

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th JULY, 2022

IN THE MATTER OF:

+ **LPA 438/2022 & CM APPLs. 31859/2022, 31861/2022**

PRAKASH SINGH Appellant

Through: Mr. Raghav Sharma, Mr. Mukesh Sharma and Mr. Kunal Tiwari, Advocates.

versus

UNION OF INDIA & ANR Respondents

Through: Mr. Piyush Beriwal, Senior Panel Counsel for UOI with Ms. Geetanjali Tyagi, Govt. Pleader.
Mr. Krishan Karthik, Advocate for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant LPA has been preferred under Clause X of the Letters Patent Act, 1865 read with Section 151 CPC seeking setting aside of the Order dated 02.06.2022 passed by the Ld. Single Judge in W.P.(C) 9134/2022 whereby the writ petition filed by the Appellant herein was dismissed.

2. The facts, in brief, leading to the instant appeal are that the Respondent No.2/Agence France Press is a news agency (*hereinafter referred to as 'news agency'*) having its headquarters at Paris, France and its branch at Janpath, New Delhi. It is stated that the Appellant joined the Respondent No.2/Agence France Press (AFP) in the year 2001. It is stated

that in the year 2011, the Appellant applied for the post of Chief Photographer South-Asia in Agence France Press. It is stated that, thereafter, the Appellant applied for the post of Chief Photographer for India Region and on 20.11.2017, the Appellant was appointed as Chief Photographer for India Region. It is alleged by the Appellant that he was being racially discriminated and harassed at the Respondent No.2/Agence France Press.

3. The Appellant approached this Court by filing W.P.(C) 9134/2022 with the following prayers:

“a) Issue a Writ/Order/Direction in the nature of Mandamus directing the Respondent No.2 to not to discriminate the Petitioner on the basis of race, place of origin, colour etc. or in any way against the law of the land.

b) Issue a Writ/Order/Direction in the nature of Mandamus directing the Respondent No.2 to allow the Petitioner to enjoy the benefits as are enjoyed by several others of the Respondent No.2's organisation.

c) Pass any other Writ(s)/Order(s)/Direction(s)/Relief(s) in favour of the Petitioner and against the Respondents in the interest of justice.”

4. A preliminary objection has been raised by the learned counsel appearing for the Respondents in the instant appeal by stating that the writ petition is not maintainable against the Respondent No.2/Agence France Press for the reason that said news agency, against whom reliefs are being sought, does not come within the definition of State under Article 12 of the Constitution of India.

5. The Ld. Single Judge *vide* impugned order dated 02.06.2022 placed reliance on the judgments of the Hon'ble Supreme Court in Ramakrishna

Mission & Anr. vs. Kago Kunya & Ors., (2019) 16 SCC 303 and in Binny Ltd. Vs. Sadasivan, (2005) 6 SCC 657, and held that Respondent No.2/Agence France Press is not amenable to writ jurisdiction as it does not have an authority under Article 12 of the Constitution of India and is also not performing any public duty and, therefore, dismissed the Writ Petition.

6. Learned counsel appearing for the Appellant contends that Respondent No.2/Agence France Press has been constituted by the Act of Parliament of France and being a news agency is performing a public function and is hence amenable to the writ jurisdiction of this Court. He places reliance on the judgment of this Court in ABC vs. Commissioner of Police and Ors., passed in **W.P.(C) No.12730/2005** dated 05.02.2013 and Sangamitra Acharya and Ors. vs. State (NCT of Delhi) and Ors., passed in **W.P.(C) No.1804/2017** dated 18.04.2018.

7. Heard learned counsels appearing for the parties and perused the material on record.

8. A Seven Bench Judge of the Apex Court in Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and others, (2002) 5 SCC 111 has elaborated the tests to determine as to whether an entity is an instrumentality or agency of the State or not and observed as under:

“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 the 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 Article 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 obligations 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 [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] 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 undeliberated. 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 [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] tests.

