

THE INDIAN LAW INSTITUTE, NEW DELHI

Seminar

on

Administrative Law  
Nainital-May, 1973

Public Corporation

By

Kishori Mohan Mohanty

The Origin and Gradual Development:

The Institution of the Public Corporation as a means of administration is not new. The Mersey Docks and Harbour Board which was constituted in 1857 (vide Mersey Docks and Harbour Board Act of 1857) due to a rivalry between Liverpool and Birkenhead may be cited as an example of the earlier type of Public Corporations. The Act provides for a Board of twenty eight unpaid members of whom twenty four are elected by payers of dock rates for four year terms six retiring each year and the remaining four are appointed by the Minister of Transport. After this in the year 1908 the port of London Authority was created ( Port of London Act of 1908) consisting of seventeen members elected by Payers of the dues and others, one member elected by wharfingers alone and ten members appointed by the Admiralty, (1) the Minister of Transport (2), the L.C.C. (4) the City Corporation (2) and Trinity House (1). All these members serve for a term of three years, all retire together but may be reelected or re-appointed. The Common aspect of these two bodies are the large proportion of elected members. As both are local bodies and represent a limited group of interested persons, the arrangement is workable, The Forestry Commission which was first established in 1919, has

-----

\*. Lecturer in Law, Madhusudan Law College,  
Utkal University, Cuttack-3, Orissa,  
India.

ten members appointed by the crown, one of whom was an M.P. and three are paid whole time appointments. The term of office was five years and re-appointment is also permitted. Public affairs in Great Britain are administered by or with the help of various independent Statutory Authorities, besides the Central Government departments under the direct control of the Ministers of the Crown. These bodies are created by Statutes, and they have considerable degree of independence from Ministerial and Parliamentary control. Though these Independent Statutory Authorities exercise public functions either over the whole country or within limited areas mostly for the benefit of the public and not for profit, their characteristics can be best expressed negatively that they are neither Government Departments under the direct control of the Ministers who are responsible to Parliament nor are they elected by local electors. They are known in different names such as Public Corporation, Public Boards and Quasi Govt. Bodies. The term Public Corporation has been derived from the report of the Crowford Committee on Broadcasting in 1926 where this term was first used. Many such authorities were brought in to existence in the 19th Century under the various Acts of Parliament, such as the improvement Commissioners, the Boards of health and the Poor law boards established for urban area.

All these various bodies, were however entrusted with their statutory function to be exercisable only over a defined local areas. After the end of Second World War the Socialist Government implemented the scheme of nationalisation of many Public Undertakings. The Corporations were therefore given separate corporate existence and limited functions but the responsibility for those functions extended over the whole country or over a wide area thereof much greater than that which could conveniently be administered by a single all purpose local authority. The modern public Corporation is a compromise, between nationalisation and private enterprise, with the sole object of Public Interest.

#### Character-stics:

The essential characteristics of a public corporation as per J.F.Garner are as follows:-

(a) The Corporation must have a separate corporate personality, Confered either by Statute or by Charter issued under the royal prerogative ( the modern corporation created by Charter are the British Board Casting Corporation.

(b) The Corporation must by its constituent Statute or Charter be entrusted with a limited range of functions of a Governmental Character exercisable over defined but normally extensive area or in some cases over a country as a whole.

(c) The Corporation must in law be independent of the Central Government capable of being issued in its own name, in few cases it may be a Crown Servant, but normally it is independent of the Central Government for most practical purposes; except general policy.

Classification:

Since 1945 in England some important Public Corporation have been created and they can be classified in to three types.

(a) The first type includes the National Road Board, the Central Electric Generating Board, the Electricity Council and the Area Electricity Board, the Gas Council and the Gas Boards. The Common Characteristic of these Corporations is that they control industrial and commercial undertakings which supply commodities or facilities, on payment to the general public. They are managerial economic bodies.

