”) of the GJEPC for the term 2020-2022 are declared by the Election Authority, who is the Additional Director General of Foreign Trade, and this is demonstrated by the Notice dated 09.06.2020 issued by the MOCI. He states that the individual who is the Election Authority is also the person who has been nominated as a Central Public Information Officer (CPIO) under the Right to Information Act, 2005 (*hereinafter referred to as the “RTI Act”*).

11. The learned Senior Counsel refers to Chapter 2 of the Handbook of Procedure issued by MOCI, which notifies the procedure to be followed by an exporter or importer or by the licensing/Regional Authority or by any other authority for the purpose of implementing the provisions of Foreign Trade (Development & Regulation) Act and any Rules/orders emanating therefrom, to state that Chapter 2.91 – 2.99 depicts GJEPC as a registering body notified by the Director General of Foreign Trade (“DGFT”). He argues that all these factors indicate that Respondent No.2 is not an autonomous body, and what constitutes as a “State” under Article 12 has been given a very wide interpretation, and institutions such as AIIMS, ONGC, BHEL, etc. which do not receive any funding from the Government are also considered to be amenable to writ jurisdiction.

12. Mr. Chaudhuri refers to the Counter Affidavit filed by the Union of India in W.P.(C) 2162/2019 to submit that the Government itself has conceded that GJEPC is a part of the list of EPCs that are under the administrative supervision of the Union of India and that the function of Respondent No.2 involves a strong element of national and public interest. Relying upon Commissioner of Income Tax, Bombay City – IV v. Gem and Jewellery Export Promotion Council, (1983) 34 CTR (Bom) 57, the learned Senior Counsel argues that it has already been recorded that Respondent

No.2 is a company established for the purposes of advancing an object of general public utility. Moreover, Mr. Chaudhuri cites Sunirmal Kumar Roy v. Union of India and Ors., **2009 (1) CHN 702**, to state that the Calcutta High Court therein had held that CAPEXIL, which is also an Export Council, was a State body and cannot function in a manner contrary to the policy of the Government. Similar reliance has been placed on All India Garment Exporters Common Cause Guild and Ors. v. Union of India and Anr., **2011 SCC OnLine Del 265**, to submit that therein a Single-Judge Bench of this Court had held that Apparels Export Promotion Council (APEC), another Export Promotion Council, discharged a public function and, thus, was amenable to writ jurisdiction. Further reliance is placed on Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors., **(1989) 2 SCC 691**, to submit that even the body in question is private in nature, a writ of mandamus would lie if the party has no other equally convenient remedy, and that mandamus cannot be denied merely on the ground that the duty to be enforced is not imposed by a statute.

13. *Per contra*, Mr. Jayant Mehta, learned Senior Counsel appearing for Respondent No.2, submits that GJEPC is not a statutory body, but a private, non-profit company established under Section 25 of the Companies Act, 1956, by eight persons, who are all jewellers by occupation; it is not a “State” or “other authority” under Article 12 of the Constitution. He states that, in this context, the learned Single Judge has not erred in holding that the writ petition of the Appellant would not be maintainable as Respondent No.2 cannot be subjected to writ jurisdiction on account of the fact that it does not perform any public or sovereign function. He states that the primary goal of an Export Promotion Council, i.e. Respondent No.2 in this

case, is to promote the Indian gem and jewellery industry, and its products. However, this function can by no stretch be termed as a governmental or public function.

14. The learned Senior Counsel appearing for Respondent No.2 refers to a table detailing the total revenue generated by Respondent No.2 and the grants received by it from Respondent No.1 in the past 22 years to submit that the same reveals that GJEPC is truly an autonomous body in every sense and does not rely on the government for its functioning. Mr. Mehta further submits that GJEPC is being run with the aid of contributions from its members and it is not a body whose parts are owned by the Government. He argues that the funds/grants received from Respondent No.1 do not cover the major expenses incurred by GJEPC and it is not substantial when it is compared with the total revenue generated by Respondent No.2. Mr. Mehta refers to Clauses 39, 40, 41 and 42 of the AoA to substantiate how the Central Government does not have control over the finances of GJEPC, and that it is in fact incumbent upon the CoA to keep proper books of accounts, and by Rules, determine whether and to what extent and at what times and places and under what conditions, the accounts and books of GJEPC or any of them shall be open for inspection. He submits that the financial aspects of GJEPC are controlled by GJEPC itself and that Respondent No.1 has no bearing on the same.

