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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 8096 of 2023

Harapriya Puri
Vs.
Union of India & Ors.

Mr. Arif Ali,
Mr. Prabhat Kumr Srivastava,
Ms. Arunima Lala
...for the petitioner

Mr. Shiv Shankar Banerjee,
Mr. Arijeet Dass Mullick
...for the respondent nos. 2 to 5

1. This writ petition has been filed inter alia challenging the denial of death benefits to the petitioner from the respondent no. 2, being the Institute for Steel Development and Growth (INSDAG).
2. A preliminary point of maintainability has been urged on behalf of the respondent no. 2. It is submitted that this petition is not maintainable since the respondent no. 2 is not amenable to the jurisdiction of the Writ Court.
3. On behalf of the petitioner it is submitted that, the respondent no. 2 has been shown to be under the administrative control of the Ministry of Steel. Moreover, the website of the respondent no. 2 also reflects that the respondent no. 2 is a non-profit organization established by the Government of

India and major steel producers in the country. On this basis, it is submitted that the respondent no. 2 is an authority within the meaning of Article 12 of the Constitution of India and this writ petition is maintainable.

4. On behalf of the respondent no. 2, it is submitted that the respondent no. 2 is not funded by the Ministry of Steel and there is no financial control of the Ministry of Steel or any other governmental agency. It is also submitted that the respondent no. 2 is a registered non-profit society having more than 300 general, individual and institutional members, who are primarily private companies. The objective of setting up the respondent no. 2 was to promote and propagate proper and effective uses of steel mainly in the construction sectors. The source of income of the respondent no. 2 is primarily from membership fees. In support of such contention, the respondent no. 2 relies on an unreported decision dated November 02, 2015 passed by the *Delhi High Court in W.P.(C) 6517 of 2012 (Captain Suresh Nath Jha vs. Institute for Steel Development and Growth & Ors.*). The said decision has been upheld by the order dated order dated 24th May, 2017 in LPA 28 of 2016 and CAV 32 of 2016 and CM Appl. 1441 of 2016/. On the basis of the aforesaid judgments it is submitted by the

respondent no. 2 that the respondent no. 2 is not amenable to the writ jurisdiction.

5. Admittedly, the respondent no. 2 is a non-profit organization, which had been formed by various organizations, including the Ministry of Steel to promote, develop and propagate the proper and effective uses of steel particularly in the construction sector. The initial registration of the respondent no. 2 was done by private individuals. The Rules and Regulations of the respondent no. 2 also stipulate for the categories of members. The subscription, which is the primary source of funding of the respondent no. 2, is also out of private funds.

6. For the purpose of falling within the ambit of Article 12 of the Constitution of India, a body need not necessarily be a statutory body created by the State. In ***Pradip Kumar Biswas vs. Indian Institute of Chemical Biology & Ors.**, **(2002) 5 SCC 111*** it has been held that on a combination of facts, a body is financially, functionally and administratively dominated by or is under the control of the Government, such control must not be permissive.

7. Similarly, in *Ajay Hasia vs. Khalid Mujib Sehravardi, [(1981) 1 SCC 722]* it has been held 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.*
> *(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.*
> *(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected.*
> *(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.*
> *(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.*
> *(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.”*

8. The aspect of the respondent no.2 not being amenable to the writ jurisdiction has been elaborately gone into in the decision reported in *Captain Suresh Nath Jha* (Supra) and by the Hon’ble Division Bench. There are no grounds to differ from or distinguish the said decisions. There is no material whatsoever to demonstrate that there

is any administrative, financial or any kind of control of the Union which assist the case of the petitioner. In such view of the matter, the instant writ petition is not maintainable and is dismissed with costs assessed at Rs. 10,000/- (Rupees Ten Thousand) to be paid to the respondent no. 2.

9. Urgent photostate certified copies of this order, if applied for, be made available o the parties upon compliance of all necessary formalities.

(Ravi Krishan Kapur, J.)