

Reserved On : 03/12/2025

Pronounced On : 11/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1148 of 2025
In R/SPECIAL CIVIL APPLICATION/1261/2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 1148 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA sd/-

With
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE sd/-

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI sd/-

Approved for Reporting		
	Yes	No
	✓	

DR. INDRANIL BANDYOPADHYAY

Versus

INSTITUTE FOR PLASMA RESEARCH & ORS.

Appearance:

MR ASIM PANDYA, SENIOR ADVOCATE with
 MR ALOK M THAKKAR(6510) for the Appellant(s) No. 1
 MR MUNJAAL M BHATT(8283) and MS KHUSHI MEHTA for M R BHATT
 & CO.(5953) for the Respondent(s) No. 1,2,3,4
 MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 5,6

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The Division Bench of this Court, under Rule 5 of the Gujarat High Court Rules, 1993, has referred the following question of law to the Larger Bench:

“Whether the respondent – Institute for Plasma Research can be said to be a ‘State’ within the meaning of Article 12 of the Constitution of India?”

The above question of law emanates from the decision of the Division Bench judgment dated 04.04.2025 in the case of Himanshu Dineshchandra Parekh vs. Institute for Plasma Research and Ors, reported in 2025 (2) GLH 585, wherein it is held that the Institute for Plasma Research (IPR) is not a “State” under Article 12 of the Constitution of India.

SUBMISSIONS ON BEHALF OF APPELLANT

2. Learned Senior Advocate Mr. Pandya, appearing for the appellant, has submitted that the appellant, serving as a Scientific Officer under respondent No.1-Institute for Plasma Research (IPR), seeks relief relating to recovery and re-fixation of pay on the basis of an audit objection, and has assailed the decision of re-fixation of pay and recovery of excess salary, which is the subject matter of the captioned Appeal.

3. It is submitted that the Division Bench in the case of **Himanshu Dineshchandra Parekh (supra)**, while placing reliance on the decision of the Apex Court in Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Ors., (2002) 5

SCC 111, along with other decisions, has held that the respondent-IPR is not a "State" within the meaning of Article 12 of the Constitution of India, which is erroneous.

4. It is contended that the Division Bench in the case of **Himanshu Dineshchandra Parekh (supra)** has premised its opinion mainly on the by-laws and funding of the Institute without examining them threadbare. It is submitted that while observing that there was nothing on record to indicate the extent to which the Central Government funds the respondent-IPR, and on the basis of the by-laws framed by the respondent-IPR, the Division Bench concluded that there was no indication of any regulatory control of the State over the Institute. It is submitted that, without appreciating the by-laws in their true perspective, a conclusion has been drawn that the functional, financial, and administrative control of the Central Government is not pervasive and, at best, could be said to be regulatory in nature, as the Union or Central Government does not interfere in the day-to-day management of the Institute. Further, he has submitted that the Division Bench was influenced by the fact that, since no notification was issued under Section 14 of the Administrative Tribunals Act, 1985, notifying the IPR to be a society governed and controlled by the Government, it could not be

brought within the purview of the Central Administrative Tribunal, which is erroneous.

5. Learned Senior Advocate Mr.Pandya has submitted that the most vital document establishing that the respondent-IPR falls within the ambit of Article 12 of the Constitution of India is the Resolution dated 30.10.1996, published in the Gazette of India, which acquires the character of a Notification. It is submitted that by this Resolution, the Department of Atomic Energy (DAE) took over the administrative control of the respondent-IPR from the Department of Science and Technology with effect from 01.10.1996, and this establishes the direct control of the DAE over the respondent-IPR, thereby indicating that the respondent-IPR is a "State" within the meaning of Article 12 of the Constitution of India.

6. Reference is also made to the Government of India (Allocation of Business) Rules, 1961, as amended up to 05.05.2025, and it is submitted that all matters relating to the personnel of the IPR, Gandhinagar, are under the control of the DAE, under which the appellant is serving. He has further submitted that the said Business Rules categorically mention that the institutions, including the IPR, form an integral part of the

Department, as there exists a growing synergy between these institutions and the Research and Development Units of the Department.

