2026 INSC 233

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) 27366 of 2023)

RAVI KHOKHAR & ORS ... APPELLANT (S)

Versus

UNION OF INDIA & ORS. ... RESPONDENT (S)

J U D G M E N T

SANJAY KAROL, J.

Leave Granted.

Signature Not Verified
Digitally signed by RAJNI MUKHI
Date: 2026.03.12 17:31:09 IST
Reason:

THE CONTROVERSY IN A NUTSHELL

2. The Appellants are employees of the Air Force Group Insurance Society[1] established under the Societies Registration Act, 1860[2] in the year 1976, with sanction of the Hon'ble President of India, having been received in the same year on 6th October. The dispute germane to this *lis* is that while the Board of Trustees, had, *vide* special meeting dated 27th December 2016 decided that the pay scales of the workers would be revised in accordance with the Sixth Pay Commission of the Government of India, subsequently, by way of meeting dated 13th February 2017 resolved that pay structures would be revised in a way that any linkage/connection to and pay parity with the Central Government, by virtue of the Pay Commissions be done away with, and according thereto, asked all employees by way of notice dated 22nd May 2017 to sign their acceptance to the revised terms.

THE IMPUGNED JUDGMENT

3. The appellants, aggrieved thereby, filed Writ Petitions before the High Court of Delhi[3] which were dismissed by a

[1] AFGIS
[2] SRA
[3] WP(C) No. 5024 of 2017; [3] WP(C) No. 16428 of 2022, CM APPL 51620 of 2022; [3] WP(C) No. 6759 of 2022; [3] WP(C) No. 13858 of 2018; [3] WP(C) No. 863 of 2019; [3] WP(C) No. 15835 of 2022 & CM APPL. 49280 of 2022.

common judgment dated 1st February 2023. The findings of the Learned Division Bench can be summarised as follows:

> 3.1 The Court's central finding was that none of the respondent organisations, namely the Air Force Group Insurance Society, the Air HQs Non-Public Fund Organisation, or the CRPF Employees' Educational Society, could be treated as "*State*" or "*other authority*" within the meaning of Article 12 of the Constitution of India. This determination was foundational, because the Court held that unless the respondents satisfied the requirements of Article 12, the writ petitions under Article 226 were not maintainable and the Court cannot not adjudicate on claims relating to pay parity, service conditions, promotions, retirement age, or implementation of Pay Commission recommendations.
>
> In examining the status of the Air Force Group Insurance Society, the Court found that it is a Society registered under the Societies Registration Act, 1860, established in 1976 as a self-contained and self-run welfare and insurance scheme meant exclusively for Air Force personnel and their families. While senior Air Force officers form part of the Board of Trustees and certain officers are posted with the Society on deputation, the Court held that this association does not translate into deep

or pervasive governmental control. The day-to-day administration of the Society is carried out under its own internal governance framework, and its finances are sourced entirely from member contributions and the insurance fund rather than from any budgetary allocation or grant from the Central Government. The Court placed particular reliance on the appointment letters of AFGIS employees, which expressly state that their service conditions are governed by the Rules of the Society as amended from time to time. The Court noted that there is no statutory or contractual guarantee of parity with Central Government employees and that allowances and pay structures are subject to approval by the Board of Trustees. The Court, therefore, concluded that even if historical parity with Central Government pay scales had existed in practice, it did not create any enforceable legal right nor did it convert AFGIS into an instrumentality of the State.

3.2 While addressing the legal tests applicable to Article 12, the Court reaffirmed the principles laid down by the Constitution Bench of the Court in ***Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others***[4]***,*** which emphasised that the decisive question is not how an entity

[4] (1981) 1 SCC 722

is created but whether it functions as an instrumentality or agency of the Government. The Court further relied on ***Pradeep Kumar Biswas and Others v. Indian Institute of Chemical Biology and Others***,[5], where the Supreme Court clarified that the tests laid down in ***Ajay Hasia*** (supra) are not rigid and that the cumulative facts must demonstrate financial, functional, and administrative domination by the Government, with control that is deep and pervasive. The Court also drew support from ***Chander Mohan Khanna v. National Council of Educational Research and Training***[6], which cautioned against an over-expansive interpretation of Article 12 merely on the basis of governmental association or assistance.

