

CHAPTER II

“STATE” FOR PURPOSES OF FUNDAMENTAL RIGHTS*

Part III of the Constitution guarantees certain fundamental rights to the citizens of India as well as other persons residing in India. These fundamental rights are guaranteed only against ‘State action’. In other words, the state cannot act contrary to the fundamental rights and cannot by its action legislative or otherwise curtail or take away the fundamental rights. Every person aggrieved by curtailment or encroachment of the fundamental rights is entitled to approach the Supreme Court under article 32 or the high court under article 226 of the Constitution. If the rights of a citizen are interfered with by any other person it only amounts to violation of his civil rights and he can approach ordinary civil courts or criminal courts constituted by the state for relief. Therefore, article 12 of the Constitution defines the word “State” for purposes of part III of the Constitution, which reads as follows:

12. *Definition:* “In this part, unless the context otherwise requires ‘the State’ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

Therefore, the fundamental right conferred by part III is an injunction both to the legislative as well as executive organs of the State and to other subordinate authorities.¹

The expression ‘all local or other authorities’ contained in article 12 defines the two types of such local or other authorities, namely-

- (i) They include all authorities within the territory of India whether under the control of the Government of India or the government of various states and even autonomous authorities which may not be under the control of the government at all.
- (ii) Those authorities under the control of the Government of India whether they are within the territory of India or constituted outside the territory of India.²

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1 *Bhesharnath v. Commissioner of Income Tax*, AIR 1959 SC 149.

2 *K.S. Rama Murthy v. Chief Commissioner, Pondicherry*, AIR 1963 SC 1464 at 1468: (1964) 1 SCR 656.

The meaning of the word 'authority' given in Webster's Third New International Dictionary, which can be applicable to the interpretation of article 12 is, "a public administrative agency or corporation having quasi-governmental powers and authorized to administer a revenue producing public enterprise." This dictionary meaning of the word 'authority' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India and there is no reason to narrow down this meaning in the context in which the words "other authorities" are used in article 12 of the Constitution.³

The state as defined in article 12 comprehends and includes bodies created for the purpose of promoting the educational and economic interests of the people, which is the duty of the state under article 46 of the Constitution. Further, the state is specifically empowered under article 298 to carry on trade or business. Therefore, it is not at all material that an authority constituted is for the purposes of carrying on economic activities. The fact that an authority is constituted to carry on some activities of the nature of trade or commerce does not and cannot be an indication to exclude such an authority from the scope of the state as used in article 12. A company receiving full assistance from the state having full control over it is a 'state' within the meaning of article 12 of the Constitution of India.⁴

Hence, every type of authority set up under a statute for purpose of administering the laws enacted by the Parliament or by the state including those vested with the duty to take decisions in order to implement those laws falls within the definition of the word 'State' contained in article 12. The words used in article 12 are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India, or under the control of the Government of India. There is no characterization of the nature of the authority in this residuary clause and consequently it must include every type of authority set up under a statute. The state as defined in article 12 is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.⁵

Local authority

According to the definition of the word 'State' in article 12 all local authorities fall within the meaning of the said expression. The 'Local Authority' is defined in section 3(31) of the General Clauses Act 1897, as follows:

3 See *Rajasthan Electricity Board v. Mohanlal*, AIR 1967 SC 1857.

4 *A.S. Gill v. State of Punjab*, 2005(6) SLR (P & H) 749.

5 See *G.V. Sundaresh v. Bangalore University*, 1967(2) Mys LJ 592.

“Local Authority” shall mean the Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to or entrusted by the Government with the control or management of Municipal or Local Fund.

