

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

% **Order reserved on: 20.05.2022**
Order pronounced on: 19.07.2022

+ W.P.(C) 2059/2021
SUSHIL KUMAR Petitioner
Through: Mr. Hitender Kapur, Adv.

versus

CENTRAL REGISTRAR OF COOP SOCY AND ORS
..... Respondents
Through: Mr. Avinash Sharma, AOR with Mr.
Siddhant Chaudhary, Adv. for R-2 &

+ W.P.(C) 2942/2020 & CM APPLs. 10224/2020, 22332/2020,
27865/2020, 33448/2020, 6201/2021, 24545/2021

PAWAN KUMAR & ORS Petitioners
Through: Mr. Vinay Kumar Garg, Sr. Adv.
with Mr. Saqib, Mr. Parv Garg, Mr.
K. S. Rekhi and Mr. Pawar
Kulshrestha, Advs. for petitioners.

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Dev P. Bhardwaj, Central Govt.
Counsel for UOI with Ms. Anubha
Bhardwaj and Mr. Sarthak Anand,
Advs.
Mr. Hitender Kapur, Adv. for
applicant in I.A. No. 27865/2020 Mr.
Sanjay Parikh, Sr. Adv. with Mr.
Rajeev Mishra, Mr. Satwik Parikh,

Mr. Sanand Rama, Advs. for R-3 & 4.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

1. These two writ petitions have challenged the steps initiated by the respondents for the purposes of election of delegates, of the **Northern Zone Railway Employees Thrift and Credit Society Limited**¹. The aforesaid cooperative society is admittedly governed by the **Multi State Cooperative Societies, Act 2002**² read with the Rules and the Byelaws framed thereunder. The communication of 03 February 2020 set out the calendar for the election process which was to be undertaken. In terms of that notice, the election process was to commence on 03 February 2020 and the final list of candidates to be displayed on 09 March 2020. The notice further specified the number of delegates to be elected as being 120 and also set out their distribution amongst the various branches of the cooperative society.

2. It appears that the lead writ petition came up for consideration before a learned Judge of the Court on 23 March 2020. Issuing notice on the petition, the learned Judge observed that without going into the merits of the matter, bearing in mind the outbreak of the COVID-19 pandemic and the subsequent lockdown, it would not be practicable to hold elections. The

¹ The cooperative society

²The Act

Court accordingly proceeded to stay all further processes of elections as envisaged and detailed in the impugned communication of 03 February 2020. It is that interim order which has continued to hold the field till these two writ petitions were taken up for final disposal.

3. The respondents in the writ petitions have raised preliminary objections both on the ground of the writ petition being not maintainable against the cooperative society as also on the ground that once the election process had been set in motion, there was no justification for a writ petition having been entertained and, in any case, of an interim order being passed interdicting the election process itself.

4. Insofar as the question of the maintainability of the writ petition is concerned, learned counsels appearing for the respondents lead by Mr. Parikh learned senior counsel have contended that undisputedly the cooperative society cannot be termed as State within the meaning of Article 12 of the Constitution nor can it be described as being a public body against which a writ petition would be maintainable. It was pointed out that the cooperative society had been formed to espouse and protect the interests of employees of the Indian Railways and its functions were clearly private in character. In view of the aforesaid, it was submitted that the writ petitions would not lie. Mr. Parikh firstly placed reliance on the decision rendered by this Court in **NZRECTC Society Limited vs. Central Registrar Cooperative Society and Ors.**³ to submit that the aforesaid decision had

³ [AIR 2012 Delhi 112]

categorically found that the cooperative society was not a public authority and therefore the issue thus stands conclusively settled against the petitioners here. It becomes pertinent to note that the decision in **NZRECTC** was essentially dealing with the question of whether the cooperative society in question could be described as a public authority and thus fall within the ambit of the Right to Information Act, 2005. However, the Court will deal with the said judgment in the latter parts of this order.

5. Mr. Parikh further placed reliance on the judgment rendered by a Division Bench of the Court in **Mukesh Kumar vs. The Administrator [NZRE]**⁴ in support of his contention that all disputes touching upon or relating to the election process could be questioned in arbitration proceedings under the Act. This according to learned senior counsel, constituted yet another ground for the dismissal of the writ petition. He drew the attention of the Court to the following observations as made in **Mukesh Kumar**: -

“...While dealing with the said provision, we find that the learned Single Judge failed to take notice of Section 84(1)(c). The learned Single Judge only concentrated on Section 84(1)(b). The present appellant is admittedly a past officer of the society. As such, in the description of parties given in Section 84(1)(c), the appellant would be included. The appellant is raising a dispute with the Multi-State Co-operative Society or its Board and the appellant I petitioner is a past officer. Therefore, the appellant I petitioner’s case would be covered under Section 84(1)(c). The learned Single Judge failed to examine this aspect of the matter.

3. Furthermore, Section 84(1) clearly stipulates that notwithstanding anything contained in any other law for the time being in force, if any dispute touches upon the constitution, management or business of a

⁴ [FAO (OS) 318/2015]

multistate co-operative society, the same can be referred to arbitration. Sub Section(2) of Section 84 is a deeming provision which indicates certain instances which are deemed to be disputes touching upon the constitution, management or business of a multi-State co-operative society. It does not mean that a dispute which would otherwise touch upon the constitution, management or business of a multi-State Co-operative society but does not find mention in the clauses (a), (b) or (c) of sub-section 2 would not be a dispute referable to arbitration. In any event, the learned counsel for the appellant submitted that the dispute that he seeks to raise would be covered under Section 84(2)(c) inasmuch as it is a dispute in connection with the election of any officer of a multi-state co-operative society. His argument is that in the first place the delegates have to be elected and it is from the delegates that officers would be elected. If a person is shut out from being elected as a delegate, it is obvious that he would be shut out from being elected as an officer and, therefore, if there is a dispute with regard to election of an delegate, it would be covered under the expression given in Section 84(2)(c).

4. We may also point out sub-section (3) of Section 84 which clearly stipulates that if any question arises whether a dispute referred to arbitration under this Section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court. In other words, whether a dispute is arbitrable or not in the sense as to whether it is covered by the expression ‘dispute’ touching upon the constitution, management or business of a multi-State co-operative society, is also to be decided by the arbitrator.

5. It is then obvious that the matter in any event has to be determined by the arbitrator. If that be the case, then a petition under Section 9 would, in our view, be maintainable. We may also point out sub-section (5) of Section 84 which we have extracted above, which clearly stipulates that save as otherwise provided in the Act of 2002, the provisions of the Arbitration and Conciliation Act, 1996 will apply to all arbitrations under the 2002 Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996. This is one more reason as to why we find that the petition under Section 9 was maintainable before the learned Single Judge.

6. For all these reasons, we feel that the impugned order cannot be sustained and the same is set aside. As a result, the matter is remitted to the learned Single Judge to decide the application under Section 9 on

merits. The appeal is allowed as above. The petition may be listed before the learned Single Judge on 22.07.2015 in the first instance for directions.”

6. Turning to the scope of Article 226 of the Constitution and the maintainability of writ petitions against private bodies, the respondents drew the attention of the Court to the decision of the Supreme Court in **Jatyapal Singh & Ors. Vs. Union of India**⁵ and more particularly to the following passages of that decision: -

“39. In order for TCL to be declared as “State” or other authority within the meaning of Article 12 of the Constitution of India, it would have to fall within the well-recognised parameters laid down in a number of judgments of this Court:

39.1 In *Pradeep Kumar Biswas* [*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111 : 2002 SCC (L&S) 633], a seven-Judge Bench of this Court considered the question as to whether Indian Institute of Chemical Biology would fall within the definition of State or other authority under Article 12. Ruma Pal, J. speaking for the majority considered the manner in which the aforesaid two expressions have been construed by this Court in the earlier cases.

39.2. The tests propounded for determining as to when the corporation will be said to be an instrumentality or agency of the Government as stated in *Ramana Dayaram Shetty v. International Airport Authority of India* [*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] were summarised as follows: (*Pradeep Kumar Biswas* case [*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111: 2002 SCC (L&S) 633], SCC pp. 130-31, para 27)

“(1) One thing is clear that if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (*Ramana Dayaram case* [*Ramana Dayaram Shetty v. International*

⁵ [(2013) 6 SCC 452]

Airport Authority of India, (1979) 3 SCC 489], SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor...whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) ‘Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference’ of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)” [Ed.: As observed in *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722, p. 737, para 9: 1981 SCC (L&S) 258.]

