

judgments of the Supreme Court on the principles as to what is a State including of Seven Judge Bench of the Supreme Court in the case of ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and Ors. (2002) 5 SCC 111*** and the judgment of a learned Single Judge of this Court in the case of ***National Cooperative Consumer Federation of India Ltd. Vs. Raj Mangal Prasad*** in W.P(C) No.7770/08 decided on 14.5.2010.

3. So far as the judgment of Supreme Court in the case of ***Pradeep Kumar Biswas (supra)*** is concerned, the same is on general principles of what is a State and considering that the requisite aspects which are considered in this case have been considered by the Division Bench in the case of ***J.S. Arneja (supra)***, therefore, in my opinion, the respondent No.1 will not be a State. Also the judgment in the case of ***Raj Mangal Prasad (supra)*** relied on by the petitioner will not apply because the learned Single Judge in that case was considering the meaning of a public authority under the RTI Act as different from a State under Article 12 of the Constitution of India. Accordingly, learned Single Judge in paras 20 and 21 held that an authority may be covered under the RTI Act even if it is not a State under Article 12 of the Constitution. These paras 20 and 21 read as under:-

“20. Therefore while applying the above test to determine if the body in question was “state” the question to be asked was whether there

was ‘pervasive’ control over the body by the appropriate government and if that was answered in the affirmative then it may “afford an indication whether a corporation is a State agency or instrumentality.” In the considered view of this Court, since Section 2 (h) (d) (i) RTI Act uses the word “controlled” without any qualification as to the degree of control, it is not to enough show that there is “no deep or pervasive control” over these entities by the appropriate Government. The question is not whether there is “deep” control, whether there is “dominance” by the appropriate government or whether the government’s nominee directors are in ‘majority’. If they are, no doubt, it would indicate that the entity is a „public authority“ but if they are not, that does not mean that the entity is on that ground not a public authority for the purposes of the RTI Act. What may be a ‘public authority’ for the purposes of the RTI Act need not be ‘state’ under Article 12 or amenable to Article 226 of the Constitution. It is the context of transparency and accountability, of accessibility of its working to the public that controls the interpretation of the expression ‘public authority’, not the amenability to judicial review of its decisions. If one asks the wrong question in the context of the RTI Act one is unlikely to get the right answer. In the present cases, the petitioners would have to show that there was or is no control or there is unlikely to be any control whatsoever over their affairs by the appropriate government if they want to escape the definition of ‘public authority’ under the RTI Act.

21. It is for the same reason that this Court does not find the judgments of the High Courts, holding these entities not to be amenable to the writ jurisdiction under Article 226 of the Constitution, to be relevant for the purpose of the present cases. While, if that question had been answered in the affirmative, it would make the task of holding them to be public authorities for the purposes of RTI Act simpler, the mere fact that for the purpose of Article 226 of the Constitution any or all of these entities are held to be not amenable to the writ jurisdiction cannot be determinative of the question whether they are ‘public authorities’ for the purposes of the RTI Act. To elaborate, although in *J.S. Arneja v. NCCF 1994 (28) DRJ 546* the Division Bench of this Court held the NCCF not to be ‘State’ within the meaning of Article 12, and in *NAFED v. National*

Processed Food Cooperative Marketing Federation of India Employees Union 2001 (58) DRJ 799 (DB) this Court held that NAFED is not amenable to the writ jurisdiction under Article 226 of the Constitution and in ***D.G. Katti Shetty v. NCCF*** [judgment dated 3rd June 2003 in W.P.(C) No. 28014 of 1999 (DB)], the Karnataka High Court held likewise as regards NCCF, it is not helpful for deciding whether either entity is a ‘public authority’ within the meaning of Section 2 (h) (d) (i) of the RTI Act. (underlining added)

4. In my opinion, I need not refer to any of these judgments which are cited on behalf of the petitioner because once there is a direct judgment of a Division Bench of this Court in the case of respondent No.1 itself whereby respondent No.1 has been held not to be a State because the entire share capital is not held by the Government nor it receives financial assistance or subsidies for its commercial operation from the Government, and respondent No.1 runs its business on its commercial principles, and is therefore not a State. Respondent No.1 is also not a ‘State’ because it is not controlled by the Government.

