

“Scope of Local Authorities under Article 12”

Akshansh Singh

B.A.LL.B

Indore Institute of Law

‘State’ from the eyes of constitution

The word ‘STATE’ is defined under Article 12 of Part III of the Constitution which says, “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.”¹

According to Article 12 the term ‘State’ includes:

- The Government and Parliament of India i.e., Executive and Legislature of the Union
- The Government and the Legislature of each State i.e., Executive and Legislature of States.
- All Local Authorities.
- Other Authorities within the territory of India, or under the control of the Central Government.

The definition in Article 12 is just with the end goal of utilization of the arrangements contained in Part III. Thus, despite the fact that a collection of people may not constitute 'State' inside the moment definition, a writ under Article 226 may lie against it on non-constitutional grounds or on grounds of repudiation of some arrangement of the Constitution outside Part III, e.g., where such body has an open obligation to perform or where its demonstrations are upheld by the State or open authorities.²

In *Ujjain Bai v. State of U.P.*³, the Supreme Court has observed that Article 12 winds up the lists of authorities falling inside the definition by alluding to "other authorities" inside the region of India which can't, clearly, be perused as *eiusdem generis* with either the Government or the Legislature or Local authorities. "State" is of wide meaning and equipped for understanding each authority made under the statute and working inside the domain of India. There is no portrayal of the idea of specialist set up under a statute to administer laws authorized by the Parliament or by the State incorporating those vested with the obligation to settle on choices keeping in mind the end goal to execute those laws.

The prevalent contemplations for articulating an element as State office or instrumentality seem to be:

¹ 2 D.J. De's Constitution of India, Asia Law House, Vol. 1, Pg. No. 133

² Durga Das Basu, Commentary on Constitution of India, 8th Edition 2007, Wadwa Nagpur, Vol. 1, Pg. No. 635, refer: *Kartick v. W.B.S.I.C.*, AIR 1967 Cal 231 (234)

³ AIR 1962 SC 1621

- i. Financial assets of the state being the Chief discovering source;
- ii. Functional character being governmental generally;
- iii. Plenary control living in government;
- iv. Earlier history of a similar movement having been carried on by government and made over to the new body;
- v. Some component of power or order. Regardless of whether the legal individual is an enterprise made by a statute, as recognized from under a statute, isn't a critical model despite the fact that it might be an indicium.⁴

Local Authorities defined:

A 'local authority' is defined in section 3 (31) of the General Clauses Act X of 1897 as:

“ 'local authority' shall mean a 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 a municipal or local fund.”

Further, Article 367 of the Constitution sets out that except if the context explicitly requires, the General Clauses Act, 1897, will be subject to any adjustments and changes apply for the translation of the Constitution too. Consequently the definition can be very much connected with the end goal of translation of Article 12.

'Local Authority' means an authority legally entitled to or entrusted by the Government with the control or management of a local fund. Hence Dock Labour Board is a local authority.⁵ Local authorities are under the elite control of the States, by temperance of entry 5 of List II of the seventh Schedule. That entry contains a list of some local authorities. This articulation will, in this way, incorporate a Municipal Committee⁶; a Panchayat⁷; a Port Trust⁸; Municipality is a "State" inside the significance of Article 12.⁹ Yet, that does not imply that the authorities are State Government or Central Government and there is a refinement amongst State and Government.

In *Union of India v/s R.C.Jain*¹⁰, to be deliberated a "local authority", the authority must satisfy the below given rules:

- i. Separate legal existence.
- ii. Role in a defined area.
- iii. Has power to raise funds.
- iv. Enjoys independence.

⁴ Som Prakash v. Union of India, AIR 1981 SC 212 (para 52) relying on Ramana v. International Airport Authority of India, AIR 1979 SC 1628

⁵ BhikhariBehara v. Dhanapatia, AIR 1970 Cal 176

⁶ State of Gujarat v. Shantilal, AIR 1969 SC 634 (643)

⁷ Ajit Singh v. State of Punjab, AIR 1967 SC 856 (866)

⁸ R.I. Handicraft Manufacturing Association v. Kottayam Municipality, AIR 2000 Ker 30

⁹ Natwarlal Khodidas Parmar v. Dist. Panchayat, Jamnagar, AIR 1990 Guj. 142

¹⁰ 1981 SCR (2) 854

- v. Entrusted by a statute with functions which are usually entrusted to municipalities.

The Evolving Scope:

The scope of local authorities can be said to as ever-changing in such a manner that the ambit of the word 'state' keeps increasing. As stated earlier the words state includes local and other authorities within the territory of India and local and other authorities under the control of Government of India.

