



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2018
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

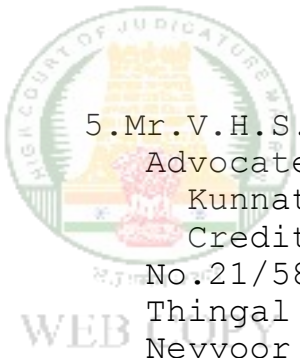
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W.P. (MD) No.6631 of 2015
and
M.P (MD) Nos.1 to 3 and 5 of 2015

T.Vijaya
Daughter of A.Thankaraj,
Wife of Murugan,
Assistant Secretary (Under Suspension),
Kunnathoor Primary Agricultural Co-operative
Credit Society Ltd., Y-55,
Co-operative Bank Road,
Puthukkadai-629 171.
Pudukkadai P.O.,
Kanyakumari District. ... Petitioner

-vs-

- 1.The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.
- 2.The Deputy Registrar of Co-operative Societies,
Thuckalay,
Kanyakumari District,
Pin-629 175.
- 3.The Kunnathoor Primary Agricultural
Co-operative Credit Society Ltd., No.Y-55,
Co-operative Bank Road,
Pudukkadai,
Pudukkadai P.O.,
Kanyakumari District,
Pin-629 171,
Represented by its President.
- 4.Mr.C.Mohandhas,
President,
Kunnathoor Primary Agricultural
Co-operative Credit Society Ltd., No.Y-55,
Co-operative Bank Road,
Pudukkadai,
Pudukkadai P.O.,
Kanyakumari District.
Pin-629 171.



5.Mr.V.H.S.Prathap,
 Advocate/Domestic Enquiry Officer of
 Kunnathoor Primacy Agricultural Co-operative
 Credit Society Ltd., No.Y-55,
 No.21/58B, Karungal Road,
 Thingal Nagar,
 Neyyoor Post,
 Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 5th respondent, pertaining to his order in notice No.Nil, dated 26.3.2015, addressed to the petitioner to quash the same and all proceedings pursuant thereto.

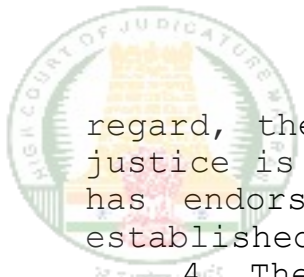
For Petitioner	: Mr.K.N.Thampi
For R1 & R2	: Mr.R.Sethuraman Special Government Pleader
For R3	: Mr.M.E.Ilango

O R D E R

The enquiry notice issued against the writ petitioner vide proceedings, dated 26.03.2015 directing the writ petitioner to participate in the Domestic Enquiry was originally challenged in this writ petition. Subsequently, when the Management brought to the notice of this Court that the enquiry was already concluded and the Enquiry Officer has also submitted his final Enquiry Report and thereafter, the prayer in the writ petition was amended so as to quash the enquiry report as well as the enquiry notice. Accordingly, the present writ petition is to be dealt in respect of the prayer to quash the enquiry report as well as the enquiry notice, dated 26.03.2015.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was appointed as Fertilizer Saleswoman in the third respondent Co-operative society with effect from 2.5.1992 on compassionate ground on account of death of her father Late.shri.A.Thankaraj, who died while he was in service. The petitioner was promoted as Assistant Secretary in the third respondent/Society with effect from 1.4.2014 and was working.

3.The core contention raised on behalf of the writ petitioner is that the allegations set out against the writ petitioner are motivated and further the appointment of Enquiry Officer itself was not in accordance with law. The learned counsel for the writ petitioner states that the enquiry officer/the fifth respondent is having certain personal grudge with the parties, more specifically, with the President of the Society and therefore, he cannot be a competent person to conduct the enquiry. In this regard, the learned counsel for the petitioner states that the fifth respondent is an Advocate and he appeared in a case on behalf of the wife of the President of the Society and more so, he is the close friend of the President of the Society and therefore, the writ petitioner would not get a fair enquiry before the fifth respondent. In this

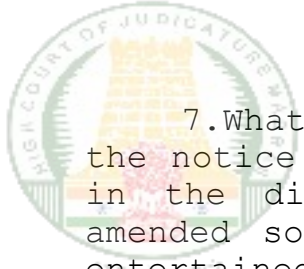


regard, the writ petitioner cited catena of Judgments to show that justice is not only done, but seems to be done. Though, this Court has endorsed the view and analysed whether the allegations are established in the present case or not.

