HIGH COURT OF GUJARAT

MANOJ AMBARAM KAHAR
Versus
INDIAN RED CROSS SOCIETY & 2

Date of Decision: 12 July 2016

Citation: 2016 LawSuit(Guj) 967

Hon'ble Judges: J B Pardiwala

Eq. Citations: 2017 1 GLH 156, 2017 LabIC 25

Case Type: Special Civil Application

Case No: 7328 of 2014

Subject: Constitution, Labour and Industrial

Acts Referred:
Constitution Of India Art 311, Art 226, Art 12, Art 14
Industrial Disputes Act, 1947 Sec 2, Sec 2(s)
Red Cross Society Act, 1920 Sec 6, Sec 5

Final Decision: Application dismissed

Advocates: A K Clerk, Nanavati Associates

Cases Referred in (+): 33

J B Pardiwala, J.

[1] By this writ application, under Article 226 of the Constitution of India, the petitioner - a former parttime 'Pathologist' serving with the Indian Red Cross Society, Navsari District Branch, seeks to challenge the order of termination dated 30th June 2008 passed by the respondents.

[2] The case of the petitioner may be summarized as under:

> 2.1 The respondent No.1 is one of the District Branches of the Indian Red Cross Society in the State of Gujarat. The respondent No.2 is the Secretary of the Society, Navsari District Branch. The respondent No.3 is the State Branch of the Society.

2.2 The Indian Red Cross Society is established under the Indian Red Cross Society Act, 1920.

2.3 He was appointed as a parttime Pathologist on 1st August 1998. He was given appointment letter dated 5th June 2001 appointing him as a Pathologist in the services of the Blood Bank of the respondents.

2.4 He was working as a parttime Pathologist in a day between 8.00 A.M. and 10.00 A.M. and 4.30 P.M. to 6.00 P.M.

2.5 He was also working on Sundays and public holidays. He was also required to attend the blood donation camps both indoor and outdoor. He was paid the overtime for working beyond his fixed duty hours.

2.6 He was performing duties like examining the blood donors, check over the machines meant for the collection of blood, check as regards the temperature of the BBR / Deep Feezer, track of the stock of blood in the Blood Bank, conduct of the blood donation camps, participation in the qualitative programmes like IQC / IQAS, attending the workshop & conferences, creating public awareness for the purpose of blood donation, etc.

2.7 It is his case that he was working efficiently and diligently and to the satisfaction of his superiors.

2.8 According to the petitioner, the respondents were not given the benefit of the Provident Fund and other benefits to its staff. The staff of the respondents, therefore, had to join the Surat District Engineering and General Workers' Union, Surat. Through the said Union, an industrial dispute was raised, which was referred for adjudication by order of Reference dated 19th April 2008, to the Labour Court, Navsari.

The said Reference was numbered as Reference (LCND) No.1 of 2008 before the Labour Court, Navsari.

2.9 It is his case that the respondents, keeping a spite on the assumption that he had instigated the other employees of the Society, terminated his services by letter dated 30th May 2008.

2.10 As the Reference (LCND) No.1 of 2008 was pending, he challenged his termination by filing a complaint (ID) No.1 of 2008 in the said Reference. The respondents therein raised a preliminary issue as to whether the petitioner would fall within the definition of the term "workman" under the Industrial Disputes Act.

The Labour Court, by order dated 21st April 1991, held that the petitioner is a workman as defined under Section 2(s) of the Industrial Disputes Act.

2.11 The order of the Labour Court dated 21st April 2011 was challenged by the respondents herein before this Court by filing a Special Civil Application No.14392 of 2011, which came to be disposed of by a learned Single Judge vide judgment and order dated 12th October 2011. The learned Single Judge, in the operative part, observed as under:

"4. Taking into consideration the rival submissions, this Court is of the opinion that the interest of the petitioner will stand protected by reserving its right to challenge this order along with the final order and award, which may be passed by the learned Judge of the Labour Court in Complaint No.1 of 2008.

5. The petition is disposed of with the aforesaid observations."

2.12 It appears that the Society challenged the order passed by the learned Single Judge by filing a Letters Patent Appeal No.230 of 2012, which came to be disposed of by order dated 27th March 2012 in the following terms:

"Since present intra Court appeal is preferred from order dated 12.10.2011 of learned Single Judge of this Court in Special Civil Application No.14932 of 2011, wherein an interim order in a Reference pending before the labour Court was under challenge and the Court has protected the appellant in paragraph 4 of the impugned order, the appeal is not required to be entertained and it is disposed as not maintainable, without prejudice to the rights and contentions of the appellant. Civil Application does not survive and stands disposed accordingly."

2.13 The complaint (I.D.) No.1 of 2008 filed by the petitioner was allowed by the Labour Court vide judgment and award dated 25th March 2013. The Labour Court directed the respondents to reinstate the petitioner in service with the continuity of service without back wages.

2.14 The respondents herein preferred a Special Civil Application No.8577 of 2013 before this Court. A learned Single Judge of this Court, by judgment and order dated 26th March 2014, held that the petitioner would not fall within the definition of the term "workman". While allowing the writ application filed by the respondents, the learned Single Judge observed in para - 13 as under:

"13. As a result of above discussion, it has to be held that the respondent would not fall within the purview of definition of Section 2(s) of the Industrial Disputes Act, 1947, and he could not be treated to be a 'workman'. No other aspects of the

matter were, therefore, required to be gone into. In view of what is held herienabove, order dated 21.04.2011 passed below Exhibit 28 by Labour Court (S.D.), Navsari in Complaint No.01 of 2008 in Reference (LCND) No.01 of 2008 is hereby set aside. Also set aside is the order dated 25.03.2013 passed by Labour Court (S.D.), Navsari whereby it partially allowed Complaint (I.D. Act) No.01 of 2008.

13.1 Accordingly Special Civil Application No.8577 of 2013 is allowed. Rule is made absolute."

2.15 In such circumstances referred to above, the petitioner was left with no other option, but to come before this Court by way of present writ application.

[3] Mr. Clerk, the learned counsel appearing for the petitioner vehemently submitted that the impugned order dated 30th June 2008 terminating the services of his client is a penal order and a stigma is attached to the said order. According to Mr. Clerk, such an order could not have been passed without following due procedure of law and without holding any inquiry in that regard. According to him, the impugned order of termination is a flagrant violation of the principles of nature justice. He submitted that the passing of the impugned order is an act of malice on the part of the respondents. According to Mr. Clerk, as his client had led the staff of the respondents - Blood Bank to the Labour Court for the purpose of the Provident Fund's benefit, the respondents terminated the services of his client.

[4] In such circumstances referred to above, Mr. Clerk prays that there being merit in this writ application, the same may be allowed and the impugned order be quashed. He prays that his client should be reinstated in service with back wages.

[5] On the other hand, this writ application has been vehemently opposed by Mr. Keyur Gandhi, the learned counsel appearing for the respondents. Mr. Gandhi has raised a preliminary issue as regards the maintainability of this writ application against his client.

[6] According to Mr. Gandhi, the Indian Red Cross Society, is not a "State" or an instrumentality of a "State" within the meaning of Article 12 of the Constitution of India. Mr. Gandhi submits that the Society is a voluntary organization. He would submit that the Red Cross Societies, all over the world, are acknowledged as impartial organization. According to Mr. Gandhi, none of the objects of the Society can be said to be closely related to the governmental function. In such circumstances, according to Mr. Gandhi, the petitioner could not have invoked the writ jurisdiction of this Court under Article 226 of the Constitution. Mr. Gandhi submits that although the provisions of the Industrial Disputes Act are not applicable as the petitioner could not be termed

as a "workman", yet the only remedy available for him is to file a civil suit for enforcing his personal contract of service and damages.

[7] Mr. Gandhi, in support of his principal submission, has placed strong reliance on the decision of the Supreme Court in the case of K.K. Saksena v. International Commission of Irrigation and Drainage and others, 2015 4 SCC 670.

[8] Mr. Gandhi has also placed reliance on the following averments made in the affidavitinreply filed on behalf of the Society:

> "3 At the outset, it is submitted that the present petition filed by the petitioner is not maintainable against the respondent Society. I submit that the respondent Society is not a 'State' within the meaning of Article 12 of the Constitution of India and hence the present Writ Petition is not maintainable against the respondent Society. I state that the respondent Society runs strictly in terms of the provisions made in its byelaws and on the donations received from different institutes / persons. The unaudited balance sheet of last two years is annexed hereto and marked as Annexure R1. I submit that even in the citations relied upon by the learned advocate for the petitioner; it is categorically held that Red Cross Society is not a 'State' within the meaning of Article 12 of the Constitution of India. This clearly establishes that respondent Society is not a 'State' under Article 12.
>
> 4 Moreover, a writ petition will not lie against a private body / individual unless there is violation of mandatory provisions of any Statute or other service rules.
>
> 5 I submit that in the judgment relied upon by the petitioner, the Hon 'ble Court has exercised its writ jurisdiction against Red Cross Society in view of the fact that in the said case, admittedly Punjab Civil Services Rules were applicable and there was a violation of those Rules. As already submitted above, there is no averment with regard to violation of statutory Rules in the present petition against the respondent Society nor the respondent Society has any such rules applicable. The present petition against the respondent Society is therefore not maintainable."
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> "7 In view of the aforesaid principles laid down by the Hon'ble Supreme Court of India, it is submitted that the present petition is not maintainable against respondent Society as there are no service rules of the Society nor there is any averment / allegation of violation of such Rules by the respondent Society. Since, there was no violation of mandatory provisions in the present case and in view of principle laid down by the Hon'ble Supreme Court of India that even if a body is performing public duty and is amenable to writ jurisdiction, all its decisions are not subject to judicial review and only those decisions wherein public element is involved can be judicially reviewed. In the present case, the petitioner is trying to

enforce contract of personal service and hence the petition filed by the petitioner is not maintainable under Article 226 of the Constitution of India.

8 With regard to the averments and contentions in the petition, the para wise reply of the respondent is as follows:

8.1 With regard to para 1 to 4 of the petition, I deny the averments and contentions therein. I reiterate that the present petition is not maintainable against respondent Society as there is no violation of mandatory statutory provision in the present case by the respondent Society, as explained above in paragraph Nos.3 to 6.

8.2 With regard to para 5 and 6 of the petition, I submit that the said averments pertain to facts of the case. The petitioner by way of present petition seeks to enforce contract of personal service which is not permissible under writ jurisdiction and hence the petition filed by the petitioner is not maintainable.

8.3 With regard to para 7 to 9 of the petition, I deny the averments and contentions therein. I submit that the averments in the said paragraphs pertain to facts of the case. I deny that the service record of the petitioner was clean and blotless. The petitioner was issued show cause notice dated 30.06.2008 by respondent Society alleging several violations and petitioner had failed to respond to the said allegations.

8.4 With regard to para 10 to 13 of the petition, I deny the averments and contentions therein. I submit that the as petitioner was indulged in activities, which were harmful to the respondent Society, the respondent Society, the respondent had issued three letters i.e. letter dated 25.06.2008, 28.06.2008 (at page 230 and 231 of the petition) and abovementioned show cause notice dated 30.06.2008. The respondent Society sought clarifications from the petitioner but was not denied by him. The respondent was therefore constrained to discharge the petitioner from his service because of misbehaviour, noncooperation, absenteeism etc. Annexed hereto and marked as Annexure R2 is a copy of show cause notice dated 30.06.2008.

8.5 With regard to para 14 to 17 of the petition, I submit that the said averments pertains to the fact and circumtances of the case and hence no detailed reply is required thereto.

8.6 With regard to grounds in the petition, I deny the averments and contentions therein. I deny that the termination order passed by the respondent Society without following due procedure of law. I submit that the respondent Society had also issued show cause notice dated 30.06.2008 mentioning in detail the charges

for which the petitioner was responsible and hence he was terminated from services of the respondent.

The allegation made by the respondent Society to victimize the petitioner is totally false, incorrect and contrary to evidence on record. The record included presence register of the petitioner for the period from September 2007 to June 2008. From bare perusal of the said record, it is crystal clear that the petitioner was very irregular and after punching at the time of checking in, he went to his own laboratory, which was situated just opposite to the respondent Society. The aforesaid fact is clear from the attendance record of the petitioner which shows only his entry time but not his exit time on many days. Annexed hereto and marked as Annexure R3 is a copy of the aforesaid present register. It is evident from the abovementioned presence register that the petitioner used to devote much less time to the respondent Society then required and was not able to respond to the show cause notice issued by the respondent Society seeking clarifications and hence was terminated from the respondent Society.

8.7 I deny that the termination order issued by the respondent Society was by way of victimization as the petitioner was pursuing Reference before Labour Court, Navsari. I submit that on 14.09.2005, one Union i.e. Shree Surat District Engineering and General Workers Union had raised certain demands before the respondent Society and along with the same had also produced list of employees working in the respondent Society.

Annexed hereto and marked as Annexure R4 is a copy of the demand notice issued by the Union. The said dispute was ultimately referred for adjudication before Labour Court, Navsari by way of Reference No.1 of 2008. Along with the said demand notice, there was a list of total 23 employees working in the respondent Society. Out of the said employees, 20 employees have settled the dispute and withdrawn the demands in July 2011 and two employees have left the service. Annexed hereto and marked as Annexure R5 are copies of the withdrawal application submitted by 20 employees before the Labour Court in Reference No.1 of 2008. From the aforesaid facts it is clear that the allegations made by the petitioner to the effect that he was victimized since he had raised the demand is frivolous since the demands were raised in 2006 by the Union and not by the petitioner and the petitioner was discharged in the year 2008 i.e. much after the demands were raised by the Union."

