

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 32/
ExxxNo. 1985.

DATE OF DECISION 11th April, 1986.

Shri Narinder Gupta

Petitioner

Shri Ashok Aggarwal

Shri A. K. Tewari

Shri G. G. Gupta

Ms. Anita Sachdeva

Shri Partap Kishan Jetley

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri B. R. Prashar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all Benches?

K. Madhava Reddy
(K. Madhava Reddy)
CHAIRMAN

11.4.1986.

K. Madhava Reddy
(Kaushal Kumar)
MEMBER 11.4.1986.

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For petitioner

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Shri Ashok Aggarwal

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Shri A.K. Tewari, Sh.B.R. Prasha

Ms. Anita Sachdeva.

(Judgment of the Bench delivered by Shri
Justice K. Madhava Reddy, Chairman.)

In this case, which was heard along with a batch of similar matters, a preliminary objection is raised that the Private Aided Schools managed by Societies and Trusts (for short Aided Schools) under the control of Delhi Administration are not amenable to the jurisdiction of the Central Administrative Tribunal, constituted under Section 4(1) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) and the grievances of the employees of these schools cannot be entertained under Section 19 of the Act.

It is contended by Shri Ashok Aggarwal and other learned Counsel that the administration of the Aided Schools is governed by the Delhi School Education Act, 1973. These schools receive 95% aid from Central Government and are controlled in all matters concerning management including disciplinary matters, by the provisions of the said Act and the rules made thereunder; hence the employees of these schools are entitled to invoke the jurisdiction of this Tribunal under Section 14(1) of the Act. This contention is refuted by the learned Counsel Shri A.K. Tewari and Ms. Anita Sachdeva. It is argued that merely because the Central Government through the Delhi Administration gives 95% grant to these schools and exercises complete and effective control over these institutions and has the power to withhold grant, withdraw recognition,

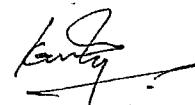


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regulate the terms of employment of the staff of these schools, enforce compliance of the Act and Rules and to even take over the management of these Institutions, the employees of these Institutions do not become employees of Union Territory or of the Union of India. They do not hold a civil post under the Union and the Central Administrative Tribunal does not acquire jurisdiction to entertain their grievances under Section 19. Consequently, the petitions and suits pending in the High Court, and other Courts and Authorities do not stand transferred under Section 29(1) to this Tribunal and it has no jurisdiction to deal with and dispose off the same.

Under Section 14(1) of the Act, recruitment and all matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian, and all service matters pertaining to the service of such member, person or civilian employed in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government alone are within the purview of the Act. It is to be seen whether the petitioners herein hold any of the posts mentioned in clause (a) of Section 14(1) of the Act. Admittedly they are neither members of the All India Services, nor civilians holding a post connected with the defence or defence services. Nor are they members of a civil service of the Union. If at all they can lay claim only to be holding a civil post under the Union. In view of the explanation added to Section 14 by the Amendment Act, we will proceed on the basis that 'civil post' under the Union includes 'civil post' under the Union Territory of Delhi as well.

It is necessary to ascertain what a "civil post under the Union" means. There is no definition of the expression "civil post" in the Administrative Tribunals Act. It is also not defined under the Constitution. Part XIV of the Constitution which deals with services under the Union and the States also does not define what a "civil post under the Union" is. Articles 310 and 311 of the Constitution and Article 323-A refer amongst others to a civil



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post under the Union and civil post under the State, but these Articles too do not define the expression "civil post". In the absence of such a definition, we may refer to some of the judicial pronouncements in this behalf to ascertain the criteria to determine whether a post is a civil post under the Union or not.

In *Praga Tools Corporation v. C.B. Imanal* (AIR 1969 SC 1306) and in *Heavy Engineering Mazdoor Union v. State of Bihar* (AIR 1970 SC 82), the Supreme Court held that "these companies have existence independent of the government and by the law relating to Corporations, these could not be held to be departments of the government and employees of the companies do not enjoy the protection available to government servants as contemplated in Art. 311."

