



2025:DHC:369



§~4 & 43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on 23.01.2025

+ **W.P.(C) 355/2025**
MS POOJA ANANDPetitioner

versus

BASIC CHEMICALS COSMETICS
AND DYES EXPORT PROMOTION
COUNCIL (CHEMEXCIL) & ANR.Respondents

+ **W.P.(C) 16740/2023**
POOJA ANANDPetitioner

versus

BASIC CHEMICALS COSMETIC AND DYE EXPORT
PROMOTION COUNCIL AND ANR.Respondents

Appearance:- Mr. Vivek Kumar Tandon, Ms. Mamta Tandon, Ms. Prerna Tandon & Mr. Harshit S. Gahlot, Advocates for Petitioner in Item No. 4.
Mr. Aayush Agarwala & Mr. Prakash Jha, Advocates in Item No. 43
Mr. Sanjoy Ghose, Senior Advocate with Mr. Pradeep Desodya, Mr. Amandeep Singh, Mr. Vinay Ranjan, Mr. Dilip K. Niranjana, & Mr. Mohit Garg, Advocates for R-1 in Item Nos. 4 & 43.
Ms. Saumya Tandon, CGSC with Mr. Gaurav Singh Sengar, Advocate and Mr. Amit Acharya, Govt. Pleader for R-2/UOI in Item No. 4. [M:-9810907029].
Mr. Arjun Mahajan, SPC for UOI with Mr. Apoorv Upmanyu & Mr. Harsh Vashist, Advocates for UOI. [M:-9810047321]

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. These two writ petitions have been filed by the same petitioner against her employer - Basic Chemicals, Cosmetics and Dyes Export



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Promotion Council [“CHEMEXCIL”]. In W.P.(C) 16740/2023, the petitioner seeks grant of child care leave, whereas in W.P.(C) 355/2025, she challenges a Human Resource Policy implemented by CHEMEXCIL with effect from 08.01.2024.

2. Notice has been issued in the first writ petition by order dated 08.01.2024, and in the counter affidavit filed by CHEMEXCIL, it has taken a preliminary objection, contesting the maintainability of proceedings under Article 226 of the Constitution against it. A similar objection was raised in the second writ petition, recorded in the very first order dated 13.01.2025.

3. I have heard Mr. Vivek Kumar Tandon and Mr. Aayush Agarwala, learned counsel, who appear on behalf of the petitioner in the two writ petitions, and Mr. Sanjoy Ghose, learned Senior Counsel for CHEMEXCIL, on this preliminary point.

4. Mr. Ghose submits that the question has been decided by a Division Bench of this Court in *Dr. Jitarani Udgata vs. Union of India and Another*¹. The aforesaid judgment concerns a writ petition filed by the petitioner therein against the Gems and Jewellery Export Promotion Council [“GJEPC”]. The Division Bench upheld a judgment of the learned Single Judge dated 09.07.2021, which held the writ not to be maintainable.

5. In arriving at this conclusion, the Division Bench considered the Memorandum and Articles of Association under which GJEPC is constituted, and also addressed the question of whether it was under the “pervasive control” of the Government of India, so as to fall within the



ambit of “State” under Article 12 of the Constitution. An argument was also raised with respect to the exercise of public functions of GJEPC².

6. The fact that CHEMEXCIL is constituted in a similar fashion and that the Memorandum and Articles of Association of CHEMEXCIL³ are in *pari materia* with those of GJEPC, is undisputed. Mr. Agarwala and Mr. Tandon, therefore, accept that the judgment of the Division Bench squarely covers the present case on this aspect.

7. However, it is their submission that the question of exercise of public function, which may render a non-State entity also amenable to the writ jurisdiction, has not been considered in *Dr. Jitarani Udgata (supra)*.

8. Upon a holistic reading of the Division Bench judgment, I am unable to concur with this submission. Paragraph 11 of the said judgment records the submission of counsel for the petitioner therein, with regard to the function of an Export Promotion Council as a registering body notified by the Director General of Foreign Trade for the purposes of implementation of the Foreign Trade (Development and Regulation) Act, 1992. A perusal of the following extracts of the judgment shows that the Division Bench was alive to the nature of the functions exercised by GJEPC and came to the conclusion that the writ was nonetheless rightly

¹ (2022) SCC OnLine Del 3449.

² “11. The learned Senior Counsel refers to Chapter 2 of the Handbook of Procedure issued by MOCI, which notifies the procedure to be followed by an exporter or importer or by the licensing/regional authority or by any other authority for the purpose of implementing the provisions of the Foreign Trade (Development & Regulation) Act and any Rules/orders emanating therefrom, to state that chapter 2.91-2.99 depicts Gjepc as a registering body notified by the Director General of Foreign Trade (“DGFT”). He argues that all these factors indicate that Respondent 2 is not an autonomous body, and what constitutes as a “State” under Article 12 has been given a very wide interpretation, and institutions such as Aiims, ONGC, BHEL, etc. which do not receive any funding from the Government are also considered to be amenable to writ jurisdiction.”

