

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.40
Neutral Citation No. - 2025:AHC:29947-DB

WRIT-C NO. 8253 OF 2022

M/S MANOJ PETROLEUM AND ANOTHER

V.

UNION OF INDIA AND OTHERS

For the Petitioners Mr. Arun Kumar Gupta, Senior Advocate
assisted by Mr. Manish Gupta and Mr. Punit
Kumar Upadhyay, Advocates

For the Respondents Mr. Anand Tiwari, Mr. Arvind Kumar Goswami
and Mr. Yash Padia, Advocates

Last heard on February 24, 2025
Pronounced on March 4, 2025

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE VIPIN CHANDRA DIXIT, J.

(Pronounced by Hon'ble Shekhar B. Saraf, J.)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioners have prayed for a writ of certiorari quashing the termination order dated December 28, 2021 passed by Nayara Energy Limited (hereinafter referred to as 'respondent no.3') based on the Lab Testing Report dated August 21, 2021. Petitioners have further prayed for a writ of mandamus commanding the respondents no.1 and 2 to make enquiry on the complaint of the petitioners dated January 31, 2022 and reminder dated March 4, 2022.

FACTS

2. Factual matrix giving rise to the instant writ petition is delineated below:

- a. Petitioner no.1 is a partnership firm, registered via partnership deed dated October 2, 2018 between Smt. Sangeeta Pathak (one of the partners of the partnership firm) and Smt. Sonam Singhal (hereinafter referred to as 'petitioner no.2'), created for the purpose of carrying on business of sale of petroleum products (oil), grease, distilled water among other products.
- b. Nayara Energy Limited, a company registered under the Companies Act, 1956, originally known as Essar Oil Limited, has acquired authorization from Ministry of Petroleum and Natural Gas, Government of India (hereinafter referred to as 'respondent no.1') to distribute franchise for sale and purchase of essential commodities like petroleum and diesel products to private individuals/firms such as the petitioner no.1.
- c. Petitioner no.1 made an application for retail outlets of petroleum and diesel products and consequently respondent no.3 issued letter of appointment dated November 5, 2019 to the petitioner no.1 for sale of Motor Speed Petrol and High Speed Diesel lubes at a retail outlet.
- d. In pursuance of aforesaid letter of appointment, a franchise agreement dated January 6, 2020 was executed between petitioner no.1 and respondent no.3 for the supply of Petrol and High-Speed Diesel lubes to the retail outlet of petitioner no.1, situated at Khasra No.232 Village Narsaina, Tehsil Sayana, District Bulandshahar, Uttar Pradesh.
- e. On August 18, 2021, officials of respondent no.3 made a visit to the said retail outlet of petitioner no.1 for conducting

inspection and collection of samples of products from the retail outlet. The samples of such products were sent to Bharat Petroleum Corporation Limited (hereinafter referred to as 'BPCL'), Quality Assurance Laboratory, Bijwasan, New Delhi for further examination on August 18, 2021. Out of the drawn samples, BPCL prepared a report dated August 21, 2021 wherein several anomalies were pointed out in the same and it was communicated to respondent no.3 that the sent samples has failed to meet the required specifications.

- f. On the basis of the aforesaid test report, the respondent no.3 issued a show cause notice dated August 26, 2021 to the petitioner no.1 directing it to explain the same within fifteen days of the receipt of the notice as to why the franchise agreement dated January 6, 2020 should not be terminated on account of various abnormalities found in the aforesaid report that tantamounted to violation of the terms and conditions of the franchise agreement dated January 6, 2020.
- g. The petitioner no.1 replied in detail to the aforesaid show cause notice on September 9, 2021 wherein it has been stated that in the sample of products drawn from the outlet amongst which there were two major anomalies (a) discrepancy in delivery of petrol as well as diesel by nozzle regarding which a complaint was made to the visiting officer of the respondent company on August 6, 2021 which was never redressed by the respondent company and (b) the collected samples were unendorsed with seal numbers hence it created a doubt on the veracity of the test report as the test report may not have been prepared for the samples drawn from the petitioners' outlet. However, the respondent no.3 found the answers to be unsatisfactory and accordingly terminated the aforesaid franchise agreement, vide order dated December 28, 2021.