Considering the question whether the employees of the Hindustan Steel Limited were entitled to the protection of Art. 311 of the Constitution, the Supreme Court in *Dr. S.L. Agarwal v. the General Manager, Hindustan Steel Limited* (AIR 1970 SC 1150) held "the Corporation which is Hindustan Steel Limited in this case is not a department of the government nor are the servants of it holding a post under the State. It has its independent existence and by law relating to Corporations it is distinct from its members." The Supreme Court held "In these circumstances, the appellant, who was an employee of the Hindustan Steel Co., does not answer the description of a holder of a civil post under the Union as stated in the Article. The appellant was not entitled to the protection of Art. 311."

A Division Bench of the Delhi High Court dealing with the question whether the petitioner therein, an employee of the Indian Standards Institution, was holding "a civil post under the Union" within the meaning of Article 311, the court held "apart from the fact that it (ISI) has not been incorporated under a statute, it is an independent body registered under the Societies Registration Act within its Memorandum and Rules to carry out its functions. It cannot therefore style as an agent or instrument of the government. It has independent existence and by law relating to Corporations

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it is distinct even from its members and, therefore, its members are not entitled to the protection of Art. 311. The institution cannot be said to be a department of the Government because it has its independent existence by virtue of its registration under the Societies Registration Act 1960."

In *Sabhajit Tewary v. Union of India*, the Supreme Court dealing with the question whether the Council of Scientific and Industrial Research was an "authority" within the meaning of Art. 12 held that it was a society registered under the Societies Registration Act and is not an authority within the meaning of Art. 312. The society does not have a statutory character. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and cooperation of scientific and industrial research and other activities of the Council towards the development of industries in the country are carried out in a responsible manner and, therefore, "its employees do not hold a civil post under the government and entitled to the benefits of Art. 311."

In *Sukhdev Singh and others v. Bhagatram Sardar Singh Raghuvanshi and another* (AIR 1975 SC 1331) even while holding that the Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation are "authorities" within the meaning of Art. 12 and its employees have a statutory status and are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provision, the Supreme Court held "the employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provision. However, these employees are not servants of the Union or State.



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Specifically dealing with the question whether a teacher of a school under the management of a District Board holds a "civil" post, a Division Bench of the Andhra Pradesh High Court in *R. Hanumanthappa v. The Special Officer District Board Anantapur and others* (AIR 1960 AP 342) declared that the post of a teacher in a school under the management of a District Board cannot be said to be a "civil" post within the meaning of Art. 311 of the Constitution.

In *Smt. Ena Ghosh v. State of West Bengal and others* (AIR 1962 /420), a single Judge of the Calcutta High Court had to consider whether the Vice Principal of Sarojini Naidu College for Women, Dum Dum holds a "civil" post under the State. The court found that the administration including the power of appointing and dismissing teachers, vested in the Governing Body. The Director of Public Instruction, West Bengal, was not the appointing authority. There was nothing to show that government ever had control of the manner in which the Vice Principal was to carry on her duties as Vice Principal. Her duties as Vice Principal were under the superintendence of the Principal and were under the ultimate superintendence of the Governing Body. Government did not exercise any degree of control over the day to day administration of sponsored colleges. The court concluded "The Vice Principal did not hold a civil post under the government and as such was not entitled to the constitutional safeguards provided in Art. 311."

From the judgements of the Supreme Court and the High Courts, to a few of which we have referred above, in our view in order to ascertain whether a post is a civil post under the Union or not, the following tests could be applied:

- (1) Is the post created by the Government and may be abolished by the Government?
- (2) Are conditions of service of such posts prescribed, regulated and controlled by the Government?



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(3) Are the duties attached to the post connected with the affairs of the State?

(4) Are the salary and other emoluments attached to the post paid out of the Revenues of the State.

These are only the several tests which may be applied to determine whether the post is a civil post under the Union. These tests are, however, neither exhaustive nor inflexible. It is not as if unless a post stands all the above tests, it cannot be treated as a civil post under the Union. While there is no single test by applying which we could say that a post is or is not a civil post under the State/Union, to be ^a post under the Union, the post must be one created by the Union and one which may be abolished by the Union; the appointment to the post and termination of service of persons holding the post should be by the Union or its officers; the control immediate or otherwise should be exercised by the Union or its officers; the conditions of service governing the post should be regulated by the Union or the State as the case may be and the relationship of master and the servant should be between the State and the persons concerned. In short, the employer must be the State. Mere control by the State of the conditions of service by law of a person employed by some other person, be it an individual, society, company or corporation, would not make such post a civil post under the Union / State and such employee a Government servant holding a post under the Union / State. Even where that authority or organisation employing the person concerned is effectively controlled by the Government, if such authority or organisation has a separate legal entity of its own and that independent legal entity creates the posts and appoints persons to hold those posts, those persons would be employees of that authority or organisation and not of the Government.

