



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.18646 of 2015

and

M.P(MD)No.1 of 2015

WEB COPY

P.Lalitha

... Petitioner

Vs

1.Deputy Registrar/Managing Director,
Tiruchirappalli District Amaravathi Consumers
Co-operative Wholesale Stores Ltd.,
Post Box.308,
No.1, Old Goods Shed road,
Tiruchirappalli-620 002.

2.R.Rajaram
Advocate/Domestic enquiry officer.
Tiruchirappalli District Amaravathi Consumers
Co-operative Wholesale Stores Ltd.,
Post Box 308,
No.1 Old Goods Shed Road,
Tiruchirappalli-620 002.

3.J.Palaneeswari
Deputy Registrar/Managing Director,
Tiruchirappalli District Amaravathi Consumers
Co-operative Wholesale Stores Ltd.,
Post Box-308,
No.1 Old Goods Shed road,
Tiruchirappalli-620 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, direction against the charge memo in Na.Ka.No.121/2015-16/CS dated 25.08.2015 issued by first respondent and the consequent notice of enquiry issued by the third respondent dated 1.10.2015 in the nature of writ calling for the records on the file of the respondents and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam

For R1 : Mr.K.Mu.Muthu
Additional Government Pleader

For R2 & R3 : No appearance

**ORDER**

Charge memo, dated 25.08.2015, is under challenge in the present writ petition.

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2. The writ petitioner was working as General Manager of the first respondent Co-operative Wholesale Stores Ltd., The charges against the writ petitioner are extracted hereunder:-

“குற்றச் சாட் ௫-1

பண்டகசாலையில் திருமதி.P.லலிதா, கணக்கு அலுவலர் (பொ) ஆக பணியாற்றிய சமயத்தில் துறையின் நிர்வாக அனுமதி பெறாமல் பண்டகசாலையின் கட்டுப்பாட்டில் செயல்படும் பொன்மலை மற்றும் கைலாசபுரம் சுயசேவைப்பிரிவுகளிலும் மற்றும் நியாய விலைக்கடைகளிலும் சோலார் மின்விளக்கு அமைக்கும் பணியினை ஸ்ரீசாய் எண்டர்பிரைஸ் மற்றும் கோலாரிஸ் ரீஜின் டெக்னாலஜிஸ் பிரைவேட் லிமிடெட் நிறுவனங்களுக்கு ரூ.31,08,200/- வழங்கிய வகையில் பண்டகசாலையின் நிதியை தவறாக பயன்படுத்தி தன்னுடைய பணி நிலைக்கான கடமைகள் மற்றும் பொறுப்புகளை கடைபிடிக்காத குற்றத்தைப் புரிந்துள்ளார்.

குற்றச் சாட் ௫-2

பண்டகசாலையில் திருமதி.P.லலிதா, கணக்கு அலுவலர் (பொ) ஆக பணியாற்றிய சமயத்தில் துறையின் நிர்வாக அனுமதி பெறாமல் பண்டகசாலையின் தலைமை அலுவலகத்தில் நவீனப்படுத்துதல் மற்றும் வர்ணம் பூசுதல் பணிக்கென் ஸ்ரீசாய் எண்டர்பிரைசஸ் நிறுவனத்திற்கு ரூ.24,55,000/- வழங்கிய வகையில் தன்னுடைய பணி நிலைக்கான கடமைகள் மற்றும் பொறுப்புகளிலிருந்து தவறிய குற்றத்தைப் புரிந்துள்ளார். மேலும் இந்நிகழ்வில் தலைமை அலுவலகத்தில் நடைபெற்ற புனரமைப்பு பணிகளை கண்காணிக்காமல் இருந்த குற்றத்தையும் புரிந்துள்ளார்.

குற்றச் சாட் ௫-3

பண்டகசாலையில் திருமதி.P.லலிதா, கணக்கு அலுவலர் (பொ) ஆக பணியாற்றிய சமயத்தில் துறையின் நிர்வாக அனுமதி பெறாமல் பண்டகசாலையின் பல்வேறு பணிகளை மேற்கொண்ட நிகழ்வில் பண்டகசாலையின் நிதியினை தவறாக பயன்படுத்தி தனது பணி நிலைக்கான கடமை பொறுப்புகளிலிருந்து மீறி செயல்பட்டுள்ளார் என குற்றம் சாட்டப்படுகிறது.

குற்றச் சாட் ௫-4

பண்டகசாலையில் திருமதி.P.லலிதா, கணக்கு அலுவலர் (பொ) ஆக பணியாற்றிய சமயத்தில் துறையின் நிர்வாக அனுமதி பெறாமல் பண்டகசாலையின் பல்வேறு பணிகளுக்காக ஸ்ரீசாய் எண்டர்பிரைசஸ் என்ற நிறுவனத்திற்கு முன்தொகை வழங்கி தனது பணி நிலைக்கான கடமை பொறுப்புகளிலிருந்து தவறி செயல்பட்டுள்ளார் என குற்றம் சாட்டப்படுகிறது.

குற்றச் சாட் ௫-5

பண்டகசாலையில் திருமதி.P.லலிதா கணக்கு அலுவலர் (பொ) ஆக பணியாற்றிய சமயம் பண்டகசாலையில் தலைமை அலுவலகக் கட்டிடத்திற்கு சன்ஷேடு அமைக்கும் பணிகள் நடைபெறாத நிலையில், அந்த பணிகள் நடைபெற்றதாக போலியான வவுச்சர் தயாரித்து வழங்கிய நிகழ்வில் ரூ.2,90,000/- அளவிற்கு பண்டகசாலையின் நிதியினை மோசடி செய்த நிகழ்வில் தனது பணி நிலைக்கான கடமை பொறுப்புகளிலிருந்து தவறி செயல்பட்டுள்ளார் என சாட்டுரைக்கப்படுகிறது.

குற்றச் சாட் ௫-6

பண்டகசாலையில் திருமதி.P.லலிதா கணக்கு அலுவலர் (பொ) ஆக பணியாற்றிய சமயம் வரிசை எண்.1 முதல் 5 வரையிலான குற்றச் சாட்டுகளில் குறிப்பிட்டுள்ள பல்வேறு முறைகேடுகளை புரிந்து துறை மற்றும் பொது மக்கள் மத்தியில் பண்டகசாலையின் நற்பெயருக்கு ஊறு விளைவித்த குற்றத்தைப் புரிந்துள்ளார்.

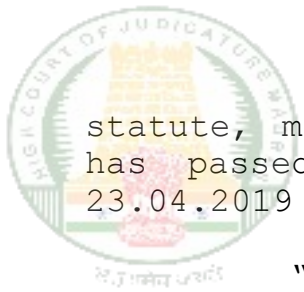
3.The charges against the writ petitioner are undoubtedly serious in nature. The charges are in relation to the financial loss caused to the first respondent Co-operative Wholesale Stores Ltd.,



4. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is no way responsible for any such financial loss and this apart, she was unnecessarily implicated in the departmental disciplinary proceedings. It is further contended that the charge memo was issued by incompetent authority. The charge memo, infact, was issued by the Managing Director (Additional Charge) of the first respondent Co-operative Wholesale Stores Ltd. The Managing Director is also one of the Director of the elected Board and the General Manager is functioning under the control of the Board of the Co-operative Society. In the absence of Board, the powers of the Board are exercised by the Managing Director. However, the first respondent is the Co-operative Wholesale Stores Ltd., and the second respondent is the Domestic Enquiry Officer and the third respondent is the Managing Director. The first respondent is a registered Co-operative Society under the provisions of the Tamil Nadu Co-operative Societies Act. The second respondent is the Domestic Enquiry Officer appointed by the first respondent Management. The third respondent was impleaded in her personal capacity to establish the malafide intention of the authorities in framing charges against the writ petitioner. Thus, all the three respondents are not "State" within the meaning of the Article 12 of the Constitution of India.