- h. Aggrieved by the termination, the petitioner no.1 had approached the Central Vigilance Commission (hereinafter referred to as the 'CVC') on January 31, 2022 making a complaint against respondent no.3 for misusing its powers and illegally and arbitrarily terminating the franchise agreement dated January 6, 2020 executed between the petitioner no.1 and respondent no.3.
- i. Since no response was received from the CVC, the petitioner no.1 sent a reminder dated March 4, 2022 to the respondent no.1 for redressal of their grievances placed before the CVC.
- j. On account of inaction from the side of the aforesaid authorities, the petitioner no.1 has approached this court seeking the aforementioned reliefs as prayed in this petition.

ISSUE

3. At the very outset, a preliminary objection has been raised by the learned counsel appearing on behalf of the respondent no.3 with regard to maintainability of the present writ petition. He contends that the main dispute in the present writ petition is between the petitioner no.1 and respondent no.3 and the same should not be adjudicated by this Court in its extraordinary writ jurisdiction on the ground that the respondent no.3 is not 'State' as per Article 12 of the Constitution of India. In light of the preliminary objection raised, we are of the view that the same should be dealt by us at the first instance before addressing the matter on merits.

CONTENTIONS OF THE PETITIONERS

4. Sri Arun Kumar Gupta, Senior Advocate, appearing on behalf of the petitioners has made the following submissions with regard to maintainability of the writ petition:

- A. Ministry of Petroleum and Natural Gas, Government of India, appoints agents like Hindustan Petroleum Corporation Limited

(hereinafter referred to as the 'HPCL'), Indian Oil Corporation Limited (hereinafter referred to as the 'IOCL') which includes other agencies such as respondent no.3 by giving them authority for the sale of essential commodities, such as, petroleum products as the same is prohibited to be sold in the open market. Therefore, respondent no.3 being the '**extended hand**' of the respondent no.1 comes under the aegis of Central Government and is ultimately discharging functions in public interest on behalf of respondent no.1. Hence, respondent no.3 comes within the meaning of 'State' under Article 12 of the Constitution of India.

- B. Respondent no. 3 is an 'instrumentality of the State'. The word 'instrumentality' has been defined in Black's Law dictionary (7th Edition) as, "*a means or agency through which a function of another entity is accomplished, such as a branch of governing body*" and 'agency' means, "*a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions*". Respondent no.3, as an authorized agent distributes franchise of retail outlets for the sale of petroleum products to private individuals/company on behalf of respondent no.1 through which the functions of the State is accomplished, and therefore, it is an instrumentality and agency of the 'State'.
- C. Under entries 52 and 53 in List 1 of the seventh schedule to the Constitution of India, the authority to control the Industries has been vested in the Central Government. Therefore, the Parliament has enacted the Petroleum Act, 1934 to regulate the Petroleum Industry in the country. From a conjoint reading of both the entries 52 and 53, it is established that Constitution has chosen Central Government, not only to regulate but also take

over the control of the Petroleum Industry. Petroleum Products are classified as essential commodities and are dangerously inflammable, and accordingly no private individuals/company can sell or store or transport the petroleum products except as permitted by license issued under the Petroleum Act, 1934. It is also submitted that power of search of the premises of corporations like the petitioner no.1 is made by the officers appointed by the Central Government as per Section 26 of the Petroleum Act, 1934 and power of inspection/sampling are carried on as per Section 14 of the same legislation. Therefore, respondent no.3 is functioning under the control of the Central Government, making it amenable to the writ jurisdiction under Article 226 of the Constitution of India.

- D. Nature of work of respondent no.3 is at parity with that of other oil companies like HPCL, BPCL and IOCL working on behalf of respondent no.1 to distribute franchise of retail outlets for the sale of petroleum and allied products and the other oil companies fall under the definition of 'State' under Article 12 of the Constitution of India. Therefore, respondent no.3 is also a 'State' as per Article 12 of the Constitution of India, making it amenable to writ jurisdiction.
- E. To buttress the arguments, reliance has placed upon the judgment of the Apex Court in **Ajay Hasia v. Khalid Mujib Sehravardi** reported in **(1981) 1 SCC 722** wherein six key tests were formulated to determine whether a corporation may be said to be an instrumentality or agency of the Government. It is submitted that the tests are not a rigid set of principles such that if a body falls within any of them, it must ex-hypothesi be considered to be 'State', within the meaning of Article 12 of the Constitution of India. The fifth test as emphasised from the aforementioned judgment is as follows:

“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.”

The respondent no.3, by the sale of petroleum and allied products, was executing functions of public importance, as only the Central Government has the power to deal with the Petroleum Industry. Falling under one of the tests as laid down in **Ajay Hasia (supra)**, patently makes the respondent no.3 an instrumentality or agency of the Government.

