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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ***Date of Decision: September 24, 2019***

% **W.P.(C) 855/2014**

KISHAN CHAND & ORS ..... Petitioners

Through: Mr. Gyan Prakash, Advocate.

versus

THE CHIEF EXECUTIVE NATIONAL COOPERATIVE UNION OF INDIA ..... Respondent

Through: Mr. B.P. Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

A.K. CHAWLA, J.

As jointly prayed, heard on the question of maintainability.

2. The petitioners instituted the instant writ petition against National Cooperative Union of India in short 'the National Cooperative' asserting it to be an instrumentality of the State and seek issuance of a Writ of Mandamus for payment of the purported arrears towards gratuity and leave benefits under 6th pay commission. During the course of hearing, it however comes to be pointed out that the gratuity claims have since been settled and the petition survives only as regards the claim towards the leave benefits.

3. It is the case of the petitioners that they were the employees of 'the National Cooperative', which was the Apex Body representing the entire Cooperative organisations of the country and that its President was the head of the organisation supported by Chief Executive, who operates through various functional divisions. In the counter-affidavit 'the National Cooperative' took the preliminary objection that 'the National Cooperative' was a multi-state cooperative society registered under the Multi State Cooperative State Act, 1984 and it was neither a State nor an Authority or Instrument or agency within the meaning of Article 12 of the Constitution of India.

4. It is a matter of record that during the course of the proceedings, the petitioners were granted opportunities to place on record such material as may be available to satisfy the court on the maintainability of the writ petition. Repeated opportunities in that regard were granted, however, but for the copy of the introduction available on the website; copy of the bye-laws; and, copy of the Service Rules, no other material of any kind has come to be placed on record.

5. Ld. counsel for the petitioners adverting to the bye-laws and the service rules of 'the National Cooperative' strenuously contends that though the National Cooperative was registered as a society, its funds were granted *inter alia* by the grants from Government and its functions were of public nature. Adverting to the service rules, it also comes to the contended that the employees of 'the National Cooperative' were subject to the similar rules and regulations as are applicable to the Central and

State Government, Public Undertaking etc. and therefore also it had the semblance of an instrumentality or agency of the State. In addition thereto, it also comes to be contended that the National Cooperative had a provision for appointment of an employee of the Central and State Government; statutory bodies etc. on deputation. So, it was also a factor to show that it was a representative of the State.

6. Ld. counsel for the respondent on his part strenuously contends that there was nothing to show that 'the National Cooperative' was under the direct or implied control of the State or the Central Government. In his submissions, any grant of funds to 'the National Cooperative' by the Government *ipso* facto cannot be a factor to draw an inference for its being a part of the State or discharging its functions and be treated as an agency of the State. In his submissions, the question of 'the National Cooperative' being treated a State within the meaning of Article 12 of the Constitution of India was also gone into by the Division Bench of the High Court of Manipur in W.P.(C) 364 of 2007 '***Shri L. Gojendra Singh vs. The Union of India & Ors.***' and it was held otherwise.

7. It is nowhere the case of the petitioners that the State was responsible to meet the expenditure of the 'National Co-operative' to meet the objective(s) for which it was constituted. As for any grant, assuming monetary, we may for a moment advent to the dictionary meaning of word 'grant'. As per the Black Law's Dictionary, "grant" is defined as "to bestow or to confer upon someone other than the person or entity which makes the grant". The Oxford dictionary defines "grant" as "a sum of

money given by a government or other organization for a particular purpose; legal conveyance or formal conferment". Thus, grant by the State may be in the form of money or schemes floated by the Government for the betterment and welfare of the Cooperative sector like Deposit Guarantee Scheme, Scheme of Assistance from NABARD etc. Such facilities or assistance cannot be termed to be a substantial funding by the State Government so as to make a body state within the meaning of Article 12 of the Constitution.

8. In ***Chander Mohan Khanna v. NCERT*** (1991) 4 SCC 578 the Supreme Court held as:

> *"Having regard to the object, functions, activities, source of funds of NCERT, freedom of application of its income and property towards the promotion of its objectives and implementation of programs, confinement of Government control only to proper utilization of the grant, and largely being an autonomous body, the institution does not satisfy the requirement of "State" under Article 12 of the Constitution."*

9. The grant of funds by the Central or the State Government by itself therefore, cannot be the reason to treat an Institution to be an agency or instrumentality of the State, assuming, such grant is to be even accounted for. Similarly, if, an Institution applies the rules, regulations or instructions of the Government, it cannot be said to have got into the position or be treated at par with the State. Moreso, when it is not shown that any such adoption by 'the National Cooperative' is under any

mandate of the Central or the State Government. Same would be the situation, if 'the National Cooperative' borrowed some employees from the Centrals or the State Government. Any borrowing or lending of employees is always to meet the administrative existence sometimes to achieve a public good on a totally ad-hoc or temporary basis. A Government employee being deployed in a society or other Corporate body on request or otherwise by no means therefore, can have the effect of changing the character of such society or corporate body itself.

