

**In Re: Badri Narayan Thakur**

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**Court :** Kolkata

**Decided On :** Mar-09-1981

**Reported in :** AIR1981Cal214

**Judge :** B.C. Ray, J.

**Acts :** [Constitution of India](#) - Articles 12 and 226

**Appellant :** In Re: Badri Narayan Thakur

**Advocate for Pet/Ap. :** Paritosh Mukherjee, Adv.

**Disposition :** Application dismissed

**Judgement :**

ORDER

**B.C. Ray, J.**

1. This application is directed against a resolution passed by the Managing Committee of Shree Mandhari High School, Kanchrapara, District 24 Parganas, against the petitioner, it has been urged by Mr. Mukherjee learned Advocate for the petitioner that the school is an agency or in other words an instrument of the State and as such it comes within other authorities under Article 12 of the Constitution and hence a Writ of Mandamus is maintainable against the resolution adopted by such an institution. I am unable to accept the submissions of Mr.

Mukherjee on this point. As regards the resolution in my opinion there is no infirmity. There is no doubt that the majority of the members of the Managing Committee of this Institution adopted the resolution and as such it is perfectly a legal and valid resolution. As regards the maintainability of a writ petition against a resolution passed by the Managing Committee of a School it has been urged on behalf of the petitioner with great emphasis that as the Institution receives grants-in-aid from the Government, as after the election of the members of managing committee the reconstitution of managing committee cannot take place unless a Govt. nominee is placed and that approval of the District Inspector of Schools or for that the Director of Public Instruction is necessary for the recognition of the Institution. These are indicia to term the school as an instrumentality or agency of the Government. Reliance has been placed in support of this argument on a decision of the Supreme Court in *Ajay Hasia v. Khalid Mujib* reported in : (1981)ILLJ103SC . In that case admission to Regional Engineering College, Srinagar, was challenged in the writ petition. A preliminary objection as to the maintainability of the writ petition was taken. It was held by Bhagwati, J., who spoke for the Supreme Court that in determining whether a corporation is an authority it is immaterial whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Govt. and not how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act or it may be a society registered under the Societies Registration Act or any other similar statute. Whatever be its genetical origin it would be an authority within the meaning of Article 12 if it is an instrumentality or agency of the Government. It has been further observed : 'if a corporation is found to be a mere agency or surrogate of the Government, in fact, owned by the Government, in truth controlled by the Government, and in effect an incarnation of the Government it will be held an instrumentality or agency of the Government against whom Writ will lie.' His Lordship in making this observation relied on His Lordship's own judgment in : (1979)ILLJ217SC (*R.D. Shetty v. International Airport Authority of India*). In that case as well as in the case just referred to i.e., *Ajay Hasia v. Khalid Mujib* both the International Airport Authority

and the Regional Engineering College, Srinagar are undoubtedly instrumentality or agency of the Government. In the case of international Airport Authority the Airport Authority was created by a statute and the entire control of the administration of the authority and functions are in the hands of the Central Government. In the case of Regional Engineering College, Srinagar State Government of Jammu & Kashmir as well as the Central Government has control as will be evident from the rules in the Memorandum of Association of this Engineering College registered under the Jammu & Kashmir Registration of Societies Act, 1898. That not only the entire finance is coming from the State Government as well as from the Central Government but also the majority members of the governing body are appointed by the State and the Central Authorities; the audits and accounts are subject to approval of the State and Central Authorities; the members of the governing body can be removed at any time by the State and the Central Authorities. In fact, it is completely under the control of the Central Government as well as the State Government. The managing committee is to work subject to the control of the State and Central Government. So in that view of the matter it was held that it is an agency or instrumentality of the Government. It is owned by the State Government. As stated by the learned Judge it is an incarnation of the Government itself. In that view of the matter it was held that in such a case it will be deemed to be an authority or in other words an agency of the Government within the meaning of Article 12 of the Constitution. In regard to this particular Institution the school has been established undoubtedly on private initiative. It has obtained recognition from the West Bengal Board of Secondary Education undoubtedly. But the members of the managing committee are elected on the basis of different constituencies embodied in the rules for management of aided institutions. Moreover, the school has got its own funds received by way of realisation of tuition fees from the students as well as other fees such as development fees, etc. from the students. As the school is an aided school it receives grants from the Govt. to meet the deficit as regards the pay and allowances of the members of the teaching and non-teaching staff. According to the six tests laid down in the above decision it cannot be said to be a sure indicia or a infallible indicia to treat this institution an authority or an agency of the Govt. within the meaning of Article 12 of the Constitution. I am unable to uphold this

submission tried to be advanced on behalf of the petitioner. In my opinion this school which has been recognised by the West Bengal Board of Secondary Education is more or less an autonomous body in the matter of running the administration of the school, in the matter of appointment and dismissal of teacher as well as members of the non-teaching staff and in disbursement of its funds other than Government grants. Therefore, in my opinion, a recognised school cannot under any circumstances be said to be another authority within the meaning of Article 12 of the Constitution and no Writ is maintainable against such an institution. I am fortified on this point by a recent decision of the Supreme Court reported in : AIR 1981 SC122 (Jawala Devi Vidyalaya's case) and also another decision, in (Vaish Degree College's case).

2. For the reasons aforesaid the contention raised on behalf of the petitioner having failed this application fails and it is therefore dismissed. This will not however stand in the way of the petitioner to take any other proceeding in any other forum if he is so advised.

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