



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Case Comment: Constitutional Interpretation: Is BCCI a ‘State’ under Article 12 in ZEE Telefilms Ltd. v Union of India

Anushka Srivastava<sup>a</sup>

<sup>a</sup>Bennett University, Greater Noida, India

*Received* 19 July 2024; *Accepted* 22 August 2024; *Published* 27 August 2024

---

### INTRODUCTION

Fundamental rights serve as the core framework of the Indian Constitution and with the recent devolution of authority upon numerous private entities, the government's functions have essentially grown. The Board of Control for Cricket in India (BCCI) as the primary cricket authority has extensive control over the arena of cricket in India. The Indian Constitution provides for the enforcement of fundamental rights only against a ‘State’ as stated in Article 12<sup>1</sup> of the Constitution. Thus, the goal of the present case study is to analyse the judgment of the Supreme Court, in ZEE Telefilms Ltd. v Union of India in the light of the precedents laid down by the courts as to whether the BCCI falls under the definition of state and more importantly can fundamental rights be enforced against such an organization.

---

<sup>1</sup> Constitution of India 1950, art 12

## **FACTS OF THE CASE**

Zee Telefilms Ltd. a leading television network, filed a writ petition against BCCI, a society recognized by the Ministry of Youth Affairs and Sports as well as the Union of India and registered under the Act of Tamil Nadu Societies Registration, 1975.<sup>2</sup> BCCI abruptly and arbitrarily cancelled the telecasting of the Cricket in India contract which it awarded to Zee Telefilms based on the bidding offer. The petitioners argued that the decision of the BCCI was arbitrary and hence violative of Article 14<sup>3</sup> of the Constitution. The question in contention was whether the BCCI is a 'State' within the meaning of Article 12<sup>4</sup> of the constitution based on the fact that it performs functions that are public in nature and that it affects the fundamental rights of the citizens of India.

## **PRELIMINARY ISSUES**

The present two issues before the Hon'ble High Court in the case are-

1. Whether the Board of Control for Cricket in India (BCCI) will be deemed as a 'State' under Article 12 of the Constitution.
2. Whether the writ petition Zee Telefilms Ltd. against the BCCI under Article 32 is sustainable<sup>5</sup>.

## **PETITIONER'S ARGUMENT**

The main arguments raised by the petitioners were that BCCI has extensive powers in the field of cricket from selecting Indian team members for the Indian national team and international arenas as well as inviting foreign teams to play in India. The absolute authority that is enjoyed by the board in the field of cricket is due to the recognition granted to the board by the Union of India and thus even though the board is an autonomous, self-governing body it would come under what constitutes the state as 'other authority' for article 12. The petitioners further argued

---

<sup>2</sup> Tamil Nadu Societies Registration Act 1975

<sup>3</sup> Constitution of India 1950, art 14

<sup>4</sup> Constitution of India 1950, art 12

<sup>5</sup> Constitution of India 1950, art 32

that BCCI controls all facets of cricketing as both a sport and a profession, as the board has the authority to determine whether a player would be representing the country and the board can suspend any players while exercising its disciplinary powers. Thus the board controls the fundamental rights of the citizen under Article 19 (1) (g)<sup>6</sup> which showcases points to BCCI being stated as under the meaning of Article 12.<sup>7</sup>

## **RESPONDENT'S ARGUMENTS**

The respondents, argument was that the BCCI does fall under the other authorities under Article 12<sup>8</sup> and thus cannot be stated as BCCI is not created by any statute and is a body simply registered under the Tamil Nadu Societies Registration Act 1860<sup>9</sup> and is not controlled by any other authority including the Union of India. The union also has no legal power to make any rules nor can it enforce its rules and regulations on BCCI. The board also does not take any sort of financial support or assistance from the Government nor does the Board perform any sort of public or legislative function. The BCCI is responsible for organizing cricket matches and tournaments between the teams and its members and with the foreign team and this cannot be said to be a public or government function. BCCI does enjoy a monopoly in the field of cricket but this monopoly of the Board has not been conferred by any statute or any order of the government of India and there is no law preventing other similar organisations from coming into existence.

## **JUDGEMENT AND RATIONALE**

The Hon'ble Court while answering the first issue held that the BCCI is not a state under the purview of Article 12 of the constitution. Given the second issue, the court held that the writ petition filed under Article 32 is not maintainable.

---

<sup>6</sup> Constitution of India 1950, art 19 (1)(g)

<sup>7</sup> Constitution of India 1950, art 32

<sup>8</sup> Constitution of India 1950, art 12

<sup>9</sup> Tamil Nadu Societies Registration Act 1975

The Court however noted that BCCI carries out operations that are akin to the public duties or State functions, and thus provided an alternative remedy under Article 226<sup>10</sup> of the Constitution which has a much wider scope than Article 32<sup>11</sup>. The High Court has a great deal of power as it can enforce non-fundamental rights too on any person or authority or for any other cause, as well as fundamental rights against the State.