7. Learned Senior Advocate Mr.Pandya has also referred to various provisions and clauses of the by-laws of the IPR and submitted that Clause 1.1 clarifies that the by-laws can come into effect only after approval of the Central Government, which, as defined under Clause 3(h), means the Government of India represented by the DAE. He has further referred to the composition of the Governing Council, which includes the Chairperson (Secretary, Department of Atomic Energy), Co-Chairperson (Director of the Institute), and representatives from the State Government (Secretary, Education, Science and Technology Department, Government of Gujarat), along with scientists nominated by the Department of Science and Technology, Government of India, and other persons. He has also referred to sub-clause 9 of Clause 18 of the by-laws and submitted that the creation of posts to accommodate promotions of scientific, technical, or faculty personnel can be approved only by the Director/Council upon recommendation to the DAE. Further reference is made to sub-clause 12 of Clause 18, which

provides that proposals relating to employment structures, adoption of pay scales, allowances, and revisions thereof, as well as creation of posts, require prior approval of the Government of India. He has also referred to sub-clause 13 of Clause 18, which stipulates that promotion and grant of promotion to all employees of the Institute, where the Governing Council is the appointing authority, shall be subject to the relevant procedures and norms as per the Institute's promotion policy. He has also referred to the Atomic Energy Act, 1962, as amended by the Amendment Act of 2015, and to the provisions of Section 3(A) and Section 20 thereof. Reliance is also placed on Section 20 of the Atomic Energy Act, 1962, and it is submitted that the DAE has control over inventions as well as patents of such inventions undertaken by the respondent-IPR.

8. It is finally submitted by learned Senior Advocate Mr.Pandya that the respondent-IPR is 100% funded by the Central Government and hence, the same is a "State" within the meaning of Article 12 of the Constitution of India.

SUBMISSION ON BEHALF OF RESPONDENT - IPR

9. In response to the aforesaid submissions, learned advocate Mr.Bhatt appearing for the respondent-IPR has submitted that the view expressed by the Division Bench that the respondent-IPR is not a "State" has been precisely taken in the case of **Himanshu Dineshchandra Parekh (supra)** by applying the decision of the Apex Court in the case of **Pradeep Kumar Biswas (supra)**. He has further submitted that the Division Bench has also considered the financial aspect as well as the facet of absence of Notification of the Central Government notifying the IPR under Section 14 of the Administrative Tribunals Act, 1985, declaring it a body governed and controlled by the Government so as to bring it within the purview of the Central Administrative Tribunal.

10. Learned advocate Mr.Bhatt in support of his submissions, has placed reliance on the judgments of the Apex Court rendered in the case of Chander Mohan Khanna vs. National Council of Educational Research and Training and Ors., (1991) 4 SCC 578, and in the case of Tekraj Vasandi @ K.L. Basandhi vs. Union of India and Ors., (1988) 1 SCC 236. While referring to the Business Rules, 1961, and in the context of nine institutes referred therein, which include the respondent-IPR as well as the Atomic Energy Educational Society (AEES),

Mumbai, it is submitted that the High Court of Andhra Pradesh in the case of Atomic Energy Educational Society, Mumbai vs. G. Laxmi and Anr., 2006 Lab IC 1953, while placing reliance on a judgment of the Patna High Court, has held that the said society is not a 'State' and hence, it is urged that a similar view may be taken in the case of the respondent-IPR also.

11. Reference is also made to various provisions of the by-laws and it is contended that in fact, it cannot be said that the DAE has complete and deep control over the affairs of the respondent-IPR. He has submitted that though the respondent-IPR receives a 100% grant from the DAE, Government of India, the funds are utilized as per its requirement, and there is no need to explain to the DAE about the expenditures or utilization of such funds; hence, it cannot be said that the DAE has complete and pervasive control over the respondent-IPR. Thus, it is submitted that the respondent-IPR does not fall within the meaning of Article 12 of the Constitution of India and cannot be treated as a 'State' or its instrumentality.

ANALYSIS

12. We have heard the learned advocates appearing for the respective parties at length and also perused the documents as pointed out by them.

13. The issue, as mentioned hereinabove, has been referred to the Larger Bench for framing the question of law: "As to whether the respondent-IPR can be said to be a 'State' within the meaning of Article 12 of the Constitution of India or not?" The following facts are not disputed and are established from the record :

(a) The respondent-IPR is 100% funded by the DAE, Government of India.

(b) The respondent-IPR is also an integral part of the DAE, Government of India.

(c) As per the by-laws, more particularly Clause 1.1, the by-laws of the respondent-IPR come into effect only after approval of the Central Government.

(d) Vesting of properties is with the DAE, Government of India.

(e) The Governing Council comprises 10 personnel, of whom 08 belong to the DAE, Government of India, and only 02, i.e., Dean(R&D) of the Institute(IPR) and Registrar/Chief Administrative Officer, do not belong to the DAE, Government of India.

(f) The employment structure, i.e., adoption of pay scales, allowances, revision thereof, and creation of posts, cannot be undertaken without prior approval of the Government of India.

(g) The service conditions of all employees of the Institute, though governed by its own conduct and discipline rules, are adopted in line with the Central Civil Service (Conduct) Rules, 1964, and Central Civil Service (Classification, Control and Appeal) Rules, 1965.

