

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition Nos.18314 & 20637 of 2017

COMMON ORDER :

Heard Sri N. Jayasurya, counsel for petitioner in WP.No.20637 of 2017, and the learned Government Pleader for Agriculture, for respondents; and Sri M. Srinivasa Rao, counsel for petitioner in WP.No.18314 of 2017 and the learned Government Pleader for Co-operation, for respondents.

2. In these two Writ Petitions a common issue arises whether a Writ Petition under Article 226 of the Constitution of India is maintainable as against a Primary Agriculture Co-operative Society (**for short, 'PACS'**) which is registered under the Andhra Pradesh Co-operative Societies Act, 1964 (**for short, 'the Act'**).

WP.No.18314 of 2017

3. In WP.No.18314 of 2017, the petitioner questions proceedings dt.28.04.2017 dismissing the petitioner from service. The petitioner has filed the said Writ Petition alleging that a Three-Member Committee appointed to enquiry into the allegations against him violated principles of natural justice, and came to the conclusion that the charges framed against the petitioner were proved and recommended his dismissal from service; and on that basis, the Managing Committee of the Society passed a resolution on 18.04.2017 dismissing him from service. Consequently, the 3rd respondent in the Writ Petition passed the impugned order dt.28.04.2017 dismissing the petitioner from service.

WP.No.20637 of 2017

4. In WP.No.20637 of 2017, the petitioner questions the appointment of the 4th respondent therein as enquiry officer to enquire into the allegations leveled against the petitioner vide proceedings dt.10.04.2017 issued by the person In-Charge Committee of the 5th respondent-PACS, and the consequential enquiry proceedings conducted by the 4th respondent without allowing the petitioner to avail the services of an Advocate.

5. There is no pleading in both the Writ Petitions as to how the PACS Limited, where the petitioners were employed and which had taken the above referred actions against them, would come within the definition of the term 'State' as defined under Article 12 of the Constitution of India.

6. However, the counsel for petitioners relied upon the decision of a Division Bench of this Court in **Anakapally Rural Electric Co-operative Society Limited v. OKS Reddy and another¹** and **R. Bhadravari Rao v. Nalgonda District Co-operative Central Bank Limited, Nalgonda and others²**, to contend that a Writ Petition would lie against a PACS also in respect of actions performed by higher officials of the said organization.

7. In **OKS Reddy** (1 supra), a Division Bench of this Court was considering an appeal against an order of a single Judge allowing a Writ Petition setting aside punishment imposed on an employee of the Anakapalli Rural Electric Co-operative Society which is a Society registered under the Andhra Pradesh Co-operative Societies Act, 1964. It was contended before the Division Bench that the Appellate Society is not an instrumentality of the

¹ 2015 (1) ALD 146 (DB)

² 2014 (6) ALD 514

State. But the Bench took the view that if there is contravention of some other provision of the Constitution outside Part-III, for example, where a body has a public duty to perform or its acts are supported by State or public officials, a Writ Petition may still lie under Article 226 of the Constitution of India.

8. On the facts of the said case, it was held that the Anakapalli Rural Electric Co-operative Society Limited was amenable to Article 226 of the Constitution.

9. In **Sadhu Varahala Babu v. Government of Andhra Pradesh and others**³, cited by the counsel for petitioners, this Court held that in certain circumstances a Writ Petition can be maintained even against a Co-operative Society to enforce a statutory public duty. It held as follows :

“77.

(1) *Article 226 empowers the High Court to issue writs to 'persons' or 'authorities' to enforce ordinary rights.*

(2) *An order can be issued against private persons by granting appropriate relief under Article 226 of the Constitution.*

(3) *Even if a society cannot be characterized as a "State" within the meaning of Article 12, a writ would lie against it to enforce a statutory public duty.*

4) *In the matter of termination of service of the employees of a cooperative 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 the High Court under Article 226 of the Constitution.*

³ 2005 (6) ALD (NOC 261)

5) A writ can be maintained under Article 226 if there is flagrant violation of the principles of natural justice, which are required to be followed under a statute.

(6) The power of the High Court is not confined only to issue of writs to a public authority. It can also issue directions to enforce any of the fundamental rights or for any other purpose.

(7) The scope of Article 226 has been widened by maintaining the writ petition against other authorities and persons also.

(8) Mandamus under Article 226 may issue even to a private person or a body regarded as a government instrumentality even when it is incorporated or registered under a statute viz., a co-operative society or a limited company.”

10. I have taken note of the above decisions.

11. It is not the case of the petitioners that any statutory duty to be performed by the PACS has not been performed or that there is deep and pervasive control of the State. Merely because they are governed by the provisions of the A.P. Co-operative Societies Act, 1964, it does not become a statutory body and become amenable to judicial review under Art. 226 of the Constitution of India since they do not fall within the ambit of “State” or its instrumentality under art. 12 of the Constitution of India.