(b) The second type includes Regional Hospital Boards and New Town Development Corporation. The fifteen hospital board form part of the National Health Service Scheme and through Hospital Management Committees manage and control the hospital within their respective jurisdiction. The function of the New Town Development Corporation is to secure the laying out and development of a new towns. These are managerial social bodies and their purpose is to administer organisations which supply services necessary to the physical and social health of the Community.

(c) The third type includes the Agricultural land commission. The Commission is entrusted with the principal functions of managing, land which is vested in the Minister, or for which he is responsible and advising and assisting him generally. It can be broadly classified as a regulatory social body.

In the present modern democratic world certain trades have been left to be carried on by private enterprise. In India after the Independence the Government has taken up the management of certain business enterprise which was being carried on by private persons.

With a view to attain the economic growth and to improve the socio economic well being of the people, our Government desired to setup a socialist pattern of Society and to adopt economic planning on a large scale. The Industrial Policy resolution of 1956 has defined the role of the Government in the economic affairs of the Country and has laid down that all important industries working in the nature of public sector. Industries which can only be made by State are also to be in public Sector. Gradually there has been a tremendous growth in the field of public sector as a result of which certain new business enterprises have been set up by nationalising the private sector business enterprise. Accordingly in 1953 the Air Transport was nationalised and in 1956 the Life Insurance was taken up by the Government. Then followed the nationalisation of certain important banks of our country (A.I.R.1970 S.C.564). The Unit Trust of India was created under the Unit Trust of India Act 1963 as the Government wanted certain institutions like the Reserve Bank of India, Life Insurance Corporation of India and the State Bank of India to invest their funds in the trust, besides also it became necessary to make certain special provisions for the benefit of private investors. Electricity Boards were made into Statutory bodies as they run the public utility service. The Damodar Vally Corporation was also created to make improvements to the Damodar River Vally and thus check Flood, create facilities for irrigation and also to generate electricity.

However, the Government has not followed systematic way for choosing the form of a particular undertaking. While the air Corporations have been created as Statutory Corporation the Similar other transport companies like the Western and Eastern shipping Corporations have been incorporated as Government companies. From time to time Estimate and other committees have opined that the Government should go in for public corporations. In 1960 the Estimate Committee recommended that all the wholly state owned public undertaking should be in the form of statutory corporations and also in the same

year the committee further reported that the State Trading Corporation which has been created as a government company for implementing the foreign trade policy of the Government, should be converted into a statutory corporation so that its activities may be controlled more efficiently. The reply of the Government was as follows ( Dr.Jains-Principle of Administrative Law 1971 publication).

Government consider that the firm of management of the undertaking should be determined by the requirement of each case. Accordingly, from the point of view of flexibility of operations, the company form of management would be preferable. In some instances it would be necessary to form statutory corporations while in few others, for various reasons it would be desirable to run the undertakings as departmental organisation. It is due to the fact that the Government wants it to keep under their direct control instead of Parliamentary Control and scrutiny. Before a Public Corporation is constituted, the necessary legislation is to be passed by the Parliament which can scrutinise its objectives and other provision for its working, whereas these are absent in a government form companies. Again in 1967 the Administrative Reforms Commission recommended for the adoption of Statutory form for the public sector undertakings rather than the company form and the reason for this view was to ensure greater freedom from executive control.

### Management of Public Corporation

The affairs of a public undertaking is managed by a Governing board. In case of Government companies the board is called as boards of directors, All the members of the boards are appointed by the Government. One of the members of the board is nominated by the Government as its Chairman. No qualification is prescribed for appointment to such boards and hence the Government can appoint any one according to its choice. A similar type is followed in the case of Public undertakings except that the nomenclature accepted for these are not uniform. In case of Air Corporations, or Life Insurance Corporations the name "Board of Directors" is not used. Thus according to Sec.4 of the Air Corporation Act of 1963 each of the Air Corporation is to consist of not less than five and not more than nine members appointed by the Central Government

Similarly, according to Sec.4 of the Life Insurance Corporation Act, the Corporation is to consist of such number of members not exceeding fifteen as the Central Government may think fit to appoint. No qualification has been prescribed in the Act to be a member, excepting that a person should not have financial or any other interest in the said corporation. In case of Food Corporation the Act lays down for constituting a board of Directors consisting of the followings:- Chairman, one Director representing each of the Ministries of Food, Finance and Corporation, Managing Director of the Central Ware Housing Corporation, Managing Director of the Food Corporation six other directors. All the directors excepting the ex-officio directors are to be appointed by the Central Government.