4. The learned counsel appearing on behalf of the respondents states that the fifth respondent has no relationship with the Society and he has not even represented any case on behalf of the Society. The writ petitioner has come before this Hon'ble Court with the allegations contained in para 3 of his affidavit only with a view to avoid the fifth respondent from conducting the enquiry and to delay the enquiry proceedings. It would not be out of place to mention here that one Mr. Chelladurai (under dismissal) Secretary of the 3rd respondent society whom the petitioner has abetted has caused loss to the tune of 1.09 crore and had been dismissed from service after the enquiry conducted by the 5th respondent. Hence, in order to avoid the same, the petitioner has made these fallacious allegations against the second respondent and the fifth respondent.

5. This Court has to consider the allegations set out by the writ petitioner that the fifth respondent appeared in a case on behalf of the wife of the President of the Co-operative Society. It is not the allegation that he appeared for the President or for the Society. The allegation is that the fifth respondent appeared in a case on behalf of the wife of the President. Such a remote link cannot be considered as a bias. In order to establish the bias, the parties have to establish that in the present case against whom such allegation of bias is raised has indulged in such activities. Mere apprehension is not a bias and if mere apprehension is entertained, then this Court is of an opinion that it may not be possible for the Disciplinary authority to proceed with the Disciplinary proceedings. The allegation of bias are to be established beyond any pale of doubt before the Court of Law. Mere apprehension cannot be a ground to vitiate the enquiry proceedings. Now, the learned counsel for the petitioner states that there is a possibility and likelihood of bias on the part of the fifth respondent in view of the fact that the fifth respondent appeared in a case on behalf of the wife of the President of the Co-operative Society.

6. This Court is of an opinion that it is a remote allegation made and the fifth respondent is not directly connected with the affairs of the Society while functioning as an Enquiry Officer. He has to act in an unbiased manner and to give reasonable opportunity to all the parties, who are appearing before the enquiry proceedings. It is not always be presumed, certain personal elements will affect official capacity of a person. It cannot be apprehended always that a person having certain personal likes and dislikes will act partially in his official capacity. Certain personal likes and dislikes alone cannot be a ground to plead that the person is biased while functioning as an officer. Therefore, the conduct of the public servant while performing the duties and responsibilities, must be in an unbiased manner and he must be fair and deliver the goods with good conscious. That is the mandate in the Constitution of India. Such is the perspective of the constitution.



7. What is under challenge in this writ petition is nothing but the notice issued to the writ petitioner calling her to participate in the disciplinary proceedings. Subsequently, the prayer was amended so as to quash the enquiry report also. No writ can be entertained against the enquiry notice or against the enquiry report. The disciplinary proceedings initiated must be allowed to be completed in all respects and the same has to reach its logical conclusion and intermittent intervention are certainly not preferable. Even the charge-memo or the enquiry notice per se will not provide any cause of action for the delinquent. Therefore, the writ petition against the pending disciplinary proceedings are to be entertained only on exceptional circumstances.

8. The writ proceedings can be entertained if the notice or enquiry was conducted by an incompetent authority or if the same is in violation of statutory Rules. If there is an allegation of malafides, then the authorities against whom such malafides are raised, are to be impleaded as a party respondent in the writ petition. However, in the present case, the enquiry officer was impleaded as fifth respondent. The allegation against the fifth respondent is that he appeared in one case in favour of the wife of the President of the Co-operative society. It is a remote apprehension and such a remote apprehension cannot be entertained by way of writ petition, so as to vitiate the entire disciplinary proceedings.

9. Unless the writ petitioner establishes that the fifth respondent has acted in a biased manner or made a finding that he acted in an unreasonable manner and in the absence of any such specific averments, the Court cannot entertain the bald allegations.