5. A co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act is not a "State" and the first respondent Co-operative Wholesale Stores Ltd., is not funded by the State Government. Thus, ordinarily the writ petition cannot be entertained. The employees of the Co-operative Wholesale Stores Ltd., are bound to exhaust the remedy provided under the Tamil Nadu Co-operative Societies Act. In the present case, the writ petitioner though an employee of the wholesale store Ltd., has not exhausted the remedy provided under Section 153 of the Tamil Nadu Co-operative Societies Act. The efficacious statutory remedy provided under the Act is to be exhausted before approaching the High Court. This apart, charge memo itself would not constitute a ground for entertaining the writ petition. Charge memo is an initiation of disciplinary proceedings by framing allegations. The delinquent official is bound to submit her explanation and participate in the enquiry for the purpose of establishing her innocence or otherwise. However, the learned counsel for the petitioner states that the charge memo was issued on the eve of the retirement of the writ petitioner and the same was issued with a malafide intention. However, all these allegations required a detailed enquiry by the competent authority and such disputed issues can be adjudicated before the competent revisional authorities by considering the original documents and by adducing evidence, if required. Such an exercise cannot be done by this Court sitting under Article 226 of the Constitution of India.

6. With reference to the maintainability of the writ petition, without exhausting the alternative remedy available under the



statute, more specifically, in Co-operative societies, this Court has passed an elaborate order in W.P.No.30396 of 2018, dated 23.04.2019 and the relevant paragraphs are extracted hereunder:-

"9. The learned counsel for the writ petitioner reiterated that, the writ petition must be admitted in view of the fact that, the Hon'ble Division Bench held that, a special status to the Cooperative Societies are given by inserting part IX B, by the Constitution (Ninety Seventh Amendment) Act, 2011. In view of the special status now given to the Cooperative Societies, the earlier view that the Writ Petition is not maintainable against cooperative societies is no more a good law.

10. Citing the above judgment, the learned counsel for the writ petitioner emphasised that, the writ petition cannot be dismissed by the learned Single Judge of this Court under Article 226 of the Constitution of India, and by relying on the judgment of the Larger Bench in the case of K.Marappan Vs. Deputy Registrar of Cooperative Societies. Under these circumstances, this Court has to consider the legal principles involved in respect of the issues raised.

11. The learned Special Government Pleader appearing on behalf of the respondent disputed the contentions raised on behalf of the writ petitioner by stating that, still the judgment of the Larger Bench passed in the case of K.Marappan Vs. Deputy Registrar of Cooperative Societies, holds as a good law and the judicial discipline warrants the judgment of the Larger Bench is to be followed by the other Courts. This apart, adjournments were granted by this Court, enabling the learned counsels to prepare their case in respect of the legal principles to be considered in the present writ petition.

12. The learned Special Government Pleader submitted position note with regard to maintainability, which reads as under:-

"(Position Note with Regard to Maintainability)

1. W.P.No.30396 of 2018 filed by Tmt. P.Priya. W/o. Late T. Maheswaran, worked as Assistant in the Dharmapur Cooperative Town Bank and retired from service on 31.10.2016, on superannuation.
2. His terminal benefit was withheld due to pendency of surcharge proceedings, criminal proceedings and disciplinary proceedings.
3. The petitioner filed the W.P. with a prayer to release immediately, the retirement benefits standing to the credit of her deceased husband with interest for delayed payment arc pass such further order.



4. The question before the Hon'ble Court is "whether the writ petition is maintainable. The petitioner has contended that cooperative societies have been incorporated under Part IX B of the Constitution (97th Amendment) Act.

5. It is submitted that the Marappan's case is based on the fact that "a society which is not a state would not normally be amenable to writ jurisdiction under article 226".

Even if assumed without admitting that the cooperative societies are amenable to writ jurisdiction, the disputes pertaining to employees of cooperative societies would not lie before the Hon'ble High Court, Madras, under article 226 of the Constitution. It is submitted that the dispute arising out of service matter relating to employees of cooperative societies, being the disputes between "master and servants" will have to be resolved under the I.D. Act or under the provision of TNCS Act, 1983. It is submitted that alternate remedy in such matters, is available to the employees of cooperative societies, by filing revision petition under section 153 of the TNCS Act, 1983. In this connection it is relevant to mention that in Marappan's case it was held as follows in paragraph 19 of the judgement.

"This even though a writ under Article 226 of the constitution can lie against a person, if it performs a public function or discharges a public or statutory duty, no application for mandamus will 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 obligation owed by a company / society towards its employee or to resolve any private dispute".

7. It is submitted that the facts of the case in W.A.No.116 of 2015 are not known and that in the judgement dated 18.06.2018 in W.A. 116 of 2015 and M.P.No.1 of 2015, the issue whether the law laid down in Marappan's case will continue to hold good even after the Constitution (97th Amendment) Act, 2011 came into force has not been elaborately discussed and decided upon. Paragraphs (2) and (3) of the judgement in the W.A.No.116 of 2015 that "The Constitution has now given a special status to the cooperative societies by inserting Part IX B by the Constitution (97th Amendment) Act 2011. In view of the special status now given to the cooperative societies, the earlier view that writ petition is not maintainable against cooperative societies no more a good law" have to be considered as "observations" but not as a "ratio decidendi" binding on other cases.



8. The Judgement in Marappan's case delivered by the Langer Bench consisting of 5 judges including the Chief Justice of the Madras High Court. The Law laid down in Marappan's case will hold good in respect of Cooperative Societies even after the Constitution (97th Amendment) Act 2011, came into force.

9. By the Constitution (97th Amendment) Act 2011, (i) in Part III of the Constitution, in article 19, in clause (1), in sub clause (c) after the words "or unions" the words In "cooperative societies" have been inserted Part III of the Constitution deals with Fundamental Rights.,

(ii) in Part-IV of the Constitution, after article 43-A the following articles has been inserted, namely.

43-B The State shall endeavour to promote voluntary formation, autonomous functioning and democratic control and professional Management of Cooperative societies; and

(iii) after Part the IX A of the construction Part IX-B "THE COOPERATIVE SOCIETIES" has been inserted.

Article 19(1) (c) as amended by the Constitutions 97th Constitution Amendment Act 2011 only guaranteed to from a Cooperative Society. It does not make a Cooperative Society as an instrumentality or agency of a State under Article 12 of the Constitution.

The New Articles 43-B inserted is Part-IV of the Constitutions by the Constitution (97th Amendment) Act , 2011 casts upon a duty on the State to promote Voluntary formation, Autonomous functioning, democratic control and professional management of Cooperative case will hold good in respect of Cooperative Societies even after the Constitution (97th Amendment) Act 2011, came into force.

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Article 19(1) (c) as amended by the Constitutions 97th Constitution Amendment Act 2011 only guaranteed to from a Cooperative Society. It does not make a Cooperative Society as an instrumentality or agency of a State under Article 12 of the Constitution.