15. With regard to the control exercised by Respondent No.1 over the functioning of Respondent No.2, Mr. Mehta submits that GJEPC is managed by a CoA which is controlled by members who are neither appointed nor nominated by Respondent No.1. Further, Respondent No.1 does not have a say in the appointment of the Chairman of the CoA, and the AoA indicates that there are 24 elected members and only 3 members are nominated by the

Central Government. These 3 members have no voting rights, merely play an advisory role and do not partake in the decision-making process of the Committee.

16. Mr. Mehta submits that the Reply dated 09.02.2021 of the Department of Commerce to the RTI application is of no consequence and does not indicate whether or not Respondent No.2 is an instrumentality of the State. He states that the Reply only notes that the Appellant can go up in appeal under Section 19 of the RTI Act, however, this does not render Respondent No.2 a State. He states that the fact that Appellant has applied to the Government seeking information about a private entity would not make GJEPC a public entity. Mr. Mehta further argues that the application of the General Clauses Act, 1897, would not make GJEPC a State. Furthermore, learned Senior Counsel argues that as per the Handbook issued by MOCI, Respondent No.2 is an Export Promotion Council and that just because it has the power to certify, it would not make it an authority.

17. Mr. Mehta submits that the Appellant's reliance on Office Memorandum dated 10.11.1997 is *mala fide* in nature as the entire document or its context are not available. He states that the factum of not being allowed to employ Class 'D' employees cannot be culled out from one out-of-context page that has been placed on record from the year 1997. He states that there is no restriction on the employment of an individual without the consent of the Central Government, and that Clause 33.4 of the AoA stipulates the rules that are devised by the GJEPC with respect to employment matters. On the aspect of elections, the learned Senior Counsel brings to the notice of this Court Clause 9 and 10 of the Rules for Election of the Committee of Administrators which enumerates "Election to the CoA" and the "Mode of Election". He submits that these election rules have

been prescribed by Respondent No.2 itself and that it is part of the governing structure. He supplements this with Clause 9 of the AoA to state that GJEPC is empowered to devise its own rules and regulations.

18. Mr. Mehta, learned Senior Counsel appearing for Respondent No.2, relies upon Raj Rajeshwar Dadhich v. The Gem & Jewellery Export Promotion Council and Anr., **1992 SCC OnLine Raj 202**, to submit that the Rajasthan High Court has already rendered a finding on the status of Respondent No.2 and held that the Government has a very limited role to play in the functioning of GJEPC, and that GJEPC cannot be held to be an agency or instrumentality of the State. He further submits that, over time, the AoA has been amended and that the role of the Central Government in the functioning of the GJEPC has decreased. Mr. Mehta submits that the best argument that can be advanced by the Appellant is that the Government has the right to see how the money generated by GJEPC is being spent and the right to ensure that the Export Policy is being followed. In conclusion, Mr. Mehta argues that Article 12 should not be stretched to bring in every autonomous body with in some nexus with government functions within the ambit of “State” and that one function assigned to GJEPC, which is not primary and forms a small fraction of their activities should not matter. He submits the impugned Judgement is not erroneous as the writ petition only reveals a private dispute having no public character, and thus, the instant appeal should be dismissed.

19. Heard Mr. Anoop Chaudhuri, learned Senior Counsel appearing for the Appellant, Mr. Jayant Mehta, learned Senior Counsel appearing for Respondent No.2, and perused the material on record.

20. The short question which arises for consideration before this Court at this juncture is whether Respondent No.2, i.e. Gems and Jewellery Export

Promotion Council, will fall within the ambit of “State and other authorities” under Article 12 of the Constitution.