39.3. The aforesaid ratio in *Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] has been consistently followed by this Court, as is evident from para 31 of the judgment in *Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111 : 2002 SCC (L&S) 633]. Para 31 reads as under: (SCC pp. 131-32)

“31. The tests to determine whether a body falls within the definition of ‘State’ in Article 12 laid down in *Ramana [Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] with the Constitution Bench imprimatur in *Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722: 1981 SCC (L&S) 258] form the keystone of the subsequent jurisprudential superstructure judicially crafted

on the subject which is apparent from a chronological consideration of the authorities cited.”

The subsequent paragraphs of the judgment noticed the efforts made to further define the contours within which to determine whether a particular entity falls within the definition of other authority, as given in Article 12. The ultimate conclusion of the Constitution Bench are recorded in paras 39 and 40 as under: (*Pradeep Kumar Biswas case* [*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] , SCC pp. 133-34)

“39. Fresh off the judicial anvil is the decision in *Mysore Paper Mills Ltd. v. Officers’ Assn.* [(2002) 2 SCC 167: 2002 SCC (L&S) 223] which fairly represents what we have seen as a continuity of thought commencing from the decision in *Rajasthan Electricity Board [Rajasthan SEB v. Mohan Lal, AIR 1967 SC 1857]* in 1967 up to the present time. It held that a company substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government is ‘an authority’ within the meaning of Article 12.

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258]* 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, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

39.4. In view of the aforesaid authoritative decision of the Constitution Bench (seven Judges) in *Pradeep Kumar Biswas* [*Pradeep Kumar Biswas v. Indian Institute of Chemical*

Biology, (2002) 5 SCC 111: 2002 SCC (L&S) 633] , it would be wholly unnecessary for us to consider the other judgments cited by the learned counsel for the parties.

40. If one examines the facts in the present case on the basis of the aforesaid tests, the conclusion is inescapable that TCL cannot be said to be the other authority within Article 12 of the Constitution of India. As noticed above, the shareholding of the Union of India would not satisfy Test Principles 1 and 2 in *RamanaDayaram Shetty* [*RamanaDayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] .

41. On perusal of the facts, it would be evident that Test 3 would also not be satisfied as TCL does not enjoy a monopoly status in ILDS. So far as domestic market is concerned, there is open competition between the numerous operators, some of which have been enumerated earlier, namely, MTNL, Airtel, Idea, Aircel, etc. This brings us to Test 4 and again we are unable to hold that the Government of India exercises deep and pervasive control in either the management or policy-making of TCL which are purely private enterprises. We may also notice that in fact even government companies like MTNL and BSNL are competitors of TCL, in respect of ILDS. We are, therefore, of the firm opinion that the High Court of Delhi and the High Court of Bombay were fully justified in rejecting the claim of the appellants that TCL would be amenable to writ jurisdiction of the High Court by virtue of the other authority within the purview of Article 12 of the Constitution of India.

Is TCL performing a public function?

42. It has been noticed earlier that ILDS functions, prior to 1986, were being performed by OCS, a department of the Ministry of Telecommunications. VSNL was incorporated under the Companies Act, 1956 as a wholly-owned government company to take over the activities of erstwhile OCS with effect from 1-4-1986. The employees of erstwhile OCS continue to work for VSNL on deputation till 1-1-1990. However, as noticed earlier, an option was given in 1989 to the pre-1986 employees for permanent absorption in VSNL. It was made clear to all the employees that they would be permanently absorbed in VSNL upon resigning from the Government of India. It was also made clear that these employees had the choice to remain as government employees but they would be transferred to surplus staff cell of the Government of India for redeployment against the vacancies in other government offices. It is an accepted fact before us that all the appellants opted to be absorbed in VSNL. They were, in fact, absorbed in VSNL with effect from 1-1-1990. In the staff notice issued on 11-12-1989, it was also made clear that OCS

employees transferred to VSNL on deputation basis without deputation allowance on foreign service terms *will cease to be government servants*. It is, therefore, patent that the appellant accepted the absorption voluntarily. Therefore, it would be difficult to accept the submission of the learned counsel for the appellants that even after absorption in VSNL, the appellants continued to enjoy the protection available to them in OCS as government servants.

44. It is a matter of record that with effect from 13-2-2002, the shareholding of the Government of India is 26.97%. Soon thereafter, the total shareholding of the Tata Group in VSNL increased to 44.99% of the paid-up share capital in 2002. It is also an accepted fact that shareholding of the Tata Group in VSNL is 15.11%. It is also noteworthy that since 2002, VSNL was a Tata Group company and accordingly on 28-1-2008 its name was changed to “Tata Communication Ltd.” In our opinion, the aforesaid facts make it abundantly clear that the Government of India did not have sufficient interest in the control of either management or policy-making functions of Tata Communication Ltd.

45. Merely because Tata Communication Ltd. is performing the functions which were initially performed by OCS would not be sufficient to hold that it is performing a public function. It has been categorically held in *Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]* if only the functions of the corporation are of public importance and *closely related to government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government*.

46. As noticed above, the functions performed by VSNL/TCL are not of such nature which could be said to be public functions. Undoubtedly, these operators provide a service to the subscribers. The service is available upon payment of commercial charges.

49. In our opinion, the functions performed by VSNL/TCL examined on the touchstone of the aforesaid factors cannot be declared to be the performance of a public function. The State has divested its control by transferring the functions performed by OCS prior to 1986 on VSNL/TCL.

51. This Court also quoted with approval *Commentary on Judicial Review of Administrative Action* (5th Edn.) by de Smith, Woolf and Jowell. In Chapter 3 Para 0.24 therein it has been stated as follows: (*Binny Ltd. case [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]* , SCC p. 666, para 11)

“A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd’s of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged [*R. v. Panel on Takeovers and Mergers, ex p Datafin Plc.*, 1987 QB 815 : (1987) 2 WLR 699 : (1987) 1 All ER 564 (CA)] , it is important for the courts to ‘recognise the realities of executive power’ and not allow ‘their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted’. Non-governmental bodies such as these are just as capable of abusing their powers as is Government.”

52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so.

57. A perusal of the aforesaid documents, however, would show that VSNL had merely promised not to retrench any employee who had come from OCS for a period of two years from 13-2-2002. Such a condition, in our opinion, would not clothe the same with the characteristic of a public duty which the employer was bound to perform. The employees had individual contracts with the employer. In case the employer is actually in breach of the contract, the appellants are at liberty to approach the appropriate forum to enforce their rights.”

7. In view of the aforesaid principles enunciated in that decision, Mr. Parikh contended that the cooperative society can neither be termed as State nor can it be recognised to be a body performing a public function. Learned senior counsel submitted that the writ petition was thus liable to be dismissed on this score alone. On the issue of whether a writ court should

entertain a petition once the election process had been set in motion, Mr. Parikh had referred to the following judgments: -

- a. **N P Ponnuswami vs. The Returning Officer, Namakkal Constituency**⁶
- b. **Laxmi Charan Sen vs. AKM Hassan Uzzaman&Ors.**⁷
- c. **Boddula Krishnaiah and Anr. vs. State Election Commissioner**⁸
and
- d. **P. Manjula vs. State of Andhra Pradesh &Ors.**⁹”

8. Controverting the preliminary objection taken to the maintainability of the writ petition, Mr. Garg, learned Senior Counsel appearing for the petitioners, would submit that the affairs of the cooperative society are governed by the provisions of the Act read with the Rules framed thereunder. Learned Senior Counsel submitted that the Rules and Byelaws which control and govern the process of election thus clearly trace their genesis to the statutory provisions and consequently it cannot be said that the writ petition would not be maintainable.

9. On the issue of maintainability, learned Senior Counsel firstly placed reliance on the following principles as enunciated by the Supreme Court in **Praga Tools Corporation vs. Shri C.A. Imanuel and Others**¹⁰:-

⁶ [1952 SCR 218]

⁷ [(1985) 4 SCC 689]

⁸ [(1996) 3 SCC 146]

⁹ [(2007) 15 SCC 766]

¹⁰ [(1969) 1 SCC 585]

“6. In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he, but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See *Sohan Lal v. Union of India*), [1957 SCR 738] In *Regina v. Industrial court* [(1965) 1 QB 377] mandamus was refused against the Industrial court though set up under the Industrial courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the Act but a private reference. “This Court has never exercised a general power” said Bruce, J. in *R. v. Lawisham Union* [(1897) 1 QB 498, 501] “to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties”. Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities.”

10. Learned Senior Counsel then pressed in aid the judgment rendered by a learned Judge of the Court in **Sushila Devi Bhaskar vs. Ishwar Nagar Cooperative House Building Society Ltd.**¹¹ The relevant extracts of that decision are reproduced hereinbelow:-

“18. Whether, the Society, registered under the Societies Registration Act, is amenable to the writ jurisdiction, this question has been considered and determined by various Courts, from time to time.