The New Articles 43-B inserted in Part-IV of the Constitution by the Constitution (97th Amendment) Act , 2011 casts upon a duty on the State to promote Voluntary formation, Autonomous functioning, democratic control and professional management of Cooperative Societies.

It does not make a Cooperative Society as an instrumentality or agency of a State under Article 12 of the constitution.

In the New Part-IX B inserted by the Constitution (97th Amendment) Act 2011 new Articles 243 ZH to 243 Z7 have been inserted, which contains certain provisions relating to Cooperative Societies which relate to constitutions of board, conduct of election to the board, audit of accounts of cooperative societies continue general body, Right of a member to information, returns offences and penalties etc.

None of the provisions in the new Part-IX B make a cooperative society as an instrumentality or agency of a State under Article 12 of the Constitution.

10. It is also submitted further that by the order dated.03.05.2013 in W.P.(PIL)/166 of 2012, the Hon'ble High Court of Gujarat has declared that the Constitution (97th Amendment) Act, 2011 inserting Part- IX B containing Articles 243 ZH to 243ZT is ultravires the Constitution of India for not taking recourse to Art 368 (2) of the Constitution providing for ratification by the majority of the State Legislatures. Against the said order Civil / Appeals Nos. of 9108-9109 of 2014 filed before the Supreme court are pending.

It is also submitted that one D. Jagadheaswaran of Chennai had also filed W.P.No.20311 of 2013 before the Hon'ble High Court Madras praying to issue a writ, order or direction, more particularly one in the nature of Writ of declaring that section4 of the Constitution (97th Amendment) Act, 2011 dated 12th January 2012 inserting Part - IXB violative of Article 368 (2) of the constitution of India and hence and unconstitutional, while preserving sections 2 and 3 in the said Article. The said Writ Petition was however dismissed as withdrawn on 04.07.2017 as it was ordered to be clubbed with the above said Civil Appeals."

13. The learned counsel for the writ petitioner once again reiterated that, the Division Bench judgment dated 18.06.2018, is binding on this Court, as it was declared that in view of the special status now given to the Cooperative Societies, the earlier view that the writ petition is not maintainable against the Cooperative



Societies is no more a good law. In this regard, the learned Special Government Pleader contended that the facts, circumstances and the details of the case before the Hon'ble Division Bench are not narrated in the order passed by the Hon'ble Division Bench. The Hon'ble Division Bench remanded the matter to the Single Judge to dispose of the case as expeditiously as possible. The facts, circumstances and the legal principles involved regarding the maintainability of the writ petition against the Cooperative Societies, which all are not funded by the State were not considered in the Writ Appeal and therefore, the other judgments now placed before this Court by the learned Special Government Pleader are to be considered by this Court for the purpose of deciding the issues.

14. In order to reiterate the submission, the learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India, in the case of **Assistant Collector of Estate Duty, Madras Vs. V.Devaki Ammal (Smt), Madras** reported in (1995) Supp 2 SCC 39, and para No.3 of the judgment is extracted here under:-

"3. We are at a loss to understand how, once one Division Bench of a High Court has held a particular provision of law to be constitutional and not violative of Article 14, it is open to another Division Bench to hold that the same provision of law is unconstitutional and violative of Article 14. Judicial discipline demands that one Division Bench of a High Court should, ordinarily, follow the judgment of another Division Bench of that High Court. In extraordinary cases, where the latter Division Bench finds it difficult, for stated reasons, to follow the earlier Division Bench judgment, the proper course is to order that the papers be placed before the learned Chief Justice of the High Court for constituting a larger Bench. Certainly, where one Division Bench has held a statutory provision to be constitutional it is not open to another Division Bench to hold otherwise."

15. Relying on the above judgment, the learned counsel for the writ petitioner states that, the judicial discipline demands that one Division Bench of a High Court should ordinarily follow the judgment of another Division Bench of that High Court. In extraordinary cases, where the latter Division Bench finds it difficult, for stated reasons, to follow the earlier Division Bench judgment, the proper course is to order that the papers be placed before the learned Chief Justice of the High Court for constituting a larger Bench. Under these circumstances, if at all this Court is not agreeing with the Hon'ble Division Bench judgment, now placed before this Court passed in Writ Appeal No.116 of 2015, this Court is bound



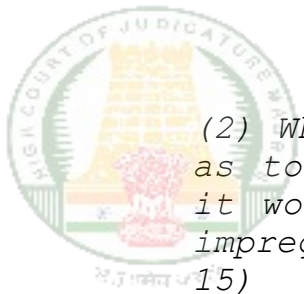
to placed the papers before the Hon'ble Chief Justice, by referring the matter to the Larger Bench.

16. The contentions raised in this regard are opposed by the learned Special Government Pleader by stating that, when the Larger Bench as well as the Hon'ble Supreme Court of India, settled the legal principles in the matter of maintainability of the writ petitions against the Cooperative Societies, which all are not funded by the State, then the judgment of the superior Courts are to be followed and the very same principle laid down by the Hon'ble Supreme Court of India, cited by the petitioner in the case of Assistant Collector of Estate Duty, Madras Vs. V.Devaki Ammal (Smt), Madras, would be applicable for the adherence of the judgment of the higher Courts to be followed with reference to the issues raised.

17. It is relevant to consider various judgments of the Constitutional Courts. In the case of **Ajay Hasia & others Vs. Khalid Mujib Sehravardi & others**, reported in **1981 (1) SCC 722**, which is a Constitutional Bench judgment. His Lordship Justice P.N.Bhagwati, J., while speaking for Constitutional Bench observed as follows, in paragraph Nos. 9,11,12 and 15, which all are extracted hereunder :-

"9. 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 the International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] . 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 realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] as follows:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para



(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)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621], be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.

11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the



expression "authority" in Article 12.

12. It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV: it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in *S.L. Aggarwal v. Hindustan Steel Ltd.* [(1970) 1 SCC 177 : (1970) 3 SCR 363] and other cases involving the applicability of Article 311 have no relevance to the issue before us.

15. It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an "authority" falling within the definition of "State" in Article 12. Is it an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the College are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or the Central Government can be removed from the membership of the



Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in Sukhdev Singh case [(1979) 3 SCC 489] the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or the agency of the State and the Central Governments and it is an "authority" within the meaning of Article 12."

18. In the case of Assistant Collector of Estate Duty, Madras Vs. V.Devaki Ammal (Smt), Madras, which is referred by the learned counsel for the writ petitioner also reiterated that, the judgments of the higher Courts are to be followed for the purpose of adopting the legal principles. However, it is clarified that, while adopting the principles, the facts, circumstances and applicability are to be independently consider by the Courts. It is not as if, a blind decision is to be arrived based on one judgment or other.

19. The facts, circumstances and the legal principles are to be considered as a whole, for the purpose of arriving a conclusion in order to provide complete justice to the litigants who all are approaching the Court of law. This being the very interpretation provided for rendering complete justice, this Court is of the considered opinion that, one judgment produced by one party to the litigation can never be followed for the purpose of deciding the maintainability of the writ petition.

20. In respect of the preliminary objections regarding the maintainability of the writ petitions, with reference to the facts and circumstances are to be certainly considered with reference to the legal principles settled in number of judgments, with reference to the facts and circumstances aroused in the present lis on hand.