21. “State” as defined under Article 12 is meant to include, *inter alia*, the Government of India, the Government 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. The Supreme Court, over the years, has examined what constitutes a “State” or “other authorities” as contemplated in Article 12. The rationale for this analysis lies in the fact that any authority falling within the ambit of Article 12 is subject to the same constitutional limitations as the Government and is bound by the basic obligation to obey the constitutional mandate of the fundamental rights enshrined in the Constitution. By virtue of being accountable to the judiciary and the citizens, Article 12 prevents such authorities from obfuscating its responsibility to adhere to our fundamental rights and hinders them from taking an individual for a ride without any consequences.

22. The importance of this exercise has been elaborated in Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors., (1981) 1 SCC 722, wherein the Supreme Court was considering whether the Society registered under the Jammu and Kashmir Registration of Societies Act, 1898, and managing the activities of the Regional Engineering College, Srinagar, would fall within the ambit of “State” under Article 12. The relevant portion is reproduced as under:

“7. While considering this question it is necessary to bear in mind that an authority falling within the expression “other authorities” is, by reason of its inclusion within the definition of “State” in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the

fundamental rights enshrined in Part III of the Constitution. We must therefore give such an interpretation to the expression “other authorities” as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the fundamental rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge Governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance

in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from “departmental rigidity, slow motion procedure and hierarchy of officers”. The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases “the true owner is the State, the real operator is the State and the effective controllor is the State and accountability for its actions to the community and to Parliament is of the State.” It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or

agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the fundamental rights, it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The fundamental rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the fundamental rights. The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socio-economic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience to the Fundamental rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental rights and not to override them. The

mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as post and telegraph, TV and radio, rail road and telephones — in short every economic activity — and thereby cheat the people of India out of the fundamental rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow the Fundamental rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post-Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] era. It is the fundamental rights which along with the directive principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, “in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government”, the court, must not allow the enforcement of fundamental rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an “authority” within the meaning of Article 12 and

hence subject to the same basic obligation to obey the Fundamental rights as the Government.”

23. Relying upon Ramana Dayaram Shetty v. International Airport Authority of India and Ors., (1979) 3 SCC 489, the Supreme Court in Ajay Hasia and Ors. (supra) had proceeded to document the relevant tests to determine as to when a corporation or an authority could be said to be an instrumentality or agency of the State. The paragraphs of the said Judgement delineating the same are as under:

“9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression “other authorities”, it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [(1979) 3 SCC 489] as follows:

“(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)*

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [(1979) 3 SCC 489] , be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

"11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a

statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression “authority” in Article 12.”

24. As can be discerned from the above, the Supreme Court added the caveat that encompassing an authority within the ambit of a “State” under Article 12 had to be done with abundant caution and that it should not be stretched to such an extent so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. It was observed that a wide enlargement of the meaning had to be tempered by a wise limitation. It is well settled that there are only general principles and not exhaustive tests to determine whether a body is an instrumentality or agency of the Government. Further, there is no clear-cut formula which exists with regard to general principles that would provide correct division of bodies into those which are instrumentalities or agencies of the government and those which are not. The powers, functions, finances and control of the government are some of the indicating factors to answer the question whether a body is “State” or not.

25. With regard to this, each case must be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, then one could agree with an entity being bestowed with government character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case [Refer to Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421, R.D. Shetty v. International Airport Authority of India (supra), Ajay Hasia v. Khalid Mujib Sehravardi (supra), and Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449].

26. It is further well settled that Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression “State”. A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as “State” under Article 12. The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is “State”. If the government operates behind a corporate veil, carrying out

governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as “State” within the meaning of Article 12 of the Constitution [Refer to P.K. Ramachandra Iyer v. Union of India, (1984) 2 SCC 141, Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156, and Tekraj Vasandi @ K.L. Basandhi v. Union of India, (1988) 1 SCC 236].