The Court specifically rejected the petitioners' reliance on ***Sagarika Singh v. Union of India and Others***[7], noting that the reasoning in that decision had subsequently been disapproved by a larger Bench of the Delhi High Court in ***Ex. Sub. Rajender Singh v. Union of India and Others***[8],. The Court observed that the larger Bench had clarified that welfare or insurance schemes connected with the armed forces cannot automatically be

[5] (2002) 5 SCC 111
[6] (1991) 4 SCC 578
[7] 2011 SCC OnLine Del 3612
[8] 2013 SCC OnLine Del 1598

treated as "*State*" in the absence of pervasive governmental control, and that the earlier view taken in ***Sagarika Singh*** (supra) no longer represents good law.

3.3 Applying these settled principles to the facts of the present cases, the Court concluded that all the respondent organisations are autonomous, self-funded societies established for the limited benefit of their members and not for the public at large. The Court found no evidence of financial dependence on the Central Government, nor any administrative or functional domination of the kind required to attract Article 12. Consequently, the writ petitions were held to be not maintainable. The interim protection granted in one of the petitions was vacated, and all petitions were dismissed with liberty granted to the petitioners to pursue their remedies before appropriate alternative forums such as civil courts or labour adjudicatory bodies.

3.4 It has to be noted that the status of certain other bodies as "*State*" within the meaning of Article 12 was also a question before the High Court, namely Air HQs Non-Public Fund Organisation and CRPF Employees' Educational Society, but since the determination in respect thereof is not under challenge before us, we need not enter into the particulars thereof.

THE CASE OF THE PARTIES

A. *The Appellants*

4. We have heard Mr. Shoeb Alam, learned senior counsel for the appellants. It is submitted that AFGIS has represented itself to be '*Government*' in official correspondence. As an example, a letter dated 15th March 2016 was shown. The cumulative test is financial functional and administrative dominance of the Government and accordingly it is submitted that the day-to-day affairs are managed by serving senior officers of the Indian Air Force[9]. The very establishment was with the sanction of the Hon'ble President of India, and membership of this Organisation is compulsory for all Officers and Airmen. Further, the land on which the office is situate has been granted by the Ministry of Defence, Government of India, and it also enjoys exemptions from various taxes levied. Still further, it is also highlighted that the functions performed by AFGIS are of public importance and welfare oriented. Heavy reliance is placed on a recent judgment of this Court in ***Rajkaran Singh v. Union of India***[10]**,** wherein this Court examined the issue concerning employees of a compulsory savings fund being entitled to benefits of the Central Pay Commission, which was answered in the affirmative given

[9] 'IAF'
[10] 2024 SCC OnLine SC 2138

alignment of service conditions, pervasive government control and public function. As such, the appellants, being similarly placed would also be entitled to the benefits of the 7th Pay Commission in line with the past position where they have been granted the said benefits.

B. *Respondent-AFGIS*

5. Mr. Ankur Chibber, learned Counsel appeared for AFGIS and submitted that the body is not '*State*' within the meaning of Article 12 for it is a self-financed, non-public fund society. The premiums paid by the members are deducted centrally by the Air Force Central Accounts Office and then remitted to the Organisation. This is the only source of funds, and it has no inflow or outflow from the Consolidated Fund of India. During the time when the officers of IAF come to the Organisation on deputation their salary and allowances are borne by the AFGIS itself. It also employees 47 civilian staff members who are not government servant. The members of the Board of trustees are *ex-officio* and do not receive any remuneration in respect of these duties. The accounts are maintained by a privately hired Chartered Accountant and AFGIS does not submit any report to the Comptroller and Auditor General of India. It is as such submitted that the High Court's holding in the impugned

judgment that a petition under Article 226 will not be maintainable, is the correct position in law.