19. The High Court of Calcutta in *Madan Mohan v. State*, AIR 1966 Calcutta 23, was considering the question, whether a Cooperative Society, registered under the Bengal Cooperative Societies Act, 1940, or its Managing Committee was amenable to writ jurisdiction. Their Lordships held that the management of the affairs and activities of the Society, were *inter alia*, controlled by the Registrar of Cooperative Societies, who was a public authority. Such affairs could not be private affairs. It was not necessary that a body, in order to be a public body, ought to be constituted by a statute, though its powers and duties were created by an Act or the Rules. Even, where the Society was a person, there could not be any broad and general proposition, that no writ would lie against such a person. It depends on particular facts of each case.

20. In *P.B.K. Rajachidambaram v. R.P. Rathana Sharma*, AIR 1967 Madras 182, the Madras High Court held that the writ could be issued against a cooperative society.

21. In *Praga Tools v. Imanual*, (1969) 1 SCC 585 : AIR 1969 SC 1306, their Lordships of the Supreme Court were considering the question, whether a writ would lie against a Company, incorporated under the Companies Act. Though, the writ was disallowed, but it was held that the writ could be issued, only in case of legal right to performance of legal duty. It was further held that it was not necessary that the person or the Authority, in whom the statutory duty was imposed, need be a public official or an official body. However, at the same time, their Lordships observed that the Company, being a non-statutory body and, once incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it, by a statute, in respect of which, enforcement could be sought by means of a mandamus.

¹¹ [(1991) 45 DLT 518]

22. In *Ramswarup v. M.P. State Coop. M. Federation*, AIR 1976 Madhya Pradesh 152, following three questions came for consideration, before the Full Bench of the Madhya Pradesh High Court:

- (i) Whether a cooperative society, registered under the M.P. Cooperative Societies Act, is a statutory body?
- (ii) Whether a writ of mandamus, direction or order can be issued under Article 226 of the Constitution by a High Court against a cooperative Society registered under M.P. Cooperative Societies Act, 1960?
- (iii) Whether the High Court can issue an appropriate writ, direction or order against a cooperative society or its officers, who was in violation of the Act or Bye-laws?

23. The Full Bench held that the Cooperative Society was not a statutory body. But, the Full Bench, relying on the judgment of the Supreme Court in *Praga, Tools*, held:

“But if there is a statutory obligation in respect of any subject matter on the Society to carry out the same and the Society fails to do so, or acts in contravention of the same it may be a proper subject matter for issuing a writ in appropriate cases commanding compliance of the statutory requirements. In other words so long as a case is made out of any breach of any statutory provision or existence of legal right in one, who claims the writ and a legal obligation in the Society to do something, no writ can be issued against the Society. Whenever, it is pointed out that any statutory provision requiring the Society to act in a particular manner creates a right in favour of the person concerned, it will be permissible for such person to approach the High Court for seeking the writ of mandamus to direct the Society to obey the statute and not to commit breach of the same. Thus we would like to make it clear that the Cooperative Society will be amenable to writ jurisdiction only in case relating to performance of legal obligation and duties imposed by a statute creating a corresponding legal right in one.”

24. In *State of U.P. v. Maharaja Dharmander Prasad Singh etc.* and *Lucknow Dev. Authority v. Maharani Rajlaxmi Kumari Devi etc.*, AIR 1989 Supreme Court 997, their Lordships of the Supreme Court, while considering the question, whether the purported forfeiture and cancellation of the lease, in respect of Nazool land, by the State Government, could be allowed or not to be allowed to be agitated in the proceedings under Article 226 of the Constitution of India. It was held:

“On a consideration of the matter, we think, in the facts and circumstances of this case, the High Court should have abstained from the examination of the legality or correctness of the purported cancellation of the lease which involved resolution of disputes on questions of fact as well. In *Express Newspapers v. Union of India*, 1985 Supp (3) SCR 382 : AIR 1986 SC 872 at p. 953, Venkataramiah, J. in a somewhat analogous situation observed:

“The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. Those questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an Officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.”

Accordingly, we hold that the question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed to be agitated in proceedings under Article 226.”

25. One of the questions for consideration, before the Supreme Court, in *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayant Mahotsav Smarak Trust v. V.R. Sudani*, AIR 1989 Supreme Court 1607, was, whether the management of a college, being a Trust, registered under the Public Trust Act, was or was not amenable to the writ jurisdiction of the High Court. In other words, the contention was that the Trust, was a private institution, against which, no writ of mandamus could be issued. It was held:

“If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was

managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See *The Evolving Indian Administrative Law* by M.P. Jain (1983) p. 266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission “to review the existing remedies for the judicial control of administrative acts and commissions with a view to evolving a simpler and more effective procedure”. The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called judicial review. Lord Denning explains the scope of this “judicial review.”

“At one stroke the Courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious, Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scope for development. It uses the words “having regard to”. Those words are very indefinite. The result is that the Courts are not bound hand and foot by the previous law. They are to have regard to it. So the previous law as to who are and who are not public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the Judges can develop the public law as they think best. That they have done and are doing.” (See The Closing Chapter by Rt. Hon Lord Denning p. 122).

The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non fundamental rights. The words “Any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: “To be enforceable by mandamus a public body does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.” (Judicial Review of Administrative Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. We therefore, reject the contention urged for the appellants on the maintainability of the writ petition.”

26. In *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal*, AIR 1962 Supreme Court 1044, their Lordships of the Supreme Court held:

The first question that falls to be considered is whether the appellant has locus standi to file the petition under Article 226 of the Constitution. The argument of learned counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *State of Orissa v. Modem Gopal*, 1952 SCR 28 : AIR 1952 SC 12 this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In *Charanji Lal Chowdhury v. Union of India*, 1950 SCR 869 : AIR 1951 SC 41, it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The question, therefore, is whether in the present case the petitioner has a legal right and whether it has been infringed by the contesting respondents. The petitioner entered into an agreement dated July 24, 1948, with respondent no. 5 in regard to the management of the Oriental Gas Company. Under the agreement the appellant was appointed as Manager and the general management of the affairs of the Company was entrusted to it for a period of 20 years. The appellant would receive thereunder by way of remuneration for its services, (a) an office allowance of Rs. 3,000/- per mensem, (b) a commission of 10 per cent, on the net yearly profit of the Company, subject to a minimum of Rs.

60,000 per year in the case of absence of or inadequacy of profits, and (c) a commission of Re. 1 per ton of all coal purchased and negotiated by the Manager. In its capacity as manager, the appellant Company was put in charge of the entire business and its assets in India and it was given all the incidental powers necessary for the said management. Under the agreement, therefore, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive the aforesaid amounts towards its remuneration for its services. Section 4 of the impugned Act reads:

“With effect from the appointed day and for a period of five years thereafter—

- (a) the undertaking of the Company shall stand transferred to the State Government for the purpose of management and control;
- (b) the Company and its agents, including managing agents, if any, and servants shall cease to exercise management or control in relation to the undertaking of the Company;
- (c) all contracts, excluding any contract or contracts in respect of agency or managing agency, subsisting immediately before the appointed day and affecting the undertaking of the Company shall cease to have effect or to be enforceable against the Company, its agents or any person who was a surety thereto or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the State of West Bengal and shall be enforceable as fully and effectively as if instead of the Company the State of West Bengal had been named therein or had been a party thereto.”

Under the said Section, with effect from the appointed day and for a period of five years thereafter, the management of the Company shall stand transferred to the State Government, and the Company, its agents and servants shall cease to exercise management or control of the same. Under clause (c) of the Section, the contracts of agency or managing agency are not touched, but all the other contracts cease to have effect against the Company and are enforceable by or against the State. It is not necessary in this case to decide whether under the said agreement the appellant was constituted as agent or managing agent or a servant of the Oriental Gas Company. Whatever may be its character, by reason of Sec. 4 of the impugned Act, it was deprived of certain legal rights it possessed under the agreement.

Under the agreement, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive remuneration for the same. But under Sec. 4 of the impugned Act, it was deprived of that right for a period of five years. There was certainly a legal right according to the appellant under the agreement and that was abridged, if not destroyed, by the impugned Act. It is, therefore, impossible to say that the legal right of the appellant was not infringed by the provisions of the impugned Act. In the circumstances, as the appellant's personal right to manage the Company and to receive remuneration therefor had been infringed by the provisions of the statute, it had locus standi to file the petition under Article 226 of the Constitution.”