The High Court may pass an order against a State or a non-state entity without any restrictions through Article 226. The Article mentions 'any person or authority' which makes it possible for the High Courts to grant writs to non-state bodies like BCCI against any violation of fundamental rights. This interpretation, which is used to assess the degree to which Article 226 of the Constitution is applicable, has come to be known as the 'private body exercising public functions test'.<sup>12</sup>

The Supreme Court further stated that the government's authority over the board is limited to regulatory functions. The Board's operations are public and have the approval of the Indian government, however, an entity is only considered a state when its operations are exclusively governmental in nature. The court ruled that the BCCI based on the facts and circumstances of the present case is not a state as defined by Article 12.<sup>13</sup> As a result, the petition was dismissed.

The dissenting opinion of Sinha J. aims to address the question of how a body comes to be considered a state from several angles. A test to determine whether a body is a state is whether a private entity qualifies as a state or not: if it is permitted to carry out regulatory and controlling tasks as well as fulfilling affirmative responsibilities or public duties that the government would have otherwise completed, then it qualifies as a 'state'. If this is the case, the private organization would be considered a state under Article 12<sup>14</sup>, even if it is not under the financial, functional, or administrative jurisdiction of the Indian government.

---

<sup>10</sup> Constitution of India 1950, art 226

<sup>11</sup> Constitution of India 1950, art 32

<sup>12</sup> Shrikrishna Upadhyaya, 'Expanding Article 226 - Public Functions Test: Zee Telefilms V. Union Of India And Aftermath' (2018) 4(1) Comparative Constitutional Law and Administrative Law Journal <<https://heinonline.org/HOL/P?h=hein.journals/cvecllw4&i=32>> accessed 17 July 2024

<sup>13</sup> Constitution of India 1950, art 12

<sup>14</sup> *Ibid*



## ANALYSIS OF THE CASE

**Article 12 of the Indian Constitution defines what constitutes a state under Part III of the Constitution:**

1. Government and Parliament of India
2. Government and state legislatures
3. Local authorities
4. Other authorities

The petitioner argues that the Board falls under the definition of 'other authorities' under Article 12 due to the variety of tasks and responsibilities performed by it. Article 12's reference to 'other authorities' can be better understood by following the article's introduction and genesis during the constitution's drafting process. On November 25, 1948, the Constituent Assembly discussed and adopted the current Article 12 of the Constitution (Article 7 of the Draft Constitution). B.R. Ambedkar outlined the purpose of this article being twofold, firstly every person ought to be able to exercise their rights. Second, these rights ought to be binding upon all authorities. Thus, it's evident that for the fundamental rights to be upheld, they must bind not only the Central Government, but all governmental bodies established by law with the authority to enact laws, rules, or bylaws.

**The scope of what encompasses 'other authorities' under Article 12<sup>15</sup> has been expanded throughout the years by the courts.**

The first case to consider the question of what consists of other authorities was the case *University of Madras v Shantha Bai*<sup>16</sup>. The court held that universities that are not statutory bodies will not be regarded as state entities. The words 'local authorities' must be interpreted as 'ejusdem generis' that is bodies of similar nature concerning government or legislature. This

---

<sup>15</sup> The Constitution of India 1950, art 12

<sup>16</sup> *University of Madras v Shantha Bai* (1954) MADLW 665

interpretation means that only authorities carrying out governmental functions would fall under the purview of other authorities.

In the case of *Raman Dayaram Shetty v International Airport Authority*<sup>17</sup>, the International Authority Act of 1971<sup>18</sup> established the International Airport Authority, a non-statutory organization, that founded the body. The authority to choose the IAA's members and chairman is vested in the federal government. The national government also had jurisdiction over the IAA and several other functions. The federal government also provided the funding needed for it to carry out its responsibilities. The Court determined that the International Airport Authority **qualified as a state under Article 12**<sup>19</sup> because it was an agency or tool of the Central Government.

In the landmark case of *Ajay Hasia v Khalid Mujib Sehravard*<sup>20</sup> the constitutionality of the admission process of the Regional Engineering College. The college was established under the Jammu and Kashmir Registration of Societies Act, of 1898<sup>21</sup>, and was responsible for overseeing and managing it. The court held the government is subjected to certain constitutional and public law limits thus if the government is operating through instrumentality, that it organizations through which it can exercise its control, then it too must be constrained to the same limits. The court also established a test to determine whether an entity or instrumentality would be considered part of the government. The Ajay Hasia case and the tests laid down below were discussed in the present case to determine whether BCCI would be considered as a state in accordance with the test laid down in the Ajay Hasia Case. These six legal tests laid down in the Ajay Hasia<sup>22</sup> case came to be the standard and have to be achieved to be considered as a 'State' under Article 12<sup>23</sup>. In the Ajay Hasia Case, the Court considered all the previous precedents and interpreted the term 'other authorities' for the purposes of Part III of the Constitution. This