C. *Respondent-UNION OF INDIA*

6. Mr. Vikramjeet Banerjee, learned ASG appeared for the Union of India and supported the stand of AFGIS.

CONSIDERATION ON MERITS

7. Since the advent of the Constitution, the question of whether a particular body can or cannot be recognised as '*State*' within the meaning of Article 12[11] has arisen time and again. Initially, this Court adopted a narrow and formalistic approach focusing on whether the body concerned which was created under a statute was part of the traditional Government structure. Over the time however, as functions of the Government expanded multi-fold there was a shift in this approach. State instrumentalities, corporations and autonomous bodies were recognised as covered under this Article, with the shift to a functional and purposive analysis. The test to be satisfied pertained to the nature of functions, character of activity, degree of governmental control. This ensured that the breadth or scope

[11] Article 12 of the Constitution of India reads thus:
"12. 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."

of examination when this question arises is not limited to ownership/origin but is instead informed by accountability, the rule of law in furtherance of practical governance. It shall be useful to refer to certain cases to exemplify the requirements that need to be established for an organization be held to be "*State*".

7.1 P.N Bhagwati J. (as His Lordship then was) writing for the Court in ***Ramana Dayaram Shetty v. International Airport Authority of India***[12], observed:

> "**14.** A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the

[12] (1979) 3 SCC 489 , 'R.D Shetty'

> corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, 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. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

7.2 A Constitution Bench in ***Ajay Hasia*** (supra) following the tests laid down in ***R.D Shetty*** (supra)held as under:

> **"9.** The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority case* [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within

the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority case* [(1979) 3 SCC 489] 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. (SCC p. 507, para 14)

(*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. (SCC p. 508, para 15)

(*3*) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(*4*) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(*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. (SCC p. 509, para 16)

(*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." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the *International Airport Authority case* [(1979) 3 SCC 489] , be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

7.3 A bench of seven Judges in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***[13] speaking through Ruma Pal J., referred to the previous decisions of the Court and held as under:

> "**38.** … "these are merely indicative indicia and are by no means conclusive or clinching in any case". In that case, the question arose whether the National Council of Educational Research (NCERT) was a "State" as defined under Article 12 of the Constitution. NCERT is a society registered under the Societies Registration Act. After considering the provisions of its memorandum of association as well as the rules of NCERT, this Court came to the conclusion that since NCERT was largely an autonomous body and the activities of NCERT were not wholly related to governmental functions and that the government control was confined only to the proper utilisation of the grant and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. …
>
> **39.** Fresh off the judicial anvil is the decision in *Mysore Paper Mills Ltd.* v. *Mysore Paper Mills Officers' Assn.* [(2002) 2 SCC 167 : 2002 SCC (L&S) 223 : JT (2002) 1 SC 61] which fairly represents what we have seen as a continuity of thought commencing from the decision in *Rajasthan Electricity Board* [AIR 1967 SC 1857 : (1967) 3 SCR 377] 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.

[13] (2002) 5 SCC 111

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] 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.

(emphasis supplied)

Recently in ***Rajkaran Singh*** (supra), on which great reliance has been placed by the appellant, this Court while dealing with the question whether the compulsory savings deposit fund of the Special Frontier Force, was 'State' or not whether the benefit of the 6th Central Pay Commission would be extended to the employees thereof or not. In para 26 of the abovesaid judgment the concluding paras of Pradeep Kumar Biswas (supra) were reproduced and thereafter applied to the instant facts. The concluding paras of the latter judgment indicate the following – to be an authority within the meaning of Article 12 the entity should either be a creation of statute or be created under a statute functioning with liabilities and obligations to the public; Tests 1, 2 and 4 in ***Ajay Hasia*** (supra) are determinative of ownership and tests 3, 5 and 6 are functional test. It is thereafter observed that "*Neither all the tests are required to be answered in the positive nor a positive answer to one or two tests would suffice. It will depend on a combination of one or more of the relevant factors depending on the essentiality and overwhelming*

nature of such factors in identifying the real source of governing power…"

7.4 The discussion made by N. Santosh Hegde J, writing for the majority in ***Zee Telefilms Ltd. v. Union of India***[14], is important for the present purposes. It was held:

> "**31.** Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.
>
> …
>
> **33.** 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. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas case* [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] hence there is force in the

[14] (2005) 4 SCC 649

contention of Mr Venugopal that this petition under Article 32 of the Constitution is not maintainable."