The general pattern of the Governing Board is that they consists of officials and non-officials. The non-officials members include persons possessing special knowledge of a particular industry with experience of industrial management. At times also the representatives of the State Government and consumers are also included.

The Governing Board of a public undertaking may consist of part time or full time or partly part time and partly full time directors. In some public undertaking like S.T.C., National Small Industries Corporation and Life Insurance Corporation, there are full time and part time directors. It is found out that Government officials are appointed as part time directors in public undertaking. It is not advantageous for a public undertaking having too many Government officials as it becomes an extension of a Government department and loss its autonomy which is necessary for efficient functioning. Various Committees including the Menon Committee<sup>1</sup> have suggested that Secretary and other Senior official of the Ministry should not be appointed since they can not afford to devote time for this besides other reasons. According to the recommendations of the Menon Committee the Government decided<sup>2</sup> that no Secretary of a Ministry should be appointed as a Director and similarly no member of a parliament should also be appointed as a Director.

1. Sub-Committee of the Congress Party in Parliament on Parliamentary Supervision over State undertakings (1959)
2. Government decisions on the Committee recommendations, Lok Sabha Debate November 20, 1971.

As regards the Statutory Corporations the position differ from one undertaking with the other. In the Life Insurance Corporation there is provision for a Chairman. A managing Director is to be a whole time employee of the corporation and he is to discharge the duties as may be entrusted by the board, or the executive Committee. The Air Corporation Act of 53 makes no provision for a managing director though there is provision for a Chairman. In 1963-64 the estimate committee found that the posts of the Chairman and Managing Director of the Public Undertakings were changed frequently, which is not at all desirable in the interest of the Public Undertaking. So the Committee have opined that at least one must be appointed to these post for a minimum period of five years.

Since it will be a lengthy one otherwise in brief reference to various methods of control over the corporation are made as follows:-

#### Governmental Control:

As these corporations are created to promote the economic activity through an autonomous body the Government must have some control over these in the interest of the general public. If they are left free they might become the "headless fourth branch of the Government".<sup>3</sup> If there will be no Governmental control then there is every chance of misuse of power by the public undertakings, but too much control is also fatal as they will loose their independence and it will be just a department of the Government. The Government exercises its control as regards the appointment of removal of the Chairman, Directors or members of the Board and the Managing Director besides the appointment of senior executive officers. The Controller and the Auditor General also exercises power in the matter of audit of accounts. In case of statutory Corporation, the Act that permits the Government to exercise the rule making power and regulations promulgated without the Governments approval becomes invalid.<sup>4</sup> Besides all these the Government also exercises its control as regards the financial matter of a corporation is concerned particularly regarding the Capital expenditure. The Air Corporation Act provides prior approval of the Government for any expenditure exceeding rupees fifteen lakhs. Section 26 of the Food Corporation Act of 1964 also provides that the Corporation must prepare a Statement of its programme of its activities along with the budget and submit it at least three months before

3. The Phrase was used in 1937 by the Presidents Committee on Administrative Management with respect to regulating Commission (Davis, Administrative Law Treaties, Vol. 1, p. 28) (F.n:4Cont..)

the year begins. Borrowing money by a corporation from sources other than the Government is also controlled by the Government. The appropriate Minister has power to give directions of a general character as to the exercise and performance by the Corporations of their functions in relation to matters which are to affect the national interest. Dr. Jain in his principle of Administrative Law, (1971 publication) has rightly pointed out that Minister and Secretary of the department concerned are in actual practice able to exercise greater degree of control over the undertakings than what is formally envisaged by the Statutes. The estimate Committee has also stated "that in the relations between these undertakings and the Ministry, the former are treated in the same manner as Departments and offices of Government controlled and supervised by the Secretariate. The State undertaking have thus become adjuncts to Ministries and are treated more or less as the same lines as any subordinate organisation or office. The committee deplored this tendency which had a harmful effect on the productive activity of the undertakings as these have been subjected to all the usual red-tape and procedural delays common to a Government department with serious consequential effect on production".<sup>5</sup>

A similar criticism has been made of the existing practices by the Chagla Commission appointed to inquire in to certain matters concerning the Life Insurance Corporation.

