

**Reserved On : 20/03/2025****Pronounced On : 04/04/2025****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/LETTERS PATENT APPEAL NO. 1366 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 4530 of 2016****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In R/LETTERS PATENT APPEAL NO. 1366 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE BIREN  
VAISHNAV****and****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No

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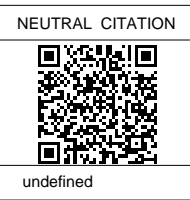
**HIMANSHU DINESHCHANDRA PAREKH****Versus****INSTITUTE FOR PLASMA RESEARCH & ORS.**

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**Appearance:****MR. SHALIN MEHTA, SENIOR COUNSEL WITH ADITI S RAOL(8128) for  
the Appellant(s) No. 1****DELETED for the Respondent(s) No. 2,3****MR DG SHUKLA, ADVOCATE WITH MS.MESHWA BHATT, ADVOCATE for  
the Respondent(s) No. 1****MS VYOMA K JHAVERI(6386) for the Respondent(s) No. 4**

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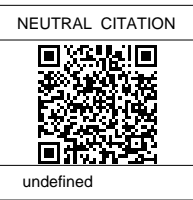
**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.  
JUSTICE BIREN VAISHNAV****and****HONOURABLE MR. JUSTICE HEMANT M.  
PRACHCHHAK****CAV JUDGMENT****(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE**

**BIREN VAISHNAV)**

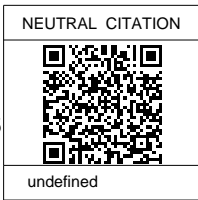
1 This appeal under Clause 15 of the Letters Patent has been filed by the appellant who was the original petitioner before the learned Single Judge. The learned Single Judge, by an oral judgement dated 08.08.2024, held that the petition filed by the petitioner is not maintainable against the respondent No.1-Institute as the Institute is not a “State” within the meaning of Article 12 of the Constitution of India.

1.1 Before the learned Single Judge, the petition was filed by the appellant challenging the order dated 29.09.2015 removing the appellant from services from the post of Engineer (S.C) as well as the order dated 21.12.2015 passed by the Director i.e. the Appellate Authority.

2 Mr.Shalin Mehta, learned Senior Counsel appearing with Ms.Aditi Raol, learned counsel for the appellant, made the following submissions:



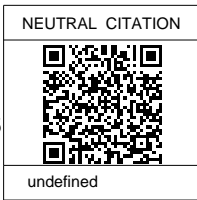
2.1 Taking us through the Bye-laws of the Institute annexed to the memo of the appeal, Mr.Mehta, learned Senior Counsel, would submit that the threshold question to be decided in this appeal is whether the Institute of Plasma Research (I.P.R) is a “State” within the meaning of Article 12 of the Constitution of India. Taking us through the Bye-laws, Mr.Mehta, learned Senior Counsel, would submit that apparent it is from the Bye-laws that the Institute is an aided institution under the Department of Atomic Energy, Government of India, and therefore, under the administrative control of the Department of Atomic Energy. The Bye-laws of the Institute came into force from the date of approval by the Central Government. Though the Institute is registered under the Societies Registration Act, reading the Bye-laws would indicate that the property of the Institute, namely, all buildings, land, machinery, equipment and instruments belong to the Department of Atomic Energy, which indicates that the financial control of the Institute is with



the Central Government.

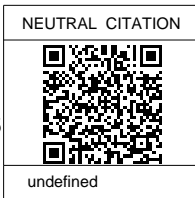
2.2 Mr.Mehta, learned Senior Counsel, would submit that even the administrative control of the Institute, as is evident from reading the Constitution of the Government Council is with the Department of Atomic Energy. Taking us through Clause 6 of Chapter 2 of the Bye-laws, Mr.Mehta, learned Senior Counsel, would submit that it is evident on reading the composition of Governing Council that the administrative control of the Department of the Central Government is all pervasive. Secretary of the Department of Atomic Energy is a Chairperson, representative of the State Government, Secretary of Education, Science and Technology, Government of Gujarat is on the governing council. The two scientists on the council are nominated by the Government of India. All these indicate that the administrative control of the Institute completely vests with the Central Government.