[9] Mr. Gandhi, the learned counsel appearing for the respondents submits that as this writ application is not maintainable, the same be rejected.

[10] Mr. Gandhi, in the alternative, submitted that even if this Court holds that the writ application is maintainable, no interference is warranted as no stigma of any kind is attached to the impugned order of termination. According to Mr. Gandhi, before the order of termination was passed, a show cause notice dated 30th June 2008 was issued. According to him, the allegations of malice and mala fide are baseless.

[11] In the rejoinder, Mr. Clerk, the learned counsel appearing for the petitioner, submitted that this writ application is maintainable. He submits that even assuming for the moment that the Society is not a "State or an instrumentality of a "State" within the meaning of Article 12 of the Constitution, as the services of his client came to be terminated in gross violation of the principles of nature justice, this Court can always entertain the writ application and issue a writ of certiorari to quash the impugned order and a writ of mandamus for the reinstatement in service. Mr. Clerk, in support of his submissions, has placed reliance on the decision of the High Court of Himachal Pradesh in the case of Seema Mehta v. Chairman-cum-Deputy Commission and another, 2015 LawSuit(HP) 276 and a Division Bench decision of the High Court of Punjab and Haryana in the case of the District Red Cross Society, Sirsa v. Radha Kishan Rajpal and another, 2004 LawSuit(P&H) 1364. He has also placed reliance on the decision of the Supreme Court in the case of U.P. State Cooperative Land Development Bank Limited v. Chandra Bhan Dubey and others, 1999 1 SCC 741 .

[12] Having heard the learned counsel appearing for the parties and having considered the materials on record, the following questions fall for my consideration in this writ application:

(I) Whether the Navsari Branch of the Red Cross Society falls within the ambit of a "State" or an instrumentality of a "State" within the meaning of Article 12 of the Constitution?

(II) Whether there has been any infraction of any statutory rules applicable to the petitioner? To put it in other words, whether the violation of those statutory rules has any bearing so far as the order of termination is concerned so as to make this writ application maintainable.

(III) Whether the Red Cross Society could be said to be performing "public function" To put it in other words, whether the Society discharges any "public function" for the purposes of Article 226 of the Constitution?

(IV) Whether a service voluntarily undertaken can be said to be a public duty?

(V) Whether the action challenged has any public element for the purpose of issue of the writ of mandamus?

[13] Before I advert to the rival submissions canvassed on either sides, I propose to look into how the Indian Red Cross Society was constituted and its objectives and functions.

[14] The Indian Red Cross Society was constituted under Act XV of 1920. That Act was amended by Act No. 22 of 1956 and Adaptation of Laws (No. 4) Order 1957. The preamble gives the object of the Act of 1920. It reads as follows:

> "Whereas it is expedient to provide for the future administration of the various monies and gifts received from the public for the purpose of medical and other aid to the sick and wounded and other purposes of a like nature during the late war, and more especially for the administration of the monies and property held by a Committee known as the Joint War Committee, Indian Branch of the order of St. John of Jerusalem in England and the British Red Cross Society and whereas it is expedient to constitute an Indian Red Cross Society with a view to the continuation in peace time, on a wider basis and with a wider purpose, of the work carried on by the said Committee during the war, and to provide for the affiliation therewith of other Societies and Bodies having similar objects; it is hereby en acted as follows".

[15] It is obvious that the society was incorporated for humanitarian purposes only. Immediately after the First World War necessity arose for the future administration and utilisation of the monies which had been collected by the Indian Branch of the Joint War Committee of the Order of St. John of Jerusalem and the British Red Cross Society. For the purpose of medical and other aid to the sick and wounded it was considered expedient to constitute the Indian Red Cross Society so that it could continue that work in peace .time. The aim was to continue in peace time on a wider basis the work which was being done by the said Indian Branch.

[16] According to Section 2 of the Act the first members immediately before the commencement of the Act were members of the Joint War Committee, Indian Branch of the Order of St. John of Jerusalem in England and the British Red Cross Society within three months from the commencement of the Act. From the members so nominated a managing body of the society was also to be appointed in the first meeting. The first members of the society and all persons who were thereafter to become members were constituted a body corporate under the name of the Indian Red Cross Society with perpetual succession and a common seal with power to hold and acquire property, movable and immovable and could sue and be sued by the said name. Section 5 provides for power to make rules, among other matters for the following, namely:

> (a) The conditions of membership of the society;

(b) the appointment and term of office of Members of the Managing Body;

(c) the choice of representatives on International and other Committees :

(d) the representation on the Managing Body of State Branch committees and affiliated societies and bodies;

(c) the constitution of Finance, Medical and other Committees and the delegation of powers to them;

(ee) the powers exercisable by the Managing Body in supervising the activities of Branch Committees;

(f) the regulation of the procedure generally of the Society and Managing Body".

[17] Under Section 6 all property movable or immovable of, or belonging to the Committee, i.e. the Indian Branch of the Joint War Committee, was to vest in the society and "shall be applied by the Managing Body to the objects and purposes hereinafter set out". The Funds of the society could be applied under S. 7 by the managing committee in its discretion for the relief of sickness, suffering or distress caused by the operation of war in India or in any other country in which expeditionary forces from India might, from time to time, be employed. It is useful to quote that section as it highlight1s the aim of the society:

"7. Notwithstanding anything contained in any appeal for subscriptions or gifts to or for the purposes of the Committee, the Managing Body may in its discretion apply.

(a) either the corpus or the income or any part of such corpus or income of any property vested in it under Cl. (b) of Section 6 for the relief of sickness, suffering or distress caused by the operation of war in India or in any other country in which expeditionary forces from India may, from time to time, be employed and for purposes cognate to that object and in maintaining of Red Cross Depots for military purposes;

(b) in accordance with the provisions of S. 8, the income only of any such property but not the corpus or any part thereof for the relief of sickness or suffering in India whether due to the operation of war or not, or in pursuance of any of the objects set forth in the first schedule."

[18] Thus, the predominant object seems to be to give relief to the disabled, sick or wounded solders during the war time and also to provide relief of sickness, suffering or distress in India whether due to the operation of war or otherwise. The first schedule to

the Act specifically lays down the objects to which the funds of the society may be applied. Those objects are as follows:

(1) Aid to the sick and wounded members of the Armed Forces of the Union in accordance with the terms and spirit of the Geneva Conventions of 12th August, 1949 and discharge of other obligations devolving upon the society under the Conventions as the recognised auxiliary of the Armed Forces Medical Services.

(2) Aid to the demobilised sick and wounded members of the Armed Forces of the Union.

(3) Maternity and Child Welfare.

(4) Junior Red Cross.

(5) Nursing and ambulance work.

(6) Provision of relief for the mitigation of suffering caused by epidemics, 'earthquakes, famines, floods and other disasters, whether in India or outside.

(7) The establishment and maintenance of peace among all nations in accordance with the decisions of the International Red Cross Organisation.

(8) Work parties to provide comforts and necessary garments, etc., for hospitals and health institutions.

(9) The expenses of management of the society and its branches and affiliated societies and bodies.

(10) The representation of the society on or at International or other Committees formed for furthering objects similar to those of the society.

(11) The improvements of health, prevention of disease and mitigation of suffering and such other cognate objects as may be approved by the society from time to time."

[19] In my view to appreciate the principal issue, it is necessary to keep in view that prior to coming into force of the Act, a Joint War Committee of the British Red Cross Society and the Order of St. John of Jerusalem was looking after the sick and wounded soldiers. It was considered that the Indian Branch of the Committee be given a statutory recognition so as to enable it to continue that task after the end of World War I. This society was and is a member of the International Committee of the Red Cross which organisation has been accepted as an impartial body. The need to have such an impartial and international body was first recognised in the Geneva Convention held in

1929. India was a signatory to that international convention. In that convention it was agreed that the heraldic emblem of the Red Cross on white ground formed by reversing the federal colours of Switzerland be used only by the International Committee of the Red Cross. An Act, namely, the Geneva Convention Implementing Act, 1936, was promulgated on 27th October, 1936, whereby a prohibition was imposed in India on the use of that emblem for the purpose of trade or business or for any other purpose whatsoever by any person. After the World War II the 1929 Geneva Convention was revised at a diplomatic conference held at Geneva from 21st April to 12th August, 1949. The three conventions, namely, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea and the Geneva Convention relating to the treatment of Prisoners of War were all drawn up on 12th August, 1949. These Conventions were ratified by the President of India and came into force in India on 9th May, 1951. Another Act, namely, the Geneva Conventions Act, 1960, seeking to implement the Conventions and also to consolidate the law on the subject was enacted by the Parliament. The Geneva Convention Implementing Act, 1936, and an earlier Act, i.e., the Geneva Convention Act, 1911, were re pealed. The said three Conventions are Schedules 1 to 3 of the 1960 Act. The activities of the Red Cross are given under Article 9 of those Conventions. The protecting powers have agreed to entrust to an organisation their duties by virtue of these Conventions whereby all the guarantees of impartiality and efficacy have been offered accordingly to the Article 10. It is useful to quote Article 10 of the 1st Schedule. It is practically similar in all the three Conventions.

> "Substitutes for Protecting Powers The High Contracting Parties may at any time agree to entrust to an organisation which offers all guarantees of impartiality, and efficacy the duties incumbent on the protecting powers by virtue of the present Convention.
>
> When wounded and sick, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a protecting Power or of an organisation provided for in the first paragraph above, the detaining power shall request a neutral State, or such an organisation, to undertake the functions performed under the present Convention by a Protecting Power designated by the parties to a conflict.
>
> If protection cannot be arranged accordingly, the detaining power shall request or shall accept, subject to the provisions of this Article the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under tho

present convention. Any neutral power, or any organisation invited by the power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the party to the conflict on which persons protected by the present Convention depend, and shall he required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between powers one of which is restricted, even temporarily, in its freedom to negotiate with the other power or its allies by reason of military events more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organisations in the sense of present Article".

[20] The Red Cross Societies, all over the world, are acknowledged as impartial organisations. Their primary aim during wars is according to the Conventions. It is for the amelioration and relief to the wounded and sick members of the armed forces in the field. Other objects according to Article 7 of the 1st Schedule of the Act (Act V of 1927) as quoted above are also exclusively humanitarian.

[21] The distinctive emblem has now been retained as the emblem and distinctive sign of the medical service of armed forces of all the Governments who are parties to the Conventions. Article 38 gives the reason: "as a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal Colours, is retained as the emblem and distinctive sign of the medical service of armed forces. Nevertheless, in the case of countries which already use an emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground those emblems are also recognised by the terms of the present Convention".

[22] I may note that it is further provided that this emblem is to be used by the medical aircrafts, ships etc. exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment.

[23] Let me give a fair idea about the functioning of the Society in the State of Gujarat, through its various District Branches like the respondent No.1 herein. The State of Gujarat has 33 Districts and 249 Talukas territory regions. The Indian Red Cross Society, Gujarat State Branch has 23 District Branches and 45 subdistrict branches.

[24] His Excellency the Governor of Gujarat is the President of the Gujarat State Branch. Hon. The Chief Minister is the VicePresident; Hon. the Health Minister is the Chairman, the General Secretary, Treasurer and the eight members are elected at the Annual General Meeting. Five members are nominated by the President on the Managing Committee. Similarly each District Branch will have to nominate one representative on the Managing Committee. Eight exofficio members are also taken. Thus, the total strength of the Managing Committee will be above 50 members.

The Gujarat State Branch managing body is responsible for the governance and supervises the functions of the society. It is assisted by a number of other committees: an executive committee, branch committee, as well as committees for health and disaster relief. The managing body elects the members of these committees. The managing body and other committees meet from time to time.

The District Branches follow a similar organizational pattern to tht of the Gujarat State Branch, although the details of their governing structure might differ slightly from the branch to branch. The common feature is that the collector of the province is the president of the District Branch. The members of the district committees are a mix of nominated and elected members.

[25] The society attaches importance to training its manpower by giving Training in the Disaster Preparedness, Community Base First Aid, Conflict Preparedness, Volunteer Management and Branch Development etc.

[26] Under Chapter VI, Rules for the District Branches framed under Section 5 of the Indian Red Cross Society Act, 1920 (as amended by Act No.22 of 1956 and the Adaptation of Laws) No.4 Order of 1957 and the Act No.14 of 1992 is as under:

"CHAPTER VI

DISTRICT/SUBDISTRICT/LOCAL BRANCHES

1. Procedure for formation

a) The Managing Committee of the State/UT Branches shall form District Branches. All the District branches shall be under the control of the respective State/U.T. Branch.

b) A district branch may within the provisions of the State branch rules and regulations, subject to approval of the Managing Committee of the State/U.T. branch concerned, frame its own rules for running the affairs of the branch.

c) The following procedures shall be followed for the formation of a District Branch:

I. A General Meeting shall be called normally at the proposed headquarters of the Branch, notice of which shall be widely circulated throughout the District.

