

CWP-7034-2013

Date of Decision: 18.12.2018.

Kamlesh

...Petitioner

Versus

The Hisar Central Co-operative Bank Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. Rajvir Singh Sihag, Advocate
for the respondents.

ARUN MONGA, J. (ORAL)

Present petition has been filed for issuance a writ in the nature of certiorari for quashing the impugned orders dated 23.10.2012 (Annexure P-2) and dated 15.12.2012 (Annexure P-4) vide which recovery was directed to be effected from the petitioner owing to the alleged embezzlement of ₹23,436/- and ₹23,825/- by her deceased husband.

2. The petitioner is still in service of the respondent-bank i.e. Hisar Central Co-operative Bank Ltd, Hisar. The respondent-bank has filed its reply and taken up preliminary objection qua the maintainability of writ petition stating that the answering-respondent is not a State within the meaning of Article 12 of the Constitution of India.

3. There is no appearance on behalf of the petitioner. Learned counsel for the respondents contends that the bank is a society registered under the

Haryana Co-operative Societies Act, 1984 [hereinafter referred to as 'the Act'] and its Board of Directors manage its affairs. He further stated that members of the Board are elected from the representatives of the primary societies, who are the members of the respondent-bank. He states that more than 80% shares are held by the primary societies and thus, the Government does not control or manage the fund of the respondent-bank.

4. Learned counsel for the respondent places heavy reliance upon the judgment rendered by the Supreme Court in case, **General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P Vs. Satrughan Nishad and others, reported as (2003) 8 Supreme Court Cases 639**, wherein it has been held that in a case of a society it has to be seen whether the State has any control over the functioning of the society much less a deep and pervasive one.

5. Learned counsel for the respondent contends that in the present case, it cannot be inferred by any imagination that the State has any deep and pervasive control over the society. He states that in the case relied upon by him it was found that 1/3rd of the management of the committee was constituted by the State Government and 2/3rd by the non-Government members. He also contends that the respondent bank has a total of 15 board members out of which 12 are non-Government and 3 are nominated by the State Government. Even the financial contribution of the State is confined to 20% shares of the Society as the 80% are held by the various primary societies of the respondent bank which is a central society.

6. I am in agreement with the arguments canvassed by the learned counsel for the respondents and accordingly hold that respondent-bank is

not a State within the meaning of Article 12 of the Constitution of India as it is neither substantially financed nor controlled by the Government. Further, the same being under management of an independent Board of Directors is not an instrumentality of the State.

Accordingly, the present petition is dismissed being not maintainable with liberty to the petitioner to seek appropriate remedy as may be otherwise admissible in accordance with law.

(ARUN MONGA)
JUDGE

December 18, 2018

Jyoti-IV

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No