2.3 Taking us through the powers of Governing Council,



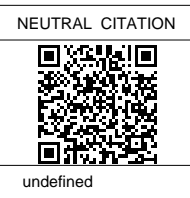
Mr.Mehta, learned Senior Counsel, would submit that Clause 18 indicates that the governing council has various powers, however, they are subject to various orders issued by the Government of India and the Management of the Institute shall be under the supervision of the Council. Further, reading the general powers with regard to adoption of pay-scales, allowances and the revision thereof and creation of posts which needs prior approval of the Government of India, in Mr.Mehta's submission would indicate control of the State. In Mr.Mehta's submission, the fact that rules of reservation have to be implemented and necessary provisions have to be made for reservation of post in matters of appointment and promotion also indicates State control on the administrative functions of the Institute.

2.4 As far as financial powers are concerned, reading Bye-law 32, Mr.Mehta, learned Senior Counsel, would submit that the fact that the provisions of the General

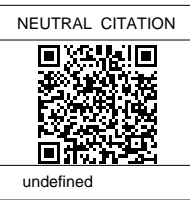


Financial Rules of the Government of India are applicable would also indicate financial control of the State. On the aspect of financial control, Mr.Mehta, learned Senior Counsel, would read Chapter 7 which deals with conditions of service of it's employees and submit that the fact that the conduct and disciplinary rules are made in line with the Central Civil Services Rules warrants a conclusion that even the financial control is with the State.

2.5 Mr.Mehta, learned Senior Counsel, therefore in light of the decision of the Hon'ble Supreme Court in the case of ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & ors.***, reported in ***(2002) 5 SCC 111***, would submit that there is no iota of doubt that in light of the cumulative facts it is very well established that the respondent body is functionally, financially and administratively dominated by and under the control of the Government. The control is pervasive. He would, therefore, submit that in light of the decision in the case



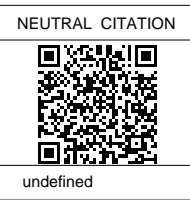
of **Pradeep Kumar Biswas (supra)**, which was also under the Societies Registration Act, the respondent-Institute of Plasma Research is a State within the meaning of Article 12 of the Constitution of India. Relying on the decision of the Hon'ble Supreme Court in the case of **Board of Control for Cricket in India vs. Cricket Assn. Of Bihar.**, reported in **(2015) 3 SCC 251**, Mr.Mehta, learned Senior Counsel would submit that as held by the Hon'ble Supreme Court in the case that it is evident that even though the Institute is an autonomous body but the same functions which are undertaken by the institute, they may not be public functions, they remain in the nature of public functions. Relying on the decision in the case of **M.P.State Cooperative Dairy Federation Ltd vs. Rajneshkumar Jamindar.**, reported in **(2009) 15 SCC 221**, reading para 31 thereof, Mr.Mehta, learned Senior Counsel, would submit that when the activity may not be commercial activity, but if such an activity is undertaken with a view to develop and achieve better economic development, the body becomes State within



the meaning of Article 12 of the Constitution of India.

2.6 Relying on a decision in the case of ***Virendra Kumar Srivastava vs. U.P.Rajya Karmachari Kalyan Nigam & Anr.***, reported in ***(2005) 1 SCC 149***, Mr.Mehta, learned Senior Counsel, would submit that as held by the Hon'ble Supreme Court, when there is a brooding presence of the government, the body would become a State within the meaning of Article 12 of the Constitution of India. On the submission of the counsel for the I.P.R that the Bye-laws that are annexed to the appeal, though of the year 2018 were not on record, Mr.Mehta, learned Senior Counsel, would submit that such Bye-laws can be considered as, when the petition was decided, the Bye-laws of 2018 were in force and as held by a decision of the Hon'ble Supreme Court in the case of ***Mr.R.S.Madireddy (supra)***, the question of issuing a writ would arise only when the writ petition is being decided. He would, therefore, submit that on the date when the learned Single Judge decided the petition,

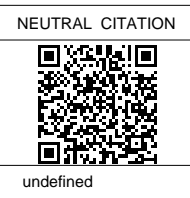




the Bye-laws annexed to the appeal memo were in force which indicated that the respondent Institute is a State. In support of his submissions, he would rely on paragraphs 38 and 39 of the decision in the case of **Mr. R.S.Madireddy (supra)**.