(emphasis supplied)

8. We now proceed to evaluate the rival contentions in the light of the judgments referred to *supra*. It is not in dispute that ***(a)*** membership of AFGIS is compulsory for all officers and Airmen; ***(b)*** the contribution of premiums are automatically deducted from the salaries; ***(c)*** the Board of Trustees comprises entirely of senior serving IAF officials; ***(d)*** service at AFGIS is considered to be proper deputation for officers and the sanction for this Body as also its deputation rules was granted by the Hon'ble President of India; ***(e)*** AFGIS periodically reports its financial transactions to a senior officer in the IAF; ***(f)*** in letter dated 15th March 2016 AFGIS itself accepts its position as '*Government*'; ***(g)*** the President has accorded sanctions on separate occasions viz., introduction of substantive post in the Society, specific fixation of pay bands; and ***(h)*** the Society is exempt from various taxes given its compulsory nature as also automatic deduction from pay, AFGIS has a monopoly over insurance for IAF members. Let us unpack these points.

9. For points (a), (b), (f) and (g) the relevant portion of the letter dated 15th March, 2016 referred to *supra* are reproduced below:

"**2.** xxx xxx xxx

(e) Para 5: As regards the issue of submission of ITR along with form 26 as for the period from 2010-11 to 2014-15, it is informed that this Society is established under the authority of Ministry of Defence, Govt of India to be run departmentally as a self-contained Society vide GOI, MoD letter No Air HQ/25657/17/D/Accts/1197 DOLA (Air-11)/76 dated 06 Oct 1976 and that this Society is registered under the Society Registration Act (XXI of 1860) and also that this Society has been established by the Armed Forces of the Union of India (Air Force) for the welfare of the past and present members (air warrior / air veterans) and their dependents. The principal objective of the Society is to collect the mandatory and compulsory deduction from the air warriors so as to provide the financial relief in case of contingencies of death/disability of the air warrior occurring while in service/post retirement. Further, the Society also provides welfare services to air warriors / air veterans and their dependents by payment of survival (saving element of the mandatory and compulsory deduction) on retirement/death. The income of the Society is exempted from Income Tax u/s 10(23)(C)(iv) of Income Tax Act 1961 as notified vide MoF letter No F.275/29/85-IT(B) dated 05 Jun 1985.

xxx xxx xxx

3. xxx xxx xxx

(c) Basis of the Working of the AFGIS: Consequent to the aforesaid sanction/approvals, the contributions by air warriors to AFGIS have been made mandatory and compulsory in terms of Air Force Instructions (AFI) 16/87 issued by the Govt of India (Ministry of Defence). The monthly mandatory contributions are compulsorily deducted from the salary of all air warriors (officers, airmen and NCs(E)) from the day they join IAF. Hence, membership to the group insurance has become an

integral part of the Service Conditions. It is pertinent to mention here that the AFGIS, like Army Group Insurance and Naval Group Insurance, caters only to 'Men in Uniform' and is not open to civilians or the general public. AFGIS does not issue any insurance policies to the air-warriors for its insurance schemes.

xxx xxx xxx

(g) Relationship between AFGIS and its Air Warrior Members.

One of the primary factors for deciding the applicability of Service Tax is the relationship between a service provider and service receiver wherein there is a "flow of service". AFGIS is a self-contained Society run departmentally under the authority of Govt of India (Ministry of Defence). The insurance schemes run by AFGIS are exclusively for the air warrior members hence the group is a "Closed Group". Membership and contribution to the schemes is compulsory and mandatory. Following examples regarding decisions given by the Courts could further clarify this matter.

(i) In the case of Saturday Club Ltd v/s Assistant Commissioner, Service Tax, 2006 (3) STR 305; the Hon'ble High Court of Calcutta observed that, "Principally there should be an existence of two sides/entities for having transaction as against consideration. In a members club there is no question of two sides. 'Members' and 'club' both are same entity. One may be called as 'Principal' while the other may be called as 'Agent' and therefore, such transaction in between themselves cannot be recorded as income, sale or service as per applicability of the revenue tax of the country."