II. This meeting shall elect a District Branch Managing Committee of at least ten members, including a Chairman, a Vice Chairman and an Honorary Treasurer.

III. All the members of the Committee shall be subscribing members of the Society and each one of them shall take oath in their first meeting of the District Committee held after the Annual General Meeting to the effect to follow the Fundamental Principles of Red Cross and agree to undertake the tasks and responsibilities assigned to him/her.

IV. The District Branch shall send to the Headquarters of the State/ UT Branch a copy of the resolution of the General Meeting, resolving the formation of the District Branch concerned, the conditions of Membership, the List of Executive Committee members giving the names of Chairman, Vice Chairman and Treasurer and list of at least 100 members (including 50 Life Members) enrolled along with 30 % share of subscription (15 % of State/UT Branch and 15 % of Headquarters) with the request to perform all the essential basic activities of Red Cross in accordance with the objectives of Red Cross and for the formation of the District Branch. In the case of SubDistrict Branches, list of at least 50 members (including 25 Life Members) is to be sent along with 30% share of subscription.

V. After approval by the State/UT Branch Managing Committee, the State/UT branch Managing Committee will inform the National Managing Body of the formation of the Branch.

2. President and Vice Presidents of District/SubDistrict Branches

a) President: The Deputy Commissioner of the District or District Magistrate shall be the President of the District Branch

b) VicePresident: The Vice President shall be nominated by the President.

c) Chairman: The Chairman of the Branch shall be elected by the District Managing Committee from among its members for a period of three years

d) Treasurer: The Treasurer for the Branch shall be elected by the Managing Committee at its first meeting held after the Annual General Meeting.

3. Enrolment of Members.

Members enrolled by the District Branches are members of the Indian Red Cross Society. Enrolments shall be in accordance with the rules, subscription and grades of membership laid down by the Managing Body at National Headquarters. District Branches shall submit to the General Secretary of the respective State/UT branch monthly list of new members enrolled along with 30 % share of membership subscription of the State Branch and National Headquarters. As soon as new members have been duly registered, certificates will be issued by the National Headquarters through the State/UT branch concerned.

A District branch will be expected to enroll, within one year of its formation, a minimum of 500 members of different categories.

4. Functions of the District Branches

The functions of a District Branch shall be:

a) To work towards achieving the objectives as specified under subheading 'objectives' in Chapter I of the Uniform Rules.

b) To enroll subscribing members in different categories from the general public as per rules ;

c) To collect donations, subscriptions from the general public, to retain/remit share to the State branch, as per rules ;

d) To foster the interest in Red Cross work amongst the members ;

e) To support the respective State/UT branch financially and otherwise in carrying out the aims and objects of the Society ;

f) To furnish to the respective State branch half yearly progress report of the work in the following month ;

g) To hold Annual General Meeting of all the members of the branch on a date and place fixed by the President of the Branch. The AGM will approve the

i. The proceedings of the previous year.

ii. Annual Report of previous year.

iii. Annual Audited Accounts of the branch of the previous year.

iv. The Budget of Receipts & Expenditure for the following year.

v. Appointment of Auditors.

vi. To elect a Chairman of the Branch and other members of the District Branch Committee, as per rules.

vii. To furnish to their respective State/UT branch, an Annual Report, Annual Audited Statement of Income & Expenditure and Balance sheet and a copy of the proceedings of AGM of the previous year.

5. Management of District Branch

A District branch shall have a Committee of at least ten members including a Chairman, a Vice Chairman and an Honorary Treasurer. All must be subscribing members of the Society. At the first meeting after the AGM all the members of the Committee and sub committee shall take oath to abide by the Fundamental Principles of the Movement and the Constitution of the Branch. The district Branch Executive Committee will appoint a Secretary who will conduct the Branch's day to day business and manage the Branch administrative structure.

The Executive Committee shall form subCommittees Viz., Finance Committee, Health Committee, JRC/YRC Committee, Disaster Mitigation Committee and other Committees as the Executive Committee may deem fit to deal with specific activities of the branch. Members of such committees must be the members of the Society but need not necessarily be the members of the Branch Executive Committee and an effort should be made to the end that these are persons who are particularly interested in the activity concerned are associated with it. The concerned heads of departments of Govt. in the Districts may be involved as coopted exofficio members in the respective Sub Committees. The subCommittees should be as broad based as possible to ensure for them the support of various sections of the public i.e. officials, educationists, medical personnel, traders, agriculturists, bankers etc.

6. Meetings

Meetings of the District Branch Executive Committee and SubCommittees shall be held once a quarter. The quorum for such a meeting shall be 30% of the total members of the Committee.

The Executive Committee of the District Branch may elect representative(s) to attend the Annual General Meeting of the State Branch as per rules.

7. Finance

i) Bankers

The Bankers of the District Branch and all the funds administered by the Branch shall be kept in the State Bank of India, its subsidiaries and/or a nationalized bank as the District Managing Committee may name from time to time for maintenance of current accounts or savings bank accounts and short term or long term fixed deposits

ii) Auditors

The annual accounts of the Society as well as funds administered by the Society shall be audited by a practicing Chartered Accountant to be appointed as a statutory Auditor for the purpose of compilation and certification of accounts by the Managing Committee/ Annual General Meeting.

iii) Investments

All investments of funds shall be held in any of the forms as provided under Income Tax Act I96I. All transactions, endorsements, discharges and communications to the bankers and other concerned agencies regarding investments including placing and taking up of fixed deposits shall be made by the Secretary with the concurrence of the Treasurer and the Chairman in accordance with the rules framed by the District Managing Committee.

iv) Operation of Bank Accounts

New savings/current Bank accounts, if required may be opened in the name of the District Branch and/or any of its allied funds or under any of its programs with the approval of the Finance Committee/Managing Committee.

The current and savings bank accounts of the Society and its allied funds shall be operated upon jointly by any two of the following -

ViceChairman, Secretary or Treasurer as decided by the District

Managing Committee from time to time

In the absence of Secretary (being on tour/leave etc) the next seniormost Officer of the Branch will carry out the duties of Secretary in accordance with the office order to be issued by the Secretary as per the decision of the District Managing Committee from time to time.

v) Financial Year

The Financial year of the Branch shall be from 01 April 31 March.

8. Every District Branch shall endeavour to keep its activities always before the public. Raising donations and subscriptions will be easier if the public is kept constantly informed of the services performed by the branch. Every District Branch shall endeavour to cooperate and collaborate with other organizations in the district whose activities are allied to those of the Society without compromising the principles of the Red Cross.

9. Interest in Contract etc.

No member of a district Branch Committee shall without the previous sanction of the Executive Committee of the District Branch, enter into any contract or transaction with other organizations or agencies.

10. District Branch Secretary.

The District Branch Secretary shall be someone with an aptitude for social work, devoting his or her time to undertake Red Cross activities throughout the district and manage the administration of the Branch.

11. The duties of the District Branch Secretary shall be:

1) To see that the Committee is properly constituted and fully representative.

2) To convene executive committee meetings at regular intervals, of not more than three months, for the transaction of all current business, and once a year to convene an Annual General Meeting of the Branch to which all members should be invited and notice of which shall be circulated.

3) To enroll members in all categories of membership as per rules and to carry on propaganda to enlighten the public about the aims and objectives of the Red Cross.

4) To publish and circulate among all members an Annual Report consisting of Audited Accounts and notes of the Treasurer on Accounts of the Branch.

5) To keep in touch with allied organizations such as District Boards, Soldiers Boards, Rural Community Councils, St. John Ambulance, Boy Scouts, Girl Guides and Cooperative Societies and to Cooperate with them in such matters as are of common interest.

6) To carry on all such activities in the Red Cross as may be decided upon by the District Committee.

7) To keep in close touch with the State Branch Secretary, to render such reports as shall be required by him or her, and to attend or depute others to attend the

Annual Meeting of the State Branch.

8) To collect subscriptions and forward monthly Statement to the State Headquarters along with the share of subscription.

9) District Branches shall be subjected to all rules and regulations issued from time to time by the National Headquarters of Indian Red Cross Society and from the State Branch.

10) The Budget of the District Branch for ensuing year shall be prepared and passed by the District Branch Committee and the Annual General Meeting

11) The District Branch, its records and those of institution financed or assisted by them shall be open to inspection by the officers of the State Branch and the National Headquarters.

12. Dissolution of the Branch

Any number not less than three fifths of the members of a District Branch present at a meeting specially called for the purpose may determine that the Branch be dissolved. Such a resolution regarding dissolution must however be forwarded to the General Secretary of the State Branch and shall not take effect until it is approved by the State Branch Managing Committee. The District Branch in such a case shall make arrangement for the disposal and settlement of its property, its claims and liabilities and hand over funds and property that may remain to the State Branch General Secretary. Such residuary funds and property shall then be added to the General funds of the State Branch or handed over to the new District Branch formed over there.

Any District Branch whose administration in the opinion of the State Branch Managing Committee has not been in accordance with the principles and policies laid down by the State Branches Committee, subject to the approval by the National Headquarters, may be taken over by the State Branch and any funds and property at their disposal added to the general funds of the State Branch.

13. Amendment of the Rules

The State Branch Managing Committee, subject approval by the National Managing Body, shall have the right to amend or alter these rules from time to time as necessary.

14. Sub District Branch/Local Branch

The District Branches may form Sub District Branches at Taluqa level and local branches at SubTaluqa level in accordance with the local needs on the same basis/ procedure adopted for the formation of a District Branch. At the time of formation of these branches the revenue area of the branch shall be clearly defined.

Whenever Sub District Branches are formed they should follow the directions for work laid down for District Branches, through whom they should correspond and send 45 % of all the subscriptions to be shared equally between the District and State Branches and the National Headquarters."

[27] Keeping the above in mind, let me now consider the law on the subject.

[28] In the case of Ajay Hasia v. Khalid Mujib, 1981 AIR(SC) 487, the Supreme Court laid down certain relevant tests for determining whether a company/society/corporation can be held to be an agency or instrumentality of the State Government. These tests are as under :

(1) One thing is clear that if the entire share capital of the corporation is held by Govt. it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford Some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor .... whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of 'deep and pervasive State control may afford an indication that the Corporation is a State Agency or instrumentality.

(5) If the functions of the corporation of Public importance and closely related to governmental functions it would be a relevant factor in classifying the corporation as an instrumentality or agency of Govt.

(6) Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference of the Corporation being an instrumentality or agency of Government.

Proceeding further, the Supreme Court held that it was immaterial whether the corporation was created by a statute or under a state. The test is whether it is an instrumentality or agency of the Government and not as to how it was created. In the said case their Lordships proceeded to observe that the Government may act

through the instrumentality or agency of a natural person or it may employ the instrumentality or agency of juridical person to carry out its functions. The test is that it will be considered to be an agency and instrumentality of the State. It is true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government, and it is in fact the Government which acts through the instrumentality or agency of the corporation or the juristic person. If the instrumentality and agency of the Govt. discharges the Governmental functions it must be subject to same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. In Ajay Hasia's case , the Supreme Court was considering the obligations of instrumentalities and agencies of the Government to respect the fundamental rights of the citizens and they were held to be bound to enforce the fundamental rights guaranteed to the citizens of India under Part III of the Constitution of India. If this binding was not there, the fundamental rights in the opinion of the Supreme Court would then be reduced to an idle dream or a promise of unreality. Because in the constitution philosophy of a democratic socialist public Govt. has to undertake a multitude of socioeconomic operations and the Govt. having regard to the practical advantages of functioning through the legal device of a corporation by resorting to create instrumentalities or agencies which will not exonerate the Govt. itself from obeying the fundamental rights of the citizens. In the context of enforcing the fundamental rights, the Supreme Court laid emphasis that by process of judicial construction the fundamental rights cannot be rendered futile and meaningless. Because in the opinion of the Apex Court, it is the fundamental rights which alone with the directive principles constitute the life force of the Constitution of India and they must be put into effective action by a meaningful and purposeful interpretation. Therefore, it was observed that if a corporation or a company is the instrumentality or agency of Government, it must be held to be an authority within the meaning of Article 12 of the Constitution and subject to the same basic obligation to obey the fundamental rights as the Government.

[29] Applying the test Nos.1 and 2 to the facts of the case on hand, no materials have been placed on record to even remotely indicate that the share capital of the District Branch of the Society is held by the State Government or the Society is dependent upon the Government for any financial assistance. There is nothing to even remotely suggest that the Red Cross enjoys any monopoly status conferred by the State. With

regard to the fourth test, there is nothing to indicate existence of deep and pervasive State control. What is important for us is the fifth test whether the functions of the Society are of public importance and further the Society could be said to be discharging a public function, which is akin to a Governmental function.

[30] While dealing with the test based on functions of the Corporation of public importance, the Supreme Court in Ramana Dayaram Shetty s case, 1979 AIR(SC) 1628, referred to E.S.Evans v. Charles E. Newton,1966 382 US 296 and Smith v. Allwright,1943 32 US 649, and observed that the decisions show that the test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a Corporation which is otherwise a private entity, would be an instrumentality or agency of the Government by reason of carrying of such activity. In applying the test, therefore, a further precaution is to be taken and it is to be seen whether the public nature of the function is impregnated with the governmental character or tied or entwined with Government or fortified by some other additional factor (vide observations in para 18 column 2 at page 641). As noticed above, the object seems to be purely humanitarian. According to the preamble, the monies and gifts received from the public by the Indian Branch stood transferred to the Society. Therefore, the monies which the Society possesses or the monies collected by way of contribution and by way of gifts under the Act and the rules, there is no obligation on the Government to make any contribution, but possibly, to enable the Society to carry out its functions, the Government, to a certain extent, may be doing so. Assuming for a moment that there is some financial assistance by the State to the respondent No.1. A reading of the Act and the Rules does not indicate that the Society is "impregnated with governmental character". In my view, therefore, the fifth test is also not satisfied.