(h) Service rules such as Fundamental Rules, Supplementary Rules, Travelling Allowance Rules, Leave Travel Concession Rules, Pension Rules, etc., are governed as per the rules of the Government of India, as provided in Chapter 7 of the by-laws.

(i) As per Clause 40 of the by-laws in Chapter 7, reservation for SC/ST/OBCs and persons with disabilities is governed by the rules and orders of the Government of India.

(j) As per Clause 52 of the by-laws, the Council must submit an annual report on the working of the Institute to the Government of India, which

includes the audited statement of accounts pertaining to the concerned financial year.

(k) As per Clause 58 of the by-laws, which is a saving clause, any directives of the Government or Department shall be binding on the Institute and shall have overriding effect over any provision of the by-laws, statutes, or rules of the Institute.

(l) The creation of the Institute was undertaken by the Department of Science and Technology of the Central Government, and by Resolution dated 30.10.1996, published in the official gazette, the DAE acquired administrative control of the respondent-IPR and transferred the same from the Department of Science and Technology.

14. Keeping in mind the aforesaid parameters, we shall now examine the legal precedents. The Division Bench, in the case of **Himanshu Dineshchandra Parekh (supra)**, has applied the ratio of the Constitution Bench decision of the Apex Court in **Pradeep Kumar Biswas (supra)**, wherein the Apex Court held that the Council for Scientific and Industrial Research (CSIR) would not fall within the meaning of "State" or "other authority" under Article 12 of the Constitution.

15. Succinctly stated, the Constitution Bench examined the following factors for holding that CSIR is not a "State".

a) 70% funding by the Government of India. Donations and gifts are permissible without prior permission/consent/sanction from the Government of India.

b) The governing body does not consist entirely of Government nominees and consists substantially of private individuals of eminence and independence, who cannot be regarded as the hands and voice of the State.

c) Absence of any provision in the rules or by-laws enabling the Government to issue binding directives to the CSIR.

d) The functions of the CSIR cannot be regarded as governmental or of essential public importance or closely related to governmental functions or being fundamental to the life of the people.

e) Historically, it was not a Government department transferred to the CSIR. The CSIR was set up as a society registered under the Societies Registration Act, 1860. It is not an offspring or extension of the Government.

16. We shall now endeavour to apply the ratio of the Constitution Bench decision of the Apex Court in the case of **Pradeep Kumar Biswas (supra)** to the creation, control, and functioning of the IPR. The Apex Court, after considering an array of judgments including the landmark Constitution Bench decision in the case of Ajay Hasia vs. Khalid Mujib Sehravardi, 1981 (1) SCC 722, has held as under:

"95. The philosophy underlying the expansion of Art. 12 of the Constitution so as to embrace within its ken such entities which would not otherwise be the State within the meaning of Art. 12 of the Constitution has been pointed out by the eminent jurist H.M. Seervai in Constitutional Law of India (Silver Jubilee Edition Vol. 1). "The Constitution should be so interpreted that the governing power, wherever located, must be subjected to fundamental constitutional limitations..... Under Article 13(2) it is State action of a particular kind that is prohibited. Individual Invasion of individual rights is not, generally speaking, covered by Art. 13(2). For, although Articles 17, 23 and 24 show that fundamental rights can be violated by private individuals and relief against them would be available under Article 32, still, by and large, Art. 13(2) is directed against State action. A public corporation being the creation of the State, is subject to the same constitutional limitations as the State itself. Two conditions are necessary, namely, that the Corporation must be created by the State and it must invade the constitutional rights of Individuals" (Para [7.54]). "The line of reasoning developed by Mathew J. prevents a large-scale evasion of fundamental rights by transferring work done in Govt. Departments to statutory Corporations, whilst retaining Govt. control. Company legislation in India permits tearing of the corporate veil in certain

cases and to look behind the real legal personality. But Mathew J. achieved the same result by a different route, namely, by drawing out the implications of Art. 13(2)" (Para [7.57 ibid.]).

96 . The terms instrumentality or agency of the State are not to be found mentioned in Article 12 of the Constitution. Nevertheless they fall within the ken of Art. 12 of the Constitution for the simple reason that if the State chooses to set up an instrumentality or agency and entrusts it with the same power. function or action which would otherwise have been exercised or undertaken by itself, there is no reason why such instrumentality or agency should not be subject to same constitutional and public law limitations as the State would have been. In different judicial pronouncement, some of which we have reviewed, any company, corporation, society or any other entity having a juridical existence if it has been held to be an instrumentality or agency of the State, it has been so held only on having found to be an alter ego, a double or a proxy or a limit or an off-spring or a mini-incarnation or a vicarious creature or a surrogate and so on - by whatever name called - of the State. In short, the material available must justify holding of the entity wearing a mask or a veil worn only legally and outwardly which on piercing fails to obliterate the true character of the State in disguise. Then it is an instrumentality or agency of the State.