10. The learned counsel for the petitioner though conceded in respect of the principles laid down by the Marappan v. The Deputy Registrar of Co-operative Societies, Namakkal reported in 2006(4) CTC 689 pleaded that the subsequent Division Bench of this Court has considered this aspect and entertained the writ petition. The learned counsel for the petitioner cited the case of S.O., Nazarath Urban Co-op Bank Ltd., Vs. C.Deva Anbu reported in (2007) 4 MLJ 1135 and submitted that the case of C.Deva Anbu was an exceptional one and the same cannot be cited as a Precedent in respect of the facts of the present case. In yet another case of The Joint Registrar/Managing Director, Virudhunagar District Central Co-operative Bank Ltd., vs. P.Asothai and others reported in 2017(4) CTC 417 and in para 10 of the judgment reads as under:-

"10. That apart, yet another contention raised by the Respondents is that as per Marappan v. Deputy Registrar of Cooperative Societies, Namakkal Circle, 2006(6) CTC 689 (LB), the Writ Petitions are not maintainable. Be that as it may, it is trite law that the Writ Petition could be entertained against the Cooperative Society, when there is a violation of the provisions of the Industrial Disputes Act and the same was also reflected in the Counter Affidavit of the Second Respondent. Furthermore, if there is an infringement caused against the Fundamental Rights, like the case on hand, there is no bar in entertaining the Writ Petitions. In this case, there is a serious violation of Fundamental Rights.



Furthermore, on earlier two occasions, the official Respondents have entertained the case of the Writ Petitioner and the Respondents had also made appearance through Government Advocate. Therefore, much waster has flown and now, at this distance point of time, the Respondents cannot go back to square one and state that the Writ Petitions are not maintainable. Hence, in these circumstances, we are of the view hat the Writ Petitions were rightly entertained by the learned Judge and matters were rightly disposed of by the learned Judges."

11.This Court has stated that when there is a violation of the provisions of the Industrial Disputes Act and the same was also reflected in the Counter Affidavit of the Second Respondent. Furthermore, if there is an infringement caused against the Fundamental Rights, like the case on hand, there is no bar in entertaining the Writ Petitions. Thus, in the above case, the Court came to the conclusion that there was a violation of Fundamental right and there was a violation of provision of Industrial Dispute cannot be countenanced with reference to the facts and circumstances of the present case. The participation in the enquiry and appointment of the Enquiry Officer by the Disciplinary authority cannot be considered as a violation of Fundamental Rights. It may be violation of procedures or violation of certain statutory provisions and can never be construed as violation of a Fundamental Rights. These are all the rights of the employees ensured under the principles of natural justice and under the Rules and regulations. Such being the fact, there cannot be any comparison in respect of the judgment of the Division Bench.

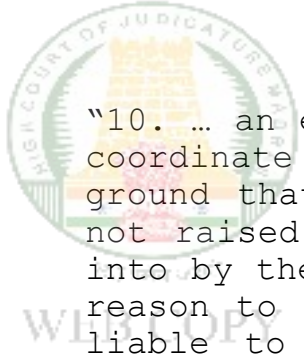
12.Apart from these judgment, this Court has to consider the binding factors of this judgment. The principles in respect of the binding precedents are very recently considered by the Supreme Court of India in the National Insurance Company Limited v. Pranay Sethi and ors reported in JT 2017 (10) SC 450 in paragraphs 15 to 26 are relevant and the same is extracted hereunder:-

"15. The aforesaid analysis in Santosh Devi (supra) may prima facie show that the two-Judge Bench has distinguished the observation made in Sarla Verma's case but on a studied scrutiny, it becomes clear that it has really expressed a different view than what has been laid down in Sarla Verma (supra). If we permit ourselves to say so, the different view has been expressed in a distinctive tone, for the two-Judge Bench had stated that it was extremely difficult to fathom any rationale for the observations made in para 24 of the judgment in Sarla Verma's case in respect of self-employed or a person on fixed salary without provision for annual increment, etc. This is a clear disagreement with the earlier view, and we have no hesitation in saying that it is absolutely impermissible keeping in view the concept of binding precedents.

16. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

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17. In State of Bihar v. Kalika Kuer alias Kalika Singh and others¹⁹, it has been held:-



"10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ..."

17.1. The Court has further ruled:-

"10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways – either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

18. In *G.L. Batra v. State of Haryana and others*²⁰, the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India v. Godfrey Philips India Ltd.*, *Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra*²² and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*²³. It may be noted here that the Constitution Bench in *Madras Bar Association v. Union of India* and another has clearly stated that the prior Constitution Bench judgment in *Union of India v. Madras Bar Association*²⁵ is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.

19. In this regard, we may refer to a passage from *Jaisri Sahu v. Rajdewan Dubey*:-

"11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma v. Venkata Narasimharao* that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in *Halsbury's Laws of England*, 3rd Edn., Vol. 22, para 1687, pp. 799-800:

"The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the



latter it is bound by the decision of the House of Lords."