(2) The tests laid down in Ajay Hasia case [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] 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 the 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 the Government or deep and pervasive control of the Government so as to hold it to be an instrumentality or agency of the State.”

9. None of the tests laid down by the Apex Court in Pradeep Kumar Biswas (supra) are satisfied in the instant case. Respondent No.2/Agence France Press has not been created by any law passed in the country nor has it been entrusted with such functions which can be termed as ‘Governmental’ or closely associated therewith by being on public importance or being fundamental to the life of people. Respondent No.2/Agence France Press was constituted in France and as far as India is concerned, Respondent No.2/Agence France Press is only a private entity.

10. The writ of mandamus is not generally a remedy against private wrongs. The scope of writ of mandamus is against the private authority which might be performing a public duty limited to the enforcement of the public duty, and this Court cannot interfere with the internal management of a private body. It is well settled that a writ of mandamus lies only for the purpose of a public or statutory duty. Writs are issued for the performance of public duties. Though Article 226 of the Constitution of India is worded in such a way that a writ of mandamus could be issued even against a private authority but such private authority must be discharging a public function and the right sought to be enforced must be a public duty.

11. In the present case, the grievance of the Appellant is that he has been racially discriminated against and harassed at Respondent No.2/Agence

France Press. The complaint against the said news agency is not in the course of its performance of its duty as a news agency. The complaint against Respondent No.2/Agence France Press, which is a foreign entity, is not amenable to the writ jurisdiction as there is an employer-employee relationship which by no jurisdiction can be termed as a public function.

12. In ABC vs. Commissioner of Police and Ors (supra), the petition was filed by the Petitioner/mother on behalf of her daughter alleging breach of right to privacy and confidentiality of identity of her daughter under Article 21 of the Constitution of India. It was contended by the Petitioner/mother therein that the newspaper had revealed the age of her daughter, who was a victim of sexual abuse as well as, the locality in which she resides, the class in which she studies, and the occupation of her father. The relief sought for in that petition by the Petitioner/mother was to restrain various news agencies like Hindustan Times House and Aaj Tak from publishing the news about her daughter and she also claimed compensation for breach of right to privacy and confidentiality of identity of her daughter.

13. The reliance placed by the learned counsel appearing for the Appellant on ABC vs. Commissioner of Police and Ors (supra) cannot be accepted for the reason that the said judgment should be interpreted in the facts of that case only. In that case, the news agencies, which were involved in that case, were all news agency operating primarily in the country having a huge subscription base. In that case, the privacy and confidentiality of the daughter of the Petitioner, who was a victim of sexual abuse, had to be zealously protected. The said judgment cannot be applied to the facts of the present case. On the same ground, the reliance placed by the Appellant on Sangamitra Acharya and Ors. vs. State (NCT of Delhi) and Ors (supra) also cannot be applied to the facts of the present case for the reason that in the said case, the question

was regarding interpretation of the relevant provisions of the Mental Health Act, 1987. In that case, a woman was taken away from the residence of her music teacher, with whom she had been residing since she turned 18 years of age, at the behest of her parents and brother, and was admitted in a privately run mental hospital.

14. The Respondent No.2/Agence France Press cannot be termed as a State under Article 12 of the Constitution of India and is, therefore, not amenable to writ jurisdiction. The Respondent No.2/Agence France Press is an entity of France and even if the contention of the Petitioner is taken into account that the said news agency has been constituted by the Act of Parliament of France and is engaged in the activity of public function, it still cannot be termed as a State under Article 12 of the Constitution of India. In any event, the complaint, which is sought to be redressed in the instant appeal, is arising out of the internal working of Respondent No.2/Agence France Press, and the enforceability is not for any public function.

15. With these observations, the appeal is dismissed, along with pending application(s), if any.

16. In view of the frivolous petition and appeal filed by the Appellant herein, which has resulted in wastage of precious judicial time, this Court is inclined to impose costs of Rs.50,000/- on the Appellant.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 27, 2022

S. Zakir