

Government Company and Article 12 of the Indian Constitution

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Abstract—A state is a nation or territory considered as an organised political community under one government. It is an organisation which works for the betterment of the public. A company is an institution that survive for the purpose of earning profit and expansion. These two concepts find a converging point when it comes to a Government company made by a state for a money-oriented purpose to earn profit. The true status of this isn't yet defined in any category by the judiciary or the statute.

The author, through this short article, has made an effort to achieve or complete or to bring out the arguments that are in support of and opposition of the Government Company being a state under Article 12 of the Indian Constitution. The author has also aimed to bring to a conclusion the expressing necessity or obligation to address the status of a Government Company as a state for reasons clearly expressed and identified in the article.

Index Terms— Article 12, Indian Constitution, State, Government Agency, Companies Act, 2013.

I. INTRODUCTION

A state is a form of political alliance or a political consortium that has evolved or developed in the history. It is thus the supreme corporate entity. A State is much more than just a Government. A Government gets decomposed and dissolved while a State remains throughout. It has many organs which exists in collaboration of all these functional organs. John Locke said that a state is a common good or good of mankind. Ihering defined State as “the form of a regulated and assured exercise of the compulsory force of society”. According to Holland, “a State is a numerous assemblage of human beings generally occupying a certain territory amongst whom the will of the majority or class, made to prevail against any of their number who oppose it”.

Article 12 of the Constitution of India defines “the state”. “In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

The Article does not clearly characterize what the local authorities are and the same has been left to the court for clarification. Through its different points of reference, the judiciary has specified certain authorities that are thought to be a state. For instance: State Electricity Boards, CSIR, and Deemed to be colleges and so forth. The most problems that the

Indian legal system has seen in instances of Article 12 is while deciding the status of a company. While the court has set out a few justification for deciding the same, the Government Companies still miss the mark regarding the definition and have not been unequivocally bound as a State by the statutes or the courts itself.

For a similar reason, one must comprehend the idea of a 'company'. A company is a general public or relationship of people, in significant number, intrigued by a common purpose, and joining themselves for the indictment of some business or mechanical endeavor, or other authentic business. The best possible meaning of the word company, when connected to people occupied with trade, signifies those assembled for a similar reason or in joint concern.

A Government Company is an organisation shaped by the Central or State Government for any business reason. A Government organisation has been characterised under area 2(45) of the Companies Act, 2013. It expresses that an "Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the central Government, or by any State Government or Government, or partly by the central Government and partly by one or more State Governments, and includes a company which is subsidiary company of such a Government company.”

At the specific start, a Government Company appears to suggest the immediate contribution of the state functionaries in it and in this manner, giving its impression being a state. Nonetheless, the genuine status of a Government Company has dependably been vague. The legal understandings have endured the lacuna of characterizing a Government Company as far as State. Through this, take note of that the creator has endeavored to unite, every one of the features of a Government Company, which does and does not render it the status of a State Agency under one umbrella. The author has additionally endeavored to reveal the vagueness in regards to the idea of a Government Company and its connection with Article 12 through certain predominant corporate ideas.

A. *Legal Endeavours to Decide the Status of a Government Company*

An instrumentality or organization of the focal or state Government whatever be its frame, i.e. regardless of whether an organization or state Government, a society, etc., would be

'State inside the importance of that word as stated in Article 12 of the Indian Constitution.

The case of Ramana Dayaram Shetty v. the International Airport Authority of India and Ors dealt extremely with the question of a Government Company being a State. The Supreme Court expounded on a test, which would propose whether the corporations incorporated under the law are organisation or an instrumentality of the Government. The test may be summarized as:

- 1) The source of the share capital;
- 2) The extent of State Control over the Corporation and whether it is "deep and pervasive";
- 3) Whether the functions of the Corporation has a monopoly status;
- 4) Whether the functions of Corporation are of public importance and closely related to Governmental functions; and
- 5) Whether, what belonged to a Government Department formerly was transferred to the Corporation.

While the above test was utilized as an inescapable marker of statehood of a Government Company, the legal set down new and expand reason for choosing the same. In the case of Som Prakash v. Union of India, the court held that the Bharat Petroleum Corporation registered as a company under the companies Act is a state within the enlarged meaning of Article 12 of the Constitution. The Court additionally set out that the genuine test for the reason to decide the "authority" was the usefulness of the Company. It was held that the Agency of a state should mean a body which practices open capacity.

In the case of Hindustan Steel Works Construction Co. Ltd. V. State of Kerala, it was laid down that notwithstanding all the pervasive control of the Government, the Government Company is neither a Government department nor a Government establishment, therefore not a state.

The Supreme Court has held that though a company was wholly controlled by a state Government, it had a separate entity and its income was not the income of the State Government, in the case of Andhra Pradesh Transport Corporation v. ITO.