"In my opinion Section 21 of L.I.C. Act embodies the ideal compromise between the autonomy of Statutory Corporation and the Control which must be exercised by a welfare state over such a Corporation. While leaving the Corporation complete independence to manage its own day to day administration, while leaving it free to invest its funds in the interest of the policy holders, Government could only control its discretion when aquisition of policy involving public interest arose. In my opinion it is most unfortunate that the wise and sound principle laid down in section 21 has not been adhered to in the working of L.I.C. The evidence before me clearly shows that there was a tendency on the part of the Finance Ministry to look upon the Corporation as a wing or branch of that Ministry and to issue orders to it in the belief that the corporation was bound to carry out those orders. It would also be a sanguine rule that in order to preserve the autonomy of the

4. Karnakar vrs. State of Mysore AIR 1966 Mys.p.317.

5. Chagla Commission Report on Life Insurance Corporation 1958.

undertakings informal controls are minimised and important policy decisions are in written directives which are published in the annual reports of the undertakings. So that responsibility for the same may be placed on the Ministry.<sup>6</sup>

So in order to maintain the autonomy of these undertakings and also for proper co-ordination among them in 1965 the Bureau of Public Enterprises was created in the Ministry of Finance having the following responsibilities.

- (1) To provide a Central point of reference and Consultation and deal with matters of general interest, such as organisational patterns, methods of managements, personnel policies, collaboration arrangements, training programmes, project planning, economic financial and Social policies.
- (2) To explore all avenues of economy in the Capital costs of projects.
- (3) To devise steps for improving productivity and profitability of public enterprises.
- (4) To undertake appraisal and evaluation of selected areas in the performances of public enterprise from time to time.
- (5) To prepare annual reports for presentation to parliament and also other reports that might be called by the Committees of Parliament or other Government agencies.<sup>7</sup>

The bureau has now launched a major programme to bring about an all round improvement in the public sector enterprises through seller management, higher production, higher return on investments and prevention of wasteful expenditure.

#### Parliamentary Control:

The important Constitutional problem that has not yet been completely solved is how to secure adequate parliamentary supervision of public Corporation to ensure that these enterprises are run efficiently and the monopoly conditions do not tempt an undertaking to exploit the consumer. This is to be balanced in such a method that the autonomy of these undertaking should be preserved and side by side the parliament

<sup>6</sup> Administrative Reforms Commission Report in the Public sector undertakings p.31 (1967).

<sup>7</sup> Organisation, Setup and function of the Ministry/ (Contd...)

should have some control over it. It is certain that the Parliamentary control should not extend to the matters of day today administration of these public undertakings:

Generally three type of methods are applied by the Parliament to control these corporations which are Questions, Debates and Examinations by Parliamentary Committees.

#### Questions:-

Members of the two Houses of Parliament put questions to ministers to get information on some important matters. Questions addressed to a minister must relate to the Public affairs with which he is officially concerned, to proceedings pending in Parliament or to matters of administration for which he is responsible. A question may be asked concerning the exercise by a minister of his power to give a general direction in the national interest to the Board of a Public Corporation. Ministers have power to require information from the Boards and so questions with the purpose to seek information are admissible but the Ministers are not bound to answer on the ground that the matter falls within the day to day administration of the Boards and questions concerning the day to day administration is inadmissible.