3 Mr.D.G.Shukla, learned counsel appearing for the Institute of Plasma Research, would submit that the Institute is an autonomous body which is a grant-in-aid Institute. It is a research Institute devoted to the fundamental and applied studies in the area of plasma physics. It is not a State within the meaning of Article 12 of the Constitution of India. Merely because Bye-laws of 2018 are read, it does not in any manner indicate pervasive functional, financial and administrative control of the government. In support of his submissions, he would rely on the following decisions:

(I) ***Chander Mohan Khanna vs. National Council of Educational Research & Training.***, reported in ***1991 (4) SCC 578***.



(ii) ***Tekraj Vasandi alias, K.L. Basandhi vs. Union of India.***, reported in **1988 (1) SCC 236.**

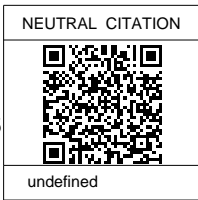
(iii) ***Rambhai Ishwarbhai Patel vs. Gujarat State Fertilizers & Chemicals Ltd.***, reported in **(2011) 2 GLR 1197.**

(iv) ***Kiritkumar K. Rawal vs. District Collector, Mehsana & Ors.***, reported in **2006 (2) GLH 266.**

(v) ***(Dr.) C.A.Shah vs. Gujarat Cancer & Research Institute.***, reported in **1992 (2) GLH 38.**

(vi) ***Army Welfare Education Society, New Delhi vs. Sunil Kumar Sharma.***, reported in **2024 (4) GLH 761.**

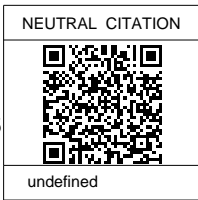
4 Ms.Vyoma Jhaveri, learned advocate appearing for respondent No.4, would support the submissions made by Mr.D.G.Shukla, learned advocate for respondent No.1, and submit that the Central Government does not interfere in the day-to-day administration of the management of the Institute, and therefore, it has a very



limited role in such management, and therefore, it cannot be said that the Central Government has functional, financial and administrative control of the State.

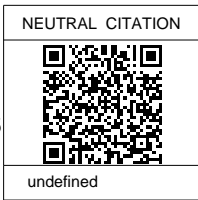
5 Having heard the learned advocates appearing for the respective parties, though the learned Single Judge has, while holding that the respondent is not a State within the meaning of Article 12 of the Constitution of India, also ventured to decide the petition on merits, during the course of submissions, it was requested by the learned Senior Counsel Mr.Mehta, that in the event we were to hold that the Institute is a “State” within the meaning of Article 12 of the Constitution of India, then even on merits, the Court should decide the matter rather than remand the case to the learned Single Judge on the issue of deciding on merits.

5.1 We note that the decision of the Hon’ble Supreme Court in the case of **Pradeep Kumar Biswas (supra)**, is the foundation on which the edifice of the learned Counsel for the appellant attempted to build his base in



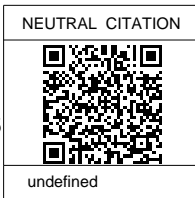
trying to convince us that the respondent Institute is a “State” within the meaning of Article 12 of the Constitution of India. Decisions subsequent thereto which have been pressed into service, essentially are reiteration of the position of law on the question of an institution being a “State”. But since the body before the Hon’ble Supreme Court i.e. the Indian Institute of Chemical Biology was also an educational institution and a scientific and research organization, the judgement in the case therefore was extensively pressed to assail the order of the learned Single Judge, who held the respondent – Institute in this case to be not a State.

5.2 Reading of the decision in the case of **Pradeep Kumar Biswas (supra)**, would indicate that the Hon’ble Supreme Court found that the C.S.I.R i.e. the Council for Scientific & Industrial Research was created by the government to carry on in an organized manner what was done earlier by the Department of Commerce of the Central Government. It was setup in the national interest



to further the economic welfare of the Society by fostering with it industrial development in the country. In the words of Hon'ble Supreme Court, such a function is fundamental to the governance of the country.

5.3 On perusal of the rules and regulations of the research institute, the Hon'ble Supreme Court found that there was a dominant role played by the Government of India in the governing body of the CSIR. The Prime Minister of India was the Ex-Officio President of the Society. The control of the government was ubiquitous. As far as the financial position is concerned, the Hon'ble Supreme Court found that at least 70% of the finance of the CSIR were available from the grants of the Government of India and the accounts were audited by the Comptroller and Auditor General and placed before the table of both the Houses of Parliament. Moreover, the Hon'ble Supreme Court found that on 31.10.1986, the Union of India had issued a Notification under Sec.14(2) of the Administrative Tribunals Act, 1985, notifying the



Institute as being a Society owned and controlled by the government.