In view of article 367 of the Constitution the provisions of the General Clauses Act are applicable for the interpretation of the Constitution. Hence, all the ‘authorities’ which fall within the meaning of the expression ‘Local Authority’ as defined in section 3 (31) of the General Clauses Act are considered as state for purposes of part III of the Constitution and are bound by the provisions of that part.⁶

For example, a Gram Panchayat constituted by a legislative enactment providing for its constitution is a ‘Local Authority’ and, therefore, ‘State’ under article 12.⁷ Similarly, the Port Trust constituted under the provisions of the Madras Port Trust Act (2 of 1905) is a local authority constituted for administering the provisions of the Madras Port Trust Act and consequently falls within the definition of the word ‘State’ in article 12. It is a corporation certainly controlled by the state and also a local authority by virtue of the definition of the word ‘Local Authority’ given in section 3 (31) of the General Clauses Act.⁸

‘Authority’ entrusted with management of local fund is a local authority

An authority entrusted with control or management of ‘local fund’ is a local authority. The word ‘Local Authority’ as defined in sub-section 31 of section 3 of the General Clauses Act includes any other authority legally entitled to or entrusted by the government with the control or management of the municipal or local fund. The word ‘local fund’ has been defined in rule 2 (17) of the Mysore Financial Code framed by the Governor of Mysore in exercise of his powers under clause (2) of article 283 of the Constitution as follows:-

“*Local Fund* means the revenue administered by bodies which come under the control of Government by law or rule having the force of law whether in regard to the proceedings generally or to specific matters such as the sanctioning of their budgets, sanction to the creation or filling up of particular appointments, the enactment of leave, pension or similar rules.”

Therefore, when an authority is constituted by a statute or under the provisions of a statute and according to statutory provisions the budget of the

⁶ See *Bombay Municipal Corporation v. Ramachandra*, AIR 1960 Bom 58; *Baijnath v. State of U.P.*, AIR 1965 All 151; and *J.Hiralal v. Bangalore Municipal Corporation*, AIR 1982 Kant 137

⁷ *All Singh v. State of Punjab*, AIR 1967 SC 856.

⁸ *R. Sranganipati v. Madras Port Trust*, AIR 1961 Mad 234.

authority is required to be approved by the Government, it is an authority legally entitled to the control and the management of the ‘local fund’ and consequently falls within the definition of ‘local authority’ under section 3(31).⁹

Hence State Transport Corporation, which is only meant for providing road transport services and has no element of popular representation in its constitution unlike a municipal committee, cannot be characterized as local authority.¹⁰

Bharat Sanchar Nigam Limited

‘BSNL’ is a state within the meaning of article 12 of the Constitution of India¹¹ – since all the assets of the Deptt. of Telecommunication alongwith liabilities were transferred to BSNL. All the employees except group A and B employees were absorbed in the BSNL. The remaining employees are on deputation without deputation allowance.

Electricity Board

An electricity board constituted under the provisions of the Indian Electricity Supply Act, 1948 (Act 54 of 1948) is an authority constituted under a statute. The fact that the board is required to carry on some activities of the nature of trade or commerce does not take it outside the scope of the word ‘State’ used in article 12. Particularly having regard to the fact that under article 46 of the Constitution it is the duty of the state to promote economic interests of the weaker sections of the people and under article 298, the state is specifically empowered to carry on trade or business, the state as defined in article 12 includes a body like the electricity board constituted for promoting economic interests of the people. Moreover, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the board include powers to give directions, the disobedience of which is punishable as a criminal offence. Therefore, the board is clearly an authority falling within the definition of the word ‘State’ contained in article 12 and, therefore, bound by the provisions of part III of the Constitution.¹²

However, an employee of CESC, a licensee under Indian Electricity Act cannot invoke the writ jurisdiction of the high court being dissatisfied with the order of termination of service since in this case the employer cannot be said to be ‘state’ within the meaning of article 12.¹³

9 *Channaveerappa v. State of Mysore*, 1968(1) Mys LJ 300.

10 *Calcutta State Transport Corporation v. Commissioner of Income Tax, West Bengal*, AIR 1996 SC 1316.

11 *Tarseb Singh v. Bharat Sanchar Nigam Ltd.*, 2003 (7) SLR (P & H) DB 693.

12 *Rejasthan Electricity Board v. Mohanlal*, AIR 1967 SC 1857; *Salim Ahmed v. Punjab Electricity Board*, SLR 1971 (1) P.&H 55.

13 *Mithai Lal Passi v. CESC Ltd.*, 2004 (5) SLR (Cal) 652.

