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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PRADEEP KUMAR BISWAS V. **INDIAN INSTITUTE OF CHEMICAL BIOLOGY**

AUTHORED BY: KANISHKA GUNJIYAL

B.A.LL.B. (Hons.) Third Year

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INTRODUCTION

The concept of rights is like an “*old wine in a new bottle.*”¹ Although rights might appear to be a novice idea in the present world, their inheritance by men even before the advent of the state suggests its inviolability. Keeping this notion in mind, the Constituent Assembly promulgated the idea of fundamental rights within Part III of India’s Constitution.² This part commences with a definition of the state under Article 12 and serves as a constitutional guarantor against all its arbitrary actions. However, fundamental rights cannot be invoked against private entities and are held enforceable only against the state.³

Article 12 in its definition of the state, also brings ‘other authorities’ within its domain. In various precedential cases, the word ‘other authorities’ has often been construed with equivocal connotations. However, its meaning was finally settled in the 2002 case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*.⁴

¹ ‘New Wine in Old Bottles Definition’ (Collins Dictionary) < <https://www.collinsdictionary.com/dictionary/english/new-wine-in-old-bottles>> accessed April 12, 2022.

² Dhruv Sharma, ‘The Clear Sky: Interpreting Article 12 through Pradeep Kumar Biswas & Ors v. Indian Institute of Chemical Biology & Ors (2008) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1106615> accessed April 14, 2022.

³ VN Shukla, *Constitution of India* (13th edn, Eastern Book Company 2017) 24.

⁴ *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111.

HISTORICAL BACKGROUND

In the *Sabhajit Tewary v. Union of India*⁵ case of 1975, a writ petition seeking parity in wages was filed by Sabhajit Tewary, who was working as a junior stenographer in the Council of Scientific and Industrial Research (CSIR). The petition based itself on Article 14 of the Constitution and deliberated on the fundamental nature of this body. However, a constitutional bench comprising five judges dismissed this petition and held CSIR not to be an ‘authority’ within Article 12’s ambit.⁶

The rationale behind the dismissal of this petition lies in the non-statutory nature of CSIR. Unlike IFC, LIC, and ONGC, CSIR does not find its origin in a statutory body and is merely registered under the Societies Registration Act.⁷ Moreover, the independent nature of CSIR professed by the court was made evident through the non-applicability of Article 311 which deals with the protections enjoyed by public servants to the state. Hence, its inapplicability to the employees of CSIR rendered the body a non-state entity.⁸

RECONSIDERATION

Though the judgment of *Sabhajit Tewary* served as a precedent for more than a quarter of the century, its constitutional validity was finally challenged in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (IICB)*. Pradeep Kumar, distressed by the arbitrary termination of his services in IICB (a sub-unit of CSIR), knocked on the doors of the Calcutta High Court. The HC, nevertheless, turned a blind eye to his concerns and was intransigent owing to the already set precedent by the 1975 case. It was, however, a seven-judge bench of the Supreme Court that finally addressed this elephant in the room and subjected the 1975 case to reconsideration.⁹

⁵ *Sabhajit Tewary v. Union of India*, (1975) 1 SCC 485.

⁶ *ibid* [1],[2].

⁷ *Sukhdev Singh v. Bhagat Ram*, (1975) 1 SCC 421.

⁸ *ibid* [3].

⁹ *Pradeep Kumar Biswas* (n3) [1]-[3].

ISSUES

This case pivoted around two main issues. Firstly, whether CSIR qualifies to be called the State under ‘other authorities’ within the ambit of Article 12 of the Indian Constitution. If yes, then should there be a reversal of the long-standing precedent of *Sabhajit Tewary*, which stood unchallenged for almost three decades?¹⁰

ANALYSIS

From 1975 to 2002, many cases popped up before the courts that conspicuously indicated the erroneous nature of the *Sabhajit Tewary* judgment. For the overruling to be plausible, a seven-judge constitutional bench was deployed in *Pradeep Kumar Biswas* to outnumber the five judges’ bench strength in the *Sabhajit* case. Subsequently, this 2002 case reversed the 1975 verdict via a bench strength of 5:2.