5.4 Based on these parameters as adopted by the Hon'ble Supreme Court, the Apex Court found that the control of the State was not merely regulatory but it was established that the body was functionally, financially and administratively dominated or be under the control of the government. Paragraphs 40, 42, 44, 45 and 47 to 58 read as under:

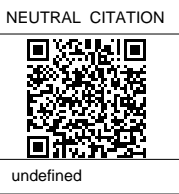
*"40 The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, it would not serve to make the body a State.*

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*42 On 27-4-1940, the Board of Scientific and Industrial Research and on 1-2-1941, the Industrial Research Utilisation Committee were set up by the*



*Department of Commerce, Government of India with the broad objective of promoting industrial growth in this country. On 14-1-1941, a Resolution was passed by the Legislative Assembly and accepted by the Government of India to the following effect:-*

*“This Assembly recommends to the Governor-General-in-Council that a fund called the Industrial Research Fund be constituted, for the purpose of fostering industrial development in this country and that provision be made in the budget for an annual grant of rupees ten lakhs to the fund for a period of five years.”*

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*44 The 26-9-1942 Resolution had provided that the functions of CSIR would be:*

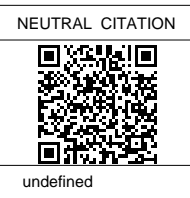
*(a) to implement and give effect to the following resolution moved by the Hon’ble Dewan Bahadur Sir A.R.Mudaliar and passed by the Legislative Assembly on 14-11-1941 and accepted by the Government of India;...*

*(b) the promotion, guidance and coordination of scientific and industrial research in India including the institution and the financing of specific researches:*

*(c) the establishment or development and assistance to special institutions or department of existing institutions for scientific study of fellowships;*

*(d) the establishment and award of research studentships and fellowships:*

*(e) the utilisation of the results of the researches conducted under the auspices of the Council towards the development of industries in the country and the payment of a share of royalties arising out of the development of the results of researches to those who are considered as having contributed towards the pursuit of such researches;*



- (f) the establishment, maintenance and management of laboratories, workshops, institutes, and organisation to further scientific and industrial research and utilise and exploit for purposes of experiment or otherwise any discovery or invention likely to be of use to Indian industries;*
- (g) the collection and dissemination of information in regard not only research but to industrial matters generally;*
- (h) publication of scientific papers and a journal of industrial resolution mentioned in (a) above.*

*45 These objects which have been incorporated in the memorandum of association of CSIR manifestly demonstrate that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. That such a function is fundamental to the governance of the country has already been held by a Constitution Bench of this Court as far back as in 1967 in Rajasthan SEB v. Mohan Lal, where it was said:*

*“The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.”*

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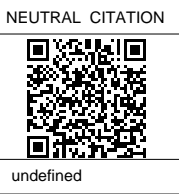
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*47 Incidentally, CSIR was and continues to be a non-profit-making organization and according to clause 4 of CSIR’s memorandum of association, all its income and property, however derived shall be applied only “towards the promotion of those objects subject nevertheless in respect of the expenditure to such limitations as the Government of India may from time to time impose”.*

*Management and control*

*48 When the Government of India resolved to set*





*up CSIR on 26-2-1942, it also decided that the Governing Body would consist of the following members:*

- (1) The Honourable Member of the Council of His Excellency the Governor-General in charge of the portfolio of Commerce (ex officio).*
- (2) A representative of the Commerce Department of the Government of India, appointed by the Government of India.*
- (3) A representative of the Finance Department of the Government of India, appointed by the Government of India.*
- (4) Two members of the Board of Scientific and Industrial Research elected by the said Board.*
- (5) Two members of the Industrial Research Utilisation Committee elected by the said Committee.*
- (6) The Director of Scientific and Industrial Research.*
- (7) One or more members to be nominated by the Government of India to represent interests not otherwise represented.*

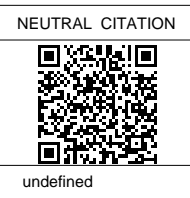
*49 The present Rules and Regulations, 1999 of CSIR provide that:*

*“(a) The Prime Minister of India shall be the ex officio President of the Society.*

*(b) The Minister in charge of the ministry or department, dealing with the Council of Scientific and Industrial Research shall be the ex officio Vice-President of the Society:*

