

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 4455 of 2019
(Arising out of SLP (C) No.18201 of 2015)

RAJBIR SURAJBHAN SINGH

.... Appellant(s)

Versus

THE CHAIRMAN, INSTITUTE OF BANKING
PERSONNEL SELECTION, MUMBAI

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. On 12.08.2013 an advertisement was issued by the Respondent inviting applications for appointment to posts of clerical cadre (Clerk-III) in Public Sector Banks. The Appellant participated in a Common Written Examination (CWE) conducted on 01.10.2013 and secured 110 marks out of 200. He was called for an interview by the Respondent on 14.02.2014. During the interview, he submitted a caste certificate dated 28.10.2010, issued by

the Naib Tehsildar, Nangal Chowdhary, Haryana which shows that he belongs to Ahir community, which is recognized as Other Backward Class (hereinafter referred to as the 'OBC') as per the Resolutions of the Ministry of Welfare, Government of India. Another caste certificate was issued in the prescribed format to the Appellant by the Naib Tehsildar, Nangal Chowdhary, Haryana on 29.01.2014, declaring him as an OBC candidate belonging to Ahir community and that he does not belong to the 'creamy layer'. The results were announced on 01.04.2014 and the Appellant was informed that his candidature for the examination has been cancelled as he could not produce the required certificate at the time of the interview. As per the advertisement, the candidates belonging to OBC category were required to produce a certificate issued during the period 01.04.2013 and 31.03.2015. The Appellant could not produce the certificate issued during the said period for which reason he was disqualified from participating further in the selection process.

2. The Appellant filed a Writ Petition challenging the proceeding dated 01.04.2014 by which he was disqualified from the selection process, for appointment to the post of Clerk, which was dismissed by the High Court as not maintainable. Hence, this appeal.

3. The High Court relied upon a judgment in Writ Petition (L) No.1042 of 2014 and others to dismiss the Writ Petition filed by the Appellant. The judgment in Writ Petition (L) No.1042 of 2014 pertains to a Common Written Examination conducted by the Respondent for recruitment to the posts of Probationary Officers/Management Trainees in participating organizations *i.e.* Public Sector Banks. The High Court was of the view that the Respondent was not a State within the meaning of Article 12 of the Constitution of India and there was no public function that was discharged by the Respondent. On said grounds, the High Court opined that the Respondent is not amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India.

4. Mr. Gagan Gupta, learned counsel appearing for the Appellant submitted that in the year 1975, Personnel

Selection Service (PSS), a unit of National Institute of Bank Management (NIBM), was constituted with the objective of developing an efficient system for recruitment, promotion, and placement services to Public Sector Banks. Said PSS unit became an independent entity in the year 1994 and came to be known as the Institute of Banking Personnel Selection *i.e.* the Respondent herein. The Respondent was registered under the Societies Registration Act, 1860 and as a public trust under the Bombay Public Trusts Act, 1950. The Respondent was recognized as a Scientific and Industrial Research Organisation in April, 1984 by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. The Respondent is also an associate member of the Indian Banks Association. Mr. Gupta submitted that the Respondent would fall under the expression “other authorities” under Article 12 of the Constitution of India as there is deep and pervasive control of the Government over the Respondent. He stated that the governing body of the Respondent-Institute consists of the Executive Director of the Reserve Bank of India; Joint Secretary to the Department of Financial Services, Ministry of Finance,

Government of India; Chairman - State Bank of India; the Chairman and Managing Directors of UCO Bank, Bank of India, Central Bank of India, Dena Bank; Chair Professor IIT Mumbai; CEO Indian Institute of Banking and Finance; Chief Executive, Indian Banks Association, Director - National Institute of Bank Management amongst others. He referred to a letter dated 20.09.2010 filed in this Court along with the rejoinder affidavit, written by the Under Secretary to the Ministry of Finance, Government of India to the Director of the Respondent-Institute conveying approval of the Government to the proposal of the Respondent for conducting a Common Recruitment Programme for recruitment of both clerks and officers in Public Sector Banks. He submitted that the document is evidence of the fact of administrative control of the Government of India over the Respondent-Institute. Alternatively, Mr. Gupta advanced an argument that, in any event, the Respondent-Institute discharges public functions and duties and would be amenable to the writ jurisdiction of the High Court. He argued that the Respondent-Institute was set up to cater to the selections made to Public