<https://hcservices.ecourts.gov.in/hcservices/> 21. In the case of **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & others**, reported in 2002 (5) SCC 111, the Constitution Bench of the Hon'ble Supreme



Court of India, interpreted the "State" under Article 12 of the Constitution of India. His Lordship Justice Mathew, J., in his concurring judgment went further and propounded a view which presaged the subsequent developments in the law and it is useful to extract paragraph Nos. 16 and 48:-

"16. Mathew, J. in his concurring judgment went further and propounded a view which presaged the subsequent developments in the law. He said: (SCC p. 449, para 82)

"A State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State."

Management and control

48. When the Government of India resolved to set up CSIR on 26-2-1942, it also decided that the Governing Body would consist of the following members:

(1) The Honourable Member of the Council of His Excellency the Governor-General in charge of the portfolio of Commerce (ex officio).

(2) A representative of the Commerce Department of the Government of India, appointed by the Government of India.

(3) A representative of the Finance Department of the Government of India, appointed by the Government of India.

(4) Two members of the Board of Scientific and Industrial Research elected by the said Board.

(5) Two members of the Industrial Research Utilisation Committee elected by the said Committee.

(6) The Director of Scientific and Industrial Research.

(7) One or more members to be nominated by the Government of India to represent interests not otherwise represented."

22. Her Lordship Justice Ruma Pal, J., in the very same judgment observed as follows in paragraph No.55, which is extracted here under:-

"55. The initial capital of CSIR was Rs 10 lakhs, made available pursuant to the Resolution of the Legislative Assembly on 14-11-1941. Paragraph 5 of the 26-9-1942 Resolution of the Government of India pursuant to which CSIR was formed reads:

"The Government of India have decided that a fund, viz., the Industrial Research Fund, should be constituted by grants from the Central revenues to which additions are to be made from time to time as moneys flow in from other sources. These 'other sources' will comprise grants, if any, by Provincial Governments, by industrialists for



special or general purposes, contributions from universities or local bodies, donations or benefactions, royalties, etc., received from the development of the results of industrial research, and miscellaneous receipts. The Council of Scientific and Industrial Research will exercise full powers in regard to the expenditure to be met out of the Industrial Research Fund subject to its observing the bye-laws framed by the Governing Body of the Council, from time to time, with the approval of the Governor-General-in-Council, and to its annual budget being approved by the Governor-General-in-Council."

23. His Lordship Justice R.C.Lahoti, J., while speaking for himself and on behalf of Justice Doraiswamy Raju, J., dissented with the other Hon'ble Judges of the Constitution Bench and observed as follows in paragraph No.73, providing the meaning of instrumentality, agency, Authority, as under:-

" 73. It will be useful to understand what the terms – instrumentality, agency and authorities mean before embarking upon a review of judicial decisions dealing with the principal issue which arises for our consideration."

24. It is important to consider the Larger Bench judgment of the High Court of Madras, in the case of K.Marappan Vs. Deputy Registrar of Cooperative Societies, reported in 2006 (4) CTC 689, which is now being followed by the Courts, for the purpose of dealing with the writ petitions filed against the management of the Cooperative Societies, which is not a "State".

25. This Court is of an independent opinion that, being the Constitutional Court, no writ petition can be dismissed on the ground that the High Court has no jurisdiction. The High Court is not expected to dismiss the writ petition by making an observation that, High Court has no jurisdiction to deal with the matter. A writ jurisdiction being a Constitutional remedy, all the Constitutional Courts are bound to redress the grievances if any person approaching the Court of law, is capable of establishing the cause of action to be redressed.

26. Thus, this Court is of an undoubted opinion that, no writ petition can be dismissed by stating that the High Court has no jurisdiction and such a decision will certainly be not in consonance with the Constitutional principles. However, the maintainability of the writ petition is to be considered with reference to various statutes and legal principles settled by the Courts. Thus,



dismissal of the writ petition on the ground of maintainability would not be compared with the order dismissing the writ petition by stating that, the High Court has no jurisdiction at all.

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27. The jurisdiction of the High Court is not ousted so as to entertain the writ petition against the Cooperative Societies. In the current day situation, the Writs can be issued against the private institutions. The principles are approved by the Apex Court also. Even in certain exceptional circumstances, a Writ can be issued by the Constitutional Courts against the private bodies and institutions.

28. This being the spirit of the Constitutional principles and the developments made in the interpretation of the Constitutional remedies, this court is of an opinion that, it is not as if the High Courts are dismissing the writ petition on the ground of maintainability, but on the ground that, certain statutory provisions are available for the purpose of redressing the grievances for these employees who all are not working with the "State" within the meaning of Article 12 of the Constitution of India.

29. With these background, let us now consider the judgment of the Larger Bench, which was delivered in adherence to the legal principles settled by the Hon'ble Supreme Court of India. His Lordship Justice Ajay Prakash Shah, J., speaking for the Larger Bench, reiterated the principles laid down by the Hon'ble Supreme Court of India, in the case of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & others and Ajay Hasia & others Vs. Khalid Mujib Sehravardi & others. It is relevant to extract the following paragraphs for the purpose of considering the question of maintainability of the writ petitions against the management of Cooperative Societies.

"8. In the light of the above decision in the case of Pradeep Kumar Biswas, a writ can be issued against a co-operative society, if it is an authority within the meaning of Article - 12, and therefore, a State is beyond dispute. The question as to whether a co-operative society registered under the Tamil Nadu Co-operative Societies Act (a Co-operative Agricultural Bank in the present case) can be said to be an agency or instrumentality of the State is required to be determined by applying the tests laid down in Ajay Hasia's case, which have been approved in Pradeep Kumar Biswas's case. Of the six tests indicated, tests 2, 3 and 6 are clearly inapplicable in the present case, and may be dealt with in the first instance to clear the ground.



Ajay Hasia Test No.2 There is no financial assistance of the State, much less it is of such extent as to meet almost all the expenditure of the society. Learned Advocate General stated that the State Government's contribution is only in the shape of share capital to a small extent, and it is the policy of the State not to grant financial assistance to co-operative societies registered under the Act. Some loans may also have been given to the respondent Bank either by the Government or by the other public financial institution, but particulars of such loans are not furnished. Be that as it may, giving loans is not financial assistance contemplated by the second test. Of course, one cannot rule out the possibility of the society in receipt of grant from the Government, but the respondent Bank is not one such.

Ajay Hasia Test No.3 No material is placed before us to show that the co-operative societies registered under the Act enjoy any monopoly status. The respondent Bank does not enjoy a monopoly status which is conferred, or protected by the State. It is not suggested that the societies to which loans are given by the respondent Bank are precluded from receiving loans from any other sources.

Ajay Hasia Test No.6 The sixth test too is inapplicable, inasmuch as this is not a case where the business carried on by respondent Bank was previously carried on by a department of the Government nor is it a case where the work of a department is transferred to the respondent.