#### Debate:

A discussion may be raised by a member of a House in several ways, by moving a resolution or a motion relating to a matter of general public interest by raising half an hour discussion on a matter of sufficient public importance which has been the subject of a recent question in the House and the answer to which needs elucidation on a matter of fact; by raising a discussion on a matter of urgent public importance for short duration. From time to time, Ministers make statements of policy in the House. Specific questions of policy may be debated on a motion that the Government policy may be approved. Without raising a discussion a member may call attention of a minister to any matter of urgent public importance and the minister may even make a brief statement. An adjournment motion ( a motion for the adjournment of business) of the House may be moved by a member in the Lok Sabha for discussing a definite matter of urgent public importance. In the Rajya Sabha also, similar purpose is served through a motion for papers. There can be debate also on the Presidents address.

(F.n.7 contd.....)

Departments of Government of India; 3rd Edition, p.253.

The annual reports and accounts of the many public coprorations are as per the Statute to be laid before Parliament by the Minister concerned, along with the Ministers report. They are then the subject of debate but these facilities also are strictly limited and this is done only once a year. The range for the debate is so wide that there is little opportunity of discussing in details.

Parliamentary Committee:

The Estimate Committee and the Public account Committee were dealing with the affairs of public undertakings. To make it more effective the Parliament Constituted the Committee on public undertaking and it was established in 1964 basing on the recommendation of Menon Committee on Parliamentary Supervision over the State Undertakings appointed in 1959. It consists of fifteen members tem from the Lok Sabha and five from the Rajya Sabha. The members are elected every year by each House according to the Principle of proportional representations by means of a single transferable vote. A minister can not be a member of the Committee. The functions of the Committee are :-

- (a) to examine the reports and accounts of public undertakings.
- (b) to examine the reports of the Comptroller and Auditor General on the Public Undertakings.
- (c) to examine whether the affairs are being managed on the basis of sound business principles in the context of autonomy and efficiency of the public undertakings.
- (d) Any other functions allotted from time to time by the speaker.

The Committee has also certain limitation and are not authorised to look into the following matters.

- (i) matters of major Government policy as distinct from business or commercial functions of the public undertakings.
- (ii) matters of day to day administration of the Public undertakings.
- (iii) matters for the consideration of which machinery is established by a special statute.

under which a particular public undertaking is established.

The committees 1st report was brought out in 1965. The function of the Committee is advisory and the Government is not bound to honour its recommendations, but generally utmost consideration is given to the report. The ministry not accepting its recommendations are to give reasons for this. The committee is more of a fact finding body and has no machinery to see whether the recommendations are implemented by the Government or not.

### Judicial Control:

It is now well settled law that the statutory Corporations are distinct and separate entity from the Government. Though some of the directors are appointed by the Government and the corporations are to obey the direction of the Ministry issued from time to time, still in the eyes of the law it is treated as having separate legal personality and existence from that of the Government.<sup>8</sup> Act 289(1) of the Constitution exempts the income of a State from central levied income tax. It has been held by the Supreme Court in Andhra Pradesh State Road Transport Corporation vrs. I.T.O.<sup>9</sup> that the provisions of the Constitution does not debar the Centre from levying income tax on the income of a State created Statutory Corporation, as the Corporation has a separate legal entity of its own which is distinct from the State and this is not changed even though the corporation is required to make over a part of its income to the State.

The employees for a public undertaking are not treated as civil servants and are therefore, not entitled to the protection given to the Government servants under article 311(2) of the Constitution. A public corporation does not enjoy any privilege and immunity available to the Government servants by the constitution in the matters of suits against it. The corporation are subject to ordinary laws except in so far as it may have special power, privileges and immunities under the Statute creating it.<sup>10</sup>

Public Corporation may sue and are liable to be sued as any other legal persons. The usual statutory provision is that the corporation "shall be body corporate with perpetual succession" and legal proceedings should be taken by or against the corporation in its corporate name. When a corporation has been created as a part of Scheme of nationalisation

8. Subodh Ranjan v. A.I.R.1957 Patna, page 10-A.I.R.1963 Supreme Court page 1811.

9. A.I.R.1964 S.C.p.1486.

10. Andhra Pradesh State Road Transport Corporation.

of a particular industry, the corporation will normally inherit the privileges and obligations of the companies or other bodies whom they have succeeded.