Sector Banks, apart from the selections made for appointment of thousands of candidates to co-operative banks, private banks, central and other financial institutions, public and private enterprises, government departments, Regional Rural Banks, universities, institutions, Certificate and Scholarship Examinations, etc. The Respondent-Institute also conducts training programmes for Public Sector Organisations. In support of his submissions, Mr. Gupta relied upon the judgments of this Court in ***Ajay Hasia v. Khalid Mujib Sehravardi***¹, ***R.D. Shetty v. I.A.A.I.***², ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others.***³, ***Zee Telefilms Ltd. v. Union of India***⁴, ***Janet Jeyapaul v. SRM Universities and Others***⁵, ***Andi Mukta Sadguru S.M.V.S.S.J.M.S.T. and Ors. v. V.R. Rudani and Ors.***⁶ and ***K. K. Saksena v. International Commission on Irrigation & Drainage***⁷. The further submission of the learned counsel for the Appellant is that nationalized banks would fall within the expression “State”

¹ 1981 (1) SCC 722

² 1979 (3) SCC 489

³ 2002 (5) SCC 111

⁴ 2005 (4) SCC 649

⁵ 2015 (16) SCC 530

⁶ 1989 (2) SCC 691

⁷ 2015 (4) SCC 670

under Article 12 of the Constitution of India and the Respondent-Institute which conducts the selections for appointment to Public Sector Banks should be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Referring to the facts of the case, learned counsel for the Appellant submitted that he produced the certificate issued in the year 2010 inadvertently. He submitted that non-production of the certificate issued on 29.01.2014 was by mistake and he should be given an opportunity to be considered for appointment to the post of Clerk as he is fully eligible for appointment on the basis of the marks obtained by him.

5. Mr. Adarsh B. Dial, learned Senior Counsel appearing for the Respondent argued that the Respondent was only an agency conducting the process of selections after being engaged by various nationalized banks and other public institutions/financial institutions. He stated that neither was any aid received by the Respondent from the Government nor was it administratively controlled by the Government. Merely because there were a few members in the governing body representing the Government and

the banks, it could not be said that the Government has administrative control over the Respondent. According to the learned Senior Counsel, conducting examinations for appointment to various posts in banks and financial institutions was not a public function. He asseverated that there was no public duty discharged by the Respondent and a Writ Petition under Article 226 of the Constitution of India against the Respondent was not maintainable. He further submitted that after the selection process in which the Appellant participated was completed in the year 2013, there were four selections that were conducted subsequently. The Appellant did not participate in any of those selections and he is not entitled to any relief at this stage. He also relied upon the following judgments; judgment dated 21.08.2014 of the High Court of Manipur at Imphal, 13.11.2014 and 18.11.2014 of the Bombay High Court, 10.04.2015 of the Punjab and Haryana High Court, 21.05.2015 and 31.08.2015 of the High Court of Jharkhand, and 31.03.2016 of the Delhi High Court, all by which various Writ Petitions filed against the Respondent were dismissed as not maintainable.

6. The objective of the Respondent-Institute as per the Memorandum of Association are:

- (1) "To establish and to carry on the administration and management of "Institute of Banking Personnel Selection."*
- (2) To plan, promote and provide for competent, well-qualified and efficient cadres of personnel at various levels to the banks and financial institutions in the country on a scientific basis.*
- (3) To render assistance in organizations in the areas of personnel such as recruitment, selection, placement, by designing, developing and printing suitable measurement test/tools, assessment of answer papers and processing results of examinations, and conduct such examination related services, on request.*
- (4) To carry out theoretical and applied research in the subjects of psychology and education."*

7. One of the functions to achieve said objects of the Respondent-Institute is to:

"Undertake to conduct on behalf of banks or financial institutions or other organization a total or partial selection project for recruitment or promotion involving all stages like designing and release of advertisement, receipt and screening of applications, conduct of examination, processing of results etc."

8. It is true that the Governor of the Reserve Bank of India and the Chairmen of certain Public Sector Banks along with the Joint Secretary, Banking Division, Ministry of Finance are members of the governing body of the Respondent-Institute. There is no dispute that the Respondent is not constituted under a statute. It is also

not disputed that the Respondent does not receive any funds from the Government. The Respondent is not controlled by the Government. The letter dated 20.09.2010 produced by the Appellant along with the rejoinder affidavit does not show deep and pervasive control by the Government of India. The question of whether the Council of Scientific and Industrial Research fell under 'other authorities' within the meaning of Article 12 was referred to a 7 Judge Bench of this Court. [See: ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others.*** (supra)]. Resolving the dispute, the 7 Judge Bench in *Pradeep Kumar Biswas* (supra) held that the question as to whether a corporation/society would fall within the meaning of Article 12 should be decided after examining whether the body is financially, functionally and administratively dominated by or under the control of the Government. This Court observed that such control should be particular to the body in question and must be pervasive. A control which is merely regulatory under the statute or otherwise would not make the body 'State' under Article 12. As there is no control by the Government over the Respondent in the

manner mentioned above, we have no doubt in our mind that the Respondent cannot be said to be falling within the expression 'State' under Article 12 of the Constitution of India.