5. Relevant observations of the judgment of the Division Bench in the case of ***J.S. Arneja (supra)*** are contained in paras 51 and 52 of the judgment and which read as under:-

“51. In Ramu Ram Shu (supra), a Division Bench of Madhya Pradesh High Court, while dealing with the N.C.C. Federation of India, laid down some important features to demonstrate that the respondent N.C.C. Federation of India is not a ‘State’ within the

meaning of Article [12](#). We are in agreement with the conclusions arrived at in the said judgment of the Division Bench and those conclusions are reproduced:

“First: The object mentioned in the Multi-State Co-operative Societies Act, 1984 (ct No. 51 of 1984) is "An Act to consolidate and amend the law relating to co-operative societies with objects not confined to one State and serving the interests of members in more than one State". The Bye-laws, as per S. [9\(2\)\(a\)](#) have to be consistent with the provisions of the Act of Rules. Bye-law No.3 of the N.C.C.F. enumerates in (i) to (xiv) activities of which a passing reference has been made by us in para 3 (supra). For brevity, we may add, that the objects include, creation and promotion of the formation of cadres of employees for the N.C.C.F and member institutions, securing from the Government or other sources requisite facilities, assistance and financial aid both for itself and member institution, holding of seminars, conferences, meetings and to undertake publicity, propaganda and similar other activities that may help the development of consumers co-operative movement; co-ordinate the working of its member institutions, etc.

Secondly: Section [19](#) of the Multi-State Co-operative Societies Act, 1984 read with Bye-law 4 relate to Membership. It is a long list (a) to (h) and the Government of India or State Government (under the Act) could be its members. That membership extends to various categories listed in Bye-law No.4 and includes Nafed or other National level cooperative organisations. The membership is very broad-based.

Thirdly: Funding: According to Bye-law 15, these could be raised by issuing shares, taking loans and advances from Government and other agencies, deposits from members, donations, grants, subscriptions and contributions, advertisements, etc., admission fees. Thus, there are multifarious sources.

Fourthly: Share Capital: The authorised share capital Bye-law 16(1) shall be Rs. 10 crores consisting of 50,000.00 shares of Rs. 2,000/- each to be subscribed by members, Pausing here, the Delhi decision, 1989 Lab Ic 940 where, it seems, parties placed materials showed, that the Central Government as member contributed 45 per cent of capital, yet, the fact is that the remaining major share capital

of 55 per cent was from other sources, such as State Federations, member Co-operative Societies, Apex bodies/NAFED.

Fifthly: The functioning under bye-laws 19 (a) the Supreme authority of the Federation is vested in the General Body of Members' clause (b) refers to the Composition of this body. Thus, there is one nominee of each member institution, but only one nominee of the Government of India, besides nominees of other legal entities. Clause (c) entitled every delegate/nominee/representative to exercise only one vote. Clause (f) refers to the purpose, namely, approval of the programme of the activities of the federation prepared by the Board of Directors, election of the member to board of Directors other than nominated members and consideration of audit report and annul report, etc. Bye-law 21 refers to duties and power's of the General Meeting Bye-law 24 refers to the Board of Directors, which consists of at least 10 members, as described therein, and only 3 nominees of the Government of India. But it does not show that the Government will have majority. Bye-law 27(i) to (xxiv) refer to various powers of the Board, which includes framing of regulation, of regulation, recruitment, promotion etc. Then there is Executive Committee in Bye-law 29 besides Business Committees. The powers and duties of the Managing Director are found in Bye-laws 34 and 35. The internal audit and check are arranged by the Board of Directors. The corresponding provisions about membership, voting. Board of Directors powers of the Board, nomination by the Central Government and State Government, may be seen in Sections [19,22,32,41](#) and [42](#) of the Act, 1984, Section [47](#) of that Act provides that the Central Government in public interest or for the purpose of securing proper implementation, etc. may make directions, which shall be complied with by those Multi-State Cooperative Societies. Pausing here it may be mentioned that the Government has also a financial stake in the running of those institutions and may also give grants, loans and subscription in the share capital and such powers are not unusual Under Section [50](#), the Central Government constitutes a body of persons in the manner prescribed for the preparation of a list of persons eligible for appointment to the post of Chief Executives and other Managerial posts in those societies, the maximum pay-scales of which exceed such amount as may be prescribed. Clause (b) thereof refers to the