(ii) In the matter of New Delhi CESTAT in the case of Federation of Indian Chambers of Commerce & Industry (FICCI) v/s Commissioner of Service Tax, Delhi (2015) 38 S.T.R. 529 (New Delhi - CESTAT) wherein the

Tribunal held that the service by FICCI to its members is not liable for payment of service tax owing to 'Principle of Mutuality'.

(h) AFGIS is controlled by the Govt. of India through the Ministry of Defence and Air HQ and hence is "Government" in terms of Finance Act, 1994. AFGIS acts as a wing of the Government and hence the collection received from its members is outside the purview of the service tax primarily on the basis of "Principle of Mutuality" and by virtue of Section 66 D of the Finance Act, 1994 wherein the service of 'Government' is outside the purview of the Service Tax.

xxx xxx xxx"

Air Force instruction dated 1st October 1987 mandating membership of AFGIS is as under:-

COPY

AIR FORCE INSTRUCTION
NO – 16

New Delhi, Thursday, October 1, 1987/Asavina 9, 1909

COMPULSORY MEMBERSHIP-GROUP INSURANCE SCHEME

1. The membership under Air Force Group Insurance Society for the Insurance Scheme in existence at the time of joining Indian Air Force will be compulsory for the following:-

   (a) Officers
   (b) Airmen
   (c) NCs(E)
   (d) Flight Cadets

2. All personnel who are members of Enhanced Group Insurance Scheme 1982 of Air Force Group Insurance Society shall automatically become members of any other Insurance Scheme floated in future by the Air Force Group Insurance Society. The will be liable to pay insurance premium for the new scheme as fixed by the Air Force Group Insurance Society from time to time.

3. All personnel who are not members of Enhanced Group Insurance Scheme 1982 but are members of Group Insurance Scheme 1975 or 1978 can become members of any new insurance scheme floated by Air Force Group Insurance Society after becoming members of Enhanced Group Insurance Scheme 1982, for which they will be required to pay the insurance premium applicable for 1982 scheme from 01 Apr 82 till the date the new schemes come into force. Premium paid under 1975 and 1978 Schemes will be retained and paid at the time of retirement will applicable rates of interest.

4. These provisions take effect from the date of issue of this AFI.

Case No. Air HQ/24018/16/PP&R-1/D (Air-III)
Min of Def/(Fin) UO No. 1410/Pay/AF of 1987

Sd/-
(R.K. Dhir)
Dy Secretary

10. For point (c), reference may be made to the Manual of Administration and Management, Air Force Group Insurance Society (Published under the Authority of Board of Trustees AFGIS) 2009

CHAPTER 2

ADMINISTRATION

Board of Trustees

1. The Society will be administered by a Board of Trustees and a Managing Committee as per the details given in succeeding paras.

2. The Board of Trustees constitute the following:-

AOA — Chairman
DG(IBS) — Member
DCAS — Member
AOM — Member
AOP — Member

ACAS (Accts) — Member
PD AFGIS — Member Secretary

18. **Secretary**. The Secretary shall be an officer of the rank of Gp Capt of the Accounts Branch and will be on deputation to the Society as per the terms and conditions approved by the Government. His appointment will be approved by the Chairman, Board of Trustees. He will conduct day to day administration and be responsible to Principal Director, AFGIS on all matters of the Society. He shall perform the following functions:-

(a) Carry out administrative duties as may be entrusted to him by Principal Director, AFGIS.

(b) Give notice of the meeting to the members of Board of Trustees/Managing Committee and prepare briefs on all agenda points to be sent to the members.

(c) Attend all meetings of the Board of Trustees and Managing Committee unless prevented by illness or excused from attending by the Chairman and record the Minutes of all meetings of the Board of Trustees.

(d) Communicate decisions of the Board of Trustees/Managing Committee to concerned executives for implementation.

(e) Be responsible for the efficient functioning of Claims, Advances, PRIC and Contribution Sections and correct maintenance of connected records.

(f) Conduct correspondence o behalf of the Board of Trustees and Managing Committee

(g) Finalise and settle all death, disability and survival benefit claims duly approved by the appropriate authority.

