



2024:DHC:5253



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

Date of decision: 09th JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 1414/2024 & CM APPL. 5811/2024**

MR. KAMLESH KUMAR

..... Petitioner

Through: Ms. Mani Gupta, Mr. Pranav
Malhotra and Ms. Sreemantini
Mukherjee, Advocates.

versus

SOCIETY FOR AFFORDABLE REDRESSAL OF DISPUTES &
ORS.

..... Respondents

Through: Ms. Astha Sharma and Mr. Ravish
Kumar, Advocates for R-1.
Mr. Manish K. Bishnoi and Mr. K.
Shakeel, Advocates for R-2.
Mr. Rahul Sharma, CGSC with Mr.
Ayush Bhatt, Mr. Harsh Rao, Ms.
Pranita Sharma, Ms. Sonika Rathore
and Mr. Madhur Sapra, Advocates for
R-3.
Mr. Ayush Acharjee and Mr.
Priyabrat Tripathy, Advocates for
R-4.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court with the following prayers:

*“a) Issue a Writ in the nature of mandamus and call
for the records pertaining to functioning and operation
of the Respondent No.1;*

*b) Issue a Writ in the nature of mandamus and call for
the records relating to the fiduciary relationship
between Respondent Nos. 1 and 2;*



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c) Issue a Writ in the nature of mandamus appointing a committee of experts to enquire into the functioning and operation of Respondent Nos. 1 and 2;

d) Issue a Writ in the nature of mandamus directing Respondent No. 1 to amend Sarod Rules in accordance with Arbitration and Conciliation Act, 1996; and

e) Issue a Writ in the nature of mandamus and quash the Fresh List as being arbitrary and violative of principles of natural justice and reinstating the Old List;

f) Issue a Writ in the nature of mandamus directing the Respondent No. 1, a public authority to comply with its obligations under Section 4 of the Right to Information Act, 2005 as enumerated hereinabove at Ground DD, including but not limited to disclosure of Rules and Regulations for conduct of Society and Model Code of Conduct for Arbitrators alongwith all other such documents, rules, procedures etc. defining the criteria of selecting members of the Governing Body and the sources of funding of Respondent No. 1

g) Pass an order allowing the continuance of the Petitioner as an empaneled arbitrator;

h) Pass an order directing the Respondent Authorities to forthwith remove the New List from its website and reinstate the Old List;

i) Pass an interim order in terms of prayer (a) and thereby staying the operation and implementation of the New List;

j. Pass such other and further orders which this court



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may deem fit and proper in the facts and circumstances of the case.”

2. The facts of the case reveal that the Petitioner was empanelled as an Arbitrator with Respondent No.1 for a period of two years in 2020. On 02.09.2022, the Petitioner was re-empanelled as an arbitrator with Respondent No.1 for a period of two years and the said period was to expire on 28.08.2024. It is stated that on 02.11.2023, Respondent No. 1 informed the Petitioner and one Mr. Praveen Garg, Retd. IAS Officer about their appointment as Co-Arbitrators in the matter of M/s DBL Kalmath Zarap Highway Ltd. vs. NII Ratnagiri, PWD, Government of Maharashtra. On 09.11.2023, the Petitioner alongwith the other Co-Arbitrator i.e., Mr. Praveen Garg, appointed Justice Vinod Goel (Retired) as the Presiding Arbitrator in the said matter. On receipt of the copy of the email dated 09.11.2023, the Secretary of Respondent No.1 informed the Petitioner on 13.11.2023 that according to Rule 11.4 of the Rules framed by Respondent No.2/NHAI, the Presiding Arbitrator must be on Respondent No.1's Arbitration Panel and accordingly, the Petitioner and the Co-Arbitrator Mr. Praveen Garg were requested to appoint the Presiding Arbitrator from the list of Arbitrators available on the website of Respondent No.1, as on 13.11.2023. A different Presiding Arbitrator was appointed and the matter was resolved.