regulations of recruitment and remuneration of such officers This, in essence, the functioning of the N.C.C.F is footed in democratic set up. It will not be out of place to mention here that the co-operative movement, in spite of promotional policies and incentive barring a few States like Maharashtra, has not caught with the progress and that is why Government encouragement is necessary. Looking to the sorry state of affairs in many co-operative societies as is the experience. The Financial control and supervision also appear to be essential in gradients in public interest As regards the contention that at present the post of the Managing Director is manned by an I.A.S officer and there is an Administrator but such are said to be the temporary phases of an institute. They arise temporarily for certain periods. There may be managerial difficulties at high posts and that is why the officers, who have expertise, could be taken on deputation.

Sixthly: The monopoly position is not conferred on the N.C.C.F. and its associates, but the objects are quite clear, as referred earlier, and those bodies, though they have entered the commercial Field, have to compete with other private enterprises, if they are to succeed. Merely because the organisation, in the allocation, is put in the Administrative control of a particular Ministry, that alone would not turn the N.C.C.F. into a Department of the Ministry. Looking to all these facts, we respectfully disagree with the views taken in the Delhi decision."

52. On consideration of all the relevant factors, the conclusion is irresistible that the respondent N.C.C.F. is neither an 'Instrumentality' nor an 'agency' of the State, within the meaning of Article 12 of the Constitution. In view of our aforesaid conclusion, the D.C. Kapoor's judgment (supra) of this court is overruled. The writ petition is accordingly dismissed. However, In the facts and circumstances of this case, parties are directed to bear their own costs."

6. Recently a learned Single Judge of this Court on 11.5.2012 in the case of ***M.K. Trivedi Vs. National Cooperative Consumers Federation of India Ltd.*** in W.P.(C) No.4942/2011 of the respondent No.1 has also

held that respondent No.1 is not a State and hence no writ lies against it under Article 226. Paras 1 to 3 and 5 of the said judgment read as under:-

“1. Primarily, objection taken in the counter affidavit filed by the Respondent is that the respondent does not come under the jurisdiction of this Court as per Article 12 of the Constitution.

2. In Para 2 and 3 of the petition, it is stated by the learned counsel that in view of the above judicial indictment, NCCF neither comes under the State Government nor an authority nor an instrumentality of State within the meaning of Article 12 of the Constitution.

3. In fact, NCCF was registered way back in 1965 as a Cooperative Society under the provisions of Cooperative Societies Act, 1925. This Act was repealed by virtue of Section 19 of the Delhi Cooperative Societies Act and came in force on 2nd April, 1973. The NCCF conducted to be governed by this Court Act and after 16th September, 1985, while the provisions of Cooperative Societies Act, 1924. The NCCF is a Cooperative Society and it is not governed by any statute. It is a voluntary body formed by the members for the welfare of its members. It is an independent body and according to its by laws, it comes neither under the Central Government, and nor any State Government is responsible for the management, administration and functioning of the NCCF.

5. In view of the above discussion, it is established that the respondent does not come under Article 12 of the Indian Constitution.

7. I am bound by the judgments passed by a Division Bench of this Court and also of the learned Single Judge dated 11.5.2012 holding that the respondent No.1 is not a State.

8. In view of the above, writ petition is dismissed as not

maintainable as respondent No.1 is not a State. Petitioner, of course, will be at liberty to initiate appropriate civil proceedings in accordance with law.

VALMIKI J. MEHTA, J

JULY 25, 2013
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