MAJORITY JUDGMENT

Digging deeper into the *Biswas* case, the majority verdict was propounded by Justice Ruma Pal, who is an adamant believer in living constitutionalism. This is reflected by her acknowledgement of Justice Mathew’s very celebrated ‘agency and instrumentality test’ in *Sukhdev Singh v. Bhagat Ram*.¹¹ She held this test of *Sukhdev Singh* to be further developed in the *RD Shetty*¹² judgment and re-formulated in the case of *Ajay Hasia*.¹³ Nonetheless, she gave a caveat that these tests are mostly indicative and in no way conclusive in nature.¹⁴ A reading of paragraph 40 of the *Biswas* judgment also suggests that Ruma Pal negated the tests of the *Ajay Hasia* case on account of its non-rigidity.

Moreover, on behalf of J. Hegde, J. Pasayat, J. Quadri, and J. Bharucha (CJI), she gave precise rationales for overriding the 1975 ruling. Firstly, she held that the body’s statutory source of origin is immaterial to regard it as ‘other authorities’ under Article 12 and that its mere incorporation under the provisions of a related act (say Societies Registration Act) suffices its criteria of being deemed a

¹⁰ *ibid* [4].

¹¹ (n6).

¹² *Ramana Daya Ram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489.

¹³ *Ajay Hasia etc. v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722.

¹⁴ *Pradeep Kumar Biswas* (n3) [25].

state. Secondly, she held the reasoning provided in the 1975 judgment relating to the applicability of Article 311 as flawed. She claimed that the definition clause of the state was unrelated to Part XIV of the Constitution and that it was restricted in its application to only Parts III and IV.

Furthermore, to corroborate her reasoning, Justice Pal dealt with the specificities of the body. She held that the formulation of the CSIR was aimed at advancing economic welfare and bringing industrial growth to the country. Its exhibition of governmental functions is evidenced through its mandate of doing work that was earlier done by the Central Government's Department of Commerce.¹⁵

Moreover, the Government of India (GoI) is seen exercising enormous control over the appointment and administration of the CSIR. The selection of vital members to CSIR's Governing Body, like the Director-General, is done by the GoI. Additionally, the CSIR's ex-officio President is the Prime Minister of the nation. Hence, this governmental control over the CSIR is held ubiquitous.¹⁶

Lastly, about 70% of CSIR's financing emanates from grants from the GoI. All the decisions regarding CSIR's budget estimates are also made upon the GoI's instructions. This immense governmental control over the financial aspects of CSIR renders CSIR a state entity.¹⁷

Hence, the above "administrative, financial and functional control test" was held satisfactorily to entitle CSIR as a state body.¹⁸

DISSENTING JUDGMENT

Justice R.C. Lahoti along with Justice Doraiswamy Raju contended Justice Pal's decision to overrule a three-decade-old precedent. He held that the sheer fact of a legal body being an agency or instrumentality of the state is inadequate in bringing it into the definition of 'authority' of Article 12. He further iterated the rationality provided by *Sabhajit's* judgment by pointing out the non-statutory

¹⁵ *ibid* [43]-[45].

¹⁶ *ibid* [48]-[54].

¹⁷ *ibid* [55]-[57].

¹⁸ Shukla (n2) [32].

nature of CSIR. He also argued that CSIR had no fundamental obligations directed to the government's operation or to the public's way of life. Moreover, he attempted to disprove the presence of any financial control by showing the absence of 100% share ownership and financing by the government. He also claimed that the PM exercises his power in the Governing Body, in his capacity as a president of CSIR and not that of the PM of the nation, and hence, any nexus with the government's administrative control should be held to be non-existent.¹⁹

CRITIQUE

The decision of the CSIR as an entity of the state was favoured by five out of seven judges. Though I agree substantially with the holding of Justice Ruma Pal (the majority judgment), few lacunae are seen arising out of its implications.