97. It is this basic and essential distinction between an 'instrumentality or agency' of the State and 'other authorities' which has to be borne in mind. An authority must be an authority sui juris to fall within the meaning of the expression 'other authorities' under Article 12. A juridical entity, though an authority, may also satisfy the test of being an instrumentality or agency of the State in which event such authority may be held to be an instrumentality or agency of the State but not the vice versa.

98. We sum up our conclusions as under:-

(1) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of

'other authorities' in Article 12. To be an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to public. Further, the statute creating the entity should have vested that entity with power to make law or issue binding directions amounting to law within the meaning of Art. 13(2) governing its relationship with other people or the affairs of other people - their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence governmental, Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligation of the State. It is this strong statutory flavour and clear indicia of power - constitutional or statutory, and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in Ajay Hasia enable determination of Governmental ownership or control. Tests 3, 5 and 6 are 'functional' tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this fallacy has occurred because of difference between 'instrumentality and agency' of the State and an 'authority' having been lost sight of sub-silentio. unconsciously and un-deliberated. In our opinion, and keeping in view the meaning which 'authority' carries, the question whether an entity is an 'authority' cannot be answered by applying Ajay Hasia tests.

(2) The tests laid down in Ajay Hasia 's case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State.

Neither all the tests are required to be answered in positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the Court of brooding presence of government or deep and pervasive control of the government so as to hold it to be an instrumentality or agency of the State. CSIR, if 'the State'."

17. The Apex Court further refined the *Ajay Hasia* principles. The Court adopted the principle of "piercing the veil" to identify the true character of entities concerned. It held that while the terms "instrumentality or agency of the State" do not appear in Article 12, they nonetheless fall within its purview. The rationale is that if the State creates an instrumentality and entrusts it with functions the State would otherwise discharge, such entity must be subject to constitutional limitations. The Court also distinguished between an 'instrumentality or agency' of the State and 'other authorities.'

18. To be considered an authority, the entity must satisfy several criteria:

- It should have been created by a statute or under a statute.
- It must function with liabilities and obligations to the public.
- The creating statute should have vested the entity with the power to make law or issue binding directions (amounting to law under Art. 13(2)), governing its relationship with the public or their legal affairs.
- It must have been entrusted with functions that are governmental or closely associated therewith (i.e., of public importance or fundamental to the life of the people).

19. Such an authority is deemed the State because "one who enjoys the powers or privileges of the State must also be subjected to the limitations and obligations of the State." This strong statutory character and clear indicia of power (constitutional or statutory) and its potential to infringe the fundamental rights is what qualifies an entity as an 'authority,' although they may overlap with instrumentalities or agencies in certain factual scenarios.

20. In contradistinction to the facets of the CSIR and on applying the foregoing principles to

respondent-IPR, it is manifest that, historically, the respondent-IPR is an entity created under a statute having its roots in the Atomic Energy Act, 1962. It is 100% funded by the Government. The inventions and patents by the respondent-IPR are subject to the restrictions of Section 20 of the Act and have liabilities and obligations to the public. The DAE has full control over the respondent-IPR and can issue directives as it deems necessary for the respondent-IPR to follow. Since the respondent-IPR is established by the DAE, which is formed for the development, control, and use of atomic energy for the people of India, the IPR, in furtherance thereof, serves the public by advancing fusion energy, developing plasma technologies for industry, offering Ph.D. programs, and engaging in Research and Development for societal benefit. It also satisfies the test of being vested with the power to issue binding directions amounting to law under Article 13(2), governing rights, duties, and liabilities of individuals. The respondent-IPR also enjoys the powers and privileges of the State and is subject to its obligations. It follows the reservation policy of the Government,

and pay revisions promulgated by the Government are applicable to its employees.

21. The Division Bench, while referring to the aforesaid decision in **Pradeep Kumar Biswas (supra)**, has not delved into the foregoing discussion and conclusions. Thus, from the established facets of the respondent-IPR and distinguishing features from the CSIR, we find that IPR falls within the meaning of "State" under Article 12 of the Constitution of India. The declaration of the Division Bench to the contrary in the case of **Himanshu Dineshchandra Parekh (supra)** is annulled. The reference stands answered accordingly.

22. Registry shall list the captioned Letters Patent Appeal before the Bench assigned such roster.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(ANIRUDDHA P. MAYEE, J.)

Sd/-
(PRANAV TRIVEDI, J)

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