Mandamus:

Now let us see whether a writ of Mandamus can be issued against a corporation or not. The writ of Mandamus is issued for enforcing a statutory or public duty and not to resolve a private dispute and the order of Mandamus is issued where there is no other means of obtaining justice. The order is purely discretionary. Now it is a well settled principle of laws that Mandamus lies against Statutory bodies including those discharging commercial functions. The Supreme Court has observed in Praga Tool Corporation case <sup>11</sup> that Mandamus may be issued even to a Company if it has been placed under a Statutory duty while laying down the proposition the Supreme Court has further added that the person or authority on whom the Statutory duty is imposed need be a public official or an official body and that a Mandamus can be issued, for instance to an official or a society to compel him to carry out the terms of Statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by States authorising their undertakings.<sup>12</sup>

In corporation of Nagpur vrs. NE.L.and P.Co.<sup>13</sup> the Bombay High Court issued the writ against a private company, a public utility, for failure to carry out the duties under the Statute on the ground that the "statutory duty devolving upon a public utility concern is a public duty. There are also decisions that a writ of Mandamus will lie against a Company if it is a public utility company or duty of a public nature has been imposed on it by Statute.<sup>14</sup>

Regarding violation of the condition of service of an employee of a corporation which is regulated by regulation having statutory force, a Mandamus may be issued against the corporation.<sup>15</sup> Mandamus will also lie to quash an action by a corporation adversely affecting an employee if it is based on regulations which are invalid due to certain procedural defects such as lack of approval of the Government when the statute requires its.<sup>16</sup>

11. A.I.R.1969 S.C.p.1306.

12. A.I.R.1969 S.C.p.1309-10.

13. A.I.R.1958 Bombay p.498.

14. Kartik vrs.WB.S.I.Corporation AIR 1967 Cal.p.231.

15. Life Insurance Corp.v.Sunil Kumar AIR 1965 S.C.p.1364.

There is another type of duty which a corporation owes to the general public and it is contained in the general duties functions or objects clause. It requires the corporation to provide a proper and efficient service, and whether a mandamus will be available to an ordinary user or to one who wishes to enjoy the benefit of the facility? First of all the issuance of an order for Mandamus is discretionary. Secondly because in the statute the imperative shall is there and not the permission may does not necessarily mean that it is obligatory on the part of the court to regard it as mandatory. Thirdly it can be argued that the interest of an actual or potential user of the service is insufficient for the purpose of obtaining the order. Fourthly there may have an alternative remedy.

An action of the Corporation based on the Ministerial direction may be quashed through a Mandamus if the minister has no authority to issue the directions. In Rowjee vrs. the State of A.P.17 the A.P.State Road Transport Corporation published a Scheme to nationalise certain Road Transport routes. The Scheme was done at the instance and directions issued by the Transport Minister who had political revoly with the private bus operators whose routes are proposed to be takenup. The Supreme Court quashed the Scheme as the directive issued by the Minister was issued malafide and was thus vitiated.

Conclusion:-

However in my opinion the corporation should be free from frequent Government interference and be allowed independence in their field of activities. However, Powerful corporation having great financial resources employing many personnel and possessing monopolistic powers conferred by Statue, should be answerable in some measures to the elected representatives of the nation and to the courts of law. A large scale commercial enterprise must be allowed freedom to carry on research, to experiment and even at times to make mistakes while doexperimenting for the betterment of the Corporation.

-----

10. A.I.R.1966 Mysore page 317.  
17. A.I.R.1964 Supreme Court page 952.

\*\*\*K.BALLABH\*\*\*  
\*\*\*

BOOKS REFERRED

Principles of Administrative Law, By J.A.G.Griffith.  
and H.Street, 3rd Edition.

Constitutional and Administrative Law by O.Hood  
Phillips, Fourth Edition.

Administrative Law, by J.F.Garner.

Principle of Administrative Law by Dr.M.P.Jain and  
Dr.S.N.Jain (1971 publication).

---

\*\*\*K.BALLABH\*\*\*

\*\*\*

\*