9. We shall now proceed to examine whether the other three tests namely, 1, 4 & 5 are satisfied in this case.

Ajay Hasia Test No.1 According to the learned Advocate General the Government shareholding in the co-operative societies is ordinarily not more than 10%, which can be said to be negligible. There is another aspect to this test, which is emphasised by a Division Bench of the Patna High Court in *H.N.Banker v. State of Bihar*, (1986) 2 Serv.LR 256. It is pointed out in the said decision that even though the Government owns a substantial number of shares of a co-operative society, still it would be having only one vote, just like an individual share holder, holding one share. Accordingly, it is pointed out that the importance given to shareholding in the first test enunciated by the Supreme Court loses much of its significance in the case of a co-operative society. The said test has been evolved keeping in mind the normal run of companies/corporations registered under the Companies Act, where shareholding carries with it the power of control and management of the company, and it is for that reason, the Court said that a satisfaction of this test



goes a long way in establishing that the body is an agency or instrumentality of the State. So far as our Act is concerned, the position is practically the same. Section 26(1) says that no member of a co-operative society shall have more than one vote in the affairs of the society. Section 33(4) (a) provides that the State may, in the public interest, nominate the entire board including the president and vice-president of certain types of societies mentioned therein, if the State has taken not less than two-thirds share or given financial or other assistance to the extent of not less than two-thirds of the loans, advances and deposits received by the society. However, the society in question is not the type, which is mentioned in Section 33(4) (a).

Ajay Hasia Test No.4 Learned counsel for the appellant strenuously argued that the provisions of the Tamil Nadu Co-operative Societies Act clearly show the deep and pervasive control in the Government and Registrar over the societies. We shall refer to some of those provisions.

Section 12 of the Act confers power on the Registrar to amend the bye-laws of the society, if he is satisfied that for the purpose of altering the area of operation of a registered society or for the purpose of improving the services rendered by it or for any other purpose not specified in the rules, an amendment of the bye-laws is necessary.

Section 14 confers power upon the Registrar to divide the society into one or more societies or to amalgamate two or more societies into one society, if such course is necessary in the interest of societies or of the co-operative movement or for the purpose of proper management of the society.

Under Section 33(4) (a), the Registrar may nominate the entire Board and under Section 33(b) (ii) the Registrar may nominate one-third of the Board. Under sub-section (7) the Government has power to appoint Managing Director to every apex society, every scheduled society and any other societies as may be notified by the Government.

Section 34(6) confers power on the Registrar to pass suo motu order of removal from membership and under Section 35 (1) the Registrar can remove any such member, who is holding certain financial interests as mentioned in Section 35.

Under Section 68 Investment of Funds has to be made only with the approval of the Registrar and Section 72 prescribes the mode in which net profits of the society are to be distributed. It is not open to the society to distribute the entire net profit by way of dividends.



Section 73 empowers the Registrar to make appointment of paid officers and servants, subject to Sections 74, 75, 76 and 77.

Under Section 75 the State Government has the power to constitute common cadre of service in (i) scheduled co-operative societies, (ii) primary societies affiliated thereunder, (iii) co-operative sugar mills, co-operative spinning mills, co-operative tea factories, and other registered societies prescribed and (iv) such other class/category of societies in which Government has taken shares or given financial or other assistance. Under Section 75(3) Co-operative Department headed by Joint Registrar shall exercise power of recruitment, appointment, transfer and disciplinary control in relation to common cadre service. Any employee in common cadre aggrieved by an order may submit appeal to Registrar/State as the case may be. Section 76 confers power on the Registrar to suspend the paid officer.

Under Section 88, the Registrar may cause supersession of Board and appoint Special Officer to perform the duties of the Board.

Under Section 88(2) the Special Officer shall be subject to the control of the Registrar.

Section 181 contains power of Registrar to give directions in public interest.

The question is what does deep and pervasive State control mean. In case of non-statutory corporations/companies and societies, etc., State control would mean the control vesting in the Government or its officers either by the statute or by the Constitution/Memorandum of Association/Bye-Laws/Articles of Association of the society or company concerned. Take for example, the Companies Act. It regulates the incorporation, working and winding up of the companies in elaborate detail. Government authorities are vested with various powers to ensure observance of, and compliance with the regulatory provisions. But all this is designed not to vest control (over the company) in the Government, but to ensure the proper working of the company, the main object being protecting the interests and rights of shareholders, investing public, employees and other having dealings with the company. Every legislative regulation cannot constitute State control. The power vested in the Government and the Registrar, as aforesaid, is of regulatory in nature and designed to protect the interest of the shareholders, depositors and creditors, in the interest of public and co-operative movement, and cannot be characterised as deep and pervasive control within the meaning of the 4th test laid down in *Ajay Hasia's* case.



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The management of every registered society is vested in a Board constituted in accordance with the provisions of the Act, the Rules and the Bye-laws. The Bye-laws made by the society as held by the Supreme Court do not have the force of law (See Co-operative Central Bank Limited Vs. Industrial Tribunal, Hyderabad, AIR 1970 SC 245 and B.K.Garad Vs. Nasik Merchants Co-operative Bank Limited, AIR 1984 SC 192). They are in the nature of contract, terms of contract, between the society and its employees or between society and its members, as the case may be.

Ajay Hasia Test No.5 Whether the functions of the society are of public importance and closely related to governmental functions? There is no dispute that the dealings of the co-operative societies are mostly confined to its members and its membership consists of member societies, Government or individual members. It is not disputed before us that the operations of the respondent Bank are actually confined to its members only. The respondent Bank would not advance loan to a non-member whoever he is. The respondent Bank's main object is to raise funds to finance its members. It has its own funds. It is entitled to raise loans from scheduled banks and other agencies. Its members also make deposits with it. As per Ajay Hasia test evolved by the Supreme Court, not only the functions of a corporation should be of public importance, but they must also be closely related to governmental functions. Inasmuch as the operation of the respondent Bank is not confined to State funds, and also because it cannot be termed as an agency created by the State for distributing the funds provided by it, it cannot be said that it satisfies this test. As stated above, the respondent Bank has its own funds. In this connection, we may refer to what Bhagwati, J. (as he then was) said in Ramana Vs. I.A.Authoirty of India, AIR 1979 SC 1628. After pointing out that the distinction between governmental and non-governmental functions is no longer valid in the present day social welfare State, the learned Judge observed:-

"The contrast is rather between governmental activities which are private and private activities which are governmental (Mathew, J. In Sukhdev V. Bhagatram at p.1355 of AIR 1975 SC 1331). But the public nature of the function, if impregnated with the governmental character or 'tied or entwined with Government' or fortified by some other additional factors, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a Corporation, it would be a strong factor supportive of this inference....."Therefore, it is not possible to say



that the respondent Bank/Society satisfies the 5th test enunciated by the Supreme Court.

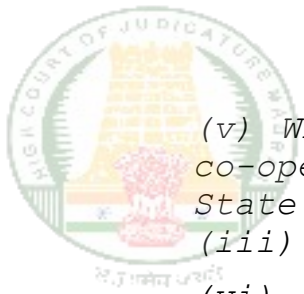
10. For the above reasons, the respondent Bank cannot be characterised as a State within the meaning of Article 12 of the Constitution. Even if it may be assumed that one or the other test as provided in the case of *Ajay Hasia* may be attracted, that by itself would not be sufficient to hold that it is an agency of the State carrying on the functions of public nature. As held in *Pradeep Kumar Biswas* case the tests formulated in *Ajay Hasia* are not rigid set of principles so that if a body falls within any one of them it must *ex hypothesis*, be considered to be a State within the meaning of Article 12 of the Constitution.

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 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.

(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*, 2000 (4) CTC 556 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.

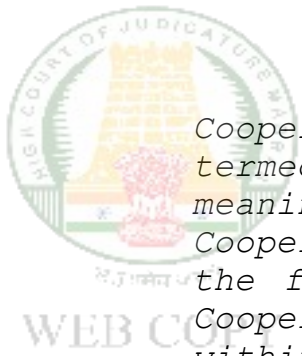
The reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal."