12. The Supreme Court in **Executive Committee of Vaish Degree College v. Lakshmi Narain**⁴, dealt with the Societies Registered under the Registration of Co-Operative Societies Act and held that there is a distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. To be a statutory body an entity must not be

⁴ (1976) 2 SCC 58

merely governed by the statutory provisions but it should owe its very existence to a statute.

13. A Full Bench of this court in **Sri Konaseema Cooperative Central Bank v. N.Seetharama Raju**⁵ considered the question in what circumstances a Co-operative Society is amenable to judicial review under Art.226 of the Constitution of India and held:

- (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 Art. 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 Art. 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 Art. 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 Art. 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 co-operative 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*

⁵ AIR 1990 AP 171 (FB)

Society and its employees, or 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, S. 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 Art. 226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A. P. Shops and Establishments Act; but, in an appropriate case, this Court will interfere under Art. 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 Art. 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 obligations, which is not statutory, cannot be enforced by way of a writ petition under Art. 226 of the Constitution. Prior to entering into contract, however, Art. 14 operates, as explained by the Supreme Court in E.E. & C. Ltd. v. State of West Bengal, MANU/SC/0061/1974MANU/SC/0061/1974 : [1975]2SCR674 , and Rarnana Dayaram Shetty, MANU/SC/0048/1979MANU/SC/0048/1979 : (1979)IILLJ217SC."*

14. This decision has been approved by the Supreme Court in **UP State Co-operative Land Development Bank Ltd. V. Chandra Bhan Dubey**⁶.

15. Keeping these principles in mind I will now consider whether the PACS in question can be said to come within the term "State" or "it's instrumentality".

⁶ (1999) 1 SCC 741

16. National Bank for Agriculture and Rural Development (**NABARD**) is the apex banking institution through which funds are channeled to the Andhra Pradesh Co-operative Bank which is the head of the Co-operative Credit Structure in the State of Andhra Pradesh, as a principal credit society at the State-level. From the Andhra Pradesh Co-operative Bank, the monies are passed through the District Co-operative Central Banks at the District Level and the monies are drawn by the PACS through the District Co-operative Central Bank. The PACSs, though lend amounts to Members of the said Societies, but they do not perform any sovereign functions. Nothing is placed before this Court to show how they are 'State' within the meaning of Article 12 of the Constitution of India. It is not shown by the petitioners that on any of the settled principles and indicia for characterizing an institution as an agency or instrumentality of 'State', the PACSs can be characterized as a 'State' or 'other authority' within the meaning of Article 12 of the Constitution. If the PACS are not a State, then no Writ can be issued directing them to perform a duty. (See **Narasimha Reddy v. Government of Andhra Pradesh, Co-operative Department, represented by its Secretary and the Commissioner of Registrar of Co-operative Societies**⁷)

17. A Full Bench of the Kerala High Court in **P. Bhaskaran and others v. Additional Secretary, Agricultural Co-operative Department, Trivandrum and others**⁸ held that the Co-operative Societies are not created by the Co-operative Societies Acts and they are not statutory bodies. It held that they are functioning only in accordance with the principles of the

⁷ 2004 (5) ALT 61

⁸ AIR 1988 KERALA 75

provisions of the Act and they would have legal existence even if the Co-operative Societies Act was not in force. It declared that Government has no share in Co-operative Societies and there is no deemed and pervasive State control. Apart from the above, it also held that management of the Societies does not vest in the Government or in the representatives of the Government and it is under the effective control of a Committee elected by the Members of the Societies. Accordingly, it held that the statutory regulation or restriction in the functioning of the Societies is not an imprint of the State under Article 12 of the Constitution and so no Writ Petition would lie against a Co-operative Society governed by the Kerala Co-operative Societies Act.

18. This decision of the Kerala High Court was considered by this Court in **B. Narayana v. PACS Limited and two others**⁹. Applying the said decision, it was held in this decision by this Court that a Writ Petition would not lie against a PACS.

19. Having regard to the above case law, I am of the opinion that the petitioners have failed to satisfy the Court that the PACS where they are employed is a “person” or an “authority” within the meaning of Art.226 of the Constitution or that they could be characterized as “State” within the meaning of Art.12 of the Constitution. They have not also made out any violation of a fundamental right or statutory duty on the respondent-PACS on the basis of which a Writ under Art.226 of the Constitution can be issued to them.

⁹ (2013) 6 ALD 421

20. The other decisions cited by Sri N. Jayachandra, counsel for petitioner in W.P.No.20637 of 2017 as to the right to engage a lawyer need not be considered, since the Writ Petition has been held to be not maintainable and since no provision of any statute has been quoted conferring such right on an enquiry facing a disciplinary enquiry.

21. Consequently, no Writ Petition would lie against the said PACS. Therefore, the Writ Petitions are dismissed as not maintainable. No order as to costs.

22. As a sequel, miscellaneous applications pending if any in these two Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-07-2017

Ndr/*