Let us now examine the nature of the posts held by the petitioners and the terms and conditions of their service, who

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appoints them, to what extent he exercises control over them and who terminates their services. It is an admitted fact that the posts are created by the Society / Trust. The petitioners are appointed by the Managing Committee of the Registered Society or the Trust to a post in a school managed by the particular Society / Trust. The respondent schools are all aided and recognised by the Government under the Delhi School Education Act, 1973. "Private School" is defined under Section 2(r) of that Act as follows:

"Private school" means a school which is not run by the Central Government, Administrator, a local authority or any other authority designated or sponsored by the Central Government, Administrator or a local authority;"

None of the schools are run by the Central Government or any of the Authorities mentioned in this definition. All the Respondent schools are private schools established and managed either by Trusts or Societies. Section 3 of the Delhi School Education Act, 1973 empowers the Administrator to regulate Education in all the schools in Delhi in accordance with that Act and the Rules made thereunder. All existing schools as well as schools to be established in future are required to conform to the Act and the Rules on pain of being not recognised. Section 4 lays down the procedure and conditions for recognition. Section 5 of the Act requires a scheme of management to be drawn up with the previous approval of the appropriate authority. The management of these schools is required to be carried on in accordance with the approved scheme and subject to the Act and Rules. Such schools are entitled to receive aid from the Government provided they are recognised under the Act. The terms and conditions of service of the employees of Recognised Private Schools are regulated by Sections 8 to 11 of the Act and the Rules made thereunder. Provision for relaxing the terms and conditions of service is vested in the Appointing Authority. But this power may be exercised only subject to the approval of the Director of Education as laid down in Rules 96, 97 and 98. Qualifications for appointment to various posts

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including posts of teachers and principals are prescribed under the Act and the Rules made thereunder. Section 10 directs that the scales of pay admissible to the employees of these aided schools shall not be less than those of the schools run by the appropriate authority. The aided schools are required to deposit their share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator, who disburses or causes to disburse the pay and allowances to the employees of the schools as provided in Section 10(2) of the Act. Section 8 prohibits removal of any of the employees of these schools without the prior approval of the Delhi Administration. If the management chooses to terminate the services of any of its employees or attempts to vary the terms and conditions of their employment, the Director of Education is vested with the jurisdiction to interfere and cancel the same. The management of any of these schools may be taken over by the Administrator under Section 20.

The Scheme of Management envisaged by Section 5 of the School Education Act and Rule 59 framed thereunder, requires a Managing Committee of an Aided School to manage the school in accordance with the Scheme of Management. The Scheme of Management inter-alia specifies the duties, powers and responsibilities of the Managing Committee. It is the Managing Committee of the School that creates the posts in the school and appoints persons against these posts. Not only the appointment to the various posts is made by the Managing Committee as laid down in Rule 98, disciplinary proceedings against the members of the staff may be taken only by the Managing Committee of the School in accordance with Rules 115, 116, 117, 119 and 120. Of course, the appointments may be made and the proceedings may be taken subject to the norms and conditions laid down by the Act, the Rules and the Scheme of Management. A major penalty may not be imposed on any member of the staff except with the previous approval of the Director. Nonetheless the penalty itself is imposed by the Managing Committee. This Managing Committee is subject to the supervision of the Trust or Society of the School.



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A reading of the provisions of the Act and the Rules made thereunder leaves one in no doubt that these Recognised Aided Private Schools are controlled in their day to day administration by the Director of Education. The recruitment and conditions of service of all employees of these schools including the disciplinary proceedings that may be instituted against them are to conform to the Act and the Rules made thereunder and are subject to the appellate and revisional jurisdiction of the Authorities under the Act and the Rules made thereunder. The entire management, though vested in the Society as per the Memorandum of Association, is nonetheless to be carried on in accordance with the scheme of management approved under Section 5 of the Delhi School Education Act and the Rules framed under the Act. Thus, though the Society manages the school, the Government gives 95% of its expenses by way of grant and effectively controls the functioning of the society itself. On failure of the society to conform to the Act, the Rules and the scheme of management framed thereunder, the Government is vested with the power to withdraw the grant sanctioned and even recognition accorded to the school. The Administrator may even take over the management of the Private School to ensure that the Act and Rules are complied with.