(h) prepare the annual report of the Society for approval by the Board of Trustees.

(j) Perform the duties of Principal Director and JD (Fin) in the absence of the permanent incumbent.

(k) Approve expenditure as per the financial powers delegated within the overall budget limit approved by the Board of Trustees.

(l) Put up proposals for investment of funds of the Society."

xxx xxx xxx

11. For points (d), the following letter is extracted:-

11(5)2000/DOI/DOI/D(Air-III)
Government of India
Ministry of Defence
New Delhi dated the 27th Mar 2002

To

The Chief of Air Staff
(with 15 Spare copies)

Subject: GENERAL TERMS & CONDITIONS FOR DEPUTATION OF OFFICERS TO AIR FORCE GROUP INSURANCE SOCIETY

Sir,

I am directed to convey the sanction of the President to the general Terms & Conditions for deputation of IAF officers to Air Force Group Insurance Society as laid down in Annexure 'A' of this letter.

3. This issues with the concurrence of Ministry of Defence (Finance) vide their u.o. No.543/P&W/AF dated 22 Mar 2002.

Yours faithfully,

(G. Srinivasan)
Desk Officer

12. For point (e) relevant portion of Manual of Administration and Management, AFGIS:-

35.**Monitoring System** On 25th of every month, PD AFGIS is to apprise ACAS (Accts) on the case flow of AFGIS, bringing out the details of all investment during the previous 30 days. He is also to make a structured presentation to AOA of investment status, the quotations received during the previous quarter along comparative statements, their forecast appreciation of the investment environment the next quarter and the case flow assessment of the next quarter. At the end of every quarter the performance analysis of the investment is to be put up to both for their perusal.

13. For point *(g)* reference is made to the following letters dated 25th February 1985 and 28th September 1981:-

"No.Air HQ/5.18172/22/3/PC-26/Plans/361/DOIIA/

D(Air-III)
Government of India,
Ministry of Defence,
New Delhi, the 25th February, 1985

To

The Chief of the Air Staff (with 35 spare copies)

SUBSTANTIVE CADRE OF GROUP CAPT AND ABOVE - DIRECTOR OF GROUP INSURANCE SOCIETY

Sir,

I am directed to refer to this Ministry's letter No. Air HQ/S.18172/22/3/Plans/3750/D(Air-III)/62 dated 15th May, 1974 as amended from time to time and to convey the sanction of the President to the inclusion of one post of Air Cmde (Accts) in the substantive cadre of Air Cmde (Accts) so long the post of director of Group Insurance Society is held by an Air Force Office and its deletion from the existing substantive cadre/of Group Cap-t (Accts).

2. This issues with the concurrence of Ministry of Defence/ (Finance/Division)vide their u.o. No. 351/Org/S/AF of 1985.

Yours faithfully,

(H.D. SHARMA)
DESK OFFICER

xxx xxx xxx

Appendix 'E'
(Refers to para 9 of
Chapter 3)

No. Air HQ/24011/71 PP & R-1/2282/DOIIB/D (Air III)

Government of India/Bharat Sarkar

Ministry of Defence /Raksha Mantralaya
New Delhi, the 28 September, 1981
6th Asvina, 1903 Sako Era

To

The Chief of the Air Staff,
Subject: Enhancement of Flying Pay-Air Force Personnel
Sir,

1. I am directed to refer to para 9(b) of AFI 4/S/74 as amended and Serial No.12 of Appendix 'B' to AFI 2/S/74, as amended and to state that the president is pleased to decide that with effect from 01 Sep 1981, the rates of flying pay will be enhanced as under:-

(i) Wing Commander and below
Rs.750.00 pm

(ii) Group Caption and Air Cmde
Rs.666.00 pm

(iii) Air Vice Marshal and above
Rs.600.00 pm

(iv) Airmen including JWOs, WOs and MWOS
Rs.374.50 pm

2. The increased flying pay will be admissible subject to additional insurance cover as given below, taken through Air Force Group Insurance Society (AFGIS):-

(a) Officers of the flying branch are required to obtain additional life insurance cover against all risks, including flying for a minimum of Rs.2 Lakhs effective from 01 Oct 81, on payment of monthly contribution as given below:-

(i) Wing Commander and below
Rs.325.00 pm

(ii) Group Captain and Air Cmde
Rs.283.00 pm

(iii) Air Vice Marshal and above
Rs.250.00 pm

(b) Officers of the Ground duty Branches, entitled to flying pay will be required to obtain additional life insurance cover against all risks, including flying, for a minimum of Rs.2 Lakhs effective from 01 Oct 81, on payment of monthly contribution as applicable to equivalent ranks of the flying branch only during the period of entitlement of flying pay.