*Provided that during any period when the Prime Minister is also such Minister, any person nominated in this behalf by the Prime Minister shall be the Vice-President.*

*(c) Minister in charge of Finance and Industry (ex officio).*

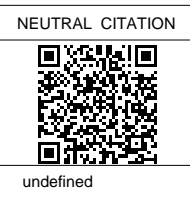


- (d) *The members of the Governing Body.*
- (e) *Chairman, Advisory Board.*
- (f) *Any other person or persons appointed by the President, CSIR."*

*The Governing Body of the Society is constituted by the:*

- (a) *Director General;*
- (b) *Member Finance;*
- (c) *Director of two national laboratories;*
- (d) *Two eminent Scientists / Technologists, one of whom shall be from academia;*
- (e) *Heads of two scientific departments / agencies of the Government of India.*

*50 The dominant role played by the Government of India in the Governing Body of CSIR is evident. The Director General who is ex officio Secretary of the Society is appointed by the Government of India [Rule2(iii)]. The submission of the learned Attorney-General that the Governing members is, having regard to the facts on record, unacceptable. Furthermore, the members of the Governing Body who are not there ex officio are nominated by the President and their membership can also be terminated by him and the Prime Minister is the ex officio President of CSIR. It was then said that although the Prime Minister was ex officio President of the Society but the power being exercised by the Prime Minister is as President of the Society. This is also the reasoning in Sabhajit Tewary. With respect, the reasoning was and the submission is erroneous. An ex officio appointment means that the appointment is by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer, in this case the Prime Minister, which are not specifically conferred upon him, but are necessarily implied in his office (as Prime Minister), these are ex officio.*

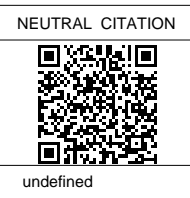


51 *The control of the Government in CSIR is ubiquitous. The Governing Body is required to administer, direct and control the affairs and funds of the Society and shall, under Rule 43, have authority “to exercise all the powers of the Society subject nevertheless in respect of expenditure to such limitations as the Government of India may from time to time impose.” The aspect of financial control by the Government is not limited to this and is considered separately. The Governing Body also has the power to frame, amend or repeal the bye-laws of CSIR but only with the sanction of the Government of India. Bye-law 44 of the 1942 Bye-laws had provided “any alteration in the bye-laws shall require the prior approval of the Governor-General-in-Council”.*

52 *Rule 41 of the present Rules provides that: “The President may review/amend/vary any of the decisions of the Governing Body and pass such orders as considered necessary to be communicated to the Chairman of the Governing Body within a month of the decision of the Governing Body and such order shall be binding on the Governing Body. The Chairman may also refer any question which in his opinion is of sufficient importance to justify such a reference for decision of the President, which shall be binding on the Governing Body.”*

53 *Given the fact that the President of CSIR is the Prime Minister, under this Rule the subjugation of the Governing Body to the will of the Central Government is complete.*

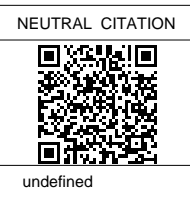
54 *As far as the employees of CSIR are concerned the Central Civil Services (Classification, Control and Appeal) Rules and the Central Civil Services (Conduct) Rules, for the time being in force, are from the outset applicable to them subject to the modification that references to the “President” and*



*“government servant” in the Conduct Rules would be construed as “President of the Society” and “officer and establishments in the service of the Society” respectively (Bye-law 12). The scales of pay applicable to all the employees of CSIR are those prescribed by the Government of India for similar personnel, save in the case of specialists (Bye-law 14) and in regard to all matters concerning service conditions of employees of CSIR, the Fundamental and Supplementary Rules framed by the Government of India from time to time are also, under Bye-law 15 applicable to the employees of CSIR. Apart from this, the rules/orders issued by the Government of India regarding reservation of posts for SC/ST apply in regard to appointments to posts to be made in CSIR (Bye-law 19). CSIR cannot lay down or change the terms and conditions of service of its employees and any alteration in the bye-laws can be carried out only with the approval of the Government of India (Bye-law 20).*

55 *The initial capital of CSIR was Rs 10 lakhs, made available pursuant to the Resolution of the Legislative Assembly on 14-11-1941. Paragraph 5 of the 26-9-1942 Resolution of the Government of India pursuant to which CSIR was formed reads:*