However, in our view, none of the powers vested either in the Director of Education or in the Delhi Administration and the Government, referred to above, make any of the employees of the Aided Schools employees of the Delhi Administration or of the Union Territory and the posts held by them civil posts under the Union. These provisions only vest effective power and authority in the Government and the Delhi Administrator to control every facet of the administration of these Private Schools. Merely because at various stages, the Managing Committee of the School is required to obtain prior approval of the Delhi Administration for its acts, relationship of master



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and servant between the employees of the Aided Schools and the Society / Trust does not stand abrogated and such a relationship established between those employees and the Government of the Union or Union Territory of Delhi. They continue to be the employees of the Society which runs the Aided School. The control envisaged by the Delhi Administration under the various provisions of the Delhi School Education Act is the control on Managing Committee of the Society. That does not convert the contract of employment between that employee and the Society into an employment under the Union. The post held by such an employee continues to be a post in a Private Aided School and the post he holds does not become a civil post under the Union or the Union Territory of Delhi.

Shri Ashok Aggarwal, learned Counsel, however, placed very strong reliance on the judgment of the Supreme Court in State of Assam versus Kanak Chandra Dutt 1968(1) LLJ 288 (S.C.) to contend that employees of Aided Schools hold civil posts under the Union. In that case, the Supreme Court held that "Maujador" holds a "civil post". The post of a Mauzador considered by the Supreme Court does not bear any analogy to the post of a teacher or other employees of an Aided School managed by a Society and governed by the Delhi School Education Act. He is appointed by the State and performs functions of a civil nature on behalf of the Government or the Deputy Commissioner.

The judgment of the Supreme Court in Superintendent of Post Office versus P.K. Rajma 1977 S.C. 1677, which dealt with the case of Extra Departmental Agents was also referred to as supporting that contention. In that case having regard to the service conditions of these Extra Departmental Agents discharging the duties ordinarily discharged by a Post Master of a Sub Post Office who is admittedly an employee of the Central Government, the Supreme Court held that though they are not regular civil servants, the Extra Departmental Agents hold civil posts under the Union and that there is a relation of master and servant between



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these Extra Departmental Agents and the Central Government.

It would be seen that though these Extra Departmental Agents are not full-time employees, they are appointed by the Government and not by any Society or other private individual or Authority.

Reliance was also placed on the judgment in Mehtab Ali Khan versus B.D.O. Panchayat Samiti - 1981 (2) SLR 539 (Rajasthan), in which a teacher of Panchayat Samiti was declared to be holding a civil post under the Government. Panchayat Samitis are constituted under the Panchayat Samitis and Zila Parishad Act. But it is not as if all schools managed by the Panchayat Samitis are necessarily schools of the Panchayat Samitis. Even Government schools along with their staff were placed under the management of the Panchayat Samitis. On the terms and conditions of service of the teachers of these schools, the management of which was transferred to the Panchayat Samiti, it was held that the teachers of those Primary Schools, now managed by the Panchayat Samitis continue to hold "civil posts" to which they were appointed.

Though Shri Aggarwal also relied on the judgment of Patna High Court in Rajpat Dubey versus State of Bihar - 1973 SLJ - 770, yet in our opinion the post of Dajjadar under the Village Chowkidar Act with which their Lordship were dealing, does not bear any analogy to the post with which we are concerned. The question whether they are employees of any other organisation, association or authority did not come up for consideration. On the other hand, referring to the position of the Aided Schools under the Delhi Administration, governed by the Delhi School Education Act, a Division Bench of the Delhi High Court in L.R. Sarma versus Delhi Administration (LPA 118/79 judgment dated 24th July, 1981) held that the Managing Committee of Private Aided Schools cannot be regarded as State or other Authority and no writ could be issued against the Societies managing these schools. It is stated that this question was referred to a Full Bench, but it could not be gone into because of a compromise arrived at between the parties.