3. It is stated that on 06.11.2023, a fresh list of panel arbitrators of Respondent No.1 was uploaded and the Petitioner's name did not figure in list. It is the case of the Petitioner that the Petitioner's name has been removed from the panel of arbitrators of Respondent No.1 without giving



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any notice to the Petitioner. It is stated that the fresh list downsizes the empanelled number of arbitrators to 68 only from the existing 119 empanelled arbitrators. Complaining that the Respondent No.1 has acted arbitrarily and questioning the functioning of Respondent No.1, the instant writ petition has been filed by the Petitioner.

4. Respondent No.1 is a society registered under Societies Registration Act, 1860. The aims and objects for which the Respondent No.1 has been established reads as under:

“(a) To advise and assist in settlement of disputes through arbitration in the Highway, Road, Infrastructure and/or any other sector in a cost effective and time bound manner and to examine issues relating to the disputes and the arbitration proceedings in the Highway, Road, Infrastructure and/or any other sector;

(b) To formulate rules, regulations, procedures and undertake other matters relating to settlement of disputes through arbitration arising under all types of contracts in infrastructure sector including but not limited to item rate contract, EPC contract, BOT (Annuity/Toll) contract, O&M contract, Toll contract relating to Highway, Road, Infrastructure and/or any other sector;

(c) To propagate and popularize the process of arbitration as per the rules, regulations and procedures, formulated by the Society from time to time, in the resolution of disputes arising in ordinary course of business pertaining to Highway, Road, Infrastructure and/or any other sector among the contracting parties including Statutory bodies, Autonomous bodies, SPVs, PSUs, Government entities,



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Contractors, Concessionaires, Consultants and /or any other related entities.

(d) To promote and bring about amicable settlement of disputes and to formulate rules and regulations determining the arbitration process, the language and the venue of arbitration, the costs of an arbitration, any administrative costs of the Society and any other expenses incurred in connection with the arbitral proceedings or the arbitral award, estimated time frame in respect of arbitration proceedings and any other related matter;

(e) To suggest modifications in the existing contracts relating to the Highway, Road, Infrastructure and/or any other sector and to draw up standard arbitration clauses for future contracts;

(f) To select, prepare and maintain a list of experts in Highway, Road, Infrastructure and/or any other sector and to avail their assistance in the working of the Society;

(g) To select, prepare and maintain a panel of arbitrators as per the terms and conditions of empanelment prescribed by the Society from time to time;

(h) To formulate rules, regulations, terms, conditions guidelines and procedures for selection and appointment/empanelment of the arbitrators;

(i) To develop, formulate and modify the model code of conduct for the arbitrators to be followed by them doing the arbitration proceedings/dispute resolution process;



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(j) To ascertain and take appropriate measures for understanding the various issues involved, problems and requirements in respect of the arbitrators and arbitral proceedings, facilities to be provided to and by various parties in smooth, efficient and cost effective conduct of the arbitral proceedings and take appropriate steps for suitable improvements and provisions;

(k) To collaborate with various other organizations and arbitral bodies on matters affecting internal commercial arbitration and send delegations and invite representatives of such organizations and bodies for the said purpose;

(l) To disseminate information and educational material concerning arbitration process and laws, rules and procedures, techniques and facilities, internal conventions, etc on arbitration matters;

(m) To undertake study and assist in the improvement of rules, regulations, procedures, processes and legislation on arbitration laws and procedures among the members and contracting parties;

(n) To study the arbitration rules and procedures of bodies dealing with arbitration in the Highway, Road, infrastructure and/or any other sector in India and suggest ways and means for overcoming any difficulties experienced by the said sector in the process of dispute resolution;

(o) To prepare, print and publish in papers, periodicals, pamphlets, bulletins and brochures, information concerning arbitration facilities existing in India and other useful material in furtherance of the objects of the Society;



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(p) To conduct research on different aspects of arbitration theory and practice and to publish reviews specializing in the study of problems in arbitrations related to the Highway, Road, Infrastructure and/or any other sector;

(q) To appoint experts to study problems, methods and procedure with regard to arbitration;

(r) To offer facilities for the training of personnel in the procedure of arbitration, offer and arrange fellowships, engage experts competent to advise on arbitration legislation and procedures, organize seminars and study groups on legal and practical problems relating to arbitral legislation and procedures and organize courses and lectures on topical questions concerning arbitration;