University

A university constituted under a statute conferring on it full statutory powers in respect of higher education and research and which has been given the power to make subordinate legislation exercises governmental powers within the limited field of its activity. The authority of the state is behind it. It is constituted to promote educational interests of the people, which is the duty of the state under article 46. Therefore, 'university' falls within the meaning of the expression 'other authorities' occurring in article 12 and therefore, the ordinances, statutes or regulations framed by the university will have to conform to the fundamental rights.¹⁴

A private educational institution recognized or affiliated to a university is not covered under article 12 as an instrumentality of state, since the affiliation or recognition is only with regard to the syllabi and the standards laid down by the state.¹⁵

Cochin Devaswom Board

The Cochin Devaswom Board constituted under Travancore Cochin Hindu Religious Institutions Act, 1950, falls within the ambit of the words 'other authorities' contained in article 12. The word 'authority' means a body exercising power and in the context of article 12 that power must be considered as the power to issue rules, bye-laws or regulations having the force of law. Since the Act conferred on the board the power to make rules to carry out all or any of the purposes of the Act, it is an authority within the meaning of article 12.¹⁶

Mizoram Apex Bank

Mizoram Apex Bank registered under Mizoram Co-operative Societies Act, 1991 is playing an important role in the co-operative movement of the state. The provisions of its bye-laws suggest deep and pervasive control exercised by state government. Hence it is an instrumentality of state.¹⁷

Mysore Paper Mills

Mysore Paper Mills¹⁸ has been held to be an authority under article 12 as 97% of the share capital of the company has been contributed by the state

14 *G.V. Sundaresh v. Bangalore University*, 1967(2) Mys LJ 592; *Umeshchandra v. V.N. Singh*, 1968 Pat 3 (FB); *Ashalata v. M.B. Vikram University*, 1961.MP 299; *Shersingh v. Vice-Chancellor*, AIR 1969 Punj. 39.

15 *Unni Krishnan, J.P. v. State of Andhra Pradesh*, AIR 1993 SC 2178.

16 *Bramadthan Namboodripad v. Cochin Devaswom Board*, AIR 1956 TC 19 (FB).

17 *C. Lalliana v. Managing Director Co-operative Apex Bank Ltd.*, 2000(2) SLR (Gau) 120.

18 *Mysore Paper Mills v. The Mysore Paper Mills Officers Association*, AIR 2002 SC 609.

government and the financial institutions of the central government. Moreover five out of 12 directors are government nominees and the rest are approved by the government. The government exercises supervisory power over the company which is entrusted with important public duties hence the physical form of a company is “merely a cloak or cover for the government”. For it is otherwise an instrumentality of the State Education Institute affiliated to a university.

Coffee Board

The Coffee Board constituted under the Coffee Act (1942) is a ‘State’ as defined in article 12. It is an authority constituted under the statute and it has power to frame rules and also to issue directions, the disobedience of which is penalised under the provisions of the Act.¹⁹

Statutory corporations

All statutory corporations, which are instrumentalities or agencies of the government, central or state, would fall within the meaning of the word ‘State’ as defined in article 12. Consequently, in the exercise of their powers they would be subject to the same constitutional and public law limitations to which a government is subject to.²⁰ The courts have taken an expansive view of article 12 lest the government resorts to setting up administrative structures in order to bypass the constraints of fundamental rights.²¹

19 *A.J. George v. Coffee Board* 1972 L. & IC. 921; *Shive Gowda v. Coffee Board*, 1980(1) Kar LJ at 200; *Ramesh Enterprises v. Coffee Board*, ILR 1985 Kar 982.