---

<sup>17</sup> *Raman Dayaram Shetty v International Airport Authority* (1979) 3 SCC 489

<sup>18</sup> The International Authority Act 1971

<sup>19</sup> Constitution of India 1950, art 12

<sup>20</sup> *Ajay Hasia Etc v Khalid Mujib Sehravardi & Ors* (1981) 2 SCR 79

<sup>21</sup> The Jammu and Kashmir Registration of Societies Act 1898

<sup>22</sup> *Ibid*

<sup>23</sup> Constitution of India 1950, art 12

judgement clarified the uncertainty regarding what authorities or entities shall be considered as 'State'.<sup>24</sup>

**The tests are as laid down by the court:**

- An organization is a government agency or instrumentality if the government owns a substantial capital share of the organization.
- Whether the body has a monopoly status in the industry that the statute has granted or protected.
- The state has deep and pervasive authority over the body.
- The transfer of a government unit to a business would be a compelling argument in favour of the business being interpreted as a government instrument or agency.
- The State provides any financial assistance that can cover nearly all the organization's expenses.
- If the duties carried out by the organization are closely related to those carried out by the government and are of public significance. If the corporations carry out public functions, this would be a pertinent factor in indicating that the corporation is a government agency or tool.

The 6 tests laid down in *Ajay Hasia* were used to determine whether the BCCI shall be considered as State under Article 12 or not. Each and every test was applied to the BCCI. Firstly, it was determined that a statute did not create the BCCI board. The government did not provide any regular financial aid to BCCI or the board's operations. The board does have a certain monopoly in the cricket industry, but this is not granted or safeguarded by the government, and other organizations are welcome to enter the same market. The state has no extensive or deep influence over how the board operates. The board's operations are neither directly associated with governmental operations nor are they public functions. BCCI was established as an

---

<sup>24</sup> Aditya Sondhi, 'The Legal Status of BCCI: Unwarranted Ad-Hocism, Constitutional Hudles and the Pressing Need for a Cricket-Legislation' (2010) 22(2) National Law School of India Review  
<<https://repository.nls.ac.in/nlsir/vol22/iss2/5>> accessed 16 July 2024



independent, self-governing organization and not an organ or instrumentality of the state. Thus, it was concluded that BCCI was not a state as defined under Article 12.

## **PUBLIC FUNCTION**

The argument put forth was that the duties that were discharged by the BCCI in the field of cricket are akin to state function as the general duties and responsibilities carried out by the BCCI suggest that the board serves the public interest.

Let's for the sake of the argument assume this to be true such that BCCI issues the rules, guidelines, and standards, in the field of cricket for the Indian team in both the national and international arena. It plays the role in the picking of the individual team members, the umpires, and anyone involved in the field of cricket and has the power to preclude players. Further, the Board is the sole owner of broadcast rights of the game as well. All of these powers exercised by the board are under the implied approval and concurrence Union of India which asserts these powers and is supportive of the activities of the BCCI.

**The question now that falls before us for consideration is whether the state performing such public duties which can akin to be state functions is enough for it to be called a state within the definition of Article 12.**

The court rejects this argument as no legislation or statute has been passed by the state that has authorized the BCCI to carry out any such duties on behalf of the state. The union has granted independence and allowed private organizations to manage cricket operations based solely on their own free will. Therefore, a private entity cannot be considered an instrumentality of the state within the sense of Article 12.

Cricket matches can be organized independently by anyone other than the board, and neither the board nor the government can object. In actuality, a large number of domestic and even international matches are played without the Board or Indian Union's permission.

Even if the board's acts are public in nature, they do not constitute governmental functions, nor do they include any public role. A body would only be considered 'other authorities' under

Article 12 if their functions are primarily governmental in nature or if a statute grants them that authority.

## CONCLUSION

A body acts in the public interest, and it is not a state merely because it carries out functions that are similar to those of the state. If the case's facts are evaluated in the context of all relevant information, it will be determined whether the body is deeply and widely controlled by the Indian government and whether it is financially, functionally, and authoritatively dominant. An entity that exercises only regulatory authority over the government would not be regarded as a state for Article 12. Further, it was held that the High Court may pass an order against a 'State' or a non-state entity without any restrictions through Article 226<sup>25</sup>.

The body must also run the various tests outlined in instances such as *Ajay Hasia* to decide whether or not it is a state. Thus, it is evident from applying these requirements that the Union of India does not have technical, political, budgetary, or administrative control over the Board. The government's influence over the board is acknowledged, but it is purely regulatory in nature and also applies to other bodies that share the same characteristics, hence the BCCI is not considered a state.

---

<sup>25</sup> Constitution of India 1950, art 226