30. The propositions emerged and declared by the Larger Bench is that, if a particular Cooperative 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.

31. The Larger Bench ruled that, no writ petition can be dismissed on the ground of maintainability, if the person approaching the Court is able to establish that the Cooperative Society is a "State" within the meaning of Article 12 of the Constitution of India. Thus, the Cooperative Society satisfying the tests enumerated in the Hon'ble Supreme Court of India judgment, can be construed as a "State" within the meaning of Article 12 of the Constitution of India. In respect of these Cooperative Societies, there is no impediment to entertain a writ petition against the orders passed by the management of such Cooperative Societies.

32. In the case of *K.Marappan Vs. Deputy Registrar of Cooperative Societies*, the Larger Bench held that, a



Cooperative Society carrying on banking business cannot be termed as an "instrumentality of the State" within the meaning of Article 12 of the Constitution. Thus, every Cooperative Society which is not funded by the State and the funds are mobilized from amongst the members of the Cooperative Societies cannot be designated as a State, within the meaning of Article 12 of the Constitution.

33. This apart, the Larger Bench has gone to the extent of stating that, even if a society cannot be characterised within the meaning of Article 12 of the Constitution of India, a writ would lie against it to enforce a statutory public duty cast upon the society. The exceptions are also considered by the Larger Bench and the Writ can be issued against such Cooperative Societies, even by applying the legal principles of discharging the public duty by such Cooperative Societies.

34. Thus, various facts and circumstances are relevant to come to a conclusion, whether a Cooperative Society or the order challenged by person by way of Writ can be maintainable under Article 226 of the Constitution of India. In respect of the Cooperative Societies where no Writ can be entertained, then also, the Larger Bench made an observation that, those employees who all are not working under the State is bound to exhaust the remedies provided under the provisions of the Tamil Nadu Cooperative Societies Act. In other words, the Tamil Nadu Cooperative Societies Act is a comprehensive statute, wherein, alternate remedies are provided in order to redress the grievances of these employees.

35. The Registrar, while performing quasi-judicial functions are empowered to adjudicate the Appeals, Revision or Reviews in the manner prescribed under the Act and Rules and by providing opportunity to all the parties concerned. Thus, such a statutory remedy is to be construed as an effective alternative remedy which all are to be exhausted by the aggrieved persons. Even in normal parlance, the High Court would not entertain the writ petition, if an effective alternative remedy is provided under any statute. Exhausting the statutory remedies is also a pre-condition for entertaining a writ petition under Article 226 of the Constitution of India. Entertaining a writ petition is an exception in case where the statutory remedy is available under the Act.

36. Thus, it is relevant to state that, the employees of the Cooperative Societies even in case, such a Cooperative Society is a State within the meaning of Article 12 of the Constitution of India, they are bound to



exhaust the statutory remedies provided under the Act for the effective adjudication of the issues.

37. The High Courts are insisting to exhaust the alternative remedy for a specific reason that, the disputes relating to complex, facts and circumstances are to be adjudicated by verifying the original records and by adducing evidences, if required. Such complex, facts and circumstances can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Thus, the High Courts are also of the opinion that, the adjudication process at the first instance must be done by the Competent Authority/Competent Forum for the purpose of recording the facts and circumstances.

38. The power of judicial review under Article 226 of the Constitution of India is undoubtedly limited. The High Courts are bound to restrain the exercise of power of judicial review, where there is an effective alternte mechanism is available. The power of judicial review is not intended to interfere with the decision taken by the Competent Authorities. The power of judicial review under the Constitution is meant to check the process through which such decisions are taken by the State or its Competent Authorities. Thus, the decision is not the one to be interefered with. However, the process through which the decision is taken and the reasonings furnished for arriving such a decision are important to adjudicate and arriving a conclusion for the purpose of issuing a Writ under Article 226 of the Constitution of India.

39. Under these circumstances, this Court is of the considered opinion that, the Larger Bench had not shut the doors in entirety. The Larger Bench had arrived the principles carefully by providing various directions to the Competent Authorities. In case, if it is established that the Cooperative Society is a State, then a Writ can be entertained under Article 226 of the Constitution of India. If the Cooperative Society is not a State within the meaning of Article 12 of the Constitution of India, then the employees are at liberty to move a writ petition after exhausting the statutory remedies provided under the provisions of the Tamil Nadu Cooperative Societies Act.

40. Equally, even if it is established a Cooperative Society is a State, then also the High Court is empowered to direct the employees to exhaust the statutory remedies provided under the Tamil Nadu Cooperative Societies Act. In respect of exhausting the alternative remedies, this Court has elaborately considered the legal principles in



the case of **M/s.Hyundai Motor India Limited Vs. The Deputy Commissioner of Income Tax**, in Writ Petition No.22508 of 2017 dated 16.07.2018 and the relevant paragraphs are extracted here under:-

"19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

(1) The supremacy of the Constitution.

(2) Republican and Democratic form of government and sovereignty of the country.



(3) Secular and federal character of the Constitution.

(4) **Demarcation of power between the Legislature, the executive and the judiciary.**

(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973] : (1973) 4 SCC 225].

That separation of powers between the legislature, the **executive** and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

<https://hcservices.ecourts.gov.in/hcservices> In **Prithvi Narayan Kulkarni v. State of Maharashtra**, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of



Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs--legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs--legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."



20. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In City and Industrial Development Corporation v. DosuAardeshirBhiwandiwalla and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

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(f) grant of relief is against public policy or barred by any valid law; and host of other factors.



2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*; *Surya Dev Rai v. Ram Chander Rai* and *SBI v. Allied Chemical Laboratories.*)

3. Commissioner of Income Tax and Ors. v. ChhabilDass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case, *Titaghur Paper Mills* case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India vs. Satyawati Tandon and others*, 2010 (8) SCC 110, and *General Manager,*



Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely



discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

23. Considering the above judgments of the Apex Court, this Court is of an opinion that the writ petitioner has not established that there is a violation of principles of natural justice nor there is an error apparent on record. No exceptional circumstances have been established in the present writ petition. If at all, the writ petitioner is aggrieved in respect of the fixing of average rate of royalty payment, then it is left open to them to approach the Disputes Resolution Panel and thereafter, if they are further aggrieved in respect of the fixing of average rate of royalty payment, then they are liberty to approach "the ITAT" constituted for the purpose of adjudicating the issues. This being the efficacious remedy available under the statute for the writ petitioner, there is no reason to entertain a writ petition under Article 226 of the Constitution of India, so as to adjudicate the merits and the demerits now raised before this Court in the present writ petition in respect of fixing of average rate of royalty payment."

41. Therefore, the very concept of exhausting the remedy was emphasised by the Constitutional Courts time and again and the principles is to be followed is exhausting the remedy is a Rule and entertaining a Writ



Petition is an exception. Thus, the writ petitions can be entertained only after exhausting the statutory remedies in normal course and only on exceptional circumstances, if the Constitutional Courts are of the opinion that, there is a gross injustice and preferring an Appeal would be a futile exercise, then only a Writ Petition can be entertained directly against the actions of the original authorities.