27. In *S.K. Ghambhir v. Union of India*, Civil Writ Petition No. 1116 of 1984, decided on 11.8.1986, there was a dispute, with regard to the waiting list of members in New Rajdhani Cooperative House Building Society, and with regard to the allotment of plots, to certain members. One of the questions, whether these disputes could be decided by a writ petition, was before the Division Bench of this Court. One of the contentions, on behalf of the Society, was that the matter could not be dealt with in a writ petition, for the simple reason, that the Cooperative Society was like a private Institution, which had nothing to do with any constitutional right, and, therefore, the Society was not amenable to the writ jurisdiction. The Division Bench held:

“The Cooperative Society, respondent no. 4, is therefore, not acting as a private individual intermediary between the public and the State. It has become a part of the machinery for the planned development of Delhi. It is, therefore, for the purpose an authority. Its actions in denying plots to anyone are in substance a denial by the State, because the land belongs to the Government. It is placed at the disposal of the Co-operative Society for giving it to its members. The three parties are the State, the Co-operative Society and the member. The member pays the annual rent to the State. The plot obtained through the Co-operative Society is allotted as a plot belonging to the Union of India and not as a plot belonging to the Co-operative Society. The Co-operative Society is only a mechanism, a cog in the wheel for making the allotment. The method is evolved by the Government, because in its wisdom the State has found this method for allotting plots to the public. It is not the only method, but one of the recognised methods. How can we say in such circumstances that a writ will not lie? If the

petitioners have been denied their legitimate grievance, it is a denial by the State through the agency of the Cooperative Society. Once we recognise the Cooperative Society as an agent for the planned development scheme, we can immediately pinpoint the Cooperative Society as an 'authority' within the meaning of law. The petitioners cannot be denied relief in these proceedings on this ground. So, we hold the writ petition is maintainable in the present set of circumstances.”

28. Reference can also be made to the judgment in *Master Vibhu Kapoor v. Council of Indian School Certificate Examination*, 27 (1985) Delhi Law Times (SN) 14, where, the writ petition, under Article 226 of the Constitution of India, was filed against withholding of the result of petitioner, a minor, on the allegation of use of unfair means, in the examination of class X conducted by the Council of Indian School Certificate Examination, a private body, registered under the Societies Regulation Act of 1860. The Division Bench held that the functions, being performed by the Society, were conducting public examination and awarding certificates. It was thus held that the writ petition was maintainable against the Society.

29. In *Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju*, AIR 1990 Andhra Pradesh 171, the High Court directed itself to the same question. After considering the number of judgments, the Full Bench took the view that a writ would not lie against a cooperative society.

30. The facts and the reliefs in *State of U.P.* (supra) were altogether different, from the facts and reliefs of the present case. As such the same is not applicable to the present case.

31. Before the Full Bench in *Sri Konaseema Co-operative Central Bank Ltd.*, (supra), no such contention was urged that the Society in respect of the land, was an against of the Government. Secondly, the Full Bench found that the functions of the Society before the Court, were not of public importance or closely related to the Governmental function. The judgment of the Division Bench of this Court in *S.K. Gambhir*, was not cited before the Full Bench. Under these circumstances, the case is distinguishable from the present one.

32. There is no doubt that the Society is not a statutory body and generally, the dispute between the Society and a member cannot be determined in a writ petition. But, this is subject to certain exceptions. One has to see the nature of reliefs, being sought in the writ petition and

the points involved. In this petition, Delhi Development Authority and the Registrar of Cooperative Societies, are the parties. In Delhi, a scheme for planned development is in operation. Large areas of land were acquired by the Central Government, for the avowed purpose of planned development of Delhi in future. Private development of land, by private colonisers, and by means of private colonies, became almost impossible. In order to carry out the scheme of planned development, two ways were visualised by the Government. Firstly, there was a public auction of the plots by DDA, to the public on leasehold basis. Secondly, there was allotment of lands to Cooperative Societies. The lands were being allotted to Group Housing Cooperative Societies, who, in turn, allot the same to their members. One of the essential terms, for applying for a membership of a House Building Cooperative Society, is that the applicant is not a member of another house building society and, also that he does not own residential building or a plot in his name or in the name of his wife or dependent child in Delhi. In other words, the right to own a house or plot or or a flat is restricted by them. The Cooperative Society, is not acting as a private individual or a private party, but it is acting, as a medium for Governmental action and it is acting as an intermediary, between the public and the State. As held by the Division Bench, in *S.K. Gambhir* (supra), it has become a part of themachinery for the planned development of Delhi. It is, therefore, for this purpose, an authority. Its actions, in denying the plots to any one, are in substance, denial by the State, because the land belongs to the Government. The land is placed at the disposal of the Society, for giving it to its members. Once it is given, there is a tripartite lease. Then there are three parties, the State, the Cooperative Society and the member.

33. In my view the present case is fully covered by the judgment of the Division Bench of this Court in *S.K. Gambhir* (supra). Further, the ratio of the judgment in *Shri Anadl Mukta Sadguru Shree Muktajee Vandasjtswami Suvarna Jayanti Mahotsay Smarak Trust* (supra), is also applicable to the present case. Thus, I hold that the Society, in the present facts & circumstances of the case, is amenable to the writ jurisdiction of this Court.”

11. Reliance was then placed on a decision of the Supreme Court in **A. Umarani vs. Cooperative Society**¹² and to the following passages of that decision: -

¹² (2004) 7 SCC 112

“60. Although we do not intend to express any opinion as to whether the cooperative society is a “State” within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the nodal centre functions and supervision of the cooperative society, the State has no administrative control over its day-to-day affairs. The State has not created any post nor could it do so on its own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularisation of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time.”

12. On the powers of a writ court to interfere with the actions taken in connection with elections even though steps in connection therewith may have been initiated, learned Senior Counsel placed reliance upon the judgment of the Supreme Court in **Election Commission of India Through Secretary vs. Ashok Kumar and Ors.**¹³. Learned Senior Counsel also sought to draw sustenance from the following principles as laid down by the Supreme Court in **Dravida Munnetra Kazhagam (DMK) vs. Secretary, Governor Secretariat**¹⁴:-

“14. The contention of the respondents that the present proceedings amount to “calling in question an election” and hence not being maintainable in view of the express constitutional embargos of Articles 243-O and 243-ZG does not impress us for the present proceedings are only to further the expeditious completion of prerequisites of a fair election. Hence, the following ratio of a coordinate Bench in *Election Commission of India v. Ashok Kumar* [*Election Commission of India v. Ashok Kumar*, (2000) 8 SCC 216] squarely applies to the present case : (SCC p. 232, para 32)

¹³ [(2000) 8 SCC 216]

¹⁴ [2020 6 SCC 548]

“32. ... (2) Any decision sought and rendered will not amount to calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.”

13. In order to rule upon the rival submissions, the Court deems it apposite to notice the following facts. The cooperative society came to be registered under Section 11 of the Act on 10 February 2006. In terms of an order dated 19 November 2014 passed by the Court in W.P.(C) 6736/2013 and other connected matters, retired Justice S. N. Dhingra came to be appointed as its Administrator. The notice for conduct of elections of delegates firstly came to be issued on 06 April 2015 by the said Administrator. A further notification thereafter came to be issued for electing members to the Board of Directors of the cooperative society on 27 June 2015. This notification was issued by the Returning Officer so appointed by the Administrator. The process of election of delegates came to be initiated in terms of the impugned communication dated 03 February 2020. It is at this stage that a number of members of the cooperative

society came to raise various objections to the appointment of Returning Officers as well as to the procedure as adopted for the purposes of election of delegates. It has further come on the record that certain nomination forms also came to be submitted before the Returning Officer. Some of those nominations came to be rejected. At this stage, further objections were raised with respect to the manner in which the Returning Officers had proceeded to consider the nominations made. The lead writ petition came to be instituted before this Court on or about 19 March 2020.

14. The interim order of 23 March 2020 has already been noticed hereinabove. As would be evident from the recordal of facts hereinabove, the interim order of 23 March 2020 was not one made on a consideration of the merits of the dispute but essentially on account of the breakout of the pandemic which led the learned Judge to form the opinion that it would be impractical to hold elections. As a result of the aforesaid interim order passed way back in March 2020, the entire process of elections which had commenced in terms of the communication of 03 February 2020 came to be brought to a halt. It is that position which has continued till this Court took up the writ petitions for final disposal.

15. The cooperative society is admittedly one which is governed by the provisions of the Act. As per the Byelaws framed thereunder, its area of operations are spread across the States of Uttar Pradesh, Uttarakhand, Haryana, Punjab, Himachal Pradesh, Rajasthan, Jammu and Kashmir, Delhi and the Union Territory of Chandigarh. The society is stated to consist of

approximately 70,000 members. Under the Byelaws, elections are to be held for delegates and for constituting its Board of Directors. The primary members of the cooperative society elect delegates who in turn choose the constituents of the Board of Directors. As per the membership details which have been disclosed by the respondents, 120 delegates are elected by the primary members of the cooperative society and it is these delegates which then proceed to elect members of the Board of Directors.

