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Supreme Court of India classifies Air Force Group Insurance Society as a 'State' Under Article 12 of the Constitution of India

The Supreme Court of India (“**Supreme Court**”), in the case of *Ravi Khokhar and Ors. vs. Union of India and Ors.*¹, considered the question whether Air Force Group Insurance Society (“**AFGIS**”) can be recognised as ‘State’ within the meaning of Article 12² of the Constitution of India (“**Constitution**”). The Supreme Court examined the tests to be satisfied to qualify as ‘State’ under Article 12 of the Constitution. These tests pertain to the nature of functions, character of activity, and degree of governmental control. The Supreme Court held that AFGIS would be a ‘State’ under Article 12 of the Constitution.

Brief facts

1. AFGIS was established in 1976 under the Societies Registration Act, 1860, after receiving the sanction of the President of India on October 6, 1976.
2. The board of trustees of AFGIS, *vide* a meeting dated December 27, 2016, decided that the pay scales of the workers would be revised in accordance with the Sixth Pay Commission of the Government of India.
3. The board of trustees of AFGIS, *vide* a meeting dated February 13, 2017, decided that while revising the pay scales any linkage and pay parity with the Central Government, by virtue of the Pay Commissions will be done away with.
4. In view of the above, a notice was issued on May 22, 2017, which asked all the employees to sign their acceptance to the revised terms.
5. The Employees of the AFGIS (“**Appellants**”) filed a writ petition before the Hon’ble High Court of Delhi (“**Delhi HC**”). The writ petition was dismissed by the Delhi HC by a common judgment dated February 1, 2023, and it held as follows:
 - a) the Respondents (including the Air Force Group Insurance Society, Air HQs Non-Public Fund Organisation, CRPF Employees’ Educational Society) cannot be treated as ‘State’ or ‘other Authority’ within the meaning of Article 12 of the Constitution.
 - b) consequently, the writ petitions under Article 226 of the Constitution were not maintainable as the respondents do not satisfy the requirements of Article 12 of the Constitution.

¹ 2026 INSC 233 (decided on March 12, 2026)

² Under Article 12 of the Constitution, unless the context otherwise requires, ‘the State’ includes the Government, the 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.

6. Aggrieved by the dismissal of the writ petition, the Appellants preferred an appeal before the Supreme Court.

Issue

The principal question before the Supreme Court was whether AFGIS can or cannot be recognised as 'State' under Article 12 of the Constitution of India?

Findings and analysis

1. The Supreme Court observed that the requirements to be recognised as 'State' rely upon a functional and purposive analysis. The present approach is a shift from the earlier narrow approach, which was only limited to the origin/ownership of the organisation. At present, various factors are taken into consideration such as accountability and the rule of law in furtherance of practical governance.
2. The Supreme Court relied upon the following judgments to exemplify the requirements of Article 12 of the Constitution:
 - a) *Ajay Hasia and Ors. vs. Khalid Mujib Sehravardi and Ors.*³: In this case, while summarising the relevant tests that indicate if a corporation is a 'State' instrumentality, the Supreme Court also cautioned that wide enlargement of the meaning must be tempered by a wise limitation. The relevant tests are as under:
 - i) if the entire share capital of the corporation is held by Government;
 - ii) the financial assistance of the State is so much as to meet almost entire expenditure of the corporation; and
 - iii) the corporation enjoys monopoly status which is State conferred or State protected;
 - iv) existence of deep and pervasive State control;
 - v) if the functions of the corporation are of public importance and closely related to governmental functions; and
 - vi) specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference.
 - b) *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology*⁴: In this case, relying on its precedents, the Supreme Court observed the following:
 - i) the tests laid out in the earlier decisions of the Supreme Court are only guiding factors, not strict or conclusive rules;
 - ii) in the case of NCERT, it was not considered 'State' because:
 - it was largely autonomous;
 - its functions were not purely governmental;
 - Government control confined only to proper utilisation of the grant; and
 - it was not fully funded by the Government; and
 - iii) *Mysore Paper Mills Limited vs. Mysore Paper Mills Officers' Assn.*⁵: In this case, it was held that a company is an 'authority' within the meaning of Article 12 of the Constitution, if: (x) it is substantially financed and controlled by the Government; (y) its board of directors are appointed and can be removed by the Government; and (z) it performs important functions of public interest under Government supervision.
 - iv) The principles set in *Ajay Hasia* case (supra) are not a rigid set of principles, that if a body falls within any