42. In respect of the arguments advanced by the learned counsel for the writ petitioner that, the order of the Division Bench dated 18.06.2018 passed in Writ Appeal No.116 of 2015 is a binding judgment and this Court is bound to entertain the writ petition. To meet out the above said argument, it is relevant to consider that the facts, circumstances and the legal principles settled in the matter of entertaining a writ petition against a Cooperative Society which is not a State within the meaning of Article 12 of the Constitution of India, had not been adjudicated elaborately by the Hon'ble Division Bench.

43. The Hon'ble Division Bench remanded the matter to the learned Single Judge, for the disposal of the writ petition. Further, during the course, the Hon'ble Division Bench held that, in view of the special status now given to the Cooperative Societies, the earlier view that the writ petition is not maintainable against the Cooperative Societies is no more a good law.

44. This being the observations made, now this Court has to go into the concept of binding precedents, which all are to be followed by the Constitutional Courts. The question arises whether the Division Bench judgment dated 18.06.2018, can be construed as a binding judgment, so as to maintain the writ petition, now filed before this Court in the present writ petition.

45. It is important to cite the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India, in the case of **National Insurance Company Ltd Vs. Pranay Sethi**, reported in **2017 (16) SCC 680**. The binding precedents are elaborately discussed by the Constitutional Bench of the Hon'ble Supreme Court of India and the relevant paragraphs are extracted here under:-

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

16. In *State of Bihar v. Kalika Kuer* [State of Bihar v. Kalika Kuer, (2003) 5 SCC 448], it has been held: (SCC p. 454, para 10)



"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. ..."

The Court has further ruled: (SCC p. 454, para 10)

"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."

17. In *G.L. Batra v. State of Haryana* [*G.L. Batra v. State of Haryana*, (2014) 13 SCC 759 : (2015) 3 SCC (L&S) 575], 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.* [*Union of India v. Godfrey Philips India Ltd.*, (1985) 4 SCC 369 : 1986 SCC (Tax) 11], *Sundarjas Kanyalal Bhatija v. Collector, Thane* [*Sundarjas Kanyalal Bhatija v. Collector, Thane*, (1989) 3 SCC 396] and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* [*Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*, AIR 1968 SC 372]. It may be noted here that the Constitution Bench in *Madras Bar Assn. v. Union of India* [*Madras Bar Assn. v. Union of India*, (2015) 8 SCC 583] has clearly stated that the prior Constitution Bench judgment in *Union of India v. Madras Bar Assn.* [*Union of India v. Madras Bar Assn.*, (2010) 11 SCC 1] 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 the later Constitution Bench.

18. In this regard, we may refer to a passage from *Jaisri Sahu v. Rajdewan Dubey* [*Jaisri Sahu v. Rajdewan Dubey*, AIR 1962 SC 83] : (AIR p. 88, para 10)

"10. 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 [*Dasrath Singh v. Damri Singh*, 1925 SCC Online Pat 242 : AIR 1927 Pat 219] given by a Bench is not brought to the notice of a Bench [*Ram Asre*



Singh v. Ambica Lal, AIR 1929 Pat 216] 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 *Gundavarupu Seshamma v. Kornepati Venkata Narasimharao* [*Gundavarupu Seshamma v. Kornepati Venkata Narasimharao*, 1939 SCC OnLine Mad 367 : ILR 1940 Mad 454] 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:

'1687. ... 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 coordinate 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 *Katragadda Virayya v. Katragadda Venkata Subbayya* [*Katragadda Virayya v. Katragadda Venkata Subbayya*, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] 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 *D.D. Bilimoria v. Central Bank of India* [*D.D. Bilimoria v. Central Bank of India*, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340]. 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."

19. 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.

20. In the context, we may fruitfully note what has been stated in *Pradip Chandra Parija v. Pramod Chandra Patnaik* [*Pradip Chandra Parija v. Pramod Chandra Patnaik*, (2002) 1 SCC 1] . In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench [*Pradip Chandra Parija v. Pramod Chandra Patnaik*, Civil Appeal No. 791 of 1993, order dated 24-10-1996 (SC)] disagreeing with the three-Judge Bench [*Nityananda Kar v. State of Orissa*, 1991 Supp (2) SCC 516 : 1992 SCC (L&S) 177] decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated: (SCC p. 4, para 6)

"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. ..."

21. In *Chandra Prakash v. State of U.P.* [*Chandra Prakash v. State of U.P.*, (2002) 4 SCC 234 : 2002 SCC (L&S) 496] , another Constitution Bench dealing with the concept of precedents stated thus: (SCC p. 245, para 22)

"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 *Raghubir Singh* [*Union of India v. Raghubir Singh*, (1989) 2 SCC 754] 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. ..."

Be it noted, *Chandra Prakash* [*Chandra Prakash v. State of U.P.*, (2002) 4 SCC 234 : 2002 SCC (L&S) 496] concurred with the view expressed in *Raghubir Singh* [*Union of India v. Raghubir Singh*, (1989) 2 SCC 754] and *Pradip Chandra Parija* [*Pradip Chandra Parija v. Pramod Chandra Patnaik*, (2002) 1 SCC 1] .

22. In *Sandhya Educational Society v. Union of India* [*Sandhya Educational Society v. Union of India*, (2014) 7 SCC 1] 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 v. State of M.P.* [*Rattiram v. State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481], the Court dwelt upon the issue, what would be the consequent effect of the later decision which had been rendered without noticing the earlier decisions. The Court noted the observations in *Raghubir Singh* [*Union of India v. Raghubir Singh*, (1989) 2 SCC 754] and reproduced a passage from *Indian Oil Corpn. Ltd. v. Municipal Corpn.* [*Indian Oil Corpn. Ltd. v. Municipal Corpn.*, (1995) 4 SCC 96] which is to the following effect: (*Rattiram case* [*Rattiram v. State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481], SCC p. 531, para 27)

"27. ... '8. ... The Division Bench of the High Court in *Municipal Corpn., Indore v. Ratnaprabha Dhanda* [*Municipal Corpn., Indore v. Ratnaprabha Dhanda*, 1988 SCC OnLine MP 116 : 1989 MP LJ 20] was clearly in error in taking the view that the decision of this Court in *Ratnaprabha* [*Municipal Corpn., Indore v. Ratnaprabha*, (1976) 4 SCC 622] was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. ...' (*Indian Oil Corpn. case* [*Indian Oil Corpn. Ltd. v. Municipal Corpn.*, (1995) 4 SCC 96], SCC p. 100, para 8)"

23. It also stated what has been expressed in *Raghubir Singh* [*Union of India v. Raghubir Singh*, (1989) 2 SCC 754] by R.S. Pathak, C.J. It is as follows: (*Rattiram case* [*Rattiram v. State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481], SCC pp. 530-31, para 26)

"26. ... '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. ...' (*Raghubir Singh case* [*Union of India v. Raghubir Singh*, (1989) 2 SCC 754], SCC p. 778, para 28)"

24. In *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] the three-Judge Bench had delivered the judgment on 12-4-2013. The purpose of stating the date is that it has been delivered after the pronouncement made in *Reshma Kumari case* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826]. On a perusal of the decision in *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149], we find that an attempt has been made to explain what the two-Judge Bench had stated

in Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] . The relevant passages read as follows: (Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , SCC p. 61, paras 8-9)

"8. Since, the Court in Santosh Devi case [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] 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 [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , 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."