In *Virayya v. Venkata Subbayya* it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in *Bilimoria v. Central Bank of India*. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

20. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.

21. In the context, we may fruitfully note what has been stated in *Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others*²⁷. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:-

"6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ..."

22. In *Chandra Prakash and others v. State of U.P.* And another, another Constitution Bench dealing with the concept of precedents stated thus:-

"22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh*²⁹ held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ..."

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23. Be it noted, Chandra Prakash concurred with the view expressed in *Raghubir Singh* and *Pradip Chandra Parija*.



24. In *Sandhya Educational Society and another v. Union of India and others* ³⁰, it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In *Rattiram and others v. State of Madhya Pradesh*³¹, the Court dwelt upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions. The Court noted the observations in *Raghubir Singh* (supra) and reproduced a passage from *Indian Oil Corporation Ltd. v. Municipal Corporation*³² which is to the following effect:-

"8. ... The Division Bench of the High Court in *Municipal Corpn., Indore v. Ratnaprabha Dhanda* was clearly in error in taking the view that the decision of this Court in *Ratnaprabha* was not binding on it. In doing so, the Division Bench of the High Court did something which even a later coequal Bench of this Court did not and could not do. ..."

25. It also stated what has been expressed in *Raghubir Singh* (supra) by R.S. Pathak, C.J. It is as follows:-

"28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. ..."

26. In *Rajesh* (supra) the three-Judge Bench had delivered the judgment on 12.04.2013. The purpose of stating the date is that it has been delivered after the pronouncement made in *Reshma Kumari's* case. On a perusal of the decision in *Rajesh* (supra), we find that an attempt has been made to explain what the two-Judge Bench had stated in *Santosh Devi* (supra). The relevant passages read as follows:-

"8. Since, the Court in *Santosh Devi* case actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma* case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In *Sarla Verma* case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair



and reasonable. There shall normally be no addition thereafter."

13. The Hon'ble Chief Justice Mr. Dipak Misra, J. while speaking on behalf of the Constitution Bench categorically enumerated the legal principles in the matter of Judicial discipline and binding precedents. Thus, when the Constitutional Bench judgment is holding the subject, this Court need not follow the Division Bench and other judgments of the Co-ordinate Benches. In these circumstances, this Court is bound by the judgment of the larger bench in the case of *Marappan v. Deputy Registrar of Co-operative Societies, Namakkal Circle*, 2006(6) CTC 689 (LB), the Principles laid down by the Larger Bench in the above case is in paragraph 21 and the same is extracted hereunder:-

"21. From the above discussion, the following propositions emerge:

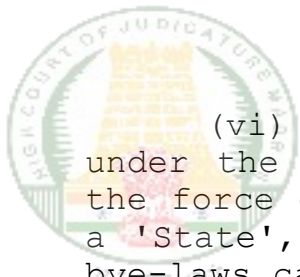
(i) If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in *Ajay Hasia* it is held that the respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon 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 and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.



(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

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(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

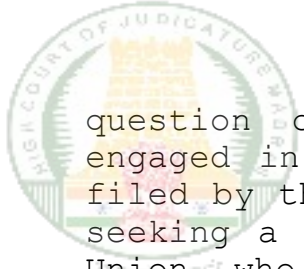
(viii) The decision in *M. Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society* MANU/TN/0330/2000MANU/TN/0330/2000 : (2001)ILLJ285Mad is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in *Pradeep Kumar Biswas* case and the other decisions referred to here before."

14. The very spirit of the judgment is that the Co-operative Society registered under the Provisions of the Tamil Nadu Co-operative Societies Act within the meaning of Article 12 of the Constitution of India. Thus, no writ can be entertained as against a co-operative society. However, certain explanations are provided if there is violation of statutory provisions. The parties cannot be allowed to cite certain violation of procedures and claim that the writ petition is to be entertained. If such writ petitions are entertained in such a manner, then the entire principles of *Marappan* case will be absolutely defeated. Exceptional circumstances provided in the judgment, would not mean that every ground raised by the parties to be entertained and it cannot be a routine procedure for initiation of disciplinary proceedings.