(c) Airmen aircrew, entitled to flying pay, will be required to obtain additional life insurance cover against all risks, including flying for a minimum of Rs. One Lakhs effective from 01 Oct 81, on payment of monthly contribution of Rs.162.00 only during the period of entitlement to flying pay.

(d) The Air Force Group Insurance Society will pay Survival Benefit to persons covered under the above insurance scheme on retirement/release, the amount of which will be determined by the said Society from time to time.

3. (a) The amount payable to the Group Insurance Scheme is to be recovered from IRLAs of officers and airmen from the pay of Sep 81 onwards and paid by the Air Force Central accounts Office to Air Force Group Insurance Society in respect of personnel for whom IRLAs are maintained, on the day pay for the month is disbursed.

(b) (i) Deputationists and other officers and airmen for whom no IRLAS are maintained at Air Force Central Accounts Office and who are entitled to enhance flying pay, are to obtain insurance cover for the amounts, as applicable by remitting the contributions to Air Force Group Insurance Society for the flying pay to be admitted.

(ii) In the case of the existing deputationist and other officers and airmen for whom no IRLAs are maintained by Air Force Central Accounts Office and who are entitled for enhanced flying pay contributions are to be remitted by them direct to the AFGIS latest by 01 Jun 82. However, the contributions will have to be made wef 01 Oct 81.

(iii) In the case of the officers mentioned above whom no IRLAs are maintained by AFCAO, the controlling officers will admit flying pay only on receiving a certificate/receipt from the Air Froce Group Insurance Society to the effect that the individual has contributed for the month(s) for which flying pay is admitted.

(c) In view of the provisions made in sub paras (a) & (b) (iii) above, no certificate of payment of insurance premium will be required to be given by OC Unit and no POR is necessary, in respect of this additional insurance cover. However, the flying pay certificate prescribed in the Appendix 'G' to AFI 2/S/74 and Appendix 'C' to AFI 2/S/74 will continue to be furnished.

4. Other conditions governing flying pay including insurance cover required under the earlier orders remain unchanged.

5. AFI 4/S 74 and AFI 2/S/74 will be amended in due course.

6. This issues with the concurrence of Min of Fin (Def) vide their No.2622/Pay/ AA of 1981.

Yours faithfully,

Sd/-
(N.N. Mathur)
Desk Officers

xxx xxx xxx"

14. For point ***(h)*** the Notification dated 31st October 1983 exempting the Society from estate duty is extracted below:-

"Appendix 'D'
(Refers to para 8
of Chapter 1)

TO BE PUBLISHED IN PART II SECTION 3-SUB SECTION (1) OF THE GAZETTE OF INDIA

Government of India
Central Board of Direct Taxes
New Delhi, the 31" October, 1983

NOTIFICATION
ESTATE DUTY

GSR 841, Whereas the Central Government is of opinion that circumstances are such that some relief in addition to the relief provided in sub section (i) of Section 33 of the Estate Duty act, 1953 (34 of 1953) should be given in respect of the following class of property belonging to the deceased which passes on his death and in respect of which estate duty is liable to be levied and collected under the said Act, namely, the money payable under Army Group Insurance Scheme or the Naval Group Insurance Scheme or the Air Force Group Insurance Schemes as the case may be, in existence on the date of publication of this Notification in the Official Gazette. Now, therefore, in exercise of the power conferred by sub section

(2) of the section 33 of the Estate Duty Act, 1953 (34 of 1953), the Central Government hereby directs that no estate duty shall be payable in respect of the aforesaid class of property.