(s) To publish arbitral awards and judicial decisions pertaining to arbitration, research data and studies of projects undertaken in India on such arbitration matters;

(t) To establish and maintain a reference library in pursuance of the objects of the Society and reading and writing rooms and furnish the same with books, reviews, magazines, newspapers and other publications on arbitration matters;

(u) To convene conferences at such places and such times as may be determined in furtherance of the objects of the Society;

(v) To impose and recover affiliation and other fees and charges for services rendered, to accept any grant s, donations and subscriptions either in cash or



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securities and of any property either movable or immovable in furtherance of the objects of the Society;

(w) To borrow and raise monies with or without security or on the security of a mortgage, charge or hypothecation or pledge of all or any of the movable or immovable properties of the Society or in any other manner whatsoever;

(x) To purchase, take on lease or otherwise acquire any land or building which may be necessary for carrying out the objects of the Society;

(y) To sell, lease, exchange; hire and otherwise transfer all or any properties of the Society;

(z) To undertake and accept the management of any endowment or trust fund having objects similar to the objects of the Society;

(aa) To invest funds or monies entrusted to the Society in such securities and in such manner as may be determined by it from time to time;

(bb) For the purpose of the Society to draw, accept, make, endorse any promissory notes, bills of exchange, cheques or other negotiable instruments;

(cc) To make Rules and Regulations and Bye-laws for the conduct of the affairs of the Society and add to, amend, vary or rescind them from time to time;

(dd) To appoint committees to take up the issues faced by the members relating to the dispute resolution with the relevant Government /non-Governmental Authorities to find appropriate solutions;



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(ee) To open zonal centers and to undertake such other activities for furtherance of all or any of the objects of the Society in accordance with the provisions made in the Rules and Regulations of the Society;

(ff) To establish a Provident Fund for the benefit of the staff of the Society; and

(gg) To do all lawful acts and things as may be incidental or conducive to the realization or attainment of all or any of the aforesaid objects of the Society / directly or indirectly and to incur requisite expenditure thereon.”

5. The aim and object does not indicate that the organization is performing any governmental functions. Rules and regulations of Respondent No.1 also gives details of the admission and qualification of membership, different types of membership, cessation/termination of membership, composition of Governing Body of the society, the term of Governing Body and the term of Governing Body etc. Relevant clauses of Rules and Regulations of Respondent No.1 reads as under:

“(iii) Admission and qualification for Membership

There shall be following types/classes of members:

- a) Founding Members;*
- b) Primary Members;*
- c) Associate Members; and*
- d) Honorary Members*

'Members' will include *'Desirous Persons'* and others who are inducted/replaced. Membership of the Society shall be approved by the Governing Body.



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The various categories are discussed below:-

*a) **Founding Members:** The Founding Members of the society are the persons who have come together to form the Society and consist of four representatives nominated by National Highways Authority of India (NHAI) and four representatives nominated by National Highways Builders Federation (NHBF).*

*b) **Primary Members:** Primary Members shall mean and include Founding Members and any individual, firm, society, company, corporation, Government entity or any other body corporate engaged in the execution, construction, development, operation and maintenance or Tolling of the Highway, Road and Infrastructure Sector.*

Candidate eligible for the Primary Membership as hereinabove shall send to the Society a written application duly proposed by a Primary Member and seconded by two Primary Members on a form prescribed by the Society from time to time along with a sum equivalent to the entrance fee payable by the Primary Member together with one year subscription, as hereinafter provided.

*c) **Associate Members:** Associate Members shall mean and include any individual, firm, society, company, corporation, Government entity or any other body corporate engaged in providing consultancy or any other related services in the Highway, Road and infrastructure Sector.*

Persons eligible for Associate Membership as hereinabove shall send to the Society a written application duly proposed by a Primary Member and seconded by two-Primary Members on a form prescribed by the Society from time to time alongwith sum equivalent to the entrance fee payable by the



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Associate Member together with subscription fee as hereinafter provided.