20 *Sukhdev v. Bagatram*, AIR 1975 SC 1331 Re.(i) Oil and Natural Gas Commission established under Oil and Natural Gas Commission Act; (ii) The Industrial Finance Corporation constituted under the Industrial Finance Corporation Act, 1948; (iii) The Life Insurance Corporation constituted under the Life Insurance Corporation Act, 1956; *Ramana Dayaram Setty v. International Airport Authority*, AIR 1979 SC 1628; *S.S. Muley v. J.R.D. Tata*, SLR 1979 (2) Bom 438 Re. Air-India Corporation constituted under the AIR Corporation Act, 1953; *T.G. Srinivasa Murthy v. The BEML*, 1982 (1) LLJ 268; ILR 1982 (1) Karn 622 Re. The Reserve Bank of India constituted under the Reserve Bank of India Act, 1926; *Smt. Pramila v. Union of India*, SLR 1983 (2) Del 619 Re. Indian Nursing Council constituted under the Nursing Council Act, 1947; *Shyam Lal Sharma v. The LIC*, 1970 All LJ 214; *Kedarnathlal v. The LIC*, SLR 1973 (1) Pat. 593; *S.R. Mony v. The LIC of India*, OP No. 463 of 1972 DD 13-4-1972 (Ker); *Jamunaram v. Bihar State Warehousing Corporation*, SLR 1980 (2) Pat 760; *Kalyanmal Bhandari v. State of Rajasthan*, SLR 1975 (2) Raj 36 Re. The Rajasthan Road Transport Corporation constituted under the Road Transport Corporation Act; *Workmen, Food Corporation of India v. Food Corporation of India*, AIR 1985 SC 670 Re. Food Corporation of India constituted under The Food Corporation Act, 1964.

21 *Steel Authority of India Ltd. v. National Union Water Front Workers*, AIR 2001 SC 3527.

Any instrumentality or agency of the government

An instrumentality or agency of the central or state government whatever be its form, i.e., whether a company, a society, etc., would be 'State' within the meaning of that word as defined in article 12.²² In order to find out whether a body or person is an instrumentality or agency of the government, the following tests have to be applied:²³

- a. whether the entire share capital of the company or society is held by the government?
- b. Whether deep and pervasive state control is in existence?
- c. Whether the body enjoys monopoly status which is conferred or protected by the state?
- d. Whether the functions of the body are of public importance and closely related to governmental functions?
- e. Whether the body was formed by converting a department of the government?

If the cumulative effect of the application of the tests indicated above show that the body is an instrumentality or agency of the government, the inevitable conclusion should be that it is state and, therefore, would be subject to the constitutional limitations to the same extent as the government.²⁴

The decisions of the Bombay²⁵ and Karnataka²⁶ High Courts holding that such of the statutory corporations whose activities were of commercial nature, or which had no power to issue orders or make rules the disobedience of which was not punishable, were not 'State' as defined in article 12, were wrong and were rendered without correctly appreciating the ratio of the judgment of the Supreme Court in *Rajasthan Electricity Board*²⁷ as pointed out by the author in the first edition. This view stands established by the judgment of the Supreme Court in *Ramana Dayaram Setty*²⁸ and *Ajay Hasia*.²⁹ Therefore, all those decisions are no longer good law. Similarly earlier decisions of Karnataka and Calcutta High Courts³⁰ holding that government companies

22 *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487; *P.V. Nayak v. Syndicate Bank*, II.R 1978 (2) Kar 1858; *Bank of India Officers' Association v. Bank of India*, 1979 (2) SLR 326 (MP); *T.G. Srinivasa Murthy v. The BEML*, 1982 (1) LLJ 268.

23 The court, however, cautioned that these tests are not conclusive or clinching but that they are merely "indicative indicia" which have to be used with care and caution.

24 *Supra* note 22; see also *Somprakash v. Union of India*, AIR 1981 SC 212.

25 *Pramodrai v. The L.I.C.*, AIR 1969 Bom 337.

26 *B.V. Mokashi v. Mysore State Road Transport Corporation*, 1973 (2) Mys LJ 76.

27 AIR 1967 SC 1857.

28 AIR 1979 SC 1628.

29 *Supra* note 22.

30 *Nagaraja Rao v. Indian Oil Corporation*, 1969 (2) Mys LJ 83; *Ranajit Kumar v. Union of India*, AIR 1969 Cal 95.

are not ‘State’ are also no longer good law. Likewise the decision of the Supreme Court³¹ holding that Council of Scientific and Industrial Research, a society registered under the Societies Act was not “State”, should also be regarded as having been impliedly overruled in *Ajay Hasia* for, even from the undisputed facts stated in that judgment the society was sponsored by the central government and was financed by it and administrative control vested in the central government. In other words it is the *alterego* of the central government and, therefore, state as defined in article 12.

