

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI**

**ON THE 4<sup>th</sup> OF JULY, 2024**

**WRIT APPEAL NO.240 OF 2024**

*(DHIRAJ KUMAR SHARMA*

*Vs.*

*STATE OF M.P. AND OTHERS)*

**Appearance:**

***(SHRI JITENDRA KUMAR SHARMA - ADVOCATE  
FOR THE APPELLANT,  
SHRI ANKUR MODY – ADDITIONAL ADVOCATE  
GENERAL FOR RESPONDENT NO.1/STATE,  
SHRI TEJ SINGH MAHADIK – ADVOCATE FOR  
RESPONDENTS NO.2, 3 AND 4)***

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**ORDER**

**Per: VIVEK RUSIA J.**

The petitioner/appellant has filed this present writ appeal against the order dated 08.09.2023, whereby the Writ Court has dismissed W.P. No.29192/2022 as not maintainable.

Short facts of the case are as under:-

1. The Madhya Pradesh State Tourism Development Corporation ( in short: MPSTDC) is a government agency that conducts and regulates the tourism activities of Madhya Pradesh, established in 1978 by the Government of M.P. The MPSTDC has headquarterd in Bhopal and has regional offices across all the districts of Madhya Pradesh and in other states as well. The MPSTDC also operates homestays, hotels, resorts, and tourist rest houses in different key locations within the state. The MPSTDC

issued an advertisement for the appointment of a Marketing Executive on a contract basis. The appellant applied for the said post, and he was called for an interview test. Vide order dated 11.02.2011, he was appointed to the post of Marketing Executive on a fixed salary of Rs.15,000/- per month with certain benefits of leave, TA/DA, deductions etc. Vide order dated 26.02.2011 the appellant was posted at the Regional Office, Gwalior and since then the appellant has been working there. Respondents enhanced the salary of the appellant from time to time.

2. All of a sudden, vide order dated 08.12.2022 appellant/ petitioner has been transferred from Gwalior to the Marketing Office at Lucknow, which he challenged by way of W.P. No.29192/2022 before this Court. While issuing notices interim protection was granted to the petitioner. In the writ petition instead of filing a reply on merit, respondents filed an application seeking dismissal of the petition as not maintainable on the ground that MPT Company is a Company registered under the Companies Act, hence, a writ cannot be issued against the respondent. The appellant filed a reply to the said application by submitting that it is a Government Company that comes under the definition of State under Article 12 of the Constitution of India.

3. Vide order dated 08.09.2023 the Writ Court has dismissed the writ petition as not maintainable. The Writ Court has held that the MPSTDC is a Company registered under the Companies Act and does not have any statutory duty or function to perform, therefore, no mandamus can be issued under Article 226 of the Constitution of India. By placing reliance on a judgment passed in the case of **the Praga Tools Corporation Vs. Shri C.A. Imanuel and others** reported in (1969) 1 SCC 585, the Writ Court has dismissed the writ petition, hence, this writ appeal before this Court.

We have heard the learned counsel for the parties.

4. It is correct that the MPSTDC is a Company registered under the Companies Act, 1956 but undisputedly, this is incorporated and fully owned by the State Government to develop tourism in the State of Madhya Pradesh. This Corporation runs various hotels and restaurants at tourist places to give the facilities to tourists coming from various parts of the country as well as from other countries. The entire MPSTDC is funded by the State Government, therefore, it is an extended arm of the State Government and, hence, amenable to the writ jurisdiction of the High Court. In another way, the MPSTDC helps the Government to develop and promote the cultural heritage of this country, it also brings foreign currency to this country by way of tourism.

5. To seek enhancement of retirement age from 60 to 62 years at par with the Government employees as per the provisions contained in M.P. Shaskiya Sevak (*Adhivarshiki Aayu*), Sanshodhan Adhiniyam, 2018, a set of employees of the MPSTDC approached this Court by way of writ petitions. All the writ petitions were entertained and vide order dated 12.01.2023, the writ petitions were allowed and the employees of the as per the provisions contained in M.P. Shaskiya Sevak (*Adhivarshiki Aayu*), Sanshodhan Adhiniyam, 2018 have been given the benefit of the age of retirement up to the age of 62 years. The Writ Court relied on a judgment passed by the coordinate Bench of this Court in the case of **Amiruddin Akolawala Vs. State of M.P. and others** reported in **ILR (2019) MP 857**, therefore, the employees of the respondent Corporation have been treated at par with the State Government employees and the benefit of extension of enhancement of the retirement age was given to them by issuing the writ under Art. 226 of the Constitution of India as per the provisions contained in M.P. Shaskiya Sevak (*Adhivarshiki Aayu*), Sanshodhan Adhiniyam, 2018. In the present case, the Writ Court has wrongly distinguished the aforesaid case.

6. So far as the judgment passed in the case of **The Praga Tools Corporation (supra)** is concerned, where the employees of Praga Tools Corporation filed a writ petition under Article 226 of the Constitution of India challenging the validity of certain agreements, therefore, the Apex Court directed the petitioner to resort the remedy available to them under the Industrial Disputes Act while raising an industrial dispute.