[31] Thus, so far as the tests laid down by the Supreme Court in the case of Ajay Hasia is concerned, none of the tests could be said to be fulfilled so as to make the Red Cross Society, although a statutory body, amenable to the writ jurisdiction of this Court.

[32] In Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others, 2002 5 SCC 111, the Supreme Court considered the issue as regards Article 12 of the Constitution of India at length. I may quote the following observations of the Supreme Court : "What is 'Authority' and when includible in 'other authorities', re: Article 12 We have, in the earlier part of this judgment, referred to the dictionary meaning of 'authority', often used as plural, as in Article 12 viz. 'other authorities'. Now is the time

to find out the meaning to be assigned to the term as used in Article 12 of the Constitution.

A reference to Article 13(2) of the Constitution is apposite. It provides

"13(2). The State shall not make any law which takes away or abridges the right conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Clause (3) of Article 13 defines 'law' as including any Ordinance, order, byelaw, rule, regulation, notification, custom or uses having in the territory of India the force of law. We have also referred to the speech of Dr. B.R. Ambedkar in Constituent Assembly explaining the purpose sought to be achieved by Article 12. In RSEB's case, the majority adopted the test that a statutory authority "would be within the meaning of 'other authorities' if it has been invested with statutory power to issue binding directions to the parties, disobedience of which would entail penal consequences or it has the sovereign power to make rules and regulations having the force of law".

In Sukhdev Singh's case, the principal reason which prevailed with A.N. Ray, CJ for holding ONGC, LIC and IFC as authorities and hence 'the State' was that rules and regulations framed by them have the force of law. In Sukhdev Singh's case, Mathew J. held that the test laid down in RSEB's case was satisfied so far as ONGC is concerned but the same was not satisfied in the case of LIC and IFC and, therefore, he added to the list of tests laid down in RSEB's case, by observing that though there are no statutory provisions, so far as LIC and IFC are concerned, for issuing binding directions to third parties, the disobedience of which would entail penal consequences, yet these corporations (i) set up under statutes, (ii) to carry on business of public importance or which is fundamental to the life of the people ___ can be considered as the State within the meaning of

Article 12. Thus, it is the functional test which was devised and utilized by Mathew J. and there he said,

"the question for consideration is whether a public corporation set up under a special statute to carry on a business or service which Parliament thinks necessary to be carried on in the interest of the nation is an agency or instrumentality of the State and would be subject to the limitations expressed in Article 13(2) of the Constitution. The State is an abstract entity. It can only act through the instrumentality or agency of natural or juridicial persons. Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State".

It is pertinent to note that functional tests became necessary because of the State having chosen to entrust its own functions to an instrumentality or agency in absence whereof that function would have been a State activity on account of its public importance and being fundamental to the life of the people.

The philosophy underlying the expansion of Article 12 of the Constitution so as to embrace within its ken such entitites which would not otherwise be the State within the meaning of Article 12 of the Constitution has been pointed out by the eminent jurist H.M. Seervai in Constitutional Law of India (Silver Jubilee Edition, Vol.1).

"The Constitution should be so interpreted that the governing power, wherever located, must be subjected to fundamental constitutional limitations..... Under Article 13(2) it is State action of a particular kind that is prohibited. Individual invasion of individual rights is not, generally speaking, covered by Article 13(2). For, although Articles 17, 23 and 24 show that fundamental rights can be violated by private individuals and relief against them would be available under Article 32, still, by and large, Article 13(2) is directed against State action. A public corporation being the creation of the State, is subject to the same constitutional limitations as the State itself. Two conditions are necessary, namely, that the Corporation must be created by the State and it must invade the constitutional rights of individuals"(Para 7.54). "The line of reasoning developed by Mathew J. prevents a largescale evasion of fundamental rights by transferring work done in Govt. Departments to statutory Corporations, whilst retaining Govt. control. Company legislation in India permits tearing of the corporate veil in certain cases and to look behind the real legal personality. But Mathew J. achieved the same result by a different route, namely, by drawing out the implications of Article 13(2)"

(Para 7.57 ibid).

The terms instrumentality or agency of the State are not to be found mentioned in Article 12 of the Constitution. Nevertheless they fall within the ken of Article 12 of the Constitution for the simple reason that if the State chooses to set up an instrumentality or agency and entrusts it with the same power, function or action which would otherwise have been exercised or undertaken by itself, there is no reason why such instrumentality or agency should not be subject to same constitutional and public law limitations as the State would have been. In different judicial pronouncements, some of which we have reviewed, any company, corporation, society or any other entity having a juridical existence if it has been held to be an instrumentality or agency of the State, it has been so held only on having found to be an alter ego, a double or a proxy or a limb or an offspring or a miniincarnation or a vicarious creature or a surrogate and so on __ by whatever

name called __ of the State. In short, the material available must justify holding of the entity wearing a mask or a veil worn only legally and outwardly which on piercing fails to obliterate the true character of the State in disguise. Then it is an instrumentality or agency of the State.

It is this basic and essential distinction between an 'instrumentality or agency' of the State and 'other authorities' which has to be borne in mind. An authority must be an authority sui juris to fall within the meaning of the expression 'other authorities' under Article 12. A juridical entity, though an authority, may also satisfy the test of being an instrumentality or agency of the State in which event such authority may be held to be an instrumentality or agency of the State but not the vice versa.

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 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 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 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 tests.

(2) The tests laid down in Ajay Hasia's case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in 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 government or deep and pervasive control of the government so as to hold it to be an instrumentality or agency of the State."

[33] In Jatyapal Singh and others v. Union of India and others, 2013 6 SCC 452, the Supreme Court reiterated the tests for considering, whether a body falls within the definition of State under Article 12 of the Constitution of India.

[34] The tests propounded for determining as to when the Corporation will be said to be an instrumentality or agency of the Government as stated in Ramana Dayaram Shetty v. International Airport Authority of India, 1979 3 SCC 489, were summarized as follows :

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor whether the corporation enjoys ? monopoly status which is Stateconferred or Stateprotected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government."

[35] The aforesaid ratio in Ramana Dayaram Shetty has been consistently followed by the Supreme Court, as is evident from paragraph 31 of the judgment in Biswas . Para 31 reads as under :

"31. The tests to determine whether a body falls within the definition of 'State' in Article 12 laid down in Ramana with the Constitution Bench imprimatur in Ajay Hasia form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited."

[36] The subsequent paragraphs of the judgment noticed the efforts made to further define the contours within which to determine, whether a particular entity falls within the definition of other authority, as given in Article 12. The ultimate conclusion of the Constitution Bench are recorded in paragraph 39 and 40 as under :

"39 Fresh off the judicial anvil is the decision in Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers Assn., 2002 2 SCC 167, which fairly represents what we have seen as a continuity of thought commencing from the decision in Rajasthan Electricity Board in 1967 up to the present time. It held that a company substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government is 'an authority' within the meaning of Article 12.

40 The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be, whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

[37] Let me now look into the decision of the Supreme Court in Binny Limited and another v. V. Sadasivan and others, 2005 6 SCC 657:

"10. The Writ of Mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the sovereign to subordinates. In England, in early times, it was made generally available through the Court of King's Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporation which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the Administrative Law (Ninth Edition) by Sir William Wade and Christopher Forsyth, (Oxford University Press) at page 621, the following opinion is expressed:

"A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases."

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in

discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article

12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rulemaking, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the state. Charities, selfregulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognise the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Nongovernmental bodies such as these are just as capable of abusing their powers as is government."

12. In Regina v. Panel on Takeovers and Merges, Ex parte Datafin Plc. And another, 1987 QB 815, a question arose whether the Panel of Takeovers and Mergers had acted in concert with other parties in breach of the City Code on Takeovers and Mergers. The panel dismissed the complaint of the applicants. Though the Panel on Takeover and Mergers was purely a private body, the Court of Appeal held that the supervisory jurisdiction of the High Court was adaptable and could be extended to any body which performed or operated as an integral part of a system which performed public law duties, which was supported by public law sanctions and which was under an obligation to act judicially, but whose source of power was not simply the consent of those over whom it exercised that power; that although the panel purported to be part of a system of self regulation and to derive its powers solely from the consent of those whom its decisions affected, it was in fact operating as an integral part of a governmental framework for the regulation of financial activity in the City of London, was supported by a periphery of statutory powers and penalties, and was under a duty in exercising what amounted to public powers to act judicially; that, therefore, the court had jurisdiction to review the panel's decision to dismiss the applicants' complaint; but that since, on the facts, there were no grounds for interfering with the panel's decision, the court would decline to intervene.

13. Lloyd L.J., agreeing with the opinion expressed by Sir John Donaldson M.R. held :

"I do not agree that the source of the power is the sole test whether a body is subject to judicial review, nor do I so read Lord Diplock's speech. Of course the source of the power will often, perhaps usually, be decisive. If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If at the end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review.

14. In that decision, they approved the observations made by Lord Diplock in Council of Civil Service Unions vs. Minister for the Civil Service, 1985 AC 374, 409 wherein it was held:

"For a decision to be susceptible to judicial review the decisionmaker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decisionmaking power is nearly always

nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decisionmaking power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of 'the prerogative.' Where this is the source of decisionmaking power, the power is confined to executive officers of central as distinct from local government and in constitutional practice is generally exercised by those holding ministerial rank"

15. It is also pertinent to refer to Sir John Donaldson M.R. in that TakeOver Panel case :

"In all the reports it is possible to find enumerations of factors giving rise to the jurisdiction, essential or as being exclusive of other factors. Possibly the only essential elements are what can be described as a public element, which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to is jurisdiction."

16. The above guidelines and principles applied by English courts cannot be fully applied to Indian conditions when exercising jurisdiction under Article 226 or 32 of the Constitution. As already stated, the power of the High Courts under Article 226 is very wide and these powers have to be exercised by applying the constitutional provisions and judicial guidelines and violation, if any, of the fundamental rights guaranteed in Part III of the Constitution. In the matter of employment of workers by private bodies on the basis of contracts entered into between them, the courts had been reluctant to exercise the powers of judicial review and whenever the powers were exercised as against private employers, it was solely done based on public law element involved therein.

17. This view was expressly stated by this Court in various decisions and one of the earliest decisions is the Praga Tools Corporation v. Shri C.A. Imanual and Others, 1969 1 SCC 585 In this case, the appellant company was a company incorporated under the Indian Companies Act and at the material time the Union Government and the Government of Andhra Pradesh held 56 per cent and 32 per cent of its shares respectively. Respondent workmen filed a writ petition under Article 226 in the High Court of Andhra Pradesh challenging the validity of an agreement entered into between the employees and the company, seeking a writ of mandamus or an order or direction restraining the appellant from implementing the said agreement. The appellant raised objection as to the maintainability of the writ petition. The learned Single Judge dismissed the petition. The Division Bench held that the petition was not maintainable against the company. However, it granted a

declaration in favour of three workmen, the validity of which was challenged before this Court. This Court held at pages 589590 as under:

"....that the applicant for a mandamus should have a legal and specific right to enforce the performance of those dues. Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or any inferior tribunal requiring him or them to do s particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the 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 the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities [Cf. Halsbury's Laws of England (3rd Ed.), Vol.II p 52 and onwards].

The company being a nonstatutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company."

18. It was also observed that when the High Court had held that the writ petition was not maintainable, no relief of a declaration as to invalidity of an impugned agreement between the company and its employees could be granted and that the High Court committed an error in granting such a declaration.

19. In VST Industries Limited vs. VST Industries Workers Union & Anr., 2001 1 SCC 298, the very same question came up for consideration. The appellantcompany was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, Rajendra Babu, J., (as he then was), held as follows :

"7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law, e.g., the activities by private bodies may be governed by the standards of public when its decisions are subject to duties conferred by statute or when by virtue of the function it is performing or possible its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarized the position with the following propositions :

(1) The test of a whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

20. Applying the above principles, this Court held that the High Court rightly held that it had no jurisdiction.

21. Another decision on the same subject is General Manager, Kisan Sahkar Chini Mills Limited, Sultanpur, UP vs. Satrughan Nishad and Ors., 2003 8 SCC 639. The appellant was a cooperative society and was engaged in the manufacture of sugar. The respondents were the workers of the appellant and they filed various writ petitions contending that they had to be treated as permanent workmen. The appellant challenged the maintainability of those writ petitions and applying the principles enunciated in VST Industries' case , it was held by this Court that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function.