*d) **Honorary Member:** Honorary Members mean those eminent persons who are distinguished in the field of arbitration or in Highway, Road and Infrastructure or any other sector and who are interested in the aims and objectives of the Society and are co-opted as Honorary Members of the Society by the Governing Body.*

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*(v) **Cessation/Termination of Membership***

A member other than NHAJ and NHBK shall cease to be member on the occurrence of any of the following events namely;

a) on the Governing Body passing a no confidence motion by 2/3rd of majority votes of members present and voting.

b) on the Governing Body deciding, by a majority of the members present and voting to strike off the name of the member for non-payment of subscription continuously for a period of two years from the due date.

c) on the Governing Body finding by a majority of not less than three fourths of its members present and voting that the continuance of the member is prejudicial to the interest of the Society.

d) on the written resignation of the member being approved by the Governing Body.

e) if the member has not attended three consecutive



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annual meetings of the General Body without any intimation.

The reason for termination of the membership shall be communicated to the member concerned in writing.

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i) General Body

(a) General Body defined

All the members of the Society will constitute the General Body of the Society.

(b) Power and duties I functions of the General Body

(1) The General Body shall be the supreme authority to take all measures necessary for the attainment of the objects specified in the Memorandum of Association and to make amendments to the Memorandum of Association and Rules and Regulations of the Society.

(2) The President of the Governing Body shall also be the President of General Body.

(3) Subject to the supervision and control of the General Body, the Governing Body shall manage the day-to-day affairs and funds of the Society and shall have all the authority to exercise all power of the General Body excepting those as specified herein which are reserved for determination by the General Body.

(4) All decisions of the General Body shall be by a majority vote of the members eligible and present in the General Body meeting. In the event of an equal



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vote, the President shall have a casting vote.

(5) All the resolutions of the General Body shall be passed by a simple majority of the members eligible and present unless specifically provided herein.

(6) The business of the annual general meetings shall be:

I. To consider the annual report and statement of accounts submitted by the Governing Body.

II. To appoint the auditors of the Society and fix their remuneration.

III. To transact such other business as may be brought before the meeting with prior notice and with permission of the person presiding.

ii) Governing Body

(a) Governing Body defined

The Governing Body shall manage the day-to-day affairs and funds of the Society and shall have all the authority to exercise all power of the General Body excepting those as specified herein which are reserved for determination by the General Body.

The Governing Body shall consist of the office bearers and members as under:-

(1) The President of Governing Body shall be nominated by NHAI,

(2) The Vice-President shall be nominated by NHBF from among its members;

(3) Three members nominated by NHAI;



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(4) Three members nominated by NHBF;

The General Body may also nominate Four Members to the Governing Body of which 2 (two) members shall be from amongst the Primary Members (with the consent of NHAI and NHBF) and 2 (two) members from amongst the Honorary Members of the Society.

The Governing Body shall designate Treasurer and the Secretary from among the members of the Governing Body.

The Governing Body shall have power to restrict the number of members of Society.

(d) Composition

The Composition of the Governing Body shall be as under:

- (1) President: 1 (one)*
- (2) Vice President: 1 (one)*
- (3) Secretary: 1 (one)*
- (4) Treasurer: 1 (one)*
- (S) Executive Members: 4 (four) to 8 (eight)*

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IV. SOURCE OF INCOME AND UTILIZATION OF FUNDS:

(i) The Society may receive funds, donations and financial assistance from only non-political sources in India or from abroad for the furtherance of its objects.

(ii) The Society shall have its own fund and all the receipts of the Society through grants, donations, subscriptions, fees as well as income from specified investments, service charges for providing service to



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members and other sources shall be credited to the fund and all payments by the Society shall be made there from. All the income of the Society shall be utilized for the furtherance of its objects.

(iii) The funds of the Society may be raised by:-

- a. Loans (with or without interest)*
- b. Deposits*
- c. Donations*
- d. Subsidies*
- e. Grants*
- f. Membership subscriptions*
- g. Contributions*
- h. Fees against special services provided by the society, if any, etc.*

(iv) General Fund

General Fund shall consist of annual subscription of members of Society, interest on and income from the Reserve Fund and of the General Fund and other moneys or donations received by the Society.