Applying the above tests, the following bodies are held to be ‘State’ within the meaning of that word used in article 12:

1. Societies registered under the Societies Registration Act, sponsored by the government.³²
2. Banks, the administration and control of which are acquired by the central government by legislation.³³
3. Insurance companies, nationalised by Act of legislature.³⁴
4. Companies registered under the Companies Act which are government companies as defined in section 617 of the Companies Act in which public money is invested and the effective administrative control of which is vested in the state government.³⁵

31 *Sabhajit Tewary v. Union of India*, AIR 1975 SC 1329.

32 *Ajay Hasia*, *supra* note 22. Re. A society registered under the Jammu and Kashmir Registration of Societies Act: *B.S. Mitnas v. Indian Statistical Institute*, AIR 1984 SC 541; *P.K. Ramachandra Iyer v. Union of India*, AIR 1984 SC 541 Re. Indian Council for Agricultural Research (ICAR) and Indian Veterinary Research Institute (IVRI); *Dr. Kalyanaraman v. Union of India*, ILR 1982 (1) Kar 523 Re. National Institute of Mental Health and Neuro Sciences (NIMHANS); *Sahadeo Narain v. Chairman, Board of Governors, Sainik School Society*, SLR 1982 (1) Guj 19.

33 *P.V. Nayak v. Syndicate Bank*, ILR 1978 (2) Karn 1858; *Syndicate Bank v. P.V. Nayak*, 1984 (2) Kar LJ 323; *Lachmandas Agarwal v. The Punjab National Bank*, SLR 1977 (2) P&H 565; *Kulbhushan v. The Punjab National Bank*, 1979 II LJ 86; *Jagannathdas v. State Bank of India*, 1979 II LJ 131; *Bank of India Officers' Association v. Bank of India*, 1979 (2) SLR 326 (MP); *Gurudas v. State Bank of India*, 1983(2) SLR AP 376; *Smt. K. Indira v. State Bank of India*, 1983 (2) SLR AP 376; *G.S. Shambhani v. State Bank of India*, 1984(2) SLR Guj. 765; *Sukhdev Ratilal v. The Chairman, Bank of Baroda*, SLR 1976 (2) Guj 144; *A.R. Joshi v. State Bank of India*, SLR 1980(2) Del 15; *Central Bank of India v. V. Ghanashyamalal*, SLR 1981 (1) Guj 392.

34 *Rajmohan v. Assistant General Manager*, 1984(2) SLR 782 (Ker) Re. The United India Insurance Co. Ltd.

35 *Somprakash v. Union of India*, AIR 1981 SC 212; SLR 1981(1) SC 154 Re. Bharat Petroleum Corporation Ltd.; *T.G. Srinivasa Murthy v. The BEML*, ILR 1982 (1) Kar 622; 1981 (2) LJ (Kar); *A.L. Kalra v. Project Engineering Corporation of India Limited*, AIR 1984 SC 1361; 1984(2) SLR 446; *Rangaswamy Setty v. Karnataka Agro Industries Corporation Ltd.*, 1981 (2) Kar. L.J. 455. ILR 1981 (2) Kar. 1039; *Ganesh Chandra v. National Textile Corporation Ltd.*, 1983 (2) SLR 665 (Cal) Also 1983 (1) SLR Cal. 187; *Kunju Mahammed v. State of Kerala*, 1984(2) SLR 89, Ker (FB) Re. Kerala Industrial

5. The Defence Metallurgical Laboratory, Hyderabad, a body founded by the Government of India is an alter-ego of the government and it is, therefore, state as defined in article 12.³⁶
6. A company enjoying the monopoly of carrying on a business under an Act of legislature has the trappings of “state” and is an “authority” under article 12.³⁷