22. In Federal Bank Limited vs. Sagar Thomas & Ors., 2003 10 SCC 733, the respondent was working as a Branch Manager of the appellant Bank. He was suspended and there was a disciplinary enquiry wherein he was found guilty and dismissed from service. The respondent challenged his dismissal by filing a writ petition. The learned Single Judge held that the Federal Bank was performing a public duty and as such it fell within the definition of "other authorities" under Article 12 of the Constitution. The appellant bank preferred an appeal, but the same was dismissed and the decision of the Division Bench was challenged before this Court. This Court observed that a private company carrying on business as a scheduled bank cannot be termed as carrying on statutory or public duty and it was therefore held that any business or commercial activity, whether it may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money which do have an impact on the economy of the country in general, cannot be classified as one falling in the category of those discharging duties or functions of a public nature. It was held that that the jurisdiction of the High Court under Article 226 could not have been invoked in that case.

23. The counsel for the respondent in Civil Appeal No. 1976 of 1998 and for the appellant in the civil appeal arising out of SLP(Civil) No. 6016 of 2002 strongly contended that irrespective of the nature of the body, the writ petition under Article 226 is maintainable provided such body is discharging a public function or statutory function and that the decision itself has the flavour of public law element and they relied on the decision of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. Vs. V.R. Rudani & Ors., 1989 2 SCC 691. In this case, the appellant was a Trust running a science college affiliated to the Gujarat University under Gujarat University Act, 1949. The teachers working in that college were paid in the pay scales recommended by the University Grants Commission and the college was an aided institution. There was some

dispute between the University Teachers Association and the University regarding the fixation of their pay scales. Ultimately, the Chancellor passed an award and this award was accepted by the State Govt. as well as the University and the University directed to pay the teachers as per the award. The appellants refused to implement the award and the respondents filed a writ petition seeking a writ of mandamus and in the writ petition the appellants contended that the college managed by the Trust was not an "authority" coming within the purview of Article 12 of the Constitution and therefore the writ petition was not maintainable. This plea was rejected and this Court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and they may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is preeminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England 3rd ed. Vol. 30, page682,

"a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit."

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or Government authorities at all levels is increasingly employing contractual techniques to achieve its regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce the contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably.

31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in State of U.P. vs. Bridge & Roof Co., 1996 6 SCC 22 and also in Kerala State Electricity Board vs. Kurien E. Kalathil, 2000 6 SCC 293. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

[38] Since I am on the issue of public functions, I may also quote a portion of the decision of the Supreme Court in the case of Jatya Pal Singh and others v. Union of India and others, 2013 AIR(SCW) 2545, as contained in paragraphs 48, 51 and 52, which read thus :

"48. Dr. K.S.Chauhan had also relied on the Human Rights Act, 1998 (Meaning of Public Function) Bill which sets out the factors to be taken into account in determining whether a particular function is a public function for the purpose of subsection (3)(b) of Section 6 of the aforesaid Act. Section (1) enumerates the following factors which may be taken into account in determining the question as to whether a function is a function of public nature.

1(a) the extent to which the state has assumed responsibility for the function in question;

(b) the role and responsibility of the state in relation to the subjectmatter in question;

(c) the nature and extent of the public interest in the function in question;

(d) the nature and extent of any statutory power or duty in relation to the function in question;

(e) the extent to which the State, directly or indirectly, regulates, supervises or inspects the performance of the function in question;

(f) the extent to which the State makes payment for the function in question;

(g) whether the function involves or may involve the use of statutory coercive powers;

(h) the extent of the risk that improper performance of the function might violate an individual's convention right.

For the avoidance of doubt, for the purposes of Section 6(3)(b) of the Human Rights Act, 1998, as per the said Bill a function of a public nature includes a function which is required or enabled to be performed wholly or partially at public expense, irrespective of :

2. (a) the legal status of the person who performs the function, or

(b) whether the person performs the function by reason of a contractual or other agreement or arrangement.

51. This Court also quoted with approval the Commentary on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24 therein it has been stated as follows : A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority

to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.

Public functions need not be the exclusive domain of the state. Charities, selfregulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to 'recognize the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Nongovernmental bodies such as these are just as capable of abusing their powers as is Government.

52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so."

[39] Thus, it is settled position of law that for a body to be amenable to the writ jurisdiction of the Court under Article 226, it need not be a "State" as required under Article 12 of the Constitution. In the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Others v. V. R. Rudani & Others, 1989 2 SCC 691, the Supreme Court distinguished between the Article 32 and Article 226:

"The term "authority used in the context, must receive a liberal " meaning unlike the term in Article 12, which is relevant only for the purpose of enforcement of fundamental rights under Article 32 The words "any person or authority used in " Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty ."

[40] The majority opinion of a five Judges' Bench of the Supreme Court further upheld this proposition in Zee Telefilms & Anr. v. Union of India, 2005 4 SCC 649:

"Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226."

[41] The test of what constitutes an authority performing 'public function' was laid down in the Board of Control for Cricket in India v. Cricket Association of Bihar, 2015 3 SCC 251 case. The Supreme Court conducted a detailed analysis of when a body can be called an authority performing public function:

"The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not "State" within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the "nature of duties and functions " which the BCCI performs. It is common ground that the respondentBoard has a complete sway over the game of cricket in this country. It regulates and controls the game to the exclusion of all others. It formulates rules, regulations norms and standards covering all aspect of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and Supporting State Associations. It frames pension schemes and incurs expenditure on coaches, trainers etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board s monopoly in the field of cricket ? Any organization or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act.

Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a nongovernment body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action".

[42] The law on what constitutes 'public function' for the purposes of Article 226 was also laid down in the case of Andi Mukta Sadguru case :

" The term "authority appearing in " Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it eligible to Article 226. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the

body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party."

[43] It is clear that functions of any body or entity should be essentially in the nature of public duty or akin to the functions of State for instance, regulating a sport entirely at national level. The body in question must have a 'pervasive control' or monopoly over the activity, as in the case of BCCI . Further, there should be some positive obligation of a public nature.

[44] The Red Cross Societies, all over the world, are acknowledged as impartial organisations. Their primary aim during wars and peace time, is according to the international conventions. It is for the amelioration and relief to the disabled, sick or wounded members of the armed forces during war time and also to provide relief of sickness, suffering or distress in India whether due to the operation of war or otherwise. These activities are carried by this Society all over India or through out the world on voluntary basis.

[45] Prima facie, it appears that so far as the District Branch of Navsari is concerned, it mainly attends the blood donation camps, etc. The funds of the Society are provided out of the donation and gift of general public; there is no financial assistance received by the Society from the Government, and no documentary evidence has been placed on record to show that any kind of financial assistance is derived by the Society from the State or the Central Government. The State has no control over the affairs of the Society. The Society has its own Constitution. Nothing has been shown to me so far as the terms and conditions of service of its Office Bearers are concerned. Nothing has been pointed out to me as regards the rules governing the person, like the petitioner who is appointed by the Society. Merely because the Governor of the State is the honorary President, Vice President of the State. It is purely an impartial voluntary organization.

[46] I am of the view that although the voluntary functions performed by the Organization are important and impartial, yet they are not "in the nature of public duty".

[47] Further, as held in G. Bassi Reddy v. International Crops Research Institute & Another, 2003 4 SCC 225, merely because the Indian public is benefited by the activity of an organization, it cannot be claimed that the organization is performing public function:

" ... Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those

performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty... While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities."

[48] I once again reiterate the observations of the Supreme Court in Binny :

"the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced."

[49] Mr. Clerk, the learned counsel placed strong reliance on the decision of the Supreme Court in the case of Jatya Pal Singh , more particularly, the following observations:

"51. This Court also quoted with approval the Commentary on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf and Jowell in Chapter 3 para 0.24 therein it has been stated as follows :

"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.

Public functions need not be the exclusive domain of the State. Charities, selfregulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted." Nongovernmental bodies such as these are just as capable of abusing their powers as is Government.""

[50] I may only say that there may be many functions of public importance which can be performed by the private organisations also. We have a large number of organisations doing important social work vital to the community. There are, for example, organisations which look after, educate and train handicapped persons or the

blind, provide them with jobs and rehabilitate them. There are private charitable organisations which may provide free or subsidized housing to the poor or free medical aid. They may supply textbooks to poor students, freeships and scholarships. There may be private organisations engaged in the transport of goods and men. They perform functions which are, undoubtedly of public importance; and they subserve a public need.

Take for example, the Lions Club or the Rotary Club. The Rotary Club is active in providing treatment to small children suffering from Thalassemia. Periodically, they conduct blood donation camps for the purpose of blood transfusion. But this does not necessarily make such organisations or club "State" under Article 12. Health services and blood banking is undoubtedly a function of public importance. But that by itself will not make the District Branches of the Red Cross Society which are not so controlled by the State a instrumentality of a "State" under Article 12. In a welfare State, many activities which are often carried on by the private organisations are undertaken by the State, in such cases, the Supreme Court has said that "one must look on the overall position of the organisation in the light of other tests also, especially when the function of the organisation is not such as can be carried on only by the State or is not connected with the governmental function.

[51] Generally speaking a public function is something that is normally provided to the public by the State like education, prisons or health services. So if an impartial organisation like the Red Cross Society carries out one of these activities on behalf of the State, they may be a public authority. But it is not enough for a voluntary impartial organisation to carry out a public service for it to count as a public authority.

The Courts will look at a number of things to decide if a voluntary impartial organisation is carrying out a public function. It will look at whether the organisation is:

* publicly funded

* supervised by a State Regulatory Body

* exercising powers given to it by the law

* taking the place of central or local government

* providing a public service

* acting in the public interest

* carrying out coercive powers devolved from the state.

[52] Let me for the time being assume that the Society is a body performing public duty. Will that by itself be sufficient to hold that the termination of the petitioner has public element involved in the same.

[53] In a recent judgment titled K.K. Saxena Vs. International Commission on Irrigation and Drainage and Others, 2015 4 SCC 670 the Supreme Court while considering a similar issue, in a case where the appellant K.K.Saxena who was appointed to the post of Secretary, International Commission on Irrigation and Drainage (ICID) in the year 1997, was terminated in the year 1999 on the ground that the services were no longer required by the ICID. He received cheques of Rs.77,388/ and Rs.98,141.50/ towards three months' basic pay in lieu of notice and the dues towards contributory provident fund respectively. After receiving these cheques, the appellant requested for revocation of the order of termination, which was followed by reminders dated September 02, 1999 and October 16, 1999. As he did not receive any response to the aforesaid requests, he approached the High Court by filing writ petition under Article 226 of the Constitution of India alleging that the termination of his services by the ICID as an act of arbitrariness and unreasonableness and, thus, violative of Article 14 of the Constitution. The appellant also specifically took the plea that ICID is a 'State' within the meaning of Article 12 of the Constitution of India and further it is involved in performing public duty. It was averred that ICID is under the control of Government and the criteria and test set out for determining whether a corporation or society is a 'State' or 'other authority' under Article 12 of the Constitution of India is satisfied inasmuch as ICID was established by the Central Government by giving a grant of Rs.15,000/ in 1950; that there are instances when the Government officers had come on deputation to the society; that the Central Government has been paying the subscription for administrative and other functions of ICID and, hence, the financial control rests with the Government; that the staffing pattern of the ICID is in accordance and with the line of the Government; that ICID has monopoly status since it is the only society established by the Government of India to bring together information on irrigation from India and outside; that the Government provides to it irrigation related information generated in the country and uses public cost and also uses information pulled by it for Government irrigation works; and that the President or Vice President incharge of the central office of the society is a Government officer and the officer of the Central Government is ex officio Secretary General, though he does not draw salary from ICID. Additional plea was taken that in any case writ petition under Article 226 of the Constitution of India was maintainable even if ICID does not qualify to be a 'State' within the purview of Article 12 of the Constitution inasmuch as the term 'other authority' appearing in Article 226 was of much wider connotation and it would embrace within itself those authorities which discharge public functions or public duty of great magnitude. The appellant pleaded

that going by the functions which ICID is discharging, it is apparent that these are public functions and, therefore, writ petition under Article 226 of the Constitution of India could be filed against it.

The Supreme Court discussed and referred to various judgments wherein, a particular organization has been held to be a "State" within the meaning of Article 12 of the Constitution. That apart, the Supreme Court had also referred to its judgment in Shri Anandi Mukta Sadguru's case , wherein, in paras 14, 16 & 19, it has held as under:

"14. But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary 'payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus?

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16. The Law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omission with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":

"At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no crossexamination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The Statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law.

They are to 'have regard to' it. So the previous law as to who areand who are not public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing."

19. The scope of this article has been explained by Subba Rao., in Dwarkanath v. Income Tax Officer, 1965 3 SCR 536 at (54041): "This article is couched in comprehensive phraseology and it exfacie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

[54] The Supreme Court has summed up the ratio in the case of Shri Anandi Mukta Sadguru in para 32 of K.K. Saxena's case as under:

"32. In para 14, the Court spelled out two exceptions to the writ of mandamus, viz. (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aiding institution, because of this reason, it discharges public function, like Government institution, by way of imparting education to students, more particularly when rules and Regulations of the affiliating University are applicable to such an institution, being an aided institution. In such a situation, held the Court, the service conditions of academic staff were not purely of a private character as the staff had superaided protection by University's decision creating a legal right and duty relationship between the staff and the management. Further, the Court explained in para 19 that the term "authority used in Article 226, in the context, would receive a liberal " meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights Under Article 31, whereas Article 226 confers power on the High Courts to issue writs not

only for enforcement of fundamental rights but also nonfundamental rights. What is relevant is the dicta of the Court that the term "authority" appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

[55] The Supreme Court also referred to its judgment in the case of K. Krishnamacharyulu and Others vs. Sri Venketaswara Hindu College of Engineering and Another, 1997 3 SCC 571 wherein the Supreme Court has held that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of a citizen the teacher who imparts education get an element of public interest in performance of his duties. In such a situation, remedy provided under Article 226 would be available to the teachers.