(v) Reserved Fund

This fund shall consist of the accumulation of entrance fees received and any other funds as may be decided by the Governing Body .which shall be kept invested in Promissory Notes, Debentures, Stock and other securities of any State Government and/or the Central Government and/or in fixed deposit with any Nationalized Bank or Banks operating in India and/or in purchase of immovable property. ”

6. The writ petition came up for hearing on 31.01.2024 and notice was issued in the writ petition limited to the issue of maintainability. Counter affidavit and rejoinder have been filed and arguments have been advanced



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on the question as to whether Respondent No.1 would come within the definition of State under Article 12 of the Constitution of India in order to be amenable to the writ jurisdiction of the Court.

7. Learned Counsel appearing for the Petitioner contends that the Respondent No.1 is totally controlled by Respondent No.2 which is a State under Article 12 of the Constitution of India. It is contended that initially the corpus of Respondent No.1 for a sum of Rs.50 lakhs was provided by Respondent No.2. It is further contended that the aims and objects of Respondent No.1 shows that Respondent No.1 discharges governmental functions. It is contended that the Governing Body of Respondent No.1 is headed by the President who is nominated by Respondent No.2. It is also contended that till date, all the appointments of Secretary and treasurer have been amongst the top officials of Respondent No.2.

8. Learned Counsel for the Petitioner further contends that the Model Concession Agreement which is the format of any agreement entered into by Respondent No.1 with any contractor has been framed by Respondent No.2 and the Respondent No.2 insists that only that Model Concession Agreement would be the contract. It is stated that Respondent No.1 administers, regulates and oversees the arbitration proceedings between Respondent No.2 and other contracts. It is, therefore, contended that since the Government of India through Respondent No.2 exercises deep and pervasive control over the Government Body of Respondent No.1 through its President, Secretary and Treasurer and also since the Respondent No.2 has created a monopoly and forced all its contractors to necessarily approach Respondent No.1 for resolving all the disputes that arise out of the contracts entered into with



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Respondent No.2, the Respondent No.1 is a State under Article 12 of the Constitution of India and amenable to the writ jurisdiction.

9. *Per contra*, it is contended and argued by learned Counsel for Respondent No.2 that the Respondent No.1 is a society registered under the Societies Registration Act and it is an initiative by Respondent No.2 and the National Highways Builders Federation (NHBF) which is a private organization of contractors/builders and there are 97 members of the federation. It is stated that Respondent No.1 is only an Arbitral Institution to facilitate the appointment of arbitrators and the conduct of the arbitration proceedings. It is stated that the affairs of Respondent No.1 is managed by Respondent No.1 itself only and its day-to-day expenses are managed by Respondent No.1 through funds which it generates on its own. It is stated that Respondent No.2 has no say in the day-to-day affairs and management of Respondent No.1. It is stated that since Respondent No.1 has its own source of funds which is managed by Respondent No.1 on its own and it is neither financially nor administratively dependent on Respondent No.2, it cannot be said that the Respondent No.2 has any deep and pervasive control over Respondent No.1. It is stated that Respondent No.2 only nominates the members to the Governing Body of Respondent No.1 and that it is not necessary that the Officers of Respondent No.2 must be nominated, and the Respondent No.2 can nominate any third party also as members to the Government Body.

10. Heard learned Counsel appearing for the Parties and perused the material on record.

11. The tests to determine as to whether an authority is a State or not



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under Article 12 of the Constitution of India amenable to the writ jurisdiction has been laid down by the Apex in several cases. A Five Judge Bench of the Apex Court in Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 after summarising the Judgment of the Apex Court in Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 has observed as under:

“9. That takes us to the next question whether the acceptance of the tender of Respondents 4 was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf of Respondents 1 and 4 that the appellant had no locus to maintain the writ petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted; what grievance could he have if the tender of Respondents 4 was wrongly accepted. A person whose tender was rejected might very well complain that the tender of someone else was wrongly accepted, but, it was submitted, how could a person who never tendered and who was at no time in the field, put forward such a complaint? This argument, in our opinion, is misconceived and cannot be sustained for a moment. The grievance of the appellant, it may be noted, was not that his tender was rejected as a result of improper acceptance of the tender of Respondents 4, but that he was differentially treated and denied equality of opportunity with Respondents 4 in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a tender, he also would have submitted a tender and competed for obtaining a contract. But he was precluded from submitting a tender and entering the field of



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consideration by reason of the condition of eligibility, while so far as Respondents 4 were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was the grievance made by the appellant in the writ petition and there can be no doubt that if this grievance was well founded, the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of Respondents 4 was vitiated by any legal infirmity.”