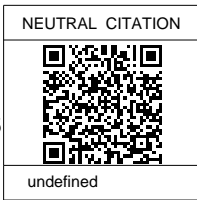
*“The Government of India have decided that a fund, viz., the Industrial Research Fund, should be constituted by grants from the Central revenues to which additions are to be made from time to time as moneys flow in from other sources. These ‘other sources’ will comprise grants, if any, by Provincial Governments, by industrialists for special or general purposes, contributions from universities or local bodies, donations or benefactions, royalties, etc., received from the development of the results of industrial research, and miscellaneous receipts. The Council of Scientific and Industrial Research will exercise full powers in regard to*



*the expenditure to be met out of the Industrial Research Fund subject to its observing the bye-laws framed by the Governing Body of the Council, from time to time, with the approval of the Governor General-in-Council, and to its annual budget being approved by the Governor-General-in-Council.”*

56 As already noted, the initial capital of Rs.10 lakhs was made available by the Central Government. According to the statement handed up to the Court on behalf of CSIR the present financial position of CSIR is that at least 70% of the funds of CSIR are available from grants made by the Government of India. For example, out of the total funds available to CSIR for the years 1998-99, 1999-2000, 2000-01 of Rs.1023.68 crores, Rs.1136.69 crores and Rs.1219.04 crores respectively, the Government of India has contributed Rs.713.32 crores, Rs.798.74 crores and Rs.877.88 crores. A major portion of the balance of the funds available is generated from charges for rendering research and development works by CSIR for projects such as the Rajiv Gandhi Drinking Water Mission, Technology Mission on oilseeds and pulses and maize or grant-in-aid projects from other government departments. Funds are also received by CSIR from sale proceeds of its products, publications, royalties etc. Funds are also received from investments but under Bye-law 6 of CSIR, funds of the Society may be invested only in such manner as prescribed by the Government of India. Some contributions are made by the State Government and to a small extent by “individuals”, institutions and other agencies”. The non-governmental contributions are a pittance compared to the massive governmental input.

57 As far as expenditure is concerned, under Bye-law 1 as it stands at present, the budget estimates of the Society are to be prepared by the Governing

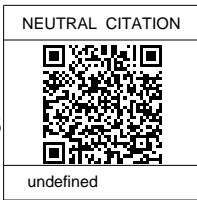


*Body “keeping in view the instructions issued by the Government of India from time to time in this regard”. Apart from an internal audit, the accounts of CSIR are required to be audited by the Comptroller and Auditor General and placed before the table of both Houses of Parliament (Rule 69).*

*58 In the event of dissolution, unlike other registered societies which are governed by Section 14 of the Societies Registration Act, 1860. the members of CSIR have no say in the distribution of its assets and under clause 5 of the memorandum of association of CSIR, on the winding up or dissolution of CSIR any property remaining after payment of all debts shall have to be dealt with “in such manner as the Government of India may determine”. CSIR is therefore both historically and in its present operation subject to the financial control of the Government of India. The assets and funds of CSIR though nominally owned by the Society are in the ultimate analysis owned by the Government.”*

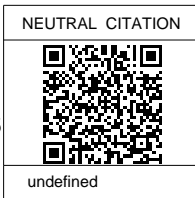
5.5 Obviously therefore, deep and pervasive functional administration and financial control vested in the Central Government which made the Institute a “State” within the meaning of Article 12 of the Constitution of India.

6 Considering these parameters as set out in the decision in the case of **Pradeep Kumar Biswas(supra)**, when considered in the context of the respondent – Institute, what we find from the affidavit-in-reply filed by



the Institute as well as the Union of India, is that the Institute of Plasma Research was initially a part of the Physical Research Laboratory dealing in experimental studies in plasma physics. It was an institute setup and recognized for its contributions to fundamental and applied research in plasma physics and associated technologies. It was an experimental program supported by the Department of Science & Technology. True it is that the institute is a research and development organization under the authority of Department of Atomic Energy, but that itself would not make the institute a State within the meaning of Article 12 of the Constitution of India.