In case of Calcutta State Transport Corporation v. Commissioner of Income-tax, West Bengal¹¹; Supreme Court declined to characterize the corporation as a 'local authority'. The corporation is implied just to provide street transport benefits and has no component of well-known portrayal in its constitution. Its forces and capacities bear no connection to the forces and elements of a municipal committee. It is more in the idea of an exchanging corporation.

In Premji Bhai Panwar v. Delhi Development Authority (DDA)¹²; the Delhi Development Authority, a statutory body, has been held to be a 'local authority' since it is constituted for the particular reason for development of Delhi as indicated by arrange for which is commonly a municipal capacity. The activities of the Delhi Development Authority are restricted to Delhi. It has some component of well-known portrayal in its organization and appreciates a significant level of autonomy.

The question in the case of housing boards can be considered as 'local authority' preceded the Supreme Court by and large. The choice uncovers the trouble in holding an authority as State regardless of whether it plays out an imperative open capacity. In Housing Board of Haryana v. Haryana Housing Board Employees Union¹³ the Supreme Court held that the Housing Board is certainly not a 'local authority' and denied to influence pertinent Payment of Bonus To act to employees of Haryana Housing Board. The reason was that it loathes a 'local fund' and the individuals are not chosen like in other local specialists like panchayats, municipalities and furthermore on the ground that it's anything but a self-sufficient body as there is government control in the capacities performed by it.¹⁴ The council had given it the status of 'local authority' with the end goal of Land Acquisitions Act. Yet, Court held that the status is given just for a restricted reason. Simultaneously, the Supreme Court additionally denied making it as 'other authority' under Article 12.

Further, in M/S Andhra Pradesh Housing Board v. Department of IT¹⁵ the question was whether Andhra Pradesh Housing Board is an administration organization or not. Dissimilar to the previous case, in the moment case, the free character of the Housing Board was maintained. In the event that in the primary case the Housing Board was pronounced not an

¹¹ AIR 1996 SC 1316 : (1996) 8 SCC 758

¹² AIR 1980 SC 738 (1980) 2 SCC 129

¹³ 1996 (1) SCC 95

¹⁴ ROHIT BAFNA & NITIN MITTAL, 'ARTICLE 12- CRITICAL ANALYSIS', LAW MANTRA (International Monthly Journal, I.S.S.N 2321 6417)

¹⁵ Available at <http://indiankanoon.org/doc/42396226/> accessed on 28, February 2014.

'other authority' for the administration control, in the moment case it was announced as not as an 'other authority' since it is working as an independent body. In any case, in the two cases the fact that the Housing Boards are playing out an imperative government work and the component of open reason in the separate activity was disregarded by the Court. Consequently it can be discovered that as opposed to nature of the activity significance is given by the Court to the tests or criteria's in deciding if a body fall under the term 'State' or not.

It is additionally to be noticed that *Budha Veerinaidu v. State of Andhra Pradesh & anr.*¹⁶ Agricultural Market Committee working under Andhra Pradesh Agricultural Produce and Live Stock Markets Act, 1966 was held to be a 'Local Authority' As it was discovered that the Market Committee was depended by the Government with the control and administration of "Local Fund" though Housing Board which additionally plays out a similarly or more essential capacity was held to be not playing out a legislative activity.

It could be seen that any society enrolled under society Registration Act of 1898 is an "agency" or "instrumentality of the state".¹⁷ It will be seen that individual or an organization performing the substance of government or in help of a government or is releasing an obligation of state can be considered as a "State". The structure is resolved when the representative of government, its costs are at the cost of the government. The standards made for society are as per the government and it will likewise conform to all bearings of the government and it ought to be clearly represented by government then it can be seen that Non-Statutory bodies are a 'State'.

The Supreme Court by a greater part judgment held that the Board of Control for Cricket in India (BCCI) isn't a 'State' or 'expert'. It was held that simply on the grounds that a non-governmental body practices some open obligation, that independent from anyone else would not get the job done to make such body a State for the reason for Article 12.