The employees of a Government Company were not held to be Government servants and therefore, the court held that the employees had no legal right to claim the extra compensation from the Government. This was held in the case of A. K. Bindal v. Union of India.

It might anyway be of significance to take note of that the 'Right to Information' is material on Government Companies. This implies Right to Information can be filed in regards to the working if a Government Company and the company is responsible to the citizens like some other state organ for the same. This makes a bigger disarray in the minds of the common man. For the Right to Information is only applicable on the Government units. Though, the Government Company isn't only a Government unit.

B. From the View of Separate Legal Entity

In the case of A Salomon v. Salomon and Co.Ltd. , the court has held that a corporation is distinct from its owner. It was in this case that the concept of separate legal entity finds its accommodation. The same was upheld in the case of Lee v. Lee's air farming ltd. As the concept travelled to India, we observe its acceptance in Re. Kondoli Tea Co. Ltd ., where the court held that 'the company was a separate body altogether from the shareholders and the transfer was as much a conveyance, a transfer of the property, as if the shareholders and the different persons.'

The idea of separate legal entity allows a distinct status to a company under the Companies Act. This status is independent from that of the proprietors/shareowners of the company. Subsequently, regardless of whether a company has its shareowners from the Government or not, it appreciates an alternate status under the law.

The piece of shareholdings in an organisation does not decide its actual status. It depends on the Memorandum of Association and the Articles of Association of an organisation that decides the genuine purpose behind the arrangement and presence of an organisation. This structures the determinant factor in choosing the actual idea of an organisation.

A Government Company, along these lines, can't simply be alluded to as a state in light of the creation of its investors. It's the capacities dispensed by the Government Companies that decide if they fall under the umbrella of Article 12 of the constitution or not.

C. Factors for Determining the Status of a Government Company:

In view of the contentions over, certain basic elements can be counted to determine the genuine status of a Government Company with respect to whether it falls underneath the head of the state or not. These factors are:

- a) *Source of share capital:* A Government Company gets dominant part of its offer capital from the Government (central or state).
- b) *Functional Autonomy:* Regardless of whether a company has the self-governance to do its own functions at its own understanding, as other state divisions.
- c) *Public function:* Whether the company is associated with conveying open functions of its own.
- d) *Monopoly:* Whether the company has a monopoly directly over different companies in the division because of the uncommon licenses and so on.
- e) *Control:* A company is an artificial person, which is overseen by the normal people who claim it and by the executives. It is the level of control that is appreciated by the Government in a Government Company which can help in deciding its status. It was held on account of Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Association that if the Government controls the everyday exercises of an organization, it is considered to be an office

of the Government.

- f) *Statutory birth*: Government Companies don't have a statutory birth yet are framed/joined under a statutory arrangement, along these lines not only included as a State.

D. Critical Analysis

The State is a politically inclined association that exists for the welfare of general society. A company has a business reason with a benefit intention. The two ideas of a 'state' and a 'company' have two distinct implications. One works for the general population welfare and alternate exists for the thought process of acquiring benefit from the general population. We discover a blend of both these ideas when a Government Company is framed. Toward one side, it is shaped by the state experts in their sovereign power. Then again, it is framed to execute a business reason.

The absence of no strict limits for a Government company in the law leaves it open to understanding with respect to whether its reality is for the benefit making reason or to deliver an open capacity, by prudence of being shaped by the Government and them being the shareholder in the company.

II. CONCLUSION

A Government Company enjoys a unique status under the Companies Act, 2013. From its introduction to the world to its consistently working, the Government has a task to carry out in it. It is reliant on the composition and measure of the pretended by the Sovereign in the company that aides in characterizing whether an organization can be thought about state or not.

Only by having an offer in the responsibility for incorporated company does not concede the company the personality like its investor. It depends on the elements that have been talked about in different cases and as said over, that the company's identity is resolved.

A company is an artificial person. The directors of a company run the business on an everyday premise. It depends on this business that the company gets its actual identity from. The general population who maintain this business as the directors play a key role in the same. It was held on account of

P.B.Ghayalod v. Maruti Udyog Ltd., that if an outside accomplice (assuming any) appreciates a bigger command over the company and the Government is a simple proprietor, the company won't be thought to be a state. Hence, all the previously mentioned factors set up together, helps in choosing the statehood of a Government Company.

India has seen a plenty of scams in the corporate area. From Harshad Mehta to the Sahara trick. It is the need of great importance for the Government to entirely choose the status of a Government Company for the accommodation of the overall population who depend on these companies for something or the other and are influenced by a minor inconvenience that happens in the administration and working of these companies.

A Government Company can either be a private or a public enterprise. This further makes it responsible to the citizens of the nation as the speculations made by them or the product that these undertakings convey to the general population. The statute ought to be revised so that the Government Companies are perceived as a state, in order to be considered more responsible and mindful and the same isn't left to vague, open finished translations of the legal which continues changing because of absence of a strict administration.

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