12. A Seven Judge Bench of the Apex Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 has summed up the tests for holding an entity to be an instrumentality of the State. The Apex Court has observed as under:

“98. *We sum up our conclusions as under:*

(1) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of “other authorities” in Article 12. To be an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to the public. Further, the statute creating the entity should have vested that entity with power to make law or issue binding directions amounting to law within the meaning of Article 13(2) governing its relationship with other people or the affairs of other people — their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been



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entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence governmental. Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power — constitutional or statutory, and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] enable determination of governmental ownership or control. Tests 3, 5 and 6 are “functional” tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this fallacy has occurred because of difference between “instrumentality and agency” of the State and an “authority” having been lost sight of sub silentio, unconsciously and undeliberated. In our opinion, and keeping in view the meaning which “authority” carries, the question whether an entity is an “authority” cannot be answered by applying Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] tests.

(2) The tests laid down in Ajay Hasia case [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are relevant for the purpose of



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determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in the positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the court of brooding presence of the Government or deep and pervasive control of the Government so as to hold it to be an instrumentality or agency of the State.”

13. The Seven Judge Bench of the Apex Court in the aforesaid Judgment has held that the tests laid down in Ajay Hasia (supra) are relevant for the purpose of determining as to whether an entity is an instrumentality of the State or not. However, it is stated that neither all the tests are required to be answered in the positive nor a positive answer to one or two tests would suffice. The Apex Court in Pradeep Kumar Biswas (supra) has held that it depends upon the combination of the relevant factors and the essentiality and overwhelming nature of such factors is necessary for indentifying the real source of governing power.

14. Applying the tests to the facts of the present case, it is seen that Respondent No.1 primarily functions as an Arbitral Institution and is not performing any governmental functions. Respondent No.1 primarily provides for panel of Arbitrators for conducting arbitration. Respondent No.1 has got its arbitration rules. The arbitration rules provides the



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procedure as to how arbitration has to be conducted. The arbitration which is conducted by Respondent No.1 is ultimately governed by the provisions of the Arbitration and Conciliation Act, 1996. Material on record indicates that the purpose of the society is to provide only a forum to ensure cost effective and time bound resolution of disputes between Respondent No.2 and other entities. Respondent No.1 also selects and maintains the list of experts who can provide their assistance in the working of the society. Respondent No.1 provides for panel of Arbitrators and also provides for moral conduct of the Arbitrators. A perusal of aims and objects of Respondent No.1 does not show that it performs any kind of governmental function. The Respondent No.1 has got its own General Body and Governing Body. The Governing Body consists of eight (8) members. The appointment of the President of Governing Body is nominated by Respondent No.2, however, it does mean that only an officer of Respondent No.2 has to be nominated. Any person can be nominated by Respondent No.2 and it could be a Retired Judge or an expert in the relevant field. The Vice President is nominated by the National Highways Builders Federation (NHBF) which is completely a private entity of contractors and builders. Three members are nominated by Respondent No.2 and three members are nominated by National Highways Builders Federation (NHBF). There is equal amount of private participation in the Governing Body. Rules and regulations also do not in any manner suggest any kind of deep and pervasive control by Respondent No.2 over Respondent No.1.

15. Applying the tests laid down in Pradeep Kumar Biswas (supra), this Court is of the opinion that Respondent No.1 is not an instrumentality of



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State amenable to writ jurisdiction. However, the instant dispute is only of cessation of term of the Petitioner who was appointed as an arbitrator. This Court is, therefore, is not inclined to entertain the writ petition only on the ground that Respondent No.1, against whom the reliefs have been sought by the Petitioner, is not amenable to writ jurisdiction.

16. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

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S. Zakir