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State under Article 12: A Judicial Evolution

By Saikat Mukherjee | Views 11168 (author-21678-saikat-mukherjee.html)

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Article 12 of the Constitution of India deals with the term State and the necessary institutions that would fall under the ambit of the word State. Before we critically analyze this definition with relevance to the jurisprudence that has been laid down by our judiciary, we would first take a look at what Article 12 says. It reads,

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 within the country and all local or other authorities within the territory of India or under the control of the Government of India.

The few institutions that have been categorically pointed out by this definition are both the Central and the State Governments along with all local authorities within its ambit. Now the point of controversy was the phrase **other authorities** which hasn't been properly defined as such in the Article. To answer the same, the judiciary has laid down a number of institutions that can be considered within the boundaries of the term other authorities as enumerated in Article 12. We shall take a look at them one by one with the help of relevant cases.

The first institution that was brought to the notice of the courts with regards to whether it can fall under the ambit of State under Article 12 was a **University**. This was the point of contention in the case of **University of Madras vs Shanta Bai** (AIR 1954 Mad 67). The Madras High Court held that other authorities could only indicate other authorities of a like nature (by invoking the principle of Ejusdem Generis meaning of the same kind). It could only mean authorities exercising governmental or sovereign functions. It could not include persons, natural or juristic (such as a University) unless it is maintained by the State.

This view was opposed in the case of **Smt.Ujjam Bai vs State of Uttar Pradesh** (1962 AIR 1621). Here the court rejected this restriction to the interpretation of the word other authorities given by the Madras High Court and said that the rule of Ejusdem Generis could not be applied to the interpretation of the expression other authorities. The Supreme Court with respect to the interpretation of the term other authorities said that there is no one genus under Article 12.

The next institution that came to be questioned before the courts was a State Electricity Board and whether that could be included under the definition of State as enumerated in Article 12. The case that we shall be talking about is **Rajasthan State Electricity Board vs Mohanlal** (AIR 1967 SC 1857). The Supreme Court, rejecting the principle of Ejusdem Generis and overturning some previous decisions of the High Courts, referred to the dictionary meaning of the term authority. It

said that the expression **other authorities** is wide enough to include within it, every authority created by a statute and functioning within the territory of India, or under the control of the Government of India.

One thing that must be noted in this judgement is that Justice Shah concurred in the judgement but gave a different opinion. According to Justice Shah, Article 12 must be interpreted in the context of Part III, which guaranteed that fundamental individual rights would not be encroached upon. Taking into account, these two lines of approach given by the Supreme Court, we come across two distinct approaches, namely the Legal Approach and the Functional Approach. The legal approach talks about how that institution in question would have some governmental control in any form. On the other hand, the functional approach talks about the functions performed by that institution.

The next question was whether Corporations as such be considered to fall within the ambit of the word State under Article 12. The Corporations in question were The Life Insurance Corporation of India, The Oil and Natural Gas Corporation and the Industrial Finance Corporation. The case in question, **Sukhdev Singh vs Bhagat Ram** (AIR 1975 SC 1331)

Justice Mathews who is often referred to as the Crusader of Article 12 concurred in this judgement and while he held that all the three of them fell under the ambit of State, he gave a very interesting opinion. He talks about a welfare State, and talks about whether that body can be called as an instrumentality or agency of the State that has been set up to take care of the welfare function of the State.

He lays down two conditions for the body to be called an instrumentality of the State. Firstly, if it is formed under a statute i.e. it is a statutory body and secondly if it has the power to make its own rules. In both these cases they would fall within the ambit of the word State.

The next case that deals with the question as to whether an Airport Authority can be considered as State or not has been dealt with in the case of **Ramana Dayaram Shetty vs International Airport Authority of India** (1979 AIR 1628). In this case, tenders had been invited for the setting up of one restaurant and two snack bars at the Airport of Bombay. Two specific conditions had been laid down that only 2nd class Hoteliers could apply for the tender and secondly that these 2nd class hoteliers must have at least 5 years of experience in that business.

It was in this case that the Supreme Court laid down the 5-pointer test to decide whether the body can be called as an instrumentality of the State or not. The first condition was that it had to be looked into whether the State held the entire share capital of that body or not. Secondly it had to be looked into as to whether the state had a deep and persuasive control over that body or not. The third condition that had to be looked into was whether the financial assistance given by the state, enough to take care of the entire expenditure of the body.

The fourth condition that had to be looked into was whether that body had been granted a monopoly status conferred or preserved by the State. The last condition was that did the body perform a function of public importance or was the body a government department which had been transferred to a corporation. We shall see in another case as to how the court has tried to sum up the 5-pointer test given in this **RD Shetty case**.

The next case that we would talk about, deals about whether a society could be termed as a State under Article 12 or not. The case in question, **Ajay Hasia vs Khalid Mujib Sehravardi** (1981 AIR 487). In this case, Regional Engineering College in Srinagar was registered under the Jammu and Kashmir, Registration of Societies Act, 1898. For entrance to the college, students had to qualify an examination in which there was a viva test within which the only questions asked were in relation to

the place of residence and parentage.

This came to be challenged as violative of Article 14 of the Constitution. The Court held that this would fall under the ambit of State under Article 12. The reasoning was multi fold. Firstly, the composition of the society was dominated by the representatives appointed by the Government. Secondly, the entire finance of the society was taken care of by the government. The rules of the society were also supposed to be made by themselves only but with the approval of the government and the accounts of the society were also under the scrutiny of the government.

The control of the State and Central Governments is indeed so deep and persuasive that no immovable property of the society could be disposed off without the authority of the government. The Governments also had the power to appoint any person whom they wanted as a member of that society. Hence, here the court held that the instrumentality of State extends to the Society and it can be termed as State under other authorities.

Moving on, the next institution in question was a council, in the case of **Sabhajit Tewary vs Union of India** (1975 AIR 1329). The 5 judge Constitutional Bench of the Supreme Court, in this case went ahead and said that the Council for Scientific and Industrial Research cannot be termed as State. The Court said that it does not have a Statutory Character like the ONGC, LIC and IFC.

This verdict of the Supreme Court however was overturned in the case of Pradeep Kumar Biswas vs Indian Institute of Chemical Biology (2002). Here the 7-judge Constitutional Bench overruled the judgement given in Sabhajit Tewary's case. It was in this case that Justice Ruma Pal tried to sum up the 5-pointer test in one sentence. She said that a body which is functionally, financially and administratively under the control of the government and where the control is pervasive, in that case, it can be referred to as an instrumentality of the state.

The final case that we shall be talking about with respect to other authorities as enumerated under Article 12, is the case of Zee Telefilms Ltd vs Union of India (decided in the year 2005), more famously known as the BCCI case. The question before the court was whether BCCI could be termed as State or not. The Court said that BCCI could not be termed as State because of the following reasons.

1. The Board is not created by a Statute.
2. No part of the share capital of the Board is held by the Government.
3. Practically no financial assistance is given by the government to meet the boards expenses.
4. The Board does enjoy a monopoly status in terms of cricket but this has not been conferred by the State.
5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.
6. The board is not created by transfer of a Government owned Corporation. It is an autonomous body.

We see, right from the **Shanta Bai case** to the BCCI case, the various ways and justifications that the judiciary has given to give a definition to the term other authority as enumerated under the definition of State under Article 12. Right from University's, State Electricity Boards, Corporations, Airport Authority, Society's, to a Council and finally to the BCCI, we see how the courts have evolved the way other authorities is to be interpreted. We rely on this established jurisprudence to understand what the constitution makers meant by the term other authorities as given under Article 12 of the Constitution of India.