Firstly, this judgment shifted the legal framework of constitutional interpretation from a functional to a structural form of understanding. To set the backdrop, functionalism deals with a more subjective approach, where each judge puts forth their autonomous lens of normative values and rules on a case-to-case basis. This is made evident through the trail of cases namely, *Rajasthan State Electricity Board*,²⁰ *Sukhdev Singh*,²¹ *RD Shetty*,²² and *Ajay Hasia*.²³ They see the Constitution as a living document and keep on refining the settled precedents to suit their current needs. However, they lack any defined or structured test and are often open to varied discourses.²⁴

However, this leeway given to judicial autonomy is constrained as soon as the structuralist approach is brought into play. As given in the *Biswas* case; this approach aims to provide an objective test by bringing an already defined set of criteria (here, say, the 'financial, administrative, and functional' control test) to the table. However, my contention lies regarding cases that are present in the grey areas of law that could be rendered ambiguous by this test's strict imposition. This test also unnecessarily tends to narrow down the already existing 'instrumentality or agency test' and leaves

¹⁹ *ibid* [98]-[100].

²⁰ *Rajasthan State Electricity Board v. Mohan Lal*, AIR 1967 SC 1857.

²¹ (n7).

²² (n12).

²³ (n13).

²⁴ Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (ed), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 794.

many bodies arbitrarily.

Secondly, Choudhary and others in Chapter 32 of the Oxford Handbook argue that this overruling also comes with the implied risks of opening the floodgates to numerous litigations and proceedings. This would inevitably lead to a further deterioration of our already overburdened legal system and cause distrust among the public.²⁵ Hence, accordingly, I believe that this floodgate argument serves as a valid concern of this 2002 verdict.

Thirdly, the judgment fails to draw realistic ends to the proposed test by juggling between over and under-inclusivity. In reality, the judge may allow for over-inclusivity by allowing litigation against bodies that are public but have a pure commercial intent. Though formulated for governmental functions, these bodies may perform a few commercial acts exceeding their realm. Hence, being sued for an act not catering to public obligations puts them on a lower footing and subjects them to arbitrary lawsuits. Additionally, another loophole is seen regarding under-inclusivity. This can be seen concerning bodies that are not able to satisfy the ‘administratively, financially, and functionality test’ but still perform public obligations. Though not satisfying the objective criteria of the state, these bodies are still under indirect or direct State authorization and can easily cease liability from any public impact caused by it.²⁶

Hence, though uniform, the test decided in this judgment failed to foresee the plausible exceptions. It lets the cases in the grey area perish and is non-uniform in its application.

Nevertheless, the critiques discussed above in no way demote the precedential and progressive value of the judgment. Though leaving a few cases behind, this judgment proportionately aided the way forward for numerous eminent cases like *Zee Telefilms v. UOI*²⁷ and *Jatya Pal Singh v. UOI*.²⁸

²⁵ *ibid* 795.