27. A 7-Judge Bench of the Supreme Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors., (2002) 5 SCC 111, while deliberating as to whether the Council of Scientific and Industrial Research (CSIR) was a State within the meaning of Article 12, rendered definitive observations with regard to the scope of Ajay Hasia and Ors. (supra) and held that the question that would arise would be whether the authority is financially, functionally and administratively dominated by or under the control of the Government. However, if the control exercised is not pervasive and is merely regulatory, whether under statute or otherwise, it would not render the said authority a State. This portion of the Judgement has been reproduced as under:

“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.”

28. While deciding whether the Board of Control for Cricket in India (BCCI) would amount to an instrumentality of the State, a 5-Judge Bench of the Supreme Court in Zee Telefilms. Ltd. and Anr. v. Union of India and Ors., (2005) 4 SCC 649, summarised the principles enumerated in Pradeep Kumar Biswas (supra), which is as follows:

“22. Sidestepping the majority approach in Sabhajit Tewary [(1975) 1 SCC 485 : 1975 SCC (L&S) 99 : (1975) 3 SCR 616 : AIR 1975 SC 1329] , the “drastic changes” in the perception of “State” heralded in Sukhdev Singh [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] by Mathew, J. and the tests formulated by him were affirmed and amplified in Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : AIR 1979 SC 1628] . Although the International Airport Authority of India is a statutory corporation and therefore within the accepted connotation of State, the Bench of three Judges developed the concept of State. The rationale for the approach was the one adopted by Mathew, J. in Sukhdev Singh [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] : (SCC p. 506, para 13)

“In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The

inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government.””

29. In Zee Telefilms Ltd. and Anr. (supra), arguments had been advanced about the public function performed by BCCI as well as the extent of administrative and financial control of the State over BCCI. The Supreme Court repelled these contentions and observed as follows:

“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.

24. As far as Sabhajit Tewary [(1975) 1 SCC 485 : 1975 SCC (L&S) 99 : (1975) 3 SCR 616 : AIR 1975 SC 1329] was concerned, it was “explained” and distinguished in Ramana [(1979) 3 SCC 489 : AIR 1979 SC 1628] saying : (SCC p. 519, para 31)

“The Court no doubt took the view on the basis of facts relevant to the constitution and functioning of the Council that it was not an ‘authority’, but we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an ‘authority’ within the meaning of Article 12. This

decision does not lay down any principle or test for the purpose of determining when a corporation can be said to be an ‘authority’. If at all any test can be gleaned from the decision, it is whether the Corporation is ‘really an agency of the Government’. The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an ‘authority’.”

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.

26. The Court recognised that : (SCC p. 731, para 6)

“Obviously the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local authority and therefore, it must come within the expression ‘other authorities’ if it is to fall within the definition of ‘State’.”

But it said that : (SCC p. 733, para 7)

“The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights.”

It was made clear that the genesis of the corporation was immaterial and that : (SCC pp. 737-38, para 11)

“The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression ‘authority’ in Article 12.”

29. The conclusion was then reached applying the tests formulated to the facts that the Society in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] was an authority falling within the definition of “State” in Article 12.

30. On the same day that the decision in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] was pronounced came the decision of Som Prakash Rekhi v. Union of India [(1981) 1 SCC 449 : 1981 SCC (L&S) 200 : AIR 1981 SC 212] . Here too, the reasoning in Ramana [(1979) 3 SCC 489 : AIR 1979 SC 1628] was followed and Bharat Petroleum Corporation was held to be a “State” within the “enlarged meaning of Article 12”. Sabhajit Tewary [(1975) 1 SCC 485 : 1975 SCC (L&S) 99 : (1975) 3 SCR 616 : AIR 1975 SC 1329] was criticised and distinguished as being limited to the facts of the case. It was said : (SCC p. 473, para 43)

“The rulings relied on are, unfortunately, in the province of Article 311 and it is clear that a body may be ‘State’ under Part III but not under Part XIV. Ray, C.J., rejected the argument that merely because the Prime Minister was the President or that the other members were appointed and removed by Government did not make the Society a ‘State’. With great respect, we agree that in the absence of the other features elaborated in Airport Authority case [(1979) 3 SCC 489 : AIR 1979 SC 1628] the composition of the governing body alone may not be decisive. The laconic discussion and the limited ratio in Tewary [(1975) 1 SCC 485 : 1975 SCC (L&S) 99 : (1975) 3 SCR 616 : AIR 1975 SC 1329] hardly help either side here.””