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Be that as it may, an identical question came up for consideration before the Supreme Court in Manmohan Singh Jaitla versus The Commissioner, Union Territory, Chandigarh and others - 1985(I) SLR (505). That was a case of an employee of Guru Nanak Khalsa High School, an aided school governed by the Punjab Aided Schools (Security of Service) Act, 1969, as it applied to the Union Territory of Chandigarh. In paragraph 8 of the judgment, the Supreme Court held that "the aided school receiving 95% of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of Head Master to be valid must be approved by the Director of Public Instruction, would certainly be amenable to the writ jurisdiction of the High Court." The Supreme Court thus laid down that the Societies or Trusts owning or running such Aided Schools would be instrumentalities of the State and are amenable to the writ jurisdiction of the High Court. But from that it would follow that the employees of such instrumentalities are not employees of the State or the Government and they do not hold a civil post under the Government. As held in Sabhajit Tewari's case AIR 1975 S.C. 1329, these Societies cannot be held to be "departments of the Government" and their employees do not get the protection of Article 311 of the Constitution which they would, if they were to be holding a civil post under the Union as contended by the Counsel.

In view of the above discussion, we hold that the employees of Aided Schools do not hold a civil post under the Union or the Union Territory so as to be covered by Section 14(1) of the Administrative Tribunals Act, 1985. Admittedly the petitioners herein are neither members of an All-India Service nor members of any Civil Service of the Union or Union Territory. Nor are they civilians holding posts connected with defence or defence services. They are, therefore, not governed by Section 14(1) of the Act.

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The next question would be whether these Aided schools and the Societies which manage them are amenable to the jurisdiction of this Tribunal. If we examine the constitution and management of the Societies which have established these schools and/or ^{are} managing these schools, we find these Aided Private Schools are receiving 95% of expenses by way of grant from the public exchequer, their employees have statutory protection under the 1969 Act and are subject to the regulations made by the Education Department of the Union Territory, and the scheme made under the Act. They answer the description of instrumentalities of the State. Although the Delhi High Court is said to have referred the question whether a writ could be issued against such Societies, we are clearly of the view that such Societies being instrumentalities of the State are amenable to the extraordinary original jurisdiction of the High Court vested in it under Article 226 of the Constitution of India. Having regard to the judgements of the Supreme Court in *Sabhajit Tewari case (AIR 1975 S.C. 1329)* and *Ajay Hasia case (1981 S.C. 487)*, this question could no longer be treated as *Res integra*. The Supreme Court held:

".....it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to 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, 1956 or it may be a society registered under the Societies Registration Act, 1860 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 and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable

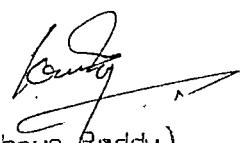
to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.

"12. It is also necessary to add that merely because a juristic entity may be an "authority" and therefore, "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Arts. 209, 310, and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Article 36, to Part IV, it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution."

These societies in question which receive 95% of the grant from State exchequer and are governed by statute and controlled by the Government are in our view instrumentalities of the State and would be amenable to the writ jurisdiction of the High Court. Even assuming they are not amenable, they do not thereby become subject to the jurisdiction of the Tribunal constituted under 4(1) of the Act. The Administrative Tribunals Act, 1985 is a special Act and unless the Central Administrative Tribunal is vested with the jurisdiction in respect of the employees of such societies, it cannot entertain their grievances and grant them relief. The petitioner herein and others similarly placed being employees of the respective Societies are governed by Section 14(2) of the Act. In respect of the grievances of persons governed by Section 14(2), the Tribunal cannot assume jurisdiction unless a Notification envisaged by that provision is issued. Such a Notification has not yet been issued. Consequently, as on today, this Tribunal has no jurisdiction to entertain their grievances. Inasmuch as the Tribunal has no jurisdiction to entertain these matters, the

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High Court which entertained these petitions continues to be vested with the jurisdiction to dispose of these writ petitions. These petitions do not stand transferred to the Central Administrative Tribunal under Section 29 of the Act. The records of all such writ petitions would have to be transmitted to the Registry of the Delhi High Court for further orders as to posting. This application was, however, filed before this Tribunal under Section 19 of the Act. There is no provision in the Act for transfer of such an application to any Court or other Authority. It has to be returned to the applicant for presentation to proper Court or Authority. Ordered accordingly.


(K. Madhava Reddy)
CHAIRMAN. 11.4.1986.


(Kaushal Kumar)
MEMBER. 11.4.1986.