- F. To substantiate the arguments, further reliance has been placed on **Pradeep Kumar Vishwas v. Indian Institute of Chemical Biology and others** reported in **(2002) 5 SCC 111** wherein initially the definition of ‘State’ was treated as exhaustive and confined to the authorities or thus which could be read as ‘*Ejusdem Generis*’ with the authorities mentioned in the definition of Article 12 of the Constitution of India. At a later stage, definition of ‘State’ came to be established with reference to remedies available against it. Thus, a statutory corporation with regulation framed by such corporation pursuant to statutory powers was considered as ‘State’ for the reason that the public duty was limited to those which were created by the statute.
- G. Another aspect of the matter is that alternative remedy is not an absolute bar to invoke writ jurisdiction, hence writ in the present facts of the case is maintainable. For this, reliance has been placed upon a judgment of the Apex Court in **Ram and Shyam Company v. State of Haryana** reported in **(1985) 3 SCC 267**.

CONTENTIONS OF THE RESPONDENTS

5. Learned counsel appearing on behalf of respondents, challenging the maintainability of the writ petition has made the following submissions:

- A. It is admitted by the petitioner that the respondent no.3 is an authorized agent of the respondent no.1, for retail sale of petroleum products. Unlike the other petroleum corporations like IOCL, BPCL and HPCL, that are, operating in the same domain, the administrative and financial control of the respondent no.3 is completely independent and Central Government has no control over the management or finances of the respondent no. 3. Hence, the respondent no.3 does not come within the ambit of the definition of 'State' as per Article 12 of the Constitution of India.
- B. Respondent no.3, a company incorporated under the Companies Act, 1956 is a privately owned and controlled entity, authorized to distribute franchise of retail sale of petroleum products by Ministry of Petroleum and Natural Gas. Consequently, a franchise agreement dated January 6, 2020 was executed between petitioner no.1 and respondent no.3 for the said purpose. The franchise agreement is clearly and essentially a private contract executed by and between private parties untrammelled by Government control.
- C. As respondent no.3 is a profit making organization and the said business of sale of petroleum products is not undertaken with the objective of any public welfare but is solely undertaken for the purpose of profit and development of the respondent no.3 itself, hence it is only discharging duties and following directions from the respondent no.1, in pursuance of agreement executed between them. The same can never be treated as discharging functions in public interest.

- D. Being a private limited company, there is no element of public law involved in the contractual relationship between petitioner no.1 and respondent no.3.
- E. Petitioners have an alternative and efficacious remedy, and without availing the said remedy have approached this Court under writ jurisdiction which is a travesty of law. Clause 20 of the Franchise Agreement provides for grievance redressal establishment and Clause 21 of the same contains an arbitration clause that is integral to the agreement between the parties.

ANALYSIS

6. The limited question for determination before this court is whether the respondents no.3, that is, Nayara Energy Limited falls within the definition of ‘State’ as enunciated and explicated by the Hon'ble Supreme Court within the ambit of Article 12 of the Constitution of India.

7. Article 12 of the Constitution of India defines the term ‘State’ for the purpose of enforcing fundamental rights. Fundamental rights are primarily enforceable against the ‘State’ and its instrumentalities rather than private individuals or bodies. Writ petitions under Article 226 are only maintainable against bodies/persons covered within the terminology of Article 12 of the Constitution of India.

8. The said definition for the term ‘State’ is provided under Article 12 of the Constitution of India, which is quoted below:

“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.”

9. Upon perusal of the above definition, it is clear that term ‘State’ includes:

- (i) The Government and Parliament of India,
- (ii) The Government and Legislature of each State,

(iii) All local authorities,

(iv) Other authorities within the territory of India or under the control of the Government of India.

10. The expression local authorities is defined in Section 3(31) of the General Clauses Act, 1897:- “*“local authority” shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.*’ However the term ‘other authorities’ has not been defined in any legislation and therefore the interpretation of the above term has caused a good deal of difficulty, and judicial opinion on its definition has undergone several changes over the years.

11. While considering this question, it is necessary to bear in mind that an authority falling within the expression ‘other authorities’ by reason of its inclusion within the definition of ‘State’ under Article 12 would be amenable to writ jurisdiction.