³ The Memorandum and Articles of Association of CHEMEXCIL have been placed on record in W.P.(C) 16740/2023.



dismissed:

“30. A perusal of the aforementioned judgments bring to the fore that the liberal interpretation that has been given to “State” and “other authorities” under Article 12 has been circumscribed over the years to include only those authorities that can explicitly be deemed to be under the control of the State **and performs a public duty or State function.** The control that must be exercised by the State over the authority should be pervasive in nature to the extent that the authority should have limited autonomy. These are the broad guidelines that must be borne in mind when venturing into the question as to whether or not a certain authorities can be termed to be a “State”. In this context, it becomes pertinent to analyse the provisions of the MoA, AoA and other documents to discern whether Gjepc can be brought within the net of “other authorities” for the purpose of Article 12.

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32. A perusal of the aforementioned clauses of the AoA and the MoA demonstrates the functions of the Gjepc which is primarily to support, protect, maintain, increase and promote the export of gems and jewellery, including pearls, coloured gemstones, diamonds, synthetic stones, costume (fashion) jewellery, gold and other precious metal jewellery and articles thereof. The primary purpose of Gjepc is to act as a nodal agency/interface between the exporters and the Government. The Council being a collective body of the exporters places the interests/problems faced by the exporters before the Government so that the Government can take such decisions which would promote the export of gems and jewellery. The Council, therefore, does not carry out the policy decisions of the Government or is in any way relevant to the decision-making process of the Government regarding exports of these articles. The CoA primarily consists of exporters with only three out of the 27 members being Government nominees. It cannot, therefore, be said that the Council does anything which is even remotely connected with the activities which are conducted by the instrumentalities of the State. The Supreme Court has noted that while it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity (Refer to G. Bassi Reddy v. International Crops Research Institute [G. Bassi Reddy v. International Crops Research Institute, (2003) 4 SCC 225] , and Ramakrishna Mission v. Kago Kunya [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303]). This Court is of the view that the function of Gjepc does not pass the “public function” test and that it cannot be said to be performing any duty that is similar to that performed by the State in its sovereign



capacity.

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37. Consequently, a deep dive into the AoA and MoA of the Gjpec only brings forth the understanding that the Gjpec is a nodal agency, meant to mediate between exporters of gems and jewellery, and the Central Government. **The function performed by the Gjpec cannot be termed as “public duty” and any administrative or financial hold that the Central Government is deemed to have over Gjpec is far from pervasive.** The Gjpec retains its autonomous character and it is the CoA which not only looks after the affairs of the Gjpec, but is also empowered to make rules and regulations with regard to conditions of service, appointment, elections, etc. Gjpec does not satisfy any of the requirements or tests laid down by various judgments of the Supreme Court for establishing whether or not an authority can be deemed to be a “State” under Article 12. The reliance of the appellant on *All India Garment Exporters Common Cause Guild v. Union of India* [All India Garment Exporters Common Cause Guild v. Union of India, 2011 SCC OnLine Del 265] is misplaced as the learned Single Judge in the matter therein had observed that the AEPC was a statutory body that received support from the Central Government “financially or otherwise”, which is not the case in the instant matter.

38. It is pertinent to note that the reliance of the appellant on *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] that even if the body in question is private in nature, a writ of mandamus would lie if the petitioner has no alternative efficacious remedy, also does not come to the aid of the petitioner for the simple reason that the authority therein was an educational institution performing a public duty. The Supreme Court had, thus, held that the service conditions of the academic staff would not be of a purely private character, and mandamus could not be refused. **This case is distinguishable from the instant case as the dispute herein is solely of a private nature and the authority in question is wholly private and autonomous, without the backing of a statute or performing any public duties.**⁴

9. The functions of CHEMEXCIL are admittedly analogous to the functions of GJEPC, albeit in a different industry.

⁴ Emphasis supplied.



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10. For the aforesaid reasons, I am of the view that the preliminary objection raised by CHEMEXCIL must be sustained, following the judgment of the Division in *Dr. Jitarani Udgata (supra)*.

11. The writ petitions are therefore dismissed, with liberty to the petitioner to take recourse to alternative remedies available to her in law.

12. It is made clear that this Court has not address itself to the rights and contentions of the parties on merits.

PRATEEK JALAN, J

JANUARY 23, 2025

'pv/JM'