

Municipal Authority – Whether a State within Article 12 of the Indian Constitution**Definition of ‘State’**

Article 12 of the Indian Constitution defines “State” in Part III (Fundamental Rights) as:

“In this part, unless the context otherwise requires, the State includes the Government and 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”

The definition is not exhaustive but inclusive, which means that apart from those organs or bodies which have been enumerated, other may also be covered by the expression ‘State’. It is thus, is an interpretative article. The expression ‘other authorities’ has been interpreted by the courts, as it has not been defined in the constitution or in any statute. Generally, a liberal or extended interpretation has been adopted by the Courts.

Essentials of a State:**a. Executive and Legislative of Union and States:**

It would obviously include Union and State Government, and, Parliament and State Legislature. The acting President of India and Governors of States form part of the Executive. The term Government includes department of Government or any institution under control Government Department e.g. - the I.T or Excise Department; the Forest Research Institution etc.

b. Authorities:

According to Webster’s dictionary, ‘Authorities’ means a person or body exercising power or command. In the context of the Article, Authority means the power to make laws, orders, regulations, bye-laws made by a municipal committee.

c. Local Authorities:

The expression defined in Sec. 3 of the General Clause Act refers to authorities like Municipalities, District boards, Panchayats, etc.

d. Other Authorities:

The expression ‘Other Authorities’ in Article 12 is used after mentioning the executive and legislative of Union and States, and all local authorities. Thus, it was held that it could only indicate authorities of a nature i.e. ejusdem generis. So construed, it could only mean authorities exercising government or sovereign functions.

The Delhi Development authority doesn’t fall under a, b or c above. It is to be seen whether DDA falls within the meaning of the term ‘any other authority’ as per Article 12.

Judicial Precedents

In the case of ***Ajay Hasia v. Khalid Mujib***¹ it has been held that whether a statutory body falling within the purview of the expression “other authorities” is to be considered differently.

In ***Electricity Board, Rajasthan v. Mohan Lal***², the Supreme Court gave a very restrictive interpretation of the expression “other authorities” and observed that only the authorities created by the Constitution or the statute are other authorities, though it is not necessary that the statutory authority should be engaged in performing governmental or sovereign function.

In ***Som Prakash v. Union of India***³, the Supreme Court expanded the term State and held that a Government company (Bharat Petroleum Corporation) fell within the meaning of the expression ‘the State’ used in Article 12. The court observed that the emphasis was on functionality plus State control rather than on the statutory character of the Corporation. The expression ‘other authorities’ is not confined to statutory corporations alone but may include a government company, a registered society, or bodies which have some nexus with the government.

In ***R.C. Jain v. Delhi Development Authority***⁴ the question that arose was that is DDA a “Local Authority” under the General Clause Act is a question raised under this writ petition?

The court observed that a Local Authority shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

The first part of the definition clearly talks about District Board, Municipal Corporation etc but the second part of the section is divided into two sub divisions. If the authority is legally entitled to or entrusted to by the government with the control and management of municipal fund not much difficulty will arise in identifying local authority because a municipal fund means fund of municipal committee and unless the fund belong to such local authority it will not be a municipal fund.

In the view of the above it was held that DDA is a local authority because it is a authority legally entitled to or entrusted by the government with the control and management of “Local Fund”.

In ***Premji Bhai Panwar v. Delhi Development Authority (DDA)***⁵ it was observed that the Delhi Development Authority, a statutory body, has been held to be a ‘local authority’ because it is constituted for the specific purpose of development of Delhi according to plan which is ordinarily a municipal function. The activities of the Delhi

¹ AIR 1981 SC 487

² AIR 1967 SC 1857

³ AIR 1981 SC 212

⁴ 1LR 1980 Delhi 29

⁵ (1980) 2 SCC 129

Development Authority are limited to Delhi. It has some element of popular representation in its composition and enjoys a considerable degree of autonomy.

In ***DDA v. Joint Action Committee, Alottee of SFS Flats***⁶ it was reaffirmed that DDA is a 'State' under the meaning of Article 12 and a writ could be preferred against it for the illegal allotment.

Hence Municipal Authorities are State within the meaning of Article 12 of the Indian Constitution.

⁶AIR 2008 SC 1343