15. The Full Bench of the Hon'ble High Court of Madras delivered the Judgment in the case of *T.K.Ananda Sayanan vs. The Joint Registrar of Co-operative Societies* reported in 2007(5) CTC - 1. In the said Judgment, the legal principles settled in the case of *Marappan vs. Deputy Registrar of Cooperative Societies, Namakkal Circle*, are reiterated and further it is emphasised that by merely stating that Article 14 and 21 are violated, the writ petition cannot be entertained in respect of a Co-operative Society. Once again the Full bench considered the issue on entertaining the writ petition in the light of the Larger Bench and settled the following principles in para 12, 14, 16 and 18 of the judgment.

"12. In *Binny Ltd. and Anr. v. V. Sadasivan* MANU/SC/0470/2005MANU/SC/0470/2005: (2005)IIILLJ738SC, the Supreme Court delineated what would be a private law remedy and a public law remedy and that indication of jurisdiction of the High Court under Article 227 of the Constitution is for obtaining a public law remedy. In this case, they also referred to *General Manager, Kisan Sahkar Chini Mills Limited, Sultanpur, U.P. v. Satrugan Nishad and Ors.* (cited supra), wherein it was held that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function. The following extracts are relevant:

19. In *VST Industries Ltd. v. Workers Union* MANU/SC/0760/2000MANU/SC/0760/2000 : 2000(8)SCALE95, the very same



question came up for consideration. The appellant Company was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, Rajendra Babu, J., (as he then was), held as follows: (SCC p.305, para 7)

7. In *De Smith, Woolf and Jowell's Judicial Review of Administrative Action*, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarised the position with the following propositions -

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a 'public' or a 'private' body.

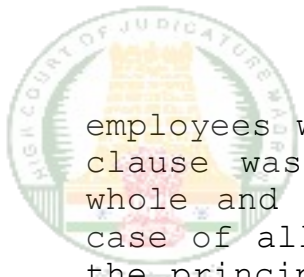
(2) The principles of judicial review *prima facie* govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute.

20. It is important to understand the real dicta laid down in the background of the facts involved therein. The appellant was a public sector undertaking and in that view of the matter it was held that the contract of employment and the service rules which gave absolute and arbitrary power to terminate the service of the



employees were illegal. It may be also noticed that the termination clause was referred to in the context of the contract read as a whole and no enquiry was contemplated under the rules even in the case of allegation of misconduct and it was held to be violative of the principles of natural justice. It was also held to be violative of Section 23 of the Contract Act as it was opposed to public policy to terminate the services of the employee without conducting an enquiry even on the ground of misconduct. Public-policy principles can be applied to employment in public sector undertakings in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labour activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of private sector. The service rules and regulations which are applicable to government employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same touchstone or enforced in the same manner. Therefore, the decision rendered by this Court in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly J.T. 1986 (2) S.C. 278 is of no assistance to the respondents in Civil Appeal No. 1976 of 1998 or to the appellant in the civil appeal arising out of SLP (Civil) No. 6016 of 2002.

27. In the second case also, namely, Delhi Transport Corpn. v. D.T.C. Mazdoor Congress MANU/SC/0031/1991 MANU/SC/0031/1991 : (1991) ILLJ395SC, the appellant was a public sector undertaking and the main controversy was about the term 'other authorities' under Article 12 of the Constitution. Both in Central Inland and DTC cases, the decision of a public sector undertaking was under challenge and the question raised was whether the principles of natural justice and fairness were to be applied. It was held that this Court has got jurisdiction to consider this question by invoking the principles of judicial review. But it would be noticed that in both the cases, it was a public sector undertaking coming within the purview of 'other authorities' under Article 12 of the Constitution.

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. 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. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of

England 3rd Edn., Vol. 30, p.682:

13. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.

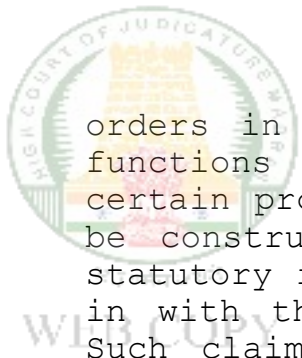
There cannot be any general definition of public duty or public function. This is stressed in Marappan's case (cited supra) in Clauses (iii) and (iv) extracted in paragraph 5 of this judgment. The facts of each case decide the point. The above cases are referred to only for highlighting what the Supreme Court has observed in this context.