[56] The Supreme Court in K. K. Saxena's case has summed up that the two cases, it had referred to pertains to education institution and the functions of imparting education was treated as the performance of public duty that too by those bodies where the aided institutions were discharging the said functions like Government institution and the interest was created by the Government in such institution to impart education.

[57] The Supreme Court in K.K. Saxena's case has also referred to, its judgments as relied upon by learned senior counsel for respondent Nos. 2 to 4 in the case of Federal Bank Ltd. and Binny Ltd and Another . And in para 40, the Supreme Court had noted that in Federal Bank Ltd. , it was also held, such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any Statute to compel it to perform such a statutory function. The Supreme Court in that case has held that ICID the respondent does not discharge any public function/duty and the impugned action does not involve public law element.

[58] The difficulty, in the present case, is that none of the parties have been able to show me the service conditions of the petitioner. The petitioner has not been able to show any rules governing his terms of appointment. I have not been shown any statutory rules or byelaws governing the inquiry or removal of any of the employees of the District Branches of the Society. It would be too much to say that the petitioner should be treated on par with a government servant, who would be governed by the Gujarat Civil Services Rules. I also take notice of the fact from the materials on record that all the Office Bearers of the Society are private individuals including the President of the District Branch of Navsari. They are all Doctors rendering their services voluntarily in one way or the other. It also appears that the main function of the

respondent No.1 is blood banking and arrangement of blood donation camps and creating awareness among people in that regard.

[59] The power to issue writ(s) under Article 226, basically, arises when the rights of a person, fundamental or legal, is infringed. Hence, while considering the question of amenability of a person to the writ jurisdiction of the High Court under Article 226, the nature of the rights of that person, whose right is alleged to have been infringed, is to be considered and in the light of the nature of the rights of such a person, the question of amenability of the person (who is alleged to have violated the rights) has to be decided and not from the point of view of what the general functions and duties of the person, in question, are.

[60] Let me now look into the decisions of the other High Courts taking the view that a Red Cross Society is amenable to the writ jurisdiction under Article 226 of the Constitution. In Pant Raj Sachdev v. The Indian Red Cross Society and others,1987 1 PunLR 69], a learned Single Judge considered the amenability of a writ application filed by the Assistant Secretary, District Red Cross Branch, Roopnagar, against an order terminating his services without assigning any reason. A preliminary objection was raised to the effect that the writ petition was not maintainable against the Red Cross Society. On the other hand, the learned counsel appearing on behalf of the petitioner countered the plea by contending that the District Red Society, Ferozepur, was admittedly constituted under the provisions of the Red Cross Society Act, 1920. It was submitted that since the Red Cross Society is constituted under a statute and is headed by High Government functionaries, it is an authority and consequently a "State" and, therefore, the writ petition against it was maintainable. The learned Single Judge, after an elaborate discussion, held that the Society cannot be termed to be an "authority" and, therefore, a "State" within the meaning of the expression in Article 12 of the Constitution. While taking such view, the Court observed as under:

> "3..The Act was brought on the statute book soon after the 1st World War. Its object was to provide for future administration of the various monies and gifts received from the public for the purpose of medical and other aid to the sick and wounded and other purposes of a like nature during the war and more especially for the administration of the monies and property held by a Committee known as the Joint War Committee, Indian Branch, of the Order of St. John of Jerusalem in England and the British Red Cross Society, and to constitute an Indian Red Cross Society with a view to the continuation in peace time, on a wider basis and with a wider purpose, of the work carried on by the said committee during the war, and to provide for the affiliation therewith of other Societies and Bodies having similar objects. Section 2 of the Act lays down that the first Members of the Society shall be nominated by persons who immediately before the commencement of the Act

were members of the Joint War Committee, Indian Branch, of the Order of St. John of Jerusalem in England and the British Red Cross Society at a meeting. The number of Members to be so nominated shall not be less than 25 or more than 50. Section 3 provides for appointment from among the Members nominated under section 2, the Managing Body of the Society, the members of which shall hold office as such until a new Managing Body is appointed as provided by the Act. The number of the Members of the Society and the appointment of the Managing Body shall not be less than 10 or more than 30. Section 6 of the Act lays down that upon the nomination of the first Members of the Society and the appointment of the Managing Body, the British Red Cross Society shall be dissolved and all its movable and immovable property shall vest in the Society and shall be applied by the Managing Body to the objects and purposes set out in the Act and all its debts and liabilities shall be transferred to the Society and shall thereafter be discharged and satisfied by the Society out of the aforesaid property. Section 4 of the Act provides for constitution of the Society as a Body corporate under its name having perpetual succession and a common seal with power to hold and acquire property movable and immoveable and to sue or be sued by its name. Section 5 of the Act employers the Managing Body of the Society to make rules for the management, function, control and procedure of the Society.

Section 7 of the Act lays down the purposes to which the Managing Body may in its discretion apply the funds of the Society. The purposes enumerated therein are

".....for the relief of sickness, suffering or distress caused by the operation of war in India or in any other country in which Expeditionary Forces from India may, from time to time, be employed and for purposes cognate to that object and in maintaining the Red Cross Depots for military purposes."

It further provides that the income only of the property vested in the Society but not the corpus or any part thereof be applied "for the relief of sickness or suffering in India, whether due to the operation of war or not, or in pursuance of any of the objects set forth in the 1st Schedule. Section 10 vests the Managing Body with the authority to determine in all cases what matters properly fall within the scope of Clause (b) of section 7. Section 11 allows the Managing Body receive and hold gifts of whatsoever description either for the general purpose of the Society or for any particular purpose and apply the same for the purposes specified. Section 9 of the Act vests the power in the Managing Body to affiliate to the Society any other society or body whether constituted in India or in any other country having all or any of the objects and purposes referred to in section 7 and may provide for the allocation and distribution of funds, through such society or body to or for any such objects or purposes.

4. The Rules framed under the Act provide for membership of the Society. Besides the President of India who shall be the President of the Society. Honorary VicePresidents shall be subscribers of Rs. 10,000/ or upwards to the funds of the Society, and Members elected by the Managing Body to be Honorary Vice Presidents The membership besides this includes Patrons, Vice Patrons, Members, Associate Members, Institutional members and their qualifications are enumerated in rule 4 to 10 of Chapter I of the Rules. Rule 11 provides that a General Meeting of the Society shall be held once a year at the headquarters of the Government of India upon a date (or dates) to be fixed by the President. It further provides that Members of the Managing Body, five member delegate nominated by each State Branch Committee, one member delegates nominated by each District Branch Committee, Member delegates nominated branch by State and District Branches on the basis of one delegate for every 1000 members on their rolls, and associate member delegates nominated by these Branches on the basis of one delegate for every 5000 Associate Members on their rolls shall be entitled to attend the annual meeting. Annual report, the annual accounts and budget shall be presented, considered and adopted and an auditor elected at the annual general meeting. The constitution of the Managing Body and its membership is elaborated in rule 14. Likewise, its powers and functions are elaborated in rules 16 to 26. The Managing Body is further given the powers to appoint from among its Members, its Executive Committee and also other committees such as a Finance Committee, a Medical Committee and their functions are also elaborated in the rules. Again, establishment of Maternity and Child Welfare Bureau and the machinery for its management is also detailed therein. In fact, the constitution of the Society under the Act and its functioning was considered in Sarmukh Singh v. Indian Red Cross Society,1985 LabIC 1072 and it was observed that the Society was incorporated for humanitarian purposes only. The aim was to continue in peace time on a wider basis the work which was being done by the Indian Branch of the British Red Cross Society and the Joint War Committee of the Order of St. John of Jerusalem. The predominant object is to give relief to the disabled, sick or wounded soldiers during the war time and also to provide relief from sickness, suffering or distress in India, whether due to the operation of war or otherwise. In Ajay Hasia's case , the Supreme Court summarised the tests laid down in Ramana Dayaram Shetty v. The International Airport Authority of India, 1979 AIR(SC) 1628, as under:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Government character.

(3) It may also be a relevant factor Whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of deep pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

5. It is quite evident that the funds of the Society are mainly constituted by gifts and donations. It does not have any share capital which might be said to be held by the Government, nor the financial assistance to it by the State is so much as to meet almost its entire expenditure. No doubt, the President of India, the Governors of the State, the Chief Ministers and the Deputy Commissioners at the district level head the hierarchy of the Society and its Branches but the State as such does not have deep and pervasive control over the Society. In fact, most of the Members of the Society are private individuals who volunteer their services to subserve the objects and purposes of the Society. Its functions are not 'closely related to governmental functions.' Thus, the tests (1), (2) and (4) to (6) above are not at all satisfied in the case of the Society. For these reasons, the Society cannot be termed to be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12 of the Constitution."

However, what weighed with the learned Single Judge was the contention on behalf of the petitioner that the petitioner was not seeking to enforce his fundamental rights. He was complaining about the infraction of the Punjab Civil Services Rules applicable to the petitioner and since his services had been terminated in violation of those rules, the writ petition was maintainable and the Society was amenable to the writ jurisdiction of the Court. While accepting the contention canvassed on behalf of the petitioner, the learned Judge observed as under:

"7. Looked at in the background of the above allegations, it is more than evident that the impugned order Annexure P.3 was passed by way of punishment.

Admittedly, he was holding a substantive appointment as Executive Secretary. Penalty of removal from service on the basis of the allegations made in para 8 of the written statement of respondent No. 3 could be imposed on his only by taking resort to the procedure laid down in rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, i.e. by service of a chargesheet on him, securing his reply thereto, conducting an enquiry in accord with the settled principles of natural justice if he denied the allegations levelled against him, and then on securing report of the enquiring authority to serve him with a showcause notice if he was found guilty with regard to the quantum of punishment proposed and then alone the impugned order could be passed. The respondents could not, in disregard of the Punjab Civil Service Rules, which admittedly govern the services of the petitioner, and in flagrant violation of the rules of natural justice order termination of his services. Somewhat recalcitrant attitude adopted by respondent No. 3 disregarding the orders Annexure P. 5 of the Governor, Punjab, who is the President of the State Branch of the Society, and again the orders Annexure P. 8 of the Chief Minister, Punjab, who is the Chairman of the State Branch of the Society, has also to be taken notice of. In this view of the matter, the impugned order Annexure P. 3 terminating the services of the petitioner is clearly in violation of the Rules governing his service and also contrary to the basic principles of natural justice and has to be quashed."

[61] Thus, what can be discerned from the above noted Punjab and Haryana High Court decision is that if there are any statutory rules governing the departmental inquiry or removal or dismissal of an employee, and if those rules are violated, then the writ application would be maintainable. In Pant Raj Sachdev , the Court noticed that the Punjab Civil Services (Punishment and Appeal) Rules, 1970 were applicable. Could it be said so far as the case in hand is concerned that the Gujarat Civil Services (Punishment and Appeal) Rules 1971 are applicable to the petitioner? The answer has to be in the negative.

[62] Relying upon Pant Raj Sachdev , a Division Bench of the very same High Court in the case of District Red Cross Society, Sirsa v. Radha Kishan Rajpal and another, 2005 1 SLR 781 took the view that a writ under Article 226 of the Constitution is maintainable against the Indian Red Cross Society and its Branches. In the said case, the District Red Cross Society, being dissatisfied with the judgment and order passed by the learned Single Judge, preferred a Letters Patent Appeal. The original petitioner had preferred a writ application challenging his removal from service. The employee was subjected to a departmental inquiry on the charges of committing financial irregularities. The inquiry culminated in the passing of the order dated 17th October 1989 vide which the Deputy CommissionercumPresident, District Red Cross Society,

Sirsa, removed the respondent from service. He challenged his removal on the ground of noncompliance of the procedure laid down in the Punjab Civil Service (Punishment and Appeal) Rules, 1952 and the rules of natural justice. The Division Bench, after considering various judgments of different Courts, including Pant Raj Sachdev and a Division Bench decision of the Rajasthan High Court, dismissed the appeal filed by the District Red Cross Society holding that the views expressed by the learned Single in Pant Raj Sachdev were correct and the writ under under Article 226 of the Constitution was held to be maintainable. I may quote the relevant observations made by the Division Bench, speaking through G.S. Singhvi, J. (as His Lordship then was):

> "11. In Pant Raj Sachdev v. The Indian Red Cross Society, Through The Secretary General and others , a learned Single Judge referred to the provisions of the 1920 Act and the fact that the Red Cross Society is headed by the Governor of the State at the State Level and by the Deputy Commissioner at the District Level as also to the judgment of a Division Bench of the Rajasthan High Court in Indian Red Cross Society v. R.N. Kaul and held that even if the Red Cross Society may not be 'State' within the meaning of Article 12, it is amenable to writ jurisdiction under Article 226 of the Constitution of India.
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> 12. In Rajasthan State Electricity Board, Jaipur v. Mohan Lal and others , the majority of the Constitution Bench of the Supreme Court held that the expression "other authorities" in Article 12 will include all constitutional and other authorities upon whom powers are conferred by law. Their Lordships further held that if any body of persons is invested with the authority to issue directions, disobedience of which is punishable as a criminal offence, that would be an indication that the said authority is State."
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> "24. We respectfully agree with the views expressed by learned Single Judge in Pant Raj Sachdev's case and hold that a writ under Article 226 of the Constitution of India is maintainable against the India Red Cross Society and its Branches and the learned Single Judge did not commit any illegality by entertaining the writ petition filed by the respondent."