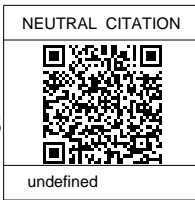
6.1 In light of the decision in the case of **Mr.R.S.Madireddy (supra)**, even if we were to consider the Bye-laws, it is evident that the institute is an audited institute under the Department of Atomic Energy. Though the property of the institute vests in the Department of Atomic Energy and the governing council in his position



as Chairperson as the Secretary of Department of Atomic Energy and Scientists nominated by the government, the governing council being a permanent body, no comparisons can be drawn with the one before the Hon'ble Supreme Court in the case of **Pradeep Kumar Biswas(supra)**. The administrative control of the CSIR before the Hon'ble Supreme Court was evident in light of the fact that the Prime Minister was the President of the Institute, which was not the case on hand in the facts where we are dealing with the Institute of Plasma Research before us.

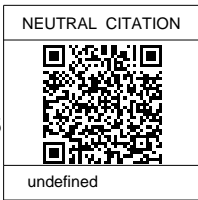
6.2 Merely because the composition is of the Government of India is mainly dominated by officers of the Department of Atomic Energy, that itself will not make it a body over which it cannot be said to be the State's pervasive functional control, much less, administrative control. Unlike what was brought before the Hon'ble Supreme Court in the case of CSIR where 70% of the funding was by the State agency, nothing is on





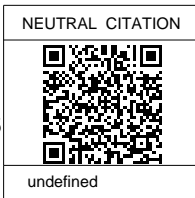
record before us as to what extent the Central Government funds the institute. We may, further, fall back upon the Memorandum of Association placed on record which indicates that the institute shall maintain a fund to which shall be credited: (I) all moneys provided by Department of Atomic Energy, Government of India, (ii) all fees and other charges received by the Institute and (iii) all moneys received by the Institute by way of grant, gifts, donations or other contributions. The accounts are to be audited by the Chartered Accountant and unlike the accounts that needed to be tabled on the House of the Parliament after it being audited by the Comptroller & Auditor General, in the case of **Pradeep Kumar Biswas (supra)**, the only administrative control is that the Comptroller & Auditor General can have a right to demand production of books of the institute.

6.3 The rules and regulations, as far as disciplinary control is concerned, are framed by the institute and merely because they are so done in line with the Central



Rules or Central Civil Services Rules, that itself is not an indication of the State's control. The line of decisions which have been extensively referred to by the Apex Court in the case of **Pradeep Kumar Biswas (supra)**, suggests that when it is pointed out to the Court that the functional, financial and administrative control of an institute is not pervasive but mere regulatory, merely because of clauses like the one where it is shown that the property vests with the Government of India or such indicia which indicate only regulatory control of the State would not make the institute "State" within the meaning of Article 12 of the Constitution of India.

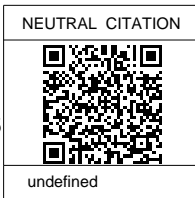
6.4 On having extensively gone through the Bye-laws so projected by the learned Counsel for the appellant, these do not persuade us to come to the conclusion that functional, financial and administrative control of the Central Government is all pervasive. At best it can be said to be regulatory in nature, particularly when it has come on record through the affidavit of the Union that the



government does not interfere in the day-to-day management of the institute. Merely regulatory provisions which ensure that the activities are carried out in consensus with the guidelines provided by the State, would not make an agency a State within the meaning of Article 12 of the Constitution of India.

6.5 As far as CSIR is concerned, in the case of **Pradeep Kumar Biswas (supra)**, the Council for Scientific & Industrial Research was held to be such as it was carrying out functions fundamental to the economic welfare of the country which the Hon'ble Supreme Court held to be a function fundamental to the governance of the country. In addition thereto, there is no notification under Sec.14 of the Administrative Tribunals' Act notifying I.P.R to be "a Society governed and controlled by the government so as to bring it within the purview of the Central Administrative Tribunal".

7 In the facts of the present case, we find that the institute is purely an academic and research institute



setup as an autonomous research and development organization and it can never be said that merely because it is under the authority of Department of Atomic Energy it becomes a State. The institute is largely involved in theoretical and experimental studies in plasma science including basic plasma physics which is a scientific and research activity which cannot be termed to be fundamental to the governance of the country and certainly therefore, the Institute cannot be a “State” within the meaning of Article 12 of the Constitution of India. We are, therefore of the opinion that the learned Single Judge committed no error in dismissing the petition.

8 Accordingly, the appeal is dismissed. In view of disposal of the main appeal, the civil application will not survive and stands disposed of, accordingly.

**(BIREN VAISHNAV,ACJ)**

**(HEMANT M. PRACHCHHAK,J)**

BIMAL