30. A perusal of the aforementioned Judgements bring to the fore that the liberal interpretation that has been given to “State” and “other authorities” under Article 12 has been circumscribed over the years to include only those authorities that can explicitly be deemed to be under the control of the State and performs a public duty or State function. The control that must be exercised by the State over the authority should be pervasive in nature to the

extent that the authority should have limited autonomy. These are the broad guidelines that must be borne in mind when venturing into the question as to whether or not a certain authorities can be termed to be a “State”. In this context, it becomes pertinent to analyse the provisions of the MoA, AoA and other documents to discern whether GJEPC can be brought within the net of “other authorities” for the purpose of Article 12.

31. GJEPC is a company which has been incorporated under Section 25 of the Companies Act, 1956 (formerly Section 8 of the Companies Act, 2013). It is not a statutory body and was in fact constituted in 1966 by eight persons, all of whom were jewellers by occupation. Though the membership has increased to almost 7000 members, none of these members can be stated to be representatives of MOCI. Furthermore, the CoA, which controls and manages the GJEPC, consists of 27 members, out of which 24 are elected members and 3 are members who have been nominated by the Central Government. With this backdrop, it would be pertinent to reproduce the relevant Clauses of the MoA and the AoA as under:

“MoA

9. *No alteration shall be made to this Memorandum of Association or to the Articles of Association of the Company which are for the time being in force, unless the alteration has been previously submitted to and approved by the Central Government.”*

3(c)(vi). *To deposit and invest the moneys of the Company in any securities or bank approved in this behalf by the Union Government;”*

“AoA

1.4 General Clauses Act to apply

The General Clauses Act, 1897, applies for the interpretation of these articles, as it applies for the interpretation of an Act of Parliament.

2. EXPORT-IMPORT POLICY

2.1 Articles to be subject to export import Policy

The provisions of these articles shall be subject to those of the Export-Import Policy, as notified by the Central Government from time to time.”

“9. CONDUCT OF ELECTIONS

9.1 Duty of Council

a) It shall be the responsibility of the Council to ensure that elections to various posts in the Council are held in time.

b) Elected members shall automatically retire on completion of their tenure.

**In case, the posts of both the Chairman and Vice Chairman gets vacated simultaneously due to any reasons whatsoever, an interim Chairman may be elected by the Committee (from the elected members) till one month or the next General Meeting, whichever is earlier. The appointment of such interim Chairman needs to be ratified by the members at the General Meeting within that one month, and can be extended till 3 months by the members, within which, the Chairman and or Vice Chairman should be appointed through election as per the election rules.*

9.2 Failure to hold elections

If a Council fails to ensure timely elections as provided in article 9.1, the Central Government may, after giving it a reasonable opportunity of being heard, order a fresh election to be held and may make such arrangements as may be necessary for that purpose.

11.3 Nominated and Co-opted Members

A nominated or co-opted member shall have no right to vote.”

“27.3 Composition of the Committee

1. The Committee of Administration shall have the following members;

*(a) *Elected members with a minimum of ten and maximum of twenty four(including the Regional Chairman, Chairman, Vice Chairman and the other members of the Committee elected from the Panels constituted under Article 23 of these articles).*

(b) Nominated members, not exceeding three in number.

(c) Members nominated by the Committee due to vacancy arising due to non filing or withdrawal of nomination at the time of election subject to the maximum number of members as stipulated under Article 27.3 (1)(a).

2. ^Subject to the provisions of clause (1), the number of members of the Committee shall be laid down by Election Rules made by the Council.”