12. In the celebrated case of **Ajay Hasia (supra)**, the five-judge Constitutional Bench of the Supreme Court headed by **Justice Y.V. Chandrachud, C.J.** considered **R.D. Shetty v. International Airport Authority of India** reported in **(1979) 3 SCC 489** and laid down the six factors test to determine whether an entity is an instrumentality or agency of the Government. The tests are as follows:

- (i) If the entire share capital of the body is held by the Government;
- (ii) If the financial assistance given by the government is so significant that it meets almost the entire expenditure of the body;
- (iii) If the body enjoys a monopoly status conferred or protected by the State;

- (iv) If there is deep and pervasive State control;
- (v) **If the functions of the body are of public importance and closely related to governmental functions;**
- (vi) Transfer of a Government department to the corporation.

(Emphasis supplied)

13. The relevant paragraphs of judgment in **Ajay Hasia (supra)** have been delineated below for a better understanding:

“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 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, be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

"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 be 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."

14. In **Pradeep Kumar Biswas (supra)**, the Hon'ble Supreme Court further crystallized the test wherein it has been held that to constitute a body as 'State', Government must have a pervasive control over the particular body as has been earlier formulated in **R.D. Shetty (supra)** and **Ajay Hasia (supra)**. The relevant paragraph of the judgment is provided below:

“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.”

15. Subsequently, the Hon'ble Supreme Court in **Federal Bank Ltd. v. Sagar Thomas** reported in (2003) 10 SCC 733 has further elaborated on the issue of maintainability of a writ petition against private companies registered under the Companies Act, 1956 carrying on any trade and business to earn livelihood and to make profit out of such activity and stated that they are not discharging public duties. The relevant paragraph of the judgement is delineated below:

“27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ

may not be issued at all. Other remedies, as may be available, may have to be resorted to.”

16. In **St. Mary's Education Society v. Rajendra Prasad Bhargava**, reported in (2023) 4 SCC 498, the Supreme Court has held that though the Educational Society is affiliated to Central Board of Secondary Education, that would not bring it within the purview of ‘State’. The relevant paragraphs of the above judgement are quoted herein below:

“66. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.”

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without

having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and

writ of mandamus cannot be issued as the action was essentially of a private character.”

CONCLUSION

17. Upon a perusal of the umpteen judgements cited by both the parties and sifting through the ratios laid down by the Supreme Court in the various judgements, one may extract the principles that would apply to make a company amenable to writ jurisdiction. The said principles are summarised below:

- A. To determine whether an authority/body would fall under ‘State’ within the meaning of Article 12 would have to be determined on the cumulative facts of financial, functional and administrative dominance and/or control of the Government upon such a body. If such control is factually found, then the body would be treated as ‘State’ within Article 12.
- B. Simpliciter because a private institution is carrying out a public duty or function and may come within the definition of ‘State’ under Article 12 of the Constitution of India making it amenable to writ jurisdiction would not by itself make every dispute concerning the said institution amenable to writ jurisdiction. The same would largely depend upon the nature of the dispute and the enforcement of the right by an individual against such an institution. A right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions.
- C. The scope of issue of a writ of mandamus is basically limited to an enforcement of the public duty and therefore it is the ardent duty of the court to ascertain whether the nature of the duty comes within the peripheral of public duty. The public duty cast may be either statutory or otherwise and where it is otherwise,

the body/authority must be shown to owe that the duty or obligation to the public involves the public law element.

- D. It has to be kept in mind that individual wrongs or breach of mutual contracts without having any public law element as its integral part cannot be rectified through a writ petition under Article 226.

18. The primary contention raised by the learned Senior Advocate appearing for the petitioners is that the present writ petition is maintainable as the respondent no.3 being the extended hand of respondent no.1, is involved in the sale of petroleum products which is an essential commodity and only the Parliament has an absolute right to deal with such commodities and no private individual/company as per entries 52 and 53 in List 1 of the seventh schedule to the Constitution of India has the power to deal with the same. Therefore, respondent no.3 is an instrumentality or agency of the state. The entries 52 and 53 in List 1 of seventh schedule to the Constitution of India are quoted below:

“52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.”

“53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.”