[63] Again, the Division Bench decision which is based on Pant Raj Sachdev considered the applicability of the Punjab Civil Services (Discipline and Appeal) Rules 1970. Such is not the position so far as the case in hand is concerned.

[64] The above referred judgment of the Division Bench has been relied upon very strongly by the learned counsel appearing for the petitioner. Again, in J.N. Gahlaut and others v. Indian Red Cross Society, a Division Bench of the Punjab and Haryana High Court, 2002 4 SLR 449 considered Pant Raj Sachdev and took the view that a writ

application was maintainable against the Indian Red Cross Haryana State Branch. In the said case, the petitioners were the Secretaries working with the District Red Cross Society of various districts such as Faridabad, Kaithal, Gurgaon, Rohtak, Rewari and Jind. They preferred a writ application with a prayer to quash their orders of transfer. Such challenge was on the ground that the orders of transfer were without jurisdiction and authority of law. The Division Bench in para - 10 observed as under:

"10. On the contrary, the learned counsel appearing on behalf of the respondents submitted that even the rules do not debar respondent No. 2 from effecting the transfer in public interest from one district to the other. It was also argued by the learned counsel for the respondents that onus is upon the petitioners to show that the action was not justified. We do not subscribe to the submissions made by the learned counsel for the respondents. As we have just stated above, that we have to see what is the case of the petitioners in the writ petition in order to see whether the jurisdiction of the High Court has not ousted or not. It is the case of the petitioners that their cadre is not an inter district and there is violation of the service rules and, therefore, it was observed that a writ is maintainable against the society. If it attacks the infraction of service rules or the rules of natural justice. In Civil Writ Petition No.13347 of 1995 (Smt. Santosh Rani vs. Indian Red Cross Society, District Branch Mansa and another) decided on 14.12.1995 a similar point arose for consideration and reliance was also placed on the judgment of Pant Raj Sachdev. Their contention was not accepted by the Hon'ble Division Bench and their Lordships were pleased to make the following observations:

"We have given out thoughtful consideration to the submission of the learned counsel for the respondents but are tenable to accept the same. We may have considered the issue whether the Indian Red Cross Society is a State within the meaning of Article 12 at length but in our opinion it is necessary to do so because in the very judgment on which the learned counsel for the respondents has placed reliance, this Court has held that although writ petition for violation of fundamental rights is not maintainable, but the High Court can issue a writ on the ground of violation of the service rules of the principles of natural justice. By placing reliance on a Division Bench judgment of the Rajasthan High Court in D.B. Special Appeal No.65 of 1976 (Indian Red Cross Society vs. R.N. Kaul and 7 others) decided on 21.1.1980, a learned Single Judge of this Court held that although violation of fundamental rights enshrined in the Constitution emanating from the impugned action of the Society cannot be made a ground of attack, the writ petition on the ground of infraction of the service rules and the rules of natural justice can be maintained against the Society. We may also quote the observations made by the

Division Bench of the Rajasthan High Court in the judgment given in R.N. Kaul's case which are as under:

"Keeping in view the ratio laid down in Ramana vs. I.A. Authority of India , we have no hesitation that the Rajasthan Branch of the Indian Red Cross Society is not an authority within the meaning of Article 12 of the Constitution of India. The Society has been created by a statute. If the statute is not there, the Society cannot exist. The statute gives an exclusive domain and monopoly in the society to act a particular sphere. The assets which fall to the share of Pakistan were transferred under Section 13 of the said Act. The share which fall to the share of Burma was allocated by the Red Cross Society (Allocation of Property) Act, 1936. As stated earlier, the Constitution provides that the Governors shall be the PatroninChief, Chief Minister would be the ViceChairman and Director of Medical and Health Services would be the ViceChairman. Clause 44 of Annexure R2/2 clearly states that the services of all the employees shall be governed by the rules which are in force for the employees of the State of Rajasthan. All these factors lead to the Indian Red Cross Society is not an authority as envisaged under Article 12 of the Constitution of India, yet it is amenable to the jurisdiction of this Court under Article 226 of the Constitution." .

We respectfully agree with the view taken by the Division Bench of the Rajashan High Court and the learned Single Judge of this Court on the issue of maintainability of writ petition in the cases of violation of the principles of natural justice and the service rules and reject the first objection raised by learned counsel for respondent No.1"

Furthermore, if a body is created by a statute, it is bound to show under what authority the action is being taken against the employees."

[65] Thus, the three judgments' referred to above, on which strong reliance has been placed on behalf of the petitioner, make it clear that the Red Cross Society, by itself, is not a "State" within the meaning of Article 12 of the Constitution, but if any action complained is on the basis of the Punjab Civil Services (Discipline and Appeal) Rules 1970 or Rajasthan Civil Services Rules, which are otherwise applicable to the employees of the State of Punjab and Haryana as well as the State of Rajasthan, then a writ application is maintainable.

[66] The learned counsel appearing for the petitioner has also placed reliance on a decision rendered by a learned Single Judge of the High Court of Himachal Pradesh in the case of Seema Mehta v. ChairmancumDeputy Commissioner and another, 2015 Lawsuit(HP) 276. In the said case, a writ application was filed being aggrieved by the

award passed by the Industrial Tribunal - Labour Court - Simla, whereby, the claim of the petitioner for regular appointment had been denied. The petitioner in that case was appointed as a ClerkcumTypist in the Indian Red Cross Society. The learned Single Judge, after considering the judgment of the Punjab and Haryana High Court referred to above and also few decisions of the Supreme Court, took the view that once the Deputy Commissioner is found to be heading the Indian Red Cross Society, then there is a flavour of public element and duty attached to the office. In such circumstances, the Society is expected to function like a model employer.

> With due respect to the learned Single Judge, it is difficult for me to subscribe to the views that if the Deputy Commissioner is found to be heading the Indian Cross Society, then there is a flavour of the public element and a public duty is attached to the office, and therefore, a writ application under Article 226 of the Constitution is maintainable.
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> Let me distinguish this case on facts. It appears that the appointment on the post of ClerkcumTypist was given by the Deputy Commissioner, in his capacity, as the Chairman of the Society. In such circumstances, the ChairmancumDeputy Commissioner was a party respondent before the Court.

[67] So far as the case in hand is concerned, as I have observed earlier, although a District Magistrate could be said to Head, the District Branch, yet I do not find anywhere his role of any nature so far as the respondent No.1 is concerned. Neither the order of appointment was issued by the District Magistrate nor the order of termination was passed by the District Magistrate. Let me make it clear that all Office Bearers of the respondent No.1 are private individuals. At the cost of repetition, they are all Doctors. In the year 2001, when the appointment order was issued in favour of the petitioner herein, one Dr. Paresh M. Desai was the President, Dr. Ashok P. Shroff was the Vice President, Professor Jayantibhai M. Naik was the Secretary, Keshavbhai R. Karve was the Joint Secretary, and Professor Jashubhai M. Naik was the Treasurer. The appointment order was signed by Dr. Paresh M. Desai, in his capacity as the President of the Branch and Professor Jayantibhai M. Naik, in his capacity as the Secretary of the Branch. In the same way, when the order of termination came to be passed dated 30th June 2008, one Dr. Atul V. Desai was the President of the Branch and Mr. Keshav R. Karve was the Vice President of the Branch, and Mr. Kersi K. Daboo was the Secretary of the Branch. The order of termination has been signed by the President and the Secretary respectively of the Branch.

[68] The learned counsel appearing for the petitioner has also relied upon a decision of the Supreme Court in the case of U.P. State Cooperative Land Development Bank Limited v. Chandra Bhan Dubey and others, 1999 1 SCC 741. The issue before the

Supreme Court was whether the U.P. State Cooperative Land Development Bank was amenable to the writ jurisdiction of the High Court or not. In the said case, the respondent was working as a Branch Accountant in the Nakur Branch, District Saharanpur of the Bank. The departmental chargesheet was served upon him containing various charges. He was ultimately dismissed from service. The dismissal orders were challenged before the High Court. The High Court negatived the plea of the petitioner that it was not amenable to the writ jurisdiction being not an "authority" or "State" within the meaning of Article 12 of the Constitution. The High Court on merit took the view that the relevant rules regarding holding of inquiry against the delinquent employee were not followed and that the order of dismissal did not contain any reason.

The Bank assailed the judgment of the High Court before the Supreme Court. The Supreme Court, after considering the various statutory regulations, observed as under:

"20. We have seen above that the appellant is functioning as a cooperative society under the Societies Act but it has been constituted under the provisions of the Bank Act. In exercise of power conferred on the State Government by Section 30 of the Bank Act, Rules have been framed called "The U. P. Cooperative Land Development Banks Rules, 1971". For the service condition of the employees of the appellant, we have to refer to the Societies Act and the Regulations framed by the U. P. Cooperative Institutional Service Board constituted under Section 122 of the Societies Act as well as to the Service Rules framed by the appellant under Regulation 102 of the Service Regulations. Service Rules framed by the appellant shall be operative only after their approval by the Institutional Service Board. Any order of dismissal by the appellant can be issued only after its approval by the aforesaid Board. If we refer to the Bank Act, it will be seen that under Section 3 there shall not be more than one State Land Development Bank for the whole of the State of Uttar Pradesh and that sole Bank is the appellant. It has thus exclusive jurisdiction for whole of the State of Uttar Pradesh. It can admit as members Land Development Banks whose number can be as many as may be deemed necessary by the Registrar of the Cooperative Society for the State of Uttar Pradesh.

Appellant is also vested with various powers under the Bank Act which powers are not available to a cooperative society registered merely under the Societies Act. If we refer to some of the provisions of the Bank Act it will be seen that the Registrar of the Cooperative Societies for the State of Uttar Pradesh shall be the Trustee for the purpose of securing the fulfillment of the obligations of the State Land Development Bank to the holders of debentures issued by the Board of Directors. The powers and functions of the Trustee shall be governed by the provisions of the

Bank Act and by the instrument of Trust executed between the appellant and the Trustee as modified or substituted from time to time by their mutual agreement and with the approval of the State Government. Trustee is to be a corporation sole. The Board of Directors of the appellant may from time to time issue debentures of various denominations with the previous sanction of the State Government and the Trustee and subject to such terms and conditions as the State Government may impose against the unconditional guarantee by the State Government for repayment in full of the principal and payment of interest thereon or on the security of mortgages, charges or hypothecations etc. Under Section 9 of the Bank Act, the State Government constitutes a Guarantee Fund on such terms and conditions as it may deem fit, for the purpose of meeting losses that might arise on account of loans advanced by the Land Development Banks on the security of mortgages not being fully recovered due to such circumstances as may be prescribed. The appellant and the Land Development Banks shall contribute to such fund at such rates as may be prescribed. Under Rule 6 of the Bank Rules the Guarantee Fund shall be maintained by the Finance Department of the State Government in the Public Accounts Section of the State Accounts and all contributions to the Fund and interest earned on investment made from the Fund shall be credited direct to the Fund. It is not necessary for us to quote various other sections and rules but all these provisions unmistakably show that the affairs of the appellant are controlled by the State Government though it functions as a cooperative society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution.

21. We also find from the Service Rules that the Managing Director and Chief General Manager of the appellant are officials of the State sent on deputation to the appellant. These two officers are at the helm of the affairs of the appellant. It is difficult to imagine a situation where a Government sends one of its employees on deputation to head a body or institution not controlled by that Government even though the employee may be paid out of the funds of that body or institution unless there is specific provision of law so entitling the Government. We also find that Service Rules have been framed under the statute and those Rules have the approval of a statutory body. Exercise of power of dismissal by the appellant has to be in accordance with the statutory regulations and with the approval of the statutory body. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, 1975 1 SCC 421 Constitution Bench of this Court held that Regulations being framed under statutory provisions would have the force of law.

22. The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In Rohtas Industries Ltd. v. Rohtas Industries Staff Union, 1976 AIR(SC) 425 it was submitted before the Constitution Bench that an award under Section 10A of the Industrial Disputes Act, 1947 savours of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under (at p. 429 of AIR):

"9. The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person even a private individual and be available for any (other) purpose even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to "the residence of such person". But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash. 10. Many rulings of the High Courts, pro and con, were cited before us to show that an award under Section 10A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar, J. (as he then was) in Engineering Mazdoor Sabha, 1963 AIR(SC) 874 at Pp. 88182) which nail the argument against the existence of jurisdiction. The learned Judge clarified at p. 640 (of SCR) : (at Pp. 88182 of AIR) :

'Article 226 under which a writ of certiorari can be used in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of Courts or Tribunals. Under Article 226 (1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore,

even if the arbitrator appointed under Section 10A is not a tribunal under Article 136 in a proper case, a writ may lie against his award under Article 226'.""