“27.6 Certain further provisions as to nominated members

(a) The term of office of members of the Committee who are nominated by the Central Government shall be co-terminus with the term of the committee. Provided that, if a member is nominated during the term of the Committee his term of office shall be such as the Central Government may specify.

(b) The Central Government may, at any time, require such a nominee to relinquish his office and may appoint another person in his place.

(c) The term of the office of the member nominated by the Committee to fill in the vacancy pursuant to the Article 20.1(c), 24.1(k), 27.3(1)(c) shall be for a period of 2 (two) years till the next election of the Committee.”

“39.3 Time and place

The Committee shall from time to time, by rules determine whether and to what extent and at what times and places and under what conditions, the accounts and books of the Council or any of them shall be open for the inspection of the members (not being members of the Committee) and no member (not being member of the Committee) shall have any right to inspect any account or book or document of the Council, except as provided bylaw or authorized by the Committee or by a resolution of the Council in a general meeting.

Provided that, the accounts and books of the Council shall be open for inspection by an officer duly authorized in this behalf by the Central Government for ascertaining or verifying the income and expenditure of the Council or for such other purposes as may, by agreement between the Council and the Central Government, be specified in this regard.”

“44.INVESTMENT OF FUNDS

44.1 Investment

The funds of the Council, which are not required for current expenditure may be placed in fixed deposit with any scheduled bank or may be invested in any security in which trust property may lawfully, be invested under section 20 of the Indian Trusts Act, 1882, subject to such instructions as may be issued from time to time by the Government of India, in the Department of Public Enterprises, with reference to investments.”

“47. POWERS OF THE CENTRAL GOVERNMENT

47.1 Power to give directions

(1) The Central Government shall have power to give directions to the Council as to the performance of the functions, where the Government considers such directions to be necessary:

- a. in the interest of national security, or*
- b. in the interests of the national economy, or*
- c. otherwise in the public interest.*

(2) The Central Government shall also have power to call for such reports, returns and other information with respect to the property and affairs of the Council, the conduct of its business and other matters connected with the performance of its functions, as the Central Government may consider necessary.

(3) The Council shall be bound to comply with all directions issued by the Central Government under sub-article’ (1) or (2) of this article and all provisions contained in the Export-Import Policy of the Central Government for the time being in force.

47.2 Foreign Collaboration

All agreements between the Council and any foreign collaborator shall require prior approval of the Central Government.

48. ALTERATION IN ARTICLES

No addition to, modification in, or deletion of, any of these articles shall be made without the prior approval of the Central Government.

***49. REPUGNANCY TO COMPANIES ACT.**

Where, in relation to a Council to which the Companies Act, 2013 applies, there is are pugnancy between the provisions of these articles and the procedures of that Act, the procedures of the Act shall

to the extent of the repugnancy overrule the provisions of these articles”

“51. GENERAL POWER TO MODIFY.

The Central Government may at any time direct by an order in writing that the provisions of these articles shall stand modified in such manner as the Central Government may direct, as in relation to Councils generally or be in relation to a group of Councils or a particular council where such a direction appears to be necessary in public interest. We, the several persons, whose name, addresses, descriptions and occupations are hereunto subscribed, are desirous of being formed into a Company, not for profit, in pursuance to these Articles of Association dated 23rd day of April, 1966.”

32. A perusal of the aforementioned Clauses of the AoA and the MoA demonstrates the functions of the GJEPC which is primarily to support, protect, maintain, increase and promote the export of gems and jewellery, including pearls, coloured gemstones, diamonds, synthetic stones, costume (fashion) jewellery, gold and other precious metal jewellery and articles thereof. The primary purpose of GJEPC is to act as a Nodal Agency/interface between the exporters and the Government. The Council being a collective body of the exporters places the interests/problems faced by the exporters before the Government so that the Government can take such decisions which would promote the export of gems and jewellery. The Council, therefore, does not carry out the policy decisions of the Government or is in any way relevant to the decision-making process of the Government regarding exports of these articles. The CoA primarily consists of exporters with only three out of the 27 members being Government nominees. It cannot, therefore, be said that the Council does anything which

is even remotely connected with the activities which are conducted by the instrumentalities of the State. The Supreme Court has noted that while it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity [Refer to G. Bassi Reddy v. International Crops Research Institute, (2003) 4 SCC 225, and Ramkrishna Mission and Anr. v. Kago Kunya and Ors., (2019) 16 SCC 303]. This Court is of the view that the function of GJEPC does not pass the “public function” test and that it cannot be said to be performing any duty that is similar to that performed by the State in its sovereign capacity.