25. At this juncture, it is necessitous to advert to another three-Judge Bench decision in Munna Lal Jain v. Vipin Kumar Sharma [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] . In the said case, the three-Judge Bench commenting on the judgments stated thus: (SCC p. 349, para 2)

"2. In the absence of any statutory and a straitjacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the guidelines. Compensation would basically depend on the evidence in a case and the formulas shown by the courts are only guidelines for the computation of the compensation. That precisely is the reason the courts



lodge a caveat stating "ordinarily", "normally", "exceptional circumstances", etc., while suggesting the formula."

26. After so stating, the Court followed the principle stated in *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . We think it appropriate to reproduce what has been stated by the three-Judge Bench: (*Munna Lal Jain case* [*Munna Lal Jain v. Vipin Kumar Sharma*, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] , SCC pp. 350-51, para 10)

"10. As far as future prospects are concerned, in *Rajesh v. Rajbir Singh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects."

46. The Hon'ble Supreme Court of India in unequivocal terms held that, in respect of the legal principles, if there is a Supreme Court judgment that alone should be followed as a binding precedent. If there is a Constitution Bench judgment, then that is to be followed as a precedent for the purpose of deciding the legal principles undoubtedly, with reference to the facts and circumstances of the case before the Courts. Thus, in the event of conflicting decisions between the Division Bench as well as the Larger Bench and also the legal principles settled by the Hon'ble Supreme Court of India, undoubtedly, the Constitution Bench of the Supreme Court in the case cited supra states that, the judgment of the Constitution Bench to be construed as a binding precedent and thereafter, the judgment of the Hon'ble Supreme Court of India and subsequently, the Larger Bench or Full Bench of the High Court.

47. Now it is relevant to consider the distinction between the orders and judgments. The orders are passed based on certain facts and circumstances of the case. However, the judgments are delivered deciding certain legal principles. Then, those judgments are to be considered as binding precedents. In other words, if the legal principles are settled by the Constitutional Courts, those judgments alone are to be followed as a binding precedents and certainly, not the orders passed by the Constitutional Courts passed based on peculiar or particular facts and circumstances of the case.



48. Thus, by producing one judgment of the Division Bench, the learned counsel for the writ petitioner cannot say that, this Court is bound by the judgment and the writ petitions are to be admitted without reference to the judgment of the Larger Bench as well as the legal principles settled by the Hon'ble Supreme Court of India, in the matter of arriving a conclusion whether the respondent is a State within the meaning of Article 12 of the Constitution of India or not.

49. The Division Bench judgment relying on the special status to a Cooperative Society inserted part IX B, by the Constitution (Ninety Seventh Amendment) Act, 2011, held that, the Cooperative Societies reached the special status and so that a writ petition would be maintainable. The said status provided in the Constitution cannot be treated in isolation with the legal principles settled by the Hon'ble Supreme Court of India, for the purpose of coming to a conclusion whether the institution is an instrumentality of the State or a State within the meaning of the Article 12 of the Constitution of India.

50. The very insertion of the term Cooperative Society in the Constitution would not confer the Status of a State within the meaning of Article 12 of the Constitution of India. If such a principle is adopted then in 7th schedule, many number of such terms are inserted. For example, education is also found in the 7th schedule. The word education inserted in the Constitution would not provide a Constitutional status for all educational institutions. If such a principle is adopted, then even the private institution run by the private management is to be construed as a State. Then all the persons or employees are entitled to file a writ petition to considering such an institution as a State. It is not a concept which is contemplated by inserting the term Cooperative Society in the Constitution.

51. The movement of the Cooperation has got certain significance and in order to develop the movement of cooperation and for the State to, develop the concept of cooperation and the cooperative societies, the term is incorporated in the Constitution. Once the term cooperative society is incorporated in the Constitution, the State is bound to give importance for the purpose of development of the cooperative movement for the betterment of the society as well as to reach the Constitutional principles and ethos. Therefore, mere inclusion of the word Cooperative Society in the schedule of the Constitution would not confer the status of a State within



the meaning of the Article 12 of the Constitution of India, to such societies.

52. Thus, the Division Bench judgment is of no avail to the writ petitioner for the purpose of entertaining the writ petition as the facts, circumstances and the legal principles exhaustively considered and discussed and laid down are not considered by the Hon'ble Division Bench while passing the orders.

53. Undoubtedly, the present writ petition on hand is a case where the plight of the writ petitioner is to be addressed by the Competent Authorities. The facts remain that, the husband of the writ petitioner was allowed to retire from service without prejudice to the proceedings initiated against him. As far as the grounds raised by the learned counsel for the writ petitioner is concerned, this Court has no hesitation in coming to the conclusion that, the Constitution Bench of the Hon'ble Supreme Court of India, in the case of National Insurance Company Ltd Vs. Pranay Sethi, held that, the judgments of the Constitution Bench of the Hon'ble Supreme Court of India, Larger Bench and Full Bench, in the order of hierarchy are to be followed as binding precedents for the purpose of deciding legal principles involved in a litigation.

54. With reference to the present case on hand, the legal principles were settled by the Larger Bench of this Court in the case of K.Marappan Vs. Deputy Registrar of Cooperative Societies. The Larger Bench decided the issues relying on the tests laid down by the Hon'ble Supreme Court of India, to arrive a conclusion whether a Cooperative Society is an instrumentality of a State or a State within the meaning of Article 12 of the Constitution of India. Thus, those judgment of the Hon'ble Supreme Court of India as well as the Larger Bench judgment of the High Court of Madras, in particular is a binding precedent and it is to be followed by all other Courts, while considering the cases filed against the management of the Cooperative Societies which is not a State or instrumentality of the State, within the meaning of Article 12 of the Constitution of India.

55. Though, in the present writ petition, the respondent Cooperative bank is not a State within the meaning of Article 12 of the Constitution of India. The grievances advanced by the writ petitioner is undoubtedly, is a concern for the High Court. The writ petitioner is a widow, seeks the terminal benefits due to her husband. Admittedly, the disputed amount as per the writ petitioner is Rs.60,000/- and as per the respondent, the deceased



husband of the writ petitioner is liable to pay the amount awarded in the surcharge proceedings.

56. In view of the discussions made in the aforementioned paragraphs, this Court has no hesitation in coming to the conclusion that, the writ petition on hand is not maintainable, in view of the legal principles settled by the Larger Bench of the High Court of Madras in the case of K.Marappan Vs. Deputy Registrar of Cooperative Societies, as well as the tests contemplated by the Apex Court in the judgment cited supra.

7. Admittedly, the first respondent is a Co-operative Wholesale Stores Ltd., registered under the provisions of the Tamil Nadu Co-operative Societies Act and therefore, the writ petitioner has to exhaust the alternative remedy provided under the provisions of the Tamil Nadu Co-operative Societies Act for the redressal of her grievances. Under these circumstances, entertaining a writ against the charge memo at this juncture in respect of an employee of the co-operative society, is impermissible.

8. The writ petitioner is at liberty to raise all the legal grounds including the competency and jurisdiction of the authority, who issued the charge memo and the allegations regarding malafide before the revisional authority. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar(CS-)

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To

The Deputy Registrar/Managing Director,
Tiruchirappalli District Amaravathi Consumers
Co-operative Wholesale Stores Ltd.,
Post Box.308,No.1, Old Goods Shed road,
Tiruchirappalli-620 002.

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate

(SR-73487[F] dated 04/07/2019)

W.P(MD)No.18646 of 2015

04.07.2019