[69] Thus, what weighed with the Supreme Court in taking the aforesaid view was that the control of the State Government on the Bank was all pervasive and the employees had the statutory protection, and therefore, the Bank being an authority or even instrumentality of the State, was held to be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. The case in hand, it is quite distinguishable as facts with the above referred Supreme Court judgment.

[70] Let me consider one another Division Bench decision of the Punjab and Haryana High Court in the case of Smt. Alka Ghai v. J.R. Verma and others [Letters Patent Appeal No.176 of 2008 decided on 16th April 2009]. In the said case, the issue was whether the District Red Cross Society, Ambala City, could be said to be a "State" within the meaning of Article 12 of the Constitution of India. J.S. Khehar, J. (as His Lordship then was), speaking for the Bench, observed as under: "The first contention of the learned counsel for the appellant is, that the District Red Cross Society,Ambala City, is not State within the meaning of Article 12 of the Constitution of India, and as such, this Court has no jurisdiction to deal with the controversy pertaining to the appointment of the petitioner. For the purpose under reference, learned counsel for the appellant has placed reliance on a decision by a learned Single Judge of this Court in Pant Raj Sachdev Vs. The Indian Red Cross Society and others, 1986 1 SLR 675. Reliance has also been made on a decision rendered by a Division Bench of this Court in Kali Ram Vs. Indian Red Cross Society, Haryana, Chandigarh (CWP No.12538 of 1992, decided on 17.2.1993) wherein the judgment rendered by this Court in Pant Raj Sachdev's case was followed. Reference has also been made to the decision rendered by another Division Bench of this Court in the District Red Cross Society, Sirsa Vs. Radha Kishan Rajpal and another, 2005 1 SLR 781, wherein pointed attention of this Court has been drawn to paragraph 24. Paragraph 24 of the judgment relied upon by the learned counsel for the appellant is being extracted hereunder:

We respectfully agree with the views expressed by learned Single Judge in Pant Raj Sachdev's case and hold that a writ under Article 226 of the Constitution of India is maintainable against the India Red Cross Society and its Branches and the learned Single Judge did not commit any illegality by entertaining the writ petition filed by the respondent."

Last of all, reliance was placed by the learned counsel for the appellant on Sarmukh Singh v. Indian red Cross Society,1985 LabIC 1072, wherein a learned Single Judge of the Delhi High Court had concluded that the Indian Red Cross Society was not State within the meaning of Article 12 of the Constitution of India.Bbased on the

judgments, referred to hereinabove, it is the vehement contention of the learned counsel for the appellant, that the two writ petitions, referred to hereinabove, were wrongly entertained by this Court in exercise of jurisdiction vested under Article 226 of the Constitution of India.

In order to deal with the controversy under reference, it would be pertinent to extract hereunder Rule 20 of the Constitution adopted by the District Red Cross Society in its Annual General Meeting, held on 23.3.2007 (which was appended as Annexure R4/1 with the written statement filed on behalf of respondent No.4 in CWP No.9340 of 2001). Rule 20 which relates to appointments including the appointment of the post of Secretary is being extracted hereunder:

20. 1) All appointments in the District Branch shall be made by the President. The President shall have the power to determine the terms of employment and pay allowances of the staff of the District Branch and cases would be laid before the Executive Committee for confirmation.

ii) Notwithstanding anything contained in Rule 20 (i) the appointment of the Secretary or the district Branch shall be made by the President with the approval of the State Branch and shall not be annulled expect with previous concurrence of of the State Branch."

It is not a matter of dispute that the Deputy Commissioner of the district is the President of the District Red Cross Society, Ambala City. The Executive Committee, referred to in rule 20, is constituted under rule 11. The Executive Committee, in terms of rule 11, includes the Deputy Commissioner, Ambala, the Chief Medical Officer, Ambala, as also the District Education Officer, Ambala, as Exofficio members of the Executive Committee. There are some nominated members also. Their nomination is,however, at the hands of the members already referred to hereinabove. It is therefore, apparent that in so far as the issue of appointment is concerned, it exclusively vests in the hands of the functionaries of the State Government. Since the issue of appointments to the District Red Cross Society Ambala City, is controlled by the functionaries of the State Government, we are satisfied, that it is open to this Court to exercise its jurisdiction under Article 226 of the Constitution of India, in case of a challenge on an issue pertaining to appointment to the District Red Cross Society. Additionally, it may be mentioned that a Division Bench of this Court in District Red Cross Society Sirsa's case , has already arrived at the conclusion in the paragraph extracted hereinabove, that it is open to this Court to exercise its jurisdiction under Article 226 of the Constitution of India, to examine certain issues relating to the Red Cross Society, as also their

branches. For the reasons recorded hereinabove, it is not possible for us to accept the first contention advanced by the learned counsel for the appellant."

[71] Thus, it could be noticed that the Division Bench considered Pant Raj Sachdev as well as Kali ram v. Indian Red Cross Society, Haryana, Chandigarh [CWP No.12538 of 1992 decided on 17th February 1993] including Radha Kishan Rajpal , and took the view that the writ application was maintainable. However, what weighed with the Division Bench was Rule 20 of the Constitution adopted by the District Red Cross Society, Ambala city, in its Annual General Meeting. Rule 20 related to the appointments in the Branch. The Court also noticed that the Deputy Commissioner of the District was the President of the District Red Cross Society, Ambala City. The Court took the view that as the issue of appointments to the District Red Cross Society, Ambala City, was being controlled by the functionaries of the State Government, it would be open for the High Court to exercise its jurisdiction under Article 226 of the Constitution in case of challenge on an issue pertaining to an appointment to the Society is concerned.

[72] A learned Single Judge of the High Court of Jammu and Kashmir in the case of G H Rasool Bhat v. Indian Red Cross Society, 2003 1 SriLJ 226 has taken the view that a writ application is not maintainable against the Indian Red Cross Society as the same cannot be said to be an instrumentality, authority or an agency of the State within the meaning of Article 12 of the Constitution. I may quote the relevant observations as under:

"9 It may be observed here that the object of International Crops Research Institute (ICRISAT) was to help developing countries, including India, in semiarid tropics to alleviate rural poverty and hunger in ways that are environmentally sustainable. The object was sought to be achieved by research and development of scientific technologies. Similarly, the Red Cross Societies all over the world are acknowledged as impartial obganizations. Their primary aim during wars and peace time is as per the international conventions. It is for the amelioration and relief to the disabled, sick or wounded members of the armed forces during the war time and also to provide relief to sickness, suffering or distress in India whether due to the operation of war or otherwise. These activities are carried out by these societies all over India, rather throughout the world on voluntary basis.

10 Applying the tests as laid down by the Apex Court in its numerous judgments to the facts of the present case, it is seen that none of the above factors are available. The funds of the Society are managed out of the donations and gifts of general public; there is no financial assistance received by the Society from the Government, and no document of evidence has been placed on record to show that

any kind of financial assistance is derived by the Society from the State or the Central Government; State has no control over the affairs of the Society, no statutory duty is cast on the Society; and it has its own constitution, terms and conditions of service of its office bearers. Merely because the Governor is the honorary President or the Chief Minister is the honorary VicePresident of the Society does not bring the Society within the control of the State. It is purely an impartial voluntary organization, depending upon the donations of general public. None of the objects of the Society can be said to be closely related to governmental functions. Therefore, the Red Cross Society cannot be said to be an instrumentality, authority or an agency of the State within the meaning of Article 12 of the Constitution. Consequently, it is not amenable to the writ jurisdiction of this Court. In my view, I am supported by a judgment of the Delhi High Court in Sarmukh Singh vs. Indian Red Cross Society,1985 LabIC 1072. The relevant observations made in the aforesaid judgment are reproduced below:

"None of the objects of the Society can, be said to be closely related to governmental functions. The impartiality and neutrality of the Red Cross Societies all over the world and the International Committee of the Red Cross in particular are recognized. I think, because there is no interference in their activities by the Government. The result is that the respondent society cannot be held to be an authority under article 12 of the Constitution..."

11. I have gone through the judgments referred to in the Division Bench order dated: 26th August, 1998. All those judgments are distinguishable on facts and law. They are of no help to the petitioner in the present case."

[73] I am of the view that the petitioner is not entitled to any safeguards like the one provided in Article 311 of the Constitution of India or in the Gujarat Civil Services (Punishment and Appeal) Rules, 1971. The employees of the District Branches of the Red Cross Society cannot be said to be members of a Civil Service of the Union or a Civil Service of a State or holding a civil post under the Union or a State. The Indian Red Cross Society is an autonomous body having been created by the Indian Red Cross Society Act and is not a "State" within the meaning of that expression in part XIV of the Constitution of India and the provisions of Article 311 and the applicability to the employees of the Society. The expression "State" as used in part XIV of the Constitution means the "States" which are mentioned in the First schedule to the Constitution. I have my own doubts, whether the Society would be covered by the expression the "State" as defined in Article 12 of the Constitution for the purpose of Part III thereof. In Article 12, the "State" includes all local and other authorities within the territory of India or under the control of the Government of India. The Red Cross Society as such is not under the control of the Government of India, but could be

termed as an authority within the territory of India. In part XIV, however, "State" is not used in that sense. For this reason, I am of the view that the employees of the Society, cannot claim the benefit of the safeguards embodied for a government servant in Article 311 of the Constitution.

[74] In the course of the hearing of this matter, repeatedly, I inquired with the learned counsel appearing for the respective parties about the rules. No rules have been shown to me providing for taking disciplinary proceedings against the employees of the Society. No other safeguards of any sort have been provided to them. The Gujarat Civil Services (Punishment and Appeal) Rules, 1971 have not been made applicable to the employees of the Society. In such circumstances, the employees of the Society cannot be put on a higher level than the employees of any other employer. It is only the safeguards provided in Article 311 of the Constitution or in the service rules of various services under the Union Government or the Government of a State that their employees are entitled to take benefit of and can urge for justification if those safeguards are not respected or the procedure prescribed is not followed, their dismissal is illegal. But, in the case of any other master and servant, the ordinary rule of contract will apply and the employee cannot approach for this Court for reinstatement under Article 226 of the Constitution.

[75] The Red Cross Society is created under the Indian Red Cross Society Act, and is governed by the provisions of that Act. The statute incorporating the Society does not provide for any obligation which the Society owes to its employees in respect of their services. No statutory rules have been shown to me prescribed, if any, by any authority giving any protection or safeguards to the employees. There is no statutory or a public duty imposed on the Society by the statute in respect of its employees of which enforcement can be sought by means of a mandamus. The impression I have gathered is that the respondent No.1 is free to employ, suspend, remove or dismiss any of its employees and similarly the employees have the right to give up the employment at any time subject to the terms of the contract between the two. The remedy under Article 226 of the Constitution is not available for enforcement of contractual obligations. This petition by the petitioner, therefore, is not maintainable.

[76] Mr. Clerk, the learned counsel appearing for the petitioner submitted that the principles of natural justice were not followed. According to him, no adequate opportunity of hearing or rendering any explanation was given to his client. Such issue can be raised in a civil suit for getting a declaration that the removal from service was illegal or for damages, but a mandamus cannot issue setting aside the dismissal or removal from service on the ground that the principles of nature justice were violated for the reason that there is no public or statutory duty imposed on the Society towards its employees, the enforcement of which can be claimed by the latter.

[77] I take notice of the powers of the Executive Committee of the respondent No.1 as provided in the Constitution, which is at Annexure:

"B" to this petition (page - 88). Clause 5(16) thereof as under:

"To employ, lay off, suspend or terminate any employee of the society"

[78] Having given my anxious thought and consideration to a very ticklish issue, my final conclusion is as under;

(1) If a particular Society can be characterized as a "State" within the meaning of Article 12 of the Constitution (applying the test evolved by the Supreme Court in that behalf), it would also be an "authority" within the meaning, and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the statutory rules or byelaws, can be corrected by way of a writ petition. This is not because the byelaws have the force of law, but on the ground that having framed the byelaws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the byelaws, it would be inherently arbitrary and may very likely give rise to discriminatory treatment. A Society, which is a "State", has to act in conformity with Article 14 and, for that reason, it will be made to follow the byelaws.

(2) In the case in hand, neither any statutory rules governing the appointment nor removal of an employee of the Society nor any byelaws, if any, have been placed on record nor even relied upon on behalf of the petitioner. Let me for the time being, assume that there are rules or byelaws for the purpose of appointment or removal of an employee. They would be in the nature of a contract, terms of contract, between the Society and its employees. Hence, where a Society cannot be characterized as a "State", the service conditions of its employees, governed by the Constitution of the Society, cannot be enforced through a writ petition. This Court would interfere under Article 226 of the Constitution in an appropriate case, if the violation of a statutory public duty is established.

(3) Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a Society, which may be a "State" within the meaning of Article 12, does not necessarily belong to public, law field. A society, which is a "State", may have its private law rights just like a Government. A contractual obligation, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into

contract, however, Article 14 operates, as explained by the Supreme Court in Ramana Dayaram Shetty .

[79] As a result of the foregoing discussion, this writ application fails on the ground that the same is not maintainable.

[80] However, it is clarified that it would be open for the petitioner to avail of an appropriate legal remedy available in law before an appropriate forum. If he avails of such legal remedy available in law, then the adjudication of the same shall be on its own merits without being influenced in any manner by any of the observations made by this Court in this judgment.