9. The question that remains to be answered is whether the Writ Petition is maintainable against the Respondent on the ground that it discharges public duty. This Court in ***Andi Mukta Sadguru S. M. V. S. S. J. M.S.T. and Ors. v. V.R. Rudani and Ors.*** (supra) held "The term 'authority' used in Article 226 of the Constitution of India, must receive a liberal meaning unlike the term "other authorities" in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue Writs for enforcement of fundamental rights as well as non-fundamental rights. 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 the authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.”

10. This Court in the said judgment also referred to what Professor S.A. de Smith stated in *‘Judicial Review of Administrative Action’*, which is as follows:

“To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.”

11. In ***Regina v. Panel on Take-Overs and Mergers, Ex parte Datafin PLC and Another***⁸, Lloyd L. J. speaking for the Court of Appeal held that if the duty is a public duty, then the body in question is subject to public law. The distinction must lie in the nature of the duty imposed, whether expressly or by implication. He referred to an earlier judgment in ***Reg. v. Criminal Injuries Compensation Board, Ex. Parte Lain***⁹ where Diplock L.J. held that in addition to looking at the source of power for the purpose of deciding the question

⁸ [1987] 1 Q.B. 815 (C.A.)

⁹ [1967] 2 Q.B. 864, D.C.

pertaining to public law, nature of power is an important facet to decide whether a dispute pertains to public law or private law. _

12. There is no manner of doubt that a Writ Petition under Article 226 is maintainable even against a private body provided it discharges public functions. While deciding the question as to whether ICRISAT is amenable to the writ jurisdiction under Article 226, this Court held that it is not easy to define what a public function or public duty is. It can reasonably be said that such functions as are similar to or closely related to those performable by the State in its sovereign capacity, are public functions. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture, purely on a voluntary basis which according to this Court, is not a public duty¹⁰. A private company carrying on banking business as a scheduled commercial bank cannot be termed as an institution or a company carrying on any statutory or public duty¹¹.

¹⁰ G. Bassi Reddy v. International Corps Research Institute (2003) 4 SCC 225

¹¹ Federal Bank v. Sagar Thomas (2003) 10 SCC 733

13. In *K.K. Saksena* (supra), this Court observed that the Respondent therein would not be amenable to Writ jurisdiction under Article 226 of the Constitution of India, as the activities were voluntarily undertaken by the Respondents and there was no obligation to discharge certain activities which were statutory or of public character. Reference was made to the *Federal Bank* case wherein it was held that the Writ Petition was not maintainable under Article 226 of the Constitution of India in spite of the regulatory regime of the Banking Regulation Act and the other statutes being in operation. The relevant questions, according to this Court in *K. K. Saksena* (supra), to be answered for the purpose of deciding whether a Writ Petition is maintainable under Article 226 are:

- a)** Whether a private body which is a non-governmental organization partakes the nature of public duty or State action?
- b)** Whether there is any public element in the discharge of its functions?
- c)** Whether there is any positive obligation of a public nature in the discharge of its functions?

d) Whether the activities undertaken by the body are voluntary, which many a non-governmental organization perform? _

14. The Respondent-Institute has been set up for the purpose of conducting recruitment for appointment to various posts in Public Sector Banks and other financial institutions. Applying the tests mentioned above, we are of the opinion that the High Court is right in holding that the Writ Petition is not maintainable against the Respondent. Conducting recruitment tests for appointment in banking and other financial institutions, is not a public duty. The Respondent is not a creature of a statute and there are no statutory duties or obligations imposed on the Respondent.

15. This Court in **Federal Bank** case held that a Writ Petition under Article 226 of the Constitution is not maintainable against a scheduled bank on the ground that the business of banking does not fall within the expression “public duty”. As the activity of the Respondent of conducting the selection process for appointment to the banks is voluntary in nature, it cannot be said that there is

any public function discharged by the Respondent. There is no positive obligation, either statutory or otherwise on the Respondent to conduct the recruitment tests. For the reasons above, we are of the considered opinion that the Respondent is not amenable to the Writ Jurisdiction under Article 32 or Article 226 of the Constitution of India.

16. We are informed by the learned Senior Counsel for the Respondent that there were four recruitments that were conducted after the year 2013 but that the Appellant did not participate in any of these recruitments. As he did not participate in any of said subsequent recruitments, the Appellant is not entitled to any relief.

17. For the aforementioned reasons, the appeal is dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R. SHAH]

New Delhi,
April 29, 2019.