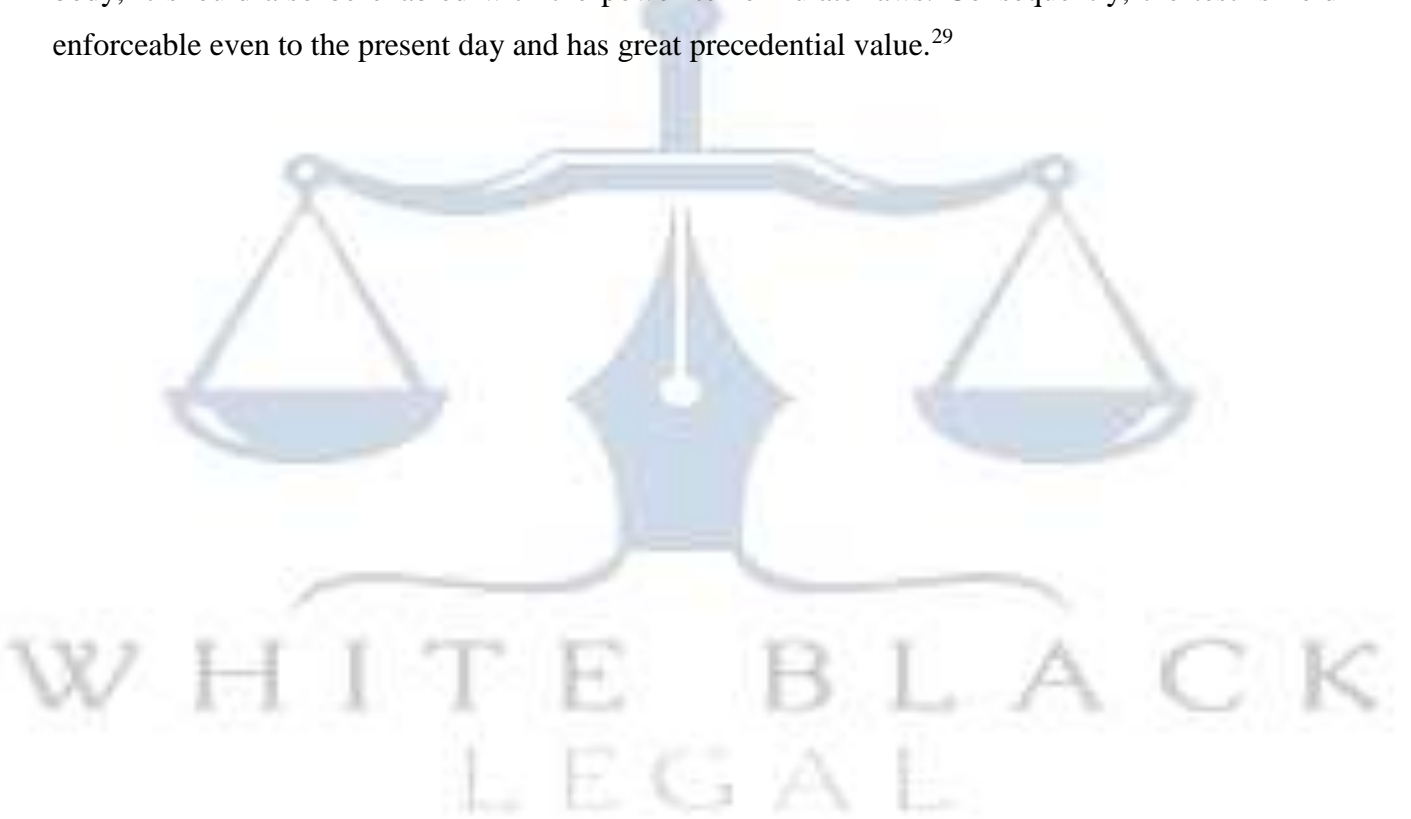
²⁶ *ibid* 796.

²⁷ *Zee Telefilms v. Union of India*, (2005) 4 SCC 649.

²⁸ *Jatya Pal Singh v. Union of India*, (2013) 6 SCC 452.

CONCLUSION

This case not only overruled the *Sabhajit Tewary* case but also provided a firm test of what construes a state, killing two birds with one stone. For a body to be termed a State, it should be administratively, functionally, and financially under the regulation of or dominated by the government. Additionally, while mere regulatory control is inadequate, an all-encompassing, pervasive control is paramount for a body to be within the realms of the state. Furthermore, its functions should be obligated to the public and should exhibit governmental roles. For the aggrieved to claim fundamental rights against the body, it should also be enabled with the power to formulate laws. Consequently, the test is held enforceable even to the present day and has great precedential value.²⁹



²⁹ Pradeep Kumar Biswas (n3) [40].