33. The submission of the Appellant that the Central Government exercises pervasive financial control over the GJEPC to the extent that it provides funds to the GJEPC and it also oversees the investment decisions of the GJEPC is not sustainable. The chart that has been presented by Respondent No.2 indicates that the funds provided by the Central Government are solely for the purpose of execution of specific schemes and projects, and it is definitely the Central Government’s prerogative to ensure that the said funds are not misused; this justifies the power of the Central Government to audit the accounts. However, the earnings of the GJEPC, which stems from subscriptions of its members, do not require prior consent or sanction from MOCI, as demonstrated by the EXIM Policy 1997-2002. The figures that have been shown to this Court reveal that with regard to the revenue generated by the GJEPC, at no point of time did the grant (revenue grants and capital grants) given by MOCI ever exceed 27%. The chart has been reproduced as under for ease of comprehension:

Sl. No.	Financial Year	Grants Utilized (In Rs.)	Total Revenue Generated By Respondent No.2 (In Rs.)	Percentage	Number Of Events
1	1999-2000	1,31,10,000	9,48,07,901	14%	-
2	2000-2001	1,99,32,000	11,04,78,755	18%	-
3	2001-2002	2,56,10,797	9,85,03,210	26%	-
4	2002-2003	4,12,33,000	15,31,45,508	27%	-
5	2003-2004	70,62,736	19,42,30,018	4%	-
6	2004-2005	1,18,64,715	38,60,10,682	3%	13

7	2005-2006	4,43,38,272	56,20,47,381	8%	14
8	2006-2007	5,96,38,158	52,60,60,434	11%	27
9	2007-2008	4,34,90,333	62,59,52,184	7%	19
10	2008-2009	4,90,76,198	64,19,30,504	8%	18
11	2009-2010	8,79,24,021	74,10,43,814	12%	19
12	2010-2011	16,68,50,383	1,00,57,19,583	17%	19
13	2011-2012	15,96,40,676	1,16,02,21,023	14%	21
14	2012-2013	18,45,13,123	1,31,73,17,085	14%	16
15	2013-2014	13,78,67,008	1,54,62,33,886	9%	20
16	2014-2015	13,85,04,189	1,47,90,52,211	9%	18
17	2015-2016	9,18,63,610	1,53,32,49,012	6%	7
18	2016-2017	9,43,44,476	1,39,20,95,171	7%	10
19	2017-2018	18,52,12,386	1,66,54,04,113	11%	10
20	2018-2019	19,77,68,986	1,97,82,92,859	10%	12
21	2019-2020	12,45,92,533	1,82,17,71,879	7%	12
22	2020-2021*	5,45,17,500	31,06,80,160	18%	11

*unaudited figures subject to change

34. The fact that the GJEPC is autonomous in nature has been stipulated by the MOCI on its website as well – “GJEPC and IDI are under the administrative control of the government and enjoy autonomy in administrative matters for creating of posts, service matters, etc. However,