14. Every illegal order of suspension or termination will not ipso facto amount to violation of Article 21. But there may be certain circumstances, as in a case of exclusion of an employee affected by HIV AIDS or an employee who has been rendered immobile by an accident or cases where the rights of huge number of employees are involved or where their very existence is jeopardized, where the employee may justifiably invoke Article 21 of the Constitution and seek protection by filing a writ petition. But every case of suspension or deprivation of wages for a period or termination will not entitle the employee of a co-operative society to move the writ Court and contend that the right of protection under Article 21 has been violated. The employees have adequate statutory protection in law.

16. For every alleged or imagined invasion of his rights, an employee of a co-operative society cannot move the writ court on the ground that his rights under Article 21 have been infringed. The effect of the Supreme Court cases cited in Marappan's case (cited supra) and the propositions set down in Marappan's case (cited supra) cannot be set at naught merely by mentioning Article 21, even if the order is illegal.

18. Therefore, every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 enabling him to move the writ court. We cannot ignore the settled position that applications to secure performance of obligations owed by a Government or a society towards its employees or to resolve any private dispute cannot be decided on the basis of the Article 21. The appellant herein may perhaps have a good case on other grounds. But the order of suspension suspending him from the post of Secretary does not amount to infringement of Article 21 and while the decision in the judgment of the Division Bench in The Nazarath Urban Co-operative Bank Ltd.'s case (cited supra) may be right on the facts of that case, the observations made regarding the application of Article 21 need to be and are clarified as above. The mere fact that he was kept under suspension beyond one year without the approval of the Registrar cannot be said to violate Article 21. It must be seen whether the invocation of Article 21 is justified in the particular case and whether the order challenged by a workman of a co-operative society is of such a nature that it would truly take away his right under Article 21 of the Constitution and that it is taken away otherwise than by due process of law.

16. Framing of charges, appointment of Enquiry Officer conduct of an enquiry, submission of enquiry report and passing of final



orders in the disciplinary proceedings are routine administrative functions of the management of a co-operative society. Thus, if certain procedures are violated during the process, the same cannot be construed as violation of Fundamental Right and violation of statutory rules. Thus, every violation of procedures cannot be fit in with the principles of fundamental rights or statutory rules. Such claims cannot be entertained in a routine manner. In the present case, it is a routine procedure and disciplinary proceedings and charge-memo was issued and an enquiry officer was also appointed. It is left open to the writ petitioner to submit his explanation/objections and participate in the enquiry proceedings and prove her innocence. However, in the present case, enquiry proceedings were already concluded and a report was also submitted and the action was initiated only after passing of the final order in the disciplinary proceedings. In these circumstances, intermittent intervention in this regard cannot be entertained, more specifically under Article 226 of the Constitution of India.

17. Furthermore, in the present writ petition, the Society is not a "State" within the meaning of Article 12 of the Constitution of India and therefore, no writ can be entertained in view of the legal principles settled by the Larger Bench cited supra.

18. Since the enquiry proceedings were already concluded in the present writ petition and the enquiry report was already submitted, it is for the petitioner to submit further objection, if any, on the enquiry report and only after the issuance of the final order in the Departmental disciplinary proceedings, the writ petitioner is at liberty to exhaust the remedy available under the provisions of Tamil Nadu Co-operative Societies Act, more specifically Section 153 of the Tamil Nadu Co-operative Societies Act and thereafter to move the appropriate Court of law.

19. The remedies in the co-operative society Act is quasi judicial in nature and therefore, all the legal grounds including the ground of procedural violation and violation of law can be pleaded before the competent authority under the provisions of the Act.

20. The remedy lies to the employees of the Co-operative Societies by way of revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act and without exhausting the said remedy, no writ proceedings can be entertained by this Court under Article 226 of the Constitution of India. This Court finds no reason to disbelieve the spirit and the scope of the power of revision provided under the Act itself.

21. Under these circumstances, this Court finds that there is no sufficient materials to entertain the present writ petition and accordingly, the writ petition stands dismissed, both on merits and on the ground of maintainability. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



To

1.The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.

2.The Deputy Registrar of Co-operative Societies,
Thuckalay,
Kanyakumari District,
Pin-629 175.

+One cc to Mr.K.N.Thampi, Advocate, SR.No.52152

+One cc to Mr.M.E.Elango, Advocate, SR.No.52561

+One cc to The Special Government Pleader, SR.No.52958

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RL/6C/15P/SV/MMS/SAR1/22/3/2018

W.P. (MD) No.6631 of 2015

01.03.2018