16. From the record it further transpires that the last elections were held in 2015. The Byelaws prescribe the tenure of the elected body to be five years and thus the term of the elected body was to come to an end sometime in June 2020. It is in that backdrop that the impugned notice of 03 February 2020 came to be issued. According to the respondents, the process of elections including up to the stage of acceptance of nominations had been completed and only actual polling of votes was to be undertaken. The polling was scheduled to be held from 30 March 2020 up to 15 April 2020 across the various constituencies of the cooperative society. It was at that stage that the instant writ petition came to be preferred and the interim order of 23 March 2020 passed.

17. While various submissions have been addressed by learned counsels for respective parties, including in relation to the scope of interference by the Court after the election process has commenced and all disputes being liable to be referred to arbitration, the Court notes that these questions

would survive for consideration only if it were to come to the conclusion that the writ petition against the cooperative society would be maintainable.

18. On the question of maintainability of the writ petition, the respondents have referred to certain order passed on writ petitions by the Allahabad High Court as well as by this Court to contend that similar challenges raised with respect to the affairs of the respondent cooperative society were dismissed. It would, therefore, be pertinent to briefly notice those decisions. The Division Bench of the Allahabad High Court in **Deepak Nagar vs. General Manager, Northern Railway and Others**¹⁵, pertinently observed that the writ petition against the respondent cooperative society would not be maintainable. As that order would indicate, the said writ petition too related to disputes touching upon the election process and the authority of the Executive Body of the respondent cooperative society to continue even after the expiry of its tenure. That order reads as follows: -

“This writ petition has been filed for issuing a direction to the respondents-authority to restrain the existing executive body to hold the office after expiry of its tenure on 26.07.2020 and to complete the election process by issuing fresh election notification as per Bye-laws of the society.

From the record, it appears that there was a Co-operative Society, registered under the Multi-State Co-operative Societies Act, 2002. Petitioner is seeking the above relief against the Co-operative society.

In our view, writ petition against the Co-operative Society for the aforesaid relief is not maintainable. Consequently, without entering into the merits of the case, the writ petition is dismissed, leaving it open to the petitioner to avail such remedy as may be available to him under law.”

¹⁵ [WP (C) No. 18238 of 2020]

19. Although reliance is placed by the respondents on another decision of the Allahabad High Court titled as **Ambuj Sharma vs. Union of India**¹⁶, this Court notes that the said order does not specifically deal with or decide the issue of maintainability of a writ petition against the respondent society. The respondents have also sought to draw sustenance from an order dated 13 March 2020 passed by a learned Judge of this Court in **Shayam Thakur vs. Union of India**¹⁷, in support of their contention that a challenge raised on identical terms in respect of the affairs of the cooperative society came to be negated. However, and as would be evident upon a perusal of the order passed on that petition, it was merely permitted to be withdrawn with liberty reserved to the petitioner there to challenge the issues as per law. Yet another order of this Court which has been relied upon by the respondents was in the matter of **Vicky Kaushik & Ors. vs. Union of India & Ors.**¹⁸. Here too, the Court has not expressly dealt with the question of maintainability of a writ petition against the respondent cooperative society.

20. The judgment of a learned Judge of the Court in **NZRECTC vs. Central Registrar, Cooperative Society & Ors.**¹⁹, however, would be of some significance and would merit a more detailed consideration. It

¹⁶[WP (C) No. 8359 of 2020]

¹⁷[W.P. (C) 2735 of 2020]

¹⁸[W.P. (C) 1465/2021]

¹⁹[AIR 2012 Del 112]

becomes pertinent to note that **NZRECTC** was principally dealing with the question of whether the respondent cooperative society would be amenable to the provisions of the Right to Information Act, 2005. The question which arose was whether it would be liable to be recognized as a public authority for the purposes of that Act. While dealing with the aforesaid question, the learned Judge made the following pertinent observations: -

“14. Admittedly, the petitioner is not a statutory corporation as it is a cooperative society stated to have been constituted in the year 1960. It is not relevant whether it was constituted under the Cooperative Societies Act, 1912 or under any other law relating to any cooperative society in force, or in pursuance of the Multi State Cooperative Societies Act, 1942 (MSCS Act) or not, since it is not in dispute that it is a cooperative society. All that Section 2(a) of the Multi State Cooperative Societies Act, 2002 purports to do, is to state to which class of cooperative societies the said act would “apply”. Section 2(b) states that the said Act “shall apply to” Multi-State Cooperative Societies “registered or deemed to be registered under this Act” [See Section 2(b)]

15. It is also not the case of the contesting respondents that the petitioner society receives any funds or financial aid from the Government. Even if the petitioner society is provided some facilities in the nature of accommodation on a reasonable rent- or rent-free accommodation, and its office bearers are provided casual leaves or special passes for travel on the railways to attend the affairs of the cooperative society, the same cannot be said to be a provision of “substantial finance” by the appropriate government, i.e. the Central Government to the petitioner cooperative society. Firstly, these facilities are provided to the office bearers, and not the petitioner society. Secondly, the respondents have not been able to show that the said facilities and amenities provided by the Central Government/Railways forms a significant fraction of the funds generated by the petitioner or the budget of the petitioner.

16. The petitioner is stated to be an organization of 72,000 railway employees, who contribute to the funds of the petitioner on a regular basis for being invested in schemes of LIC etc. There is no reason to accept that the amenities/facilities provided by the railways to the petitioner cooperative society translates into a “substantial finance” when compared to the revenues and budgets of the petitioner cooperative

society. The method of collection of contributions is wholly irrelevant. That is only a mechanism evolved to enable smooth and punctual transmission of the subscription of the railway employees. It has no bearing on the issue at hand.

17. It is not even shown that the model bye laws in any way vest the Central Government/Railways with any direct or indirect control in the functioning, and in the organization of the petitioner cooperative society. The mere adoption of the model bye laws as prescribed by the railways is, therefore, of no consequence. The adoption of the model bye laws appears to be insisted upon, only to ensure that the funds entrusted to the petitioner cooperative society by its members is properly utilized and are not defaulted or dissipated.

18. The mere fact that the petitioner comes within the purview of MSCS Act also makes no difference to the status of the petitioner in relation to the RTI Act. If the submission of learned counsel for the respondents/querists were to be accepted, it would mean that every cooperative society to which the MSCS Act applies would, ipso facto, qualify as a public authority. This position cannot be accepted.

19. The enabling provision contained in Section 61 of the MSCS Act, which enables the Central and State Governments to provide aid to such multi state cooperative societies in one or the other way, specified in the said section by itself cannot lead to the inference that the petitioner is a public authority. For it to fall within the said definition, the respondent should have established that the Central Government or the State Government have, as a matter of fact, either subscribed to the share capital of the petitioner cooperative society; or given loans and made advances to the petitioner; or guaranteed repayment of principal and payment of interest on debentures issued by the petitioner society, or like, which amounts to “substantial finance”.

20. Unless and until, the said aid qualifies to be termed as “substantial finance”, when looked at in the light of the overall financial dealings and budget of the petitioner, the grant of aid under Section 61 of the MSCS Act would not be sufficient to clothe the cooperative society with the character of a public authority.”

21. The question of maintainability of a writ petition against a cooperative society again came up for consideration in **Mohinder Singh &**

Ors. vs. D.P. Khatri & Ors.²⁰, where the Court held thus: -

“12. In *Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju*, AIR 1990 Andhra Pradesh 171, (5) a Full Bench of the said High Court has referred to the whole concept in a very detailed manner and at page 190 of the judgment, distinction between ‘public law’ and ‘private law’ has been pointed out as follows:—

“Difficult as this distinction is and incapable of precise demarcation, it is yet necessary to keep the broad distinction in mind. Lord Denning in his book “The Closing Chapter” has this to say on the subject:

“The first thing to notice is that public law is confined to “public authorities”. What are “public authorities”? There is only one avenue of Approach. It is asking, in the words of Section 3(2)(b) of the supreme Court Act, 1981: What is the ‘nature of the persons and bodies against whom relief may be granted by such orders’, that is, by mandamus, prohibition or certiorari?

These are divided into two main categories:

First, the persons or bodies who have legal authority to determine questions affecting the common laws or statutory rights or obligations of other persons as individuals. That is the formula stated by Lord Justice Atkin in *R. v. Electricity Commissioners, ex parte London Electricity Joint Committee Co., (1920) Ltd.*, 1 KB 171/205 as broadened by Lord Diplock in *O'Reilly v. Mackman*, (1982) 3, WLR 1096/1104.