Hon'ble Supreme Court held since the State is today removing itself from commercial activities and concentrating on administration rather than business, situation winning at the time when, was chosen isn't in presence and there is no compelling reason to further extend the extent of "local authorities" in Article 12 by judicial interpretation "at least for the time being". It was further held that in a majority rule government there is an isolating line between a State venture and a non-State undertaking which is particular and the legal ought to be an instrument to eradicate the said partitioning line, except if the conditions of the day expects it to do so.¹⁸ Unaided Schools even don't cover the ambit of state despite the fact that the giving education is a main substance of the government. In this manner it will be watched that all authorities which are performing the quintessence of the government and

¹⁶ 1983 (143) ITR 1021

¹⁷ *Ajay Hasia v Khalid Mujib*, AIR 1981 SC 487

¹⁸ *Zee Telefilms Ltd. V. Union of India*, (2005) 4 SCC 649

straightforwardly or in a roundabout way under or over the control of government form the State.¹⁹

An expert which is located outside India may in any case go under the meaning of 'State' under Article 12 is it us under the control of the Government of India These words expand the application of the essential rights to zones outside the territory of India, which might be under the control of the Government of India for the time being, e.g., mandatory and trust regions which may be put by international organizations under the control of the Government of India. This article clarifies that India would not discriminate, so far as the crucial privileges of people are worried, between its own particular nationals and the general population of other countries, which may go under the administration of India under some international plan, understanding or the like.²⁰ The Supreme Court has anyway given to the above words a significance diverse form that given in the Constituent Assembly. As indicated by the Supreme Court, the words 'under the control of the Government of India' control the word 'authorities' and not the word 'territory'.²¹

The Unnamed: Other Authorities

The elucidation of the term 'other authorities' in Article 12 has caused an awesome trouble and legal assessment has experienced changes after some time. In this way the most begging to be proven wrong theme of the article is the core of authorities shrouded in the ambit of "other authorities" in article 12. The importance and extent of this could be left just to the translation of courts.

In *Rajasthan State Electricity Board v. Mohanlal*²²; the Supreme Court decided that a State electricity board, set up by a statute, having some business capacities to release, would be an 'authority' under Article 12. The court stressed that it isn't material that a portion of the forces gave on the concerned authority are of business nature. This is on the grounds that under Article 298, the legislature is enabled to bear on any exchange or commerce. Consequently, the court watched: "The condition that the Board under the Electricity Supply Act is required to bear on a few activities of the idea of exchange or commerce does not, along these lines give any sign that the 'Board' must be prohibited the extent of the word 'state' is utilized as a part of Article 12.

In *Sukhdev Singh v. Bhagatram*²³ the Supreme Court following the test set down in *Electricity Board Rajasthan's* case by 4:1 dominant part held that ONGC, LIC, and Industrial Finance Corporation are experts inside the significance of Article 12 of the Constitution and in this way they are 'State'. Every one of the three statutory corporations have the ability to make directions under the statute for controlling states of administration of their workers. The

¹⁹ Chandra Mohan Khanna V. NCERT, AIR 1992 SC 76

²⁰ Dr. Ambedkar, Constituent Assembly Debates, Vol. VI, pg. 607

²¹ Pradeep Kumar Biswas v. Indian Distribution of Chemical Biology, (2002) 5 SCC 511 (supra)

²² AIR 1967 SC 1857 : (1967) 3 SCR 377

²³ AIR 1967 SC 1857

guidelines and controls confined by the above bodies have the power of law. The terms of the contract with a specific manager is endorsed by the statute itself. These controls are authoritative on these bodies. The representatives of these statutory bodies have a statutory status and they are qualified for an affirmation of being in business when their rejection or expulsion is in repudiation of statutory arrangements. The workers are qualified for assert under Articles 14 and 16 against the corporation.

In *Ramana Dayaram Shetty v. International Airport Authority of India*²⁴, Justice Bhagwati favored the more extensive test as recommended by Justice Mathew in *Sukhdev v. Bhagatram* case. For this situation, the Court has held that if a body is an organization or instrumentality of government it might be an 'authority' inside the importance of Article 12 whether it is a statutory corporation, an administration organization or even an enlisted society. As needs be, it was held that the International Airport Authority which had been made by an Act of Parliament was the "State" inside the importance of Article 12. The Central Government had capacity to the arrangement of any part frame the Board. The capital required by it was given just by the Central Government. Be that as it may, what is the test whether a body is an office or instrumentality? The Court set out the accompanying tests for deciding if a body is an organization or instrumentality of the Government:

- Financial Resources of the State
- Existence of Deep and Pervasive State Control
- Function of Governmental Essence
- Department transformed into a Corporation
- Monopoly Status

In *SomPrakash v. Union of India*²⁵; the organization was held to fall under Article 12. The Court underscored that the genuine test for the reason whether a body was an 'authority' or not was not whether it was shaped by a statute, or under a statute, yet it was "functional". In the moment case, the key factor was "the agonizing nearness of the state behind the activities of the body, statutory or other". For this situation, the body was semi-statutory and semi-non-statutory. It was non-statutory insource; it was additionally perceived by the Act being referred to and subsequently had some "statutory flavor" in its tasks and capacities. For this situation, there was a formal exchange of the endeavor from the Government to an administration organization. The control by the Government over the corporation was writ substantial in the Act and in the factum of being an administration organization. Office of a state would mean a body which practices public capacities.