7. The Constitution Bench of the Apex Court in the case of **Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others** reported in **(1981) 1 SCC 722**, examined the arbitrary or unreasonable action of an authority under Article 12 of the Constitution of India. The Apex Court has held that the Corporation may be a statutory Corporation created by a statute or it may be a Government Company or a Company formed under the Companies Act, 1956 or it may be a Society registered under the Societies Registration Act, 1860 or any other similar statute. It would be an authority within the meaning of Article 12 of the Constitution of India if it is an instrumentality or agency of the Government. The Supreme Court in the case of **Ajay Hasia (supra)** has held as under:

11. We may point out that it is immaterial for this purpose whether the corporation is created *by* a statute or *under* a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided

on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression “authority” in Article 12.

**12.** It is also necessary to add that merely because a juristic entity may be an “authority” and therefore “State” within the meaning of Article 12, it may not be elevated to the position of “State” for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of “State” in Article 12 which includes an “authority” within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV: it does not extend to the other provisions of the Constitution and hence a juristic entity which may be “State” for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in *S.L. Aggarwal v. Hindustan Steel Ltd.* [(1970) 1 SCC 177 : (1970) 3 SCR 363] and other cases involving the applicability of Article 311 have no relevance to the issue before us.

8. The Supreme Court in the case of **Central Inland Water Transport Corporation Limited and another Vs. Brojo Nath Ganguly and another** reported in (1986) 3 SCC 156, held as under:-

**19.** Thus, the expression “the State” when used in Parts III and IV of the Constitution is not confined to only the federating States or the Union of India or even to both. By the express terms of Article 12 the expression “the State” includes—

“(1) the Government of India,

- (2) Parliament of India,
- (3) the government of each of the States which constitute the Union of India,
- (4) the legislature of each of the States which constitute the Union of India,
- (5) all local authorities within the territory of India,
- (6) all local authorities under the control of the Government of India,
- (7) all other authorities within the territory of India, and
- (8) all other authorities under the control of the Government of India.”

**21.** As pointed out in *Craies on Statute Law*, 7th Edn., p. 213, where an interpretation clause defines a word to *mean* a particular thing, the definition is explanatory and prima facie restrictive; and whenever an interpretation clause defines a term to *include* something, the definition is extensive. While an explanatory and restrictive definition confines the meaning of the word defined to what is stated in the interpretation clause, so that wherever the word defined is used in the particular statute in which that interpretation clause occurs, it will bear only that meaning unless where, as is usually provided, the subject or context otherwise requires, an extensive definition expands or extends the meaning of the word defined to include within it what would otherwise not have been comprehended in it when the word defined is used in its ordinary sense. Article 12 uses the word “includes”. It thus extends the meaning of the expression “the State” so as to include within it also what otherwise may not have been comprehended by that expression when used in its ordinary legal sense.

**22.** Article 12 defines the expression “the State” while the other articles of the Constitution referred to above, such as Article 152 and Article 308, and clause (58) of Section 3 of the General

Clauses Act define the term “State”. The deliberate use of the expression “the State” in Article 12 as also in Article 36 would have normally shown that this expression was used to denote the State in its ordinary and constitutional sense of an independent or sovereign State and the inclusive clause in Article 12 would have extended this meaning to include within its scope whatever has been expressly set out in Article 12. The definition of the expression “the State” in Article 12 is, however, for the purposes of Parts III and IV of the Constitution. The contents of these two Parts clearly show that the expression “the State” in Article 12 as also in Article 36 is not confined to its ordinary and constitutional sense as extended by the inclusive portion of Article 12 but is used in the concept of the State in relation to the Fundamental Rights guaranteed by Part III of the Constitution and the Directive Principles of State Policy contained in Part IV of the Constitution which principles are declared by Article 37 to be fundamental to the governance of the country and enjoins upon the State to apply in making laws.

9. The Supreme Court in the case of **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and others** reported in (2002) 5 SCC 111, held as under:-

“19. Although the Court noted that it was the Government which was taking the "special care" nevertheless the writ petition was dismissed ostensibly because the Court factored into its decision two premises:

i) "The society does not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation or Industrial Finance Corporation. It is a Society incorporated in accordance with the provisions of the Society's Registration Act" (SCC p. 486, para 4), and

ii) "This Court has held in *Praga Tools Corporation V. Shri C.A. Imanuel & Ors.* [1969] 3 SCR 773, *Heavy Engineering Mazdoor Union v. The State of Bihar & Ors.* [1969] 3 SCR 995 and in *S.L.*

*Agarwal v. General Manager Hindustan Steel Ltd.* [1970]3 SCR 363 that the Praga Tools Corporation, Heavy Engineering Mazdoor Union and Hindustan Steel Ltd. are all companies incorporated under the Companies Act and the employees of these companies do not enjoy the protection available to Government servants as contemplated in Article 311. The companies were held in these cases to have independent existence of the Government and by the law relating to corporations. These could not be held to be departments of the Government". (SCC p.487, para 5)".

10. In view of aforesaid case law, the order passed by the Writ Court is unsustainable, hence, hereby set aside. The writ petition is liable to be decided on its merit and hence restored to its original number for its decision on merit. Let the respondents file the reply to the writ petition on merit. The interim relief in favour of the petitioner shall continue till disposal of the Writ Petition on merit.

11. The writ appeal stands **allowed and disposed of**.

**(VIVEK RUSIA)**  
**JUDGE**

**(RAJENDRA KUMAR VANI)**  
**JUDGE**

(alok)