Second, the persons or bodies who are entrusted by Parliament with functions, powers and duties which involve the making of decisions of a public nature.....To which I would add the words of Lord Goddard, C.J. in *R. v. National Joint Council for Dental Technicians, ex parte Neate* (1953) 1 QB 704/707:

“The bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction”.

²⁰[1993 (27) DRJ 424]

But those categories are not exhaustive. The courts can extend them to any other person or body of a public nature exercising public duties which it is desirable to control by the remedy of judicial review.

There are many cases which give guidance, but I will just give some illustrations.

Every body which is created by statute and whose powers and duties are defined by statute is a 'public authority'. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. So are members of a statutory tribunal or inquiry, and the board of visitors of a prison. The Criminal Injuries Compensation Board is a public authority. So also, I suggest, is a university incorporated by Royal charter; and the managers of a State School. So is the Boundary Commission; and the Committee of Lloyd's.

But a limited liability company incorporated under the Companies Act is not 'public authority'; (see *Tozer v. National Greyhound Racing Club* (1983) Times, 16 May) Nor is an unincorporated association like the Jockey Club.....”.

13. The said full bench has culled out following propositions with regard to the maintainability of a writ petition against cooperative societies:—

“(i) If a particular co-operative society can be characterised as a State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an 'authority' within the meaning, and for the purpose, of Article 226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a 'state', has to act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws.

(ii) Even if a Society cannot be characterised as a 'State' within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a 'person', or an 'authority', within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.

(iii) The bye-laws made by a cooperative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its members, as the case may be. Hence, where a Society cannot be characterised as a 'State', the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co-operative society, Section 47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution.

Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishment Act; but, in an appropriate case, the Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.

(iv) Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a 'State' within the meaning of Article 12, does not necessarily belong to public law field. A society, which is a 'State', may have its private law rights just like a Government. A contractual obligation, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into contract, however, Article 14 operates, as explained by the Supreme Court in *E.E. & C. Ltd. v. State of West Bengal*, (1975) 1 SCC 70 : AIR 1975 SC 226 and *Ramana Dayaram Shetty*, (1979) 3 SCC 489 : AIR 1979 SC 1628."

14. The Supreme Court in the case of *Sohan Lal v. Union of India*, AIR

1957 SC 529, (6) had held that normally a writ of mandamus does not issue to or an order in the nature of mandamus is not made against private individual. Such an order is made against a person directing him to do a particular thing specified in the order which appertains to his office and is in the nature of public duty.

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16. It appears that the aforesaid observations of the Supreme Court have been somehow interpreted in different way by the High Court. Some of the High Courts have gone to the extent of laying down that if a statutory duty is to be performed by the cooperative society the same can be enforced by taking resort to Article 226 of the Constitution. The Supreme Court has not laid down such a proposition of law that even if the statutory duty or statutory obligation has no connection with the public interest even then resort to Article 226 could be had. The Supreme Court in this very judgment had also mentioned that it is, therefore, fairly clear that such declaration can be issued against a person or an authority or a corporation where the impugned act is in violation of or contrary to a statute under which it is set up or governed or a public duty or responsibility imposed on such person, authority or body by such statute. The dis-junctive “or” placed before the words “a public duty” has led some of the High Courts to hold that even if there is violation of any statutory duty which is not in the nature of public duty even then the High Court had jurisdiction to issue mandamus or any order for enforcing such statutory duty. I am afraid the Supreme Court judgment cannot be read to lay down such a law when in the whole of the judgment the view expressed is that it is the remedy in public law and it is the duty imposed on any person which can be enforced by issuance of a mandamus. The law laid down by the Supreme Court in the case of Sohan Lal (supra) was not dissented or varied by this judgment.

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21. The Full Bench of the Madhya Pradesh High Court in Ramswarup Gupta v. Madhya Pradesh State Cooperative Marketing Federation Limited, AIR 1976 MP 152, (14) also held that private institution can be said to be a statutory body, if it is created by a statute and must owe its existence to the statute and it will be necessary to mark a distinction between an institution which is not created by or under a statute but is covered by certain statutory provisions for the proper maintenance and administration of its affairs and the one which is created by the statute and owes existence to the same this judgment follows a number of judgments of the Supreme Court laying down this proposition of law. They are Sukhdev Singh v. Bhagat Ram, (1975) 1 SCC 421 : AIR 1975 SC 1331,

(15) *Sabhajit Tewari v. Union of India*, (1975) 1 SCC 485 : AIR 1975 SC 1329, (16) and *Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain*, (1976) 2 SCC 58 : AIR 1976 SC 888, (17).

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23. In *Electrogears (P) Ltd. v. Rehabilitation Industries Corporation Ltd.*, AIR 1979 Calcutta 320, (19) it was clearly laid down that a writ petition is not maintainable against a company registered under the Companies Act even if there was a breach by the company of some statutory duty imposed upon it. The rationale behind this ratio is that the company is not performing any public duty and the jurisdiction under Article 226 of the Constitution can be invoked in public law field and not in private law field. Relying on the judgments of the Supreme Court in the cases of *Sukhdev Singh*, (supra), *Sabhajit Tewari* (supra) and *Executive Committee of Vaish Degree College* (supra), it was held that the company cannot be deemed to be a statutory body created by any statute.

24. Similarly the cooperative societies are not creatures of the statute, created by the statute or under the statute. They are independent private group of people organized themselves into a society which is got registered under the Cooperative Societies Act of a particular State. So, such a society may be governed by the provisions of the statute, still such a society cannot be termed as a statutory body created by a statute. Unless and until a particular cooperative society is enshrined with any public duty to perform, the action of such a society cannot be challenged by filing a writ petition and resort has to be made by the aggrieved person in filing a suit or filing any reference for arbitration or for decision of the Registrar in consonance with the provisions of the Cooperative Societies Act.”

22. A Five Judge Bench of the Allahabad High Court in **Vijay Behari Srivastava vs. U.P. Postal Co-operative Bank Ltd.**²¹, made the following pertinent observations: -

“11. It is well settled by several decisions of the Supreme Court including the decisions hereinafter referred to that for the purpose of determination of question under Article 12, namely, if the authority, in question, is an instrumentality of the State, deep and pervasive State

²¹[(2003) 6 SLR 384]

control and the composition of management and functions discharged by such society, namely, if they relate to public affairs are required to be considered in order to arrive at a conclusion that a writ lies against such a body. In *Ajay Hasia v. Khalid Mujib*, (1981) 1 SCC 722 : AIR 1981 SC 487, a society, registered under the Societies Registration Act, 1860, running an Engineering College, refused to take admission of a student. On a writ petition instituted before the Apex Court, it was held that it was immaterial for determining whether the corporation or an authority is created by statute or under a statute. The test was whether it is an instrumentality or agency of the Government and not as to how it was created. The enquiry is to be not as to how the juristic person is born but why it is brought into existence. The Corporation may be statutory corporation created by 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 nature. After surveying various decisions and summarizing the relevant tests gathered from the decision in *Ramana Dayaram Shetty v. International Airport Authority*, (1979) 3 SCC 489 : AIR 1979 SC 1628, the following observations were made:—

“The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in *International Airport Authority's case*, (1979) 3 SCC 489 : AIR 1979 SC 1628. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression ‘other authorities’, it must be realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation ...”

12. The Apex Court summarized six tests gathered from the decision in *International Airport Authority's case* (supra). These tests are as follows:—

1. Majority of share capitals of the Corporation/Authority/establishment must be held by the Government;
2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the establishment, it would afford

some indication of the establishment being impregnated with Governmental character;

3. It may also be relevant factor, whether the establishment enjoys monopoly status which is State conferred or State protected;
4. Existence of deep and pervasive State control may afford an indication that the establishment is a State agency or instrumentality of the State;
5. If the functions of the establishment are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the establishment as an instrumentality or agency of the Government, and
6. 'Specifically, if a department is transferred to a Corporation, it would be a strong factor supportive of this inference' of the Corporation being an instrumentality or agency of Government.