the function of EPCs are as governed by para 2.55 of FTP 2015-20". Further, it is the CoA which manages and governs the functioning of the GJEPC, and not the Central Government. Out of 27 members of the CoA, only 3 members are nominated by the Central Government and, as per Clause 11.3 of the AoA, they possess no voting rights and, therefore, only play an advisory role in the administration of the GJEPC. Moreover, with respect to the aspect of conducting elections, the learned Senior Counsel for the Appellant has submitted that as per Clause 9.2 of the MoA, if the GJEPC fails to hold elections in a timely manner, then the Central Government may intervene. This Court states that Clause 9.2 does not reveal whether or not the Central Government has control over the functioning of the GJEPC, and therefore, the submission of the Appellant does not hold water. In fact, it is the CoA which, under various Clauses of the AoA, lays down the conduct of elections, the duty of GJEPC in holding the same, and the mode of conducting elections. Furthermore, as per Clause 39 of the AoA, it is the CoA which determines how the books and accounts of the GJEPC must be kept and when they should be inspected. Merely because the Central Government may also inspect the books and accounts of the GJEPC does not establish that it controls the financial aspects of the GJEPC.

35. While it is evident that the Central Government does have wide powers to issue directions to the GJEPC under Clause 47 of the AoA, however, these directions may only be given if they are "a. in the interest of national security, or b. in the interests of national economy, or c. otherwise in the public interest", and they may also have the power to call for such reports, returns and other information with respect to the property, affairs, etc. of the GJEPC. Thus, what can be inferred from these provisions is that the control of the Central Government over the GJEPC is only to be

exercised in certain situations and cannot be said to be of such nature that it can be deemed to be pervasive.

36. The contention of the Appellant that the Reply to the RTI application dated 09.02.2021 demonstrates that Respondent No.2 is an instrumentality of the State cannot be accepted as it merely discloses that Respondent No.2 participated in the KPCS in capacity of a designated Importing and Exporting Authority within the meaning of Section IV (b) of the KPCS Core Document, and that the Public Information Officer was not required as per the RTI Act to derive any conclusion from any information. Nowhere does it indicate that Respondent No.2 is an instrumentality of the State. On the contrary, a screenshot from the website of MOCI which refers to GJEPC categorically states that GJEPC is not covered under the provisions of the RTI Act. Additionally, the fact that the General Clauses Act, 1897, applies for the interpretation of the AoA is of no relevance and does not indicate anything.

37. Consequently, a deep dive into the AoA and MoA of the GJEPC only brings forth the understanding that the GJEPC is a nodal agency, meant to mediate between exporters of gems and jewellery, and the Central Government. The function performed by the GJEPC cannot be termed as “public duty” and any administrative or financial hold that the Central Government is deemed to have over GJEPC is far from pervasive. The GJEPC retains its autonomous character and it is the CoA which not only looks after the affairs of the GJEPC, but is also empowered to make rules and regulations with regard to conditions of service, appointment, elections, etc. GJEPC does not satisfy any of the requirements or tests laid down by various Judgements of the Supreme Court for establishing whether or not an authority can be deemed to be a “State” under Article 12. The reliance of the

Appellant on All India Garment Exporters Common Cause Guild and Ors. v. Union of India and Anr. (supra) is misplaced as the learned Single Judge in the matter therein had observed that the AEPC was a statutory body that received support from the Central Government “*financially or otherwise*”, which is not the case in the instant matter.

38. It is pertinent to note that the reliance of the Appellant on Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors. (supra) that even if the body in question is private in nature, a writ of mandamus would lie if the Petitioner has no alternative efficacious remedy, also does not come to the aid of the Petitioner for the simple reason that the authority therein was an educational institution performing a public duty. The Supreme Court had, thus, held that the service conditions of the academic staff would not be of a purely private character, and mandamus could not be refused. This case is distinguishable from the instant case as the dispute herein is solely of a private nature and the authority in question is wholly private and autonomous, without the backing of a statute or performing any public duties.

39. In view of the above observations, this Court is of the opinion that the learned Single Judge *vide* the impugned Judgement dated 09.07.2021 in W.P.(C) No. 4733/2021, wherein it held that the writ petition would not be maintainable as the GJEPC, i.e. Respondent No.2 does not fall within the ambit of “State” and “other authorities” under Article 12 of the Constitution of India, is legally firm and does not require any interference on the part of this Court.

40. Accordingly, the instant appeal is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

OCTOBER17, 2022

Rahul