In *Ajay Hasia v. Khalid Mujib*²⁶; it has been held that a Society enlisted under the Societies Registration Act, 1898, is an organization or "instrumentality of the State" and consequently a "State" inside the ambit of Article 12. Its organization is dictated by the delegates of the

²⁴ AIR 1979 SC 1628

²⁵ AIR 1981 SC 212

²⁶ AIR 1981 SC 487

Government. The costs of society are completely given by the Central Government. The standards made by the general public require earlier endorsement of the State and is totally controlled by the Government. The administration has the ability to designate and evacuate the individuals from the general public. Subsequently, the State and the Central Government have full control of the working of the general public. In perspective of these components the general public is an instrumentality of the State or the Central Government and it is accordingly an "authority" inside the significance of Article 12.

In *S.C. Chandra v. State of Jharkhand*²⁷; the inquiry which emerged for choice was whether the educators of a school not possessed by BCCL and was controlled by Managing Committee and whose instructors were never designated by BCCL, despite the fact that BCCL used to discharge non-repeating gifts subject to specific conditions would bring about such educators to be considered as the workers of BCCL and qualified for all advantages accessible to the standard representatives of BCCL.

The expression 'other authorities' will include all constitutional or statutory authorities on whom powers are conferred for the purpose of promoting economic activities. It is not only confined to statutory corporations alone but may include a government company, a registered society, or bodies which have some nexus with the government.²⁸

Judiciary: Under State?

Different from at U.S.A, where the judicial decision suggests 'State action' for the reasons for requirement of fundamental rights, in India the 'judiciary' isn't particularly said in Art. 12. The judicial view is that the judgements of courts can't be tested on the ground that hello repudiate fundamental rights. Presently, the inquiry emerges does it imply that the term judiciary isn't be incorporated into the idea of 'state'? The appropriate response relies on the qualification between the judicial and non-judicial elements of the courts. In the activity of the non-judicial capacities, the courts fall inside the meaning of the 'State'. The activity of judicial capacities won't occasion the encroachment of fundamental rights and, along these lines, the subject of bringing the courts inside the meaning of the 'state' would not arise.²⁹

In *Naresh v. State of Maharashtra*³⁰, it was held that regardless of whether a court is the State a writ under Art. 32 can't be issued to a High Court of equipped purview against its judicial requests, on the grounds that such requests can't be said to damage the fundamental rights. What the judicial decisions implies to do is to choose the discussion between the parties and nothing more. The court said that the 'judiciary' while practicing its run making power under Art. 145 would be secured by the articulation 'State' inside the importance of Art. 12, however while playing out its judicial capacities, it isn't so included.

²⁷ (2007) 8 SCC 279 : AIR 2007 SC 3021

²⁸ Dr. J.N. Pandey's *The Constitution of India*, 48th Edn., Central Law Agency, Pg. No. 62-63

²⁹ Cf. H.M. Seervai: *Constitutional law of India*, 225 ff (3rd Edn. 1983) for a forceful argument that judiciary is 'the State' even in the exercise of its judicial functions. This would also seem the view taken by Mukharjee, J., in *A.R. Antulay v. R.S. Nayak*

³⁰ AIR 1967 SC 1

In *Rupa Ashok Hurra v. Ashok Hurra*³¹, the summit court has re-affirmed and decided that no judicial continuing could be said to abuse any of the fundamental rights. It was said to be settled position of law that the prevalent courts of equity did not fall inside the ambit of 'State' or 'other authorities' under Art. 12.

In *A. R. Antulay v. R.S. Nayak*³², it was held that the court couldn't pass a request or issue a course which would be violative of the fundamental rights, along these lines, one might say that the articulation 'state' incorporates judiciary too.

It is presented that the judiciary, however not explicitly specified in Art. 12, it ought to be incorporated in this way, since the courts are set up by statute and exercise control gave by law. It is suggested to the point that separation might be realized... even (by) judiciary. The courts, similar to some other organ of the state, are constrained by the obligatory arrangements of the Constitution.

³¹ AIR 2002 SC 1771

³² AIR 1988 SC 1531