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17. That apart, all the cases relating to the question in controversy were considered in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, wherein by majority judgment, the decision in *Sabhajit Tewari v. Union of India*, (1975) 1 SCC 485 : (AIR 1975 SC 1329) was over ruled holding that 'Council of Scientific and Industrial Research' registered under the Societies Registration Act, 1860 is State within the meaning of Article 12 of the Constitution of India. On examining the objects and functions it was found that CSIR was set up in the national interest to further economic welfare of the society by fostering planned industrial development in the country. It was further found that in the governing body the President of CSIR is the Prime Minister and such subjugation of the governing body is subject to the will of the Central Government. The financial aid was by the Central Government. It was, however, pointed out that when a corporation or society is an instrumentality or agency of Government, are to be considered keeping in view various factors, namely, the body is financially, functionally and administratively dominated by or under the control of the Government and whether such control is deep and pervasive and when the control is merely regulatory, whether under statute or otherwise, do not serve to make a body State, in paragraph 40 of the Report, it was observed that:—

“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 when the control is merely regulatory, whether under statute or otherwise, it would not serve to make the body a State.”

(Emphasis supplied)

18. A society registered under the Societies Registration Act, 1860, to a great extent, is controlled by the Registrar of the Societies. A society after it is registered has to submit every year a list of the names, addresses and occupation of the governing council, directors, committee or other governing body interested with the management of the affairs of the society. The Registrar has a power under Section 22 of the Act to require any society to furnish in writing such information and documents within such time being ordinarily not less than two weeks from the date of receipt of order by the society, he may specify in the order in connection with the affairs of the society or any documents filed by the society under the Act. Under Section 23 of the Act where the Registrar is of the opinion that it is necessary or expedient so to do, he may, by written order require any society to furnish its accounts or a copy of the statement of receipts of expenditure for any particular year duly audited by a Chartered Accountant. He can also investigate the affairs of the societies under Section 24 of the Act. Under Section 25, if there is a dispute in respect of election or continuance in office of office bearers of the society, he may refer it to the Prescribed Authority or decide it himself summarily on the conditions mentioned therein. Similarly, under the U.P. Co-operative Societies Act, 1965 the Registrar exercises the powers in regard to management and also decision of the committee of management of the Co-operative Societies. The Registrar can suspend a Committee of management under Section 35 of the U.P. Co-operative Societies Act, 1965, seize the record under Section 37, remove an officer of the Co-operative Society under Section 38, decide the dispute as provided under Section 70, determine the terms of employment of a person in a society under Section 121, disciplinary control the employees of Co-operative Societies and resolution of Co-operative Society in certain cases under Section 128 of the Act.

19. The mere fact that the registrar has a power to control the affairs of the society itself will not make a society a ‘State’ unless other factors as enumerated in the decisions, referred to above, are existing. The

supervision of these societies as held in *Pradeep Kumar Biswas's case* (supra) shall be treated as regulatory and shall not be taken as a control by a State Authority. A society to be an 'authority' is to be financially, functionally and administratively dominated by or under the control of Government. If such factors are missing, the mere fact that the control is regulatory of a society created or recognized under an Act will not itself make the society a 'State' or 'other authority' as contemplated under Article 12 of the Constitution of India.

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21. The view of the Division Bench in *Jagveer Singhaa's case* (supra) that every cooperative society can be treated as an 'authority' within the meaning of Art. 226 of the Constitution of India because of its control by the Registrar under the provisions of the Act, in our view, is incorrect. In *Jagveer Singhaa's case* (supra), the Division Bench further held that the view taken by the Full Bench in *Radha Charan Sharma's case* (supra) was inconsistent with the view taken by the Apex Court in *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey* (supra). In *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey* (supra), the facts were that the U.P. Co-operative Federation Ltd., employed the petitioner therein as Sales Representative in its Co-operative Drugs Factory at Ranikhet. He was transferred as an Accountant-cum-Godown keeper in the Branch Office of the Federation at Ghaziabad. A report of theft of fertilizers and misappropriation of money and materials was received by the Federation and the employee was suspended. He instituted a writ petition under Article 226 of the Constitution. The Division Bench referred three questions. The first question was whether co-operative society which is an apex or State level co-operative society governed by the provisions of U.P. Co-operative Societies Act is statutory body or is 'State' within the meaning of Art. 12 of the Constitution. Referring the decision in *Ajay Hasia's* (supra), the Full Bench recorded finding that the petitioner failed to prove that the Government controls the activities or decision making power of the managing body of the Federation, Paragraph 16 of the Report in *U.P. State Cooperative Land Development Bank Ltd. 's case* (supra) reads thus:

"It is obvious that a juristic personality like a co-operative society which is registered under the Act but is otherwise free of governmental control will not be an authority within meaning of Art. 12. In the present case, it has been stressed that 40 to 60 per cent of the share-holding of the Federation is owned by the State Government. The President of the Federation is the Registrar of Co-

operative Society, a Government Servant, and the Secretary of the Federation is the Deputy Registrar, another Government Servant. The petitioner has not indicated what is the constitution of the Federation in which organ or body of the Federation is the power of management and taking decisions resides. It has not been shown how far the Government controls the activities or decision-making power of the managing authority of the Federation. In these circumstances, it is difficult to hold that the Federation was an authority within meaning of Art. 12.”

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32. Now we will deal with the topic ‘obligation to follow the statutory rules’. If a society, corporation or company is an authority within the meaning of Art. 12 of the Constitution, it is obliged to follow the statutory rules in regard to its function or regulation in regard to service matters of its employees. In *Administrator, Konch Sahakari Kraya Vikraya Samiti Ltd. v. Sarnam Singh*, (1997) 11 SCC 144 : (1999 AIR SCW 4824) the respondent therein was removed from service from the co-operative society from the post of Secretary under Section 38 of the U.P. Co-operative-Societies Act. 1965. The Court held that the writ petition is maintainable under Article 226 of the Constitution. The Court observed thus (at page 4825 of AIR SCW):—

“The scheme of the enactment clearly shows that the order of removal from service of Secretary of a Co-operative Society made under sub-section (1) of Section 38 by the Society or that under sub-section (2) of Section 38 by the Registrar is, therefore, statutory in nature. For this reason alone, it must be held that such an order is amenable to the writ jurisdiction of the High Court under Art. 226 of the Constitution. The view taken by the High Court that the writ petition was maintainable in the present case does not, therefore, call for any interference.”

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35. In the light of foregoing discussions, we answer question as to whether a writ petition in the nature of certiorari will lie against a co-operative society or it comes within the meaning of the words “other Authority” occurring in Art. 226 of the Constitution, as follows:

The writ petition in the nature of certiorari will lie against a Co-operative Society only when such Society has ingredient of an ‘Authority’ within the meaning of Art. 226 of the Constitution and

not otherwise. The following guidelines are culled out from the various decisions of the Supreme Court, referred to above:—

1. The constitution of the Managing Body/Committee constitutes the function arise of the Government.
2. There is an existence of deep and pervasive control of the management and policies of the Co-operative Societies by the Government.
3. The function of the Co-operative Society is of public importance and closely related to the governmental functions.
4. The financial control is by the Government or it provides financial aid controlling its affairs.
5. The violation of statutory rules applicable to the society in regard to the service matters of its employees, and
6. Statutory violations or non-compliance of it by an authority under the Act.”

23. Explaining the concept of a public function, the Supreme Court in **K. K. Saxena vs. International Commission on Irrigation & Drainage**²², observed as under:

“14. We may also like to point out that the aforesaid examination of the issue undertaken by the High Court is keeping in view the principles laid down by this Court in a catena of judgments and the tests which are to be applied to arrive at the decision as to whether a particular authority can be termed as “State” or “other authority” within the meaning of Article 12. It took note of the Constitution Bench decision in *Ajay Hasia v. Khalid Mujib Sehravardi* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] wherein the following six tests were culled out from its earlier judgment in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] : (*Ajay Hasia case* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] , SCC p. 737, para 9)

“(1) One thing is clear that if the entire share capital of the corporation is held by the Government, it would go a long way

²²[(2015) 4 SCC 670]

towards indicating that the corporation is an instrumentality or agency of the Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.

(6) 'Specifically, if a department of the Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of the Government. "

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53. In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no "public law rights" have accrued in favour of the appellant which are infringed. The service conditions of the appellant are not governed in the same manner as was the position in *Andi Mukta Sadguru [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691]*"

24. In **S.S. Rana v. Registrar, Coop. Societies**²³ the Supreme Court pertinently observed: -

²³[(2006) 11 SCC 634]

“9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control there over would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] . [See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)* [(2005) 5 SCC 632] .]

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions.”

25. The scope and extent of the expression ‘public function’ was more succinctly explained by the Supreme Court in its recent decision in

Ramakrishna Mission and Anr. vs. Kago Kunya and Ors.²⁴, in the following terms: -

27. In *Binny Ltd. v. V. Sadasivan* [*Binny Ltd. v. V. Sadasivan*, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus: (SCC pp. 665-66, para 11)

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

28. The Bench elucidated on the scope of mandamus: (SCC p. 673, para 29)

“29. ... However, the scope of mandamus is limited to enforcement of public duty. *The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced.* The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action ... *There cannot be any general*

²⁴[(2019) 16 SCC 303]

definition of public authority or public action. The facts of each case decide the point.” (emphasis supplied)

29. More recently in *K.K. Saksena v. International Commission on Irrigation & Drainage* [*K.K. Saksena v. International Commission on Irrigation & Drainage*, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] , another two-Judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus: (SCC p. 692, para 43)

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.”