³ (1981) 1 SCC 722

⁴ (2002) 5 SCC 111- 7 Judges Bench

⁵ (2002) 2 SCC 167

one of them it must, *ex hypothesi*, be considered a 'State' within the meaning of Article 12 of the Constitution.

v) The key question would be whether the body is financially, functionally and administratively dominated by or under the control of the Government. If this governmental control is pervasive, the body is considered 'State'.

vi) However, mere regulatory control whether under a statute or otherwise, is not enough to make a body 'State'.

vii) In *Rajkaran Singh vs. Union of India*⁶, the Supreme Court observed that:

- to be an authority within the meaning of Article 12 of the Constitution, the entity should either be a creation of statute or be created under a statute functioning with liabilities and obligations to the public;
- in *Ajay Hasia* case (supra), tests (i), (ii), and (iv) are determinative of ownership, and tests (iii), (v), and (vi) are functional tests;
- neither all the tests are required to be answered in the positive, nor a positive answer to one or two tests would be enough; and
- the identification of the real source of governing power will depend on a combination of one or more of the relevant factors depending on the essentiality and overwhelming nature of such factors.

c) *Zee Telefilms Ltd v Union of India*⁷: The Supreme Court observed that merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12 of the Constitution.

3. After examining the case of AFGIS in light of the above judgments, the Supreme Court observed the following:

a) On the aspect of deep and pervasive control:

- i) AFGIS was established by the sanction of the President of India.
- ii) The deputation rules of AFGIS were approved by the President of India.
- iii) The President of India has sanctioned, on separate occasions, the creation of substantive post in the AFGIS, and specific fixation of pay bands.
- iv) The Principal Director (AFGIS) has to apprise the Assistant Chief of Air Staff monthly on the AFGIS cash flow. Thereby enabling oversight of by a core member of the Indian Air Force ("IAF").
- v) The membership and deductions are compulsory for the personnel serving in the IAF.
- vi) AFGIS has a monopoly over insurance for IAF members.

b) On the aspect of administrative control:

- i) All the members of the board of trustees and the managing committee are serving members of the IAF, on deputation to AFGIS for a fixed period.
- ii) Hence, the administration is entirely in the hands of Government servants even though AFGIS is a purportedly private, a self-contained society.

c) On the aspect of financial control:

- i) It was the Appellant's case that there is a 'mandatory and automatic' reduction of the premium from the IAF personnel's salary. The Government has financial control as the salary is charged upon the Consolidated Fund of India.

⁶ 2024 SCC Online SC 2138

⁷ (2005) 4 SCC 649

- ii) The Supreme Court rejected the Appellant's contention and observed that with respect to the financial aspects of AFGIS, the Government may not have direct control.
 - iii) The Supreme Court observed that for an entity to be treated as 'State', it must be under deep and pervasive government control- financial and administrative and must carry out public duties.
- d) On the aspect of public duty:
- i) The protection and welfare of armed forces personnel is a core government function.
 - ii) AFGIS does perform a public duty, as they provide insurance coverage to IAF personnel, whose role is essential for national security and sovereignty.
 - iii) The State's obligation continues even after retirement because the life of a person is forever shaped by their time in service.
- e) Selective assertion of Government identity for tax benefits:
- i) AFGIS is exempt from various taxes because of its compulsory nature, and the automatic deduction of contributions from salaries.
 - ii) At one point, AFGIS has also claimed the status of 'Government' to get an exemption from service tax, on the ground that it is under the control of the Ministry of Defence.
 - iii) AFGIS has resiled from its own statement, by opposing the challenge of the Appellants.
 - iv) An organisation cannot selectively claim the status of "Government" for one purpose (availing tax exemptions in this case), while denying the same status in other contexts.
4. Consequent to the above discussion, the Supreme Court allowed the appeal and held that AFGIS would be 'State' under Article 12 of the Constitution.

Conclusion

The Supreme Court ruling reinforces the modern interpretation of Article 12 of the Constitution of India, which moves beyond the test of ownership. The Supreme Court has also rejected the ill practice of entities who avail tax benefits by claiming the status of 'State'. However, they deny this status when it does not suit their purpose to evade their constitutional obligations. This judgment is especially significant for those organisations which are engaged in a public function or provide public utility services, particularly those which were earlier provided by the Government itself and now stand privatised. The assertions made before various statutory bodies including tax authorities is now also being considered as a factor to test as to whether an entity is 'State' under Article 12 of the Constitution.

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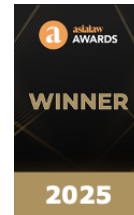
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