Sd/
(Arvind Pinto)
Under Secretary to the Government of India

(F.No.296/7/83-ED)

Notification dated 5th June 1985 exempting AFGIS from income tax, is as under:-

"Appendix 'B'
(Refers to para 7(c) of Chapter 1)

Copy

TO BE PUBLISHED IN PART II SECTION 3 (II) OF THE GAZETTE OF INDIA

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NEW DELHI, TIME 5th JUNE, 1985

NOTIFICATION
INCOME TAX

S.O. In pursuance of sub clause (f) of clause (iii) of sub section (3) of section 194A of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Society known as Air Force Group Insurance Society, New Delhi, for the purpose of the said sub- clause.

(F. No. 275/29/85-IT (B)
Sd/-
(B.Nagarajan)
Deputy Secretary to
the Govt of India

xxx xxx xxx”

15. In our view, a perusal of the documents extracted *supra* make out a case for AFGIS to be considered ‘*State*’ within the meaning of Article 12. For the aspect of deep and pervasive control, we observe that the Hon’ble President of India granted sanction for AFGIS to be established and also specifically approved the deputation Rules; the Principal Director (AFGIS), every month is to apprise the Assistant Chief of Air Staff regarding the cash flow of AFGIS which ensures monitoring by a core member of the IAF on the activities of AFGIS; the membership and deductions arising therefrom are a compulsory aspect of serving in the IAF, meaning thereby that there is no choice of the individual officer in that matter and instead is a mandate from the employer. When the aspect of administrative control is examined, it is seen that all the members of the Board of Trustees, so also the Managing Committee are serving members of the IAF and are deputed to AFGIS for a fixed period. In essence, therefore, the administration of the Body is entirely in the hands of Government servants even though the body itself is a purportedly private, a self-contained society. The appellant, in submitting that financial control also rests with the Government says that since the mandatory reduction of the premium is directly/automatically from the salary of the

members of IAF and these salaries are charged to the Consolidated Fund of India- this shows financial control.

16. We are unable to accept this contention. It may be that in so far as financial aspects of AFGIS are concerned, the Government may not have a direct role however for a body to be held to be a 'State' it is the cumulative effect and impact of deep and pervasive control, financial and administrative control along with other factors such as carrying out of public duty.

17. We are of the considered view that AFGIS does indeed perform a public duty. The protection and welfare of armed forces personnel is a core government function. The role of the armed forces is directly linked to the sovereignty and security of the nation and in protecting the same members of the forces are required to adhere to, abide by, and maintain a strict set of rules, unquestionable conduct, and at times in the most severe and adverse circumstances. Thus, providing insurance coverage is a public function as it addresses a collective obligation the State has towards a defined public class whose service is indispensable. The body, in effect, becomes a conduit for the discharge of that obligation. The role of the State in protecting them does not end upon their superannuation from service for the life of a person from the forces is forever shaped by their time in service. Insurance to service members is a critical instrument for safeguarding their physical, mental well-being, dignity and

economic security. It operates as an assurance of protection and support in case contingencies such as disability or illness befall them or even untimely death which is a real possibility in these services. The fact that healthcare, rehabilitation, support to dependants is available readily, is undoubtedly an aspect that gives great peace of mind to the member of service enabling them to carry out their duties without worry, at least in this regard.

18. In addition to the discussion above, it is also seen that at one-point AFGIS itself claimed to be Government while claiming an exemption from service taxes, since it is under the control of Ministry of Defence. In effect, by opposing the challenge of the appellants, AFGIS has resiled from its own statement. We fail to understand an organisation can be '*Government*' for one purpose and not be, for another purpose.

19. Consequent to the above discussion, AFGIS would be '*State*' under Article 12. The writ petition before the High Court accordingly, maintainable. The said writ petition on the grievance of the appellants is restored. The High Court is requested to decide the same expeditiously keeping in view the fact that the same has been filed in the year 2017. Appeal is allowed.

Pending application(s) if any shall stand disposed of.

……..……..……..J.
(SANJAY KAROL)

……..……..……..J.
(VIPUL M. PANCHOLI)

New Delhi
March 12, 2026