19. A bird's eye view of the present writ petition simplifies the issue at hand. The present dispute arises out of the termination of the franchise agreement that had been entered between the parties. Before carrying out the said termination, the respondent no.3 had issued a show cause notice to the petitioner on August 26, 2021 and the same was replied to by the petitioner no.1 on September 9, 2021. After considering the said reply the respondent no.3 terminated the franchise agreement as per the provisions in the said franchise agreement. The reasons for cancellation of the said franchise agreement have been provided in Clauses 4 and 5 of the termination letter

dated December 28, 2021 The said paragraphs of the termination order are delineated below:

“4. Under the Franchise Agreement you are obliged to carry out the business as per the terms and conditions contained therein and in compliance of the applicable laws and policies including Marketing procedure discipline code. The state of affairs at the RO at the time of inspection and failure of samples establishes that you have procured product from sources other than the Company. It also proves that you were operating the RO in violation of applicable provisions in this regards.

5. The aforesaid acts and omissions are flagrant violation of the Franchise Agreement and applicable legal provisions. The same cannot be condoned as requested by you and attracts termination of the Franchise Agreement.”

20. Having heard the learned Senior Advocate appearing on behalf of the petitioner as well as counsel appearing on behalf the respondents, it is clearly established that the relation between the petitioner no.1 and the respondent no.3, both being private entities, is contractual in nature, created via a franchise agreement solely for the purpose of sale of petroleum and diesel products for commercial purpose. Although the sale of petroleum products is governed by guidelines and regulation issued by the Ministry of Petroleum and Natural Gas, a department of the Government of India, the respondent no.3 has been appointed as an agent to distribute franchise to private firms, one of those being the petitioner no.1. The respondent company is purely a private company as it is neither created under a statute nor is it financially or administratively controlled by the Government.

21. Though the respondent no.3 is partly operating in the same domain (distribution and sale of petroleum products) as Government oil companies such as IOCL, BPCL and HPCL but is distinguishable from the Government companies for the reason that these Government companies are functionally, financially and administratively under the pervasive and deep control of the Government of India while the respondent no.3 is an independent organization wherein the Government does not have any such control.

22. The argument of the petitioner that since sale of petroleum products being an inflammable product is strictly governed by entries 52 and 53 in List 1 of the seventh schedule to the Constitution of India, is an argument in sophistry and does not help the petitioners. It may be noted that entry 45 in List 1 of the seventh schedule to the Constitution of India contains 'Banking'. If the logic of the petitioner were to hold good then all banks public (such as State Bank of India, Punjab National Bank, Bank of Baroda, Canara Bank, Union Bank of India, Indian Bank) or the private (such as HDFC, ICICI, AXIS, IndusInd, Federal Bank, Kotak Mahindra) would fall within the definition of 'State' under Article 12 of the Constitution of India. Similarly, if one were to look into the telecom industry, it is only the government controlled company like BSNL that are treated as 'State' while private companies such as Vodafone, Airtel and Jio do not fall within the meaning of 'State' and are not amenable to writ jurisdiction. The fact that private companies such as Vodafone, Airtel, Jio, HDFC Bank, ICICI Bank, Axis Bank, IndusInd Bank, Federal Bank, Kotak Mahindra Bank amongst others comply with the rules and regulations established by the various Ministries and public regulators such as the Reserve Bank of India (RBI) and Telecom Regulatory Authority of India (TRAI) do not by itself bring them within the meaning of 'State' under Article 12 as none of these companies are under the pervasive control (functionally, financially and/or administratively) of the Government of India.

23. Upon a perusal of the reasons for termination of the franchise agreement by the respondent no.3 it is crystal clear that the same were as a result of non-compliance and flagrant violation of the franchise agreement. Such being the case, no element of public duty comes into play in the present factual matrix and the arguments raised by the petitioners that the actions of the respondent no.3 in termination of the agreement would be subject to the writ jurisdiction is superfluous and fallacious. Ergo, we are of the view that the petitioner is barking up the wrong tree by pursuing the writ jurisdiction. One may also note that remedial measures have been

specifically provided in the franchise agreement itself in relation to a grievance redressal establishment and/or arbitration.

24. In light of the same, this Court is of the view that the objection raised by the respondent no.3 with regard to the maintainability of the writ petition is justified, and accordingly, the writ petition is dismissed as not maintainable. Parties shall be at liberty to approach the alternative mechanisms available to them in accordance with law.

25. This Court would like to acknowledge counsel appearing on behalf of all the parties for the dexterity and equanimity shown during arguments and the extensive and comprehensive research carried out by them that has assisted the Court in coming to its conclusion.

26. As a legal point was involved in the present writ petition, there shall be no order as to costs.

04.03.2025
Kuldeep

(Vipin Chandra Dixit, J.)

(Shekhar B. Saraf, J.)