30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

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32. Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an “authority” within the meaning of Article 226. State Governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of State control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

33. It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act, 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations

are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In *Federal Bank [Federal Bank Ltd. v. Sagar Thomas]*, (2003) 10 SCC 733, while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the Court held thus: (SCC pp. 758-59, para 33)

“33. ... in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. *Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank.*” (emphasis supplied)

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the *contract of service* is governed or regulated by a

statutory provision. Hence, for instance, in *K.K. Saksena* [*K.K. Saksena v. International Commission on Irrigation & Drainage*, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

26. Having noticed the legal principles which would govern, it would be apposite, at this stage, to review the functions, aims and objectives of the respondent cooperative society. Those stand enumerated in its Byelaws and read thus: -

“OBJECTIVES AND FUNCTIONS:

Objects:

The principal object of the society will be to promote the interests of all its members to attain their social and economic betterment through self-help and mutual aid in accordance with the cooperative principles.

(ii) Functions:

The object of the Society shall be to promote the economic interest of the members. In furtherance of the above objects, the society may undertake any or all the following:

- a. To raise funds by means of issuing shares, acceptance money on compulsory deposit or otherwise from members.
- b. To lend money to share-holder at interest.
- c. To undertake welfare activities particularly for the members and employees and their children for the promotion of their moral, educational and physical improvement.
- d. To own lands, building or to take them on lease or rent for the business of the Society and residential quarters for the staff of the Society.

- e. To open Branches within the area of operation of the society, subject to the approval of the General Body.
 - f. To undertake other measures designed to encourage in the members the spirit and practice of thrift self and mutual help.
 - g. To do all such things as are incidental or conducive to the attainment of any or all the above objects.
- (i) The Society shall help, maintain and promote the aims and object of the following funds, the rules of the working of which shall be framed by the General Body from time to time.
- (1) The “Share holder Death Cum Retirement Benefit Funds”.
 - (2) The “Share holder relief funds”.
 - (3) The “Staff Welfare Funds”.

27. The following undisputed facts emerge from the aforesaid discussion. The cooperative society has essentially been formed to promote and safeguard the welfare of its members who are all employees of the Indian Railways. As its objects would indicate, it is enjoined to work towards the upliftment and betterment of the condition of its members through self-help and mutual aid in accordance with “cooperative principles”. It raises funds from its members by requiring compulsory deposits, issuing shares and other means permissible under the Byelaws. In **NZRECTC**, the learned Judge albeit dealing with the issue of whether the respondent cooperative society could be treated as a public authority for the purposes of the Right to Information Act, 2005, in unambiguous terms found that it receives no funds or financial aid from the Government. That decision significantly noted that the cooperative society was not a statutory corporation and had merely applied for registration under the Act. It was then observed that it was not found to satisfy the test of substantial finance by the Government

and was funded principally on the basis of contributions made by its members. **NZRECTC** then found that even the Byelaws did not vest any control in the Central Government or the Railways over its affairs. It was further observed that the mere fact that the cooperative society was governed by the provisions of the Act would have no bearing on the question of whether it was a public authority. It ultimately and in light of the conclusions noticed above found that the cooperative society would not be covered by the Right to Information Act, 2005.

28. From the aforesaid findings on facts as recorded in **NZERCTC** and which were not disputed by the petitioners, it is manifest that there is no deep or pervasive control exercised by the Government. It is a cooperative society formed by employees of the Indian Railways to promote and safeguard the interests of its members. From its aims and objects it is apparent that it is principally concerned with ameliorating the conditions of its members, to extend loans, work toward their welfare, acquire land for the purposes of establishing its offices and for construction of residences for its members and to lend money to its shareholders and members. Its finances are founded on share money and contributory deposits made by its members. In order to hold that a body would be amenable to the writ jurisdiction of this Court as conferred by Article 226 of the Constitution it would have to be necessarily found that it is either State or an authority as envisaged by Article 12. The well settled tests propounded in the decisions of the Supreme Court noticed above include whether the body is substantially funded or financially controlled by the Government, whether it

is functionally or administratively controlled by the Government and whether it performs a public function or discharges a public duty.

29. From the facts noticed above, it is apparent that the cooperative society is neither substantially financed nor funded by the Government. A reading of its Byelaws establishes beyond a measure of doubt that it is also not administratively controlled by the Government. There is no dominant or overriding power that the Government may be recognised to wield over the affairs of the cooperative society. The Government is not shown to control the cooperative society either in the management of its affairs or the formulation of policy. The Court also bears in mind that the cooperative society has not been conferred with any monopoly status. It clearly comes across as an autonomous body formed by employees of the Indian Railways as a part of their intent to adopt “cooperative principles” for the promotion of the welfare and well-being of its members. The Court thus comes to the firm conclusion that the cooperative society fails to satisfy the test of “*deep and pervasive control*” as enunciated in the body of precedents noted above.

30. That then takes the Court to consider whether the cooperative society discharges a public function and whether its registration under the provisions of the Act would have any bearing on the question that stands posited. Dealing firstly with the issue of a public function, it becomes apposite to note that the Supreme Court in **Ramakrishna Mission** pertinently observed that in order to satisfy the public function test it must

be found that the body is discharging functions that are akin to the sovereign functions of the State. For a body to be recognised as performing a public function, it must be found that its activities and functions are imbued with a character touching upon public interest as opposed to something which may be of a purely private character. The Court fails to discern any public function element that may flow from the Byelaws of the society. That instrument in fact and to the contrary indicates that the cooperative society is essentially concerned with protecting the private interests of its members.

31. Turning then to the registration of the cooperative society under the Act, it may at the outset be observed that the affairs of various bodies may be regulated and controlled by myriad statutes in respect of a wide range of activities and functions that may be performed by them. However, merely because the affairs of a particular body may be regulated by statute, that cannot be determinative of the question that stands raised. As was aptly observed by the Supreme Court in **Ramakrishna Mission**, law is a “ubiquitous phenomenon” and touches various aspects of the functioning of a body. It was observed that merely because a body is obligated to comply with various statutory requirements, that cannot be conclusive to answer the question of whether it is discharging a public function. The fact that the cooperative society is registered under the Act or that the Byelaws or the procedure of elections owe their genesis to the Act and the Rules, would not be sufficient to hold that it would be amenable to the writ jurisdiction of the Court. This Court also bears in mind the principles enunciated by the Full

Bench of the Allahabad High Court in **Vijay Behari Srivastava** where it was pertinently observed that merely because the affairs of a society are controlled by the Registrar that would not make that body “State” as contemplated under Article 12 of the Constitution. In **S.S. Rana** the Supreme Court held that the general regulation of a society by statute is merely meant to ensure its proper functioning and would not render the activities of that entity as being subject to State control. The aforesaid position in law clearly emerges from the decision of this Court in **Mohinder Singh**. It would be pertinent to note that both **Sushila Devi Bhaskar** and **S.K. Gambhir**, on which reliance was placed by Mr. Garg, were dealing with cases where the Court had found that the cooperative societies had become instruments and vehicles for implementation of State policy and acting as an adjunct to the Delhi Development Authority. It was in that backdrop that the writ petitions were held to be maintainable.

32. The Court further notes that the writ petition neither rests on an allegation of a statutory provision having been violated nor does it impugn a decision or action of a public authority. The decision of the Supreme Court in **A. Umarani** which was cited by Mr. Garg also does not come to the aid of the petitioners for the aforesaid reasons. It may be observed that Byelaws constitute a contract between the society and its members and members inter se. A mere infraction of those Byelaws would not justify the invocation of Article 226 of the Constitution. For this reason, also it must be held that the writ petition would not be maintainable.

33. The Court may while parting note that while Mr. Garg had addressed various contentions touching upon the merits of the dispute, those have not been dealt with in light of the conclusion of the Court that the writ petition itself is not maintainable. The Court consequently leaves it open to the petitioners to raise those issues, if so chosen and advised, before the appropriate forum and in accordance with law.

34. Accordingly, and for the aforesaid reasons, since the writ petition has been found to be not maintainable under Article 226 of the Constitution, it shall stand dismissed. All interim orders shall consequently stand discharged.

JULY 19, 2022

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YASHWANT VARMA, J.

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