A general proposition may be laid down that a body whether statutory or non-statutory, whether exercising functions of a commercial or non-commercial nature will be regarded as an authority and hence ‘state’ if it can be categorized as an instrumentality of the state.³⁸

Private educational institutions receiving substantial financial aid from the state

Whatever be the nature of the management of a private educational institution, a trust or a society or a co-operative society, if it receives substantial financial aid from the government and whose employees have secured statutory protection in matters relating to their employment and which is subject to the regulations made by the education department of the state would be an instrumentality or agency of the state.³⁹ Army school is purely a private institution. The government has no control over it financially or administratively, neither does it receive any funds from the government, hence it does not qualify as a state under article 12 of the Constitution.⁴⁰

Co-operative societies and private societies

A co-operative society is formed by individuals or societies and registered. The bye-laws or the rules framed by a co-operative society or societies have no statutory force.⁴¹ Therefore, they are unenforceable through a petition under article 226.

Development Corporation Ltd, also at 472; *Hindustan Steel Ltd. v. Ravindranath Banerjee*, 1985 (1) SLR 147(Cal); *A.M. Agarwala v. Union of India*, SLR 1981 (2) Del 407, and *Officers' Association v. Steel Authority*, SLR 1983(1) MP 477 Re. Steel Authority of India Ltd; *Amarnath v. Trade Fair Authority of India Ltd*, SLR 1982 (2) 670; *S.D. Sharma v. Trade Fair Authority of India*, SLR 1985 (1) Del 670

36 *A. Manik Rao v. The Director, Metallurgical Research Laboratory*, 1985 (1) SLR AP 165.

37 *Biman Kishore Bose v. United India Insurance Co. Ltd.*, (2001) 6 SCC 477.

38 2001(7) SCC 19.

39 *Manmohan Singh v. Commissioner, Union Territory of Chandigarh*, AIR 1985 SC 364.

40 *Army School, Kunraghat v. Smt. Shilpi Paul*, 2005 (5) SLR (All) (D.B) 664.

41 *Vaish Degree College v. Lakshminarayana*, AIR 1975 SC 888; *Rudra Aradhya v. Election Officer*, 1968(1) Mys LJ 545; *Dharopal Soni v. State of Punjab*, SLR 1969 P&H 349; *K. Ramraj v. Srivilliputhur Co.op. Spinning Mills*, AIR 1971 Mad 315; *Khoday Brewing and Distilling Industries v. State of Karnataka*, ILR 1981 (2) Kar

However, it should be added that applying the tests laid down by the Supreme Court in *Ajay Hasia*, if it is found that a co-operative society is an instrumentality or agency of the government, it would come within the purview of the word ‘State’ as defined in article 12.

Further, notwithstanding the fact that a society or a co-operative society is not an authority and therefore the bye-laws or rules made by it has no force of law, if any such body happens to be the management of an educational institution recognized by a government or university and the conditions of service of such employees are regulated by or under an Act of appropriate legislature, the provisions thereof can be enforced through a petition under article 226 before the concerned high court.⁴³ Further it has to be seen whether the body is engaged in a public duty. A private body registered as a society with the objective of eradicating untouchability does not come within the ambit of state since it is not doing a public duty.⁴⁴

To sum up, irrespective of the form in which the state manifests itself to discharge its constitutional obligations, or to implement its policies or schemes, whatever be the sphere, the person or body concerned falls within the meaning of the word ‘State’ as defined in article 12 and, therefore, must function within the four corners of the constitutional provisions.

1039; 1981 (2) Kar LJ533; *M.N. Siddeswariah v. Managing Director, Bangalore D.C.C. Bank*, SLR 1984(2) Kar 647; *Ramaswarup v. M.P.Co. Operative Marketing Federation*, SLR 1976(2) MP 454; *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal*, AIR 1970 SC 245.

42 For further elucidation on this aspect see part IX. *Indrapal v. Managing Committee, M.L. College*, AIR 1984 SC 1110; *Dr. R.K. Seth v. C.B.C.I. Society*, 1985(1) Kar 1.J 12.

43 *Vinay Kumar Tyagi v. Harijan Sewak Sangh*, 2004 (7) SLR (Del) 861.