10. A perusal of Rule 4 of the Bye-Laws of the Cooperation would show that the membership of 'the National Cooperative' is open to State, National Cooperatives/Federations, Cooperatives of UT's, Cooperative business amongst others. Under Rule 14 the "Governing Council", comprises of members from various cooperative societies along with one nominee of the Central Government–if grant is provided, Chief Executive and two eminent Co-operators. This governing Council performs the major functions of the National Cooperative and under the Bye-Laws, the Government cannot issue any order or direction to it to determine its policy or have any control in the functioning of the Cooperative much less deep and pervasive one.

11. In ***S.S. Rana vs. Registrar, Coop Societies and another*****,** (2006) 11 SCC 634, the Apex Court held as under:-

> *"It is well settled that general regulations under an Act, like Companies Act or the Co-operative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control*

in terms of the provisions of the Act is meant to ensure proper functioning of the Society and the State or statutory authorities would have nothing to do with its day-to-day functions."

12. In ***Krishna Mohan vs. State Of U.P.*****, 2019 it was held:**

> *"Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate, does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in S.S. Rana v. Registrar, Co-operative Societies and another (2006) 11 SCC 634."*

13. The foregoing position of law and the given factual conspectus, when the petitioners have miserably failed to place before the court any material which could show that 'the National Cooperative' was under any direct supervision or control of the Central or the State Government or was being run on the funds provided by the State but for some grant, it is difficult to accept the contentions raised by the ld. counsel for the petitioner. Incidentally, it was the similar situation in ***L. Gojendra Singh's*** case (supra) relied upon by the ld. counsel for the respondent 'the National Cooperative', it was held as under:

> *"7. In the light of the above decisions, we now to proceed to examine the bye-laws of NCUI to find out*

as to whether State Government or the Central Government has any control whatsoever in functioning of the said organization. The object of the union is to promote and develop the cooperative movement in India, to guide and assist the people for their effort to built up and expand the cooperative sector and serve for expanding of cooperative opinion in accordance with cooperative principles as enunciated in the first schedule to the Act.

7.1. The membership of the Union shall be open to the State Co-operative Union, National Cooperative Societies/Federations Cooperative Unions of Union Territories, etc.. The funds raised for NCUI are from different sources such as annual membership subscription and other grants from the Government and some other sources as mentioned in Clause-8 of the bye-laws. Nothing has been placed before the Court to indicate that the NCUI has received any financial grant from the Central Government or the State Government. On the other hand, learned counsel, Mr. Ch. Momon Singh, appearing on behalf of respondents 3 to 5 submitted that there is No financial grant either from the State Government or from the Central Government and the NCUI is only engaged for execution of certain projects of the State and Central Government. On examination of the entire bye-laws, we find that there is No representative either from the State Govt. or from the Central Govt. and there is absolutely No participation either from the State Govt. or from the Central Govt.in functioning of the NCUI. There is nothing in bye-laws to show that either the State Govt. or the Central Govt. has any kind of control over the functioning of the NCUI. Therefore, if the present case is examined in the light of the law laid down by the Apex Court in the above decisions, it can safely be held that the NCUI is neither an instrumentality nor an agency of

> *the State and it is completely a private body and neither the State Govt. nor the Central Govt. has any control over its functioning nor it is financed either by the Central Govt. or the State Govt. We have, therefore, No hesitation to hold that the NCUI is not an "authority" within the meaning of Article 12 of the Constitution of India and accordingly the said private body is not amenable to writ jurisdiction.*
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> *8. It was strenuously contended by the learned counsel for the petitioner that since NCUI is discharging public duty, even if the Central or the State Government have No control over its functioning, it is amenable to writ jurisdiction. Even if we go to the extent of accepting these submissions, any dispute relating to discharge of public duty may be examined by the Court in a writ jurisdiction, but any internal dispute relating to the service conditions of an employee of the organization such as taking disciplinary action against one of the employees of NCUI is definitely not an action in discharge of public duty and therefore, the writ application filed by the petitioner challenging his termination from service cannot be examined by the Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. Since we hold that NCUI is not a State within the meaning of Article 12 of the Constitution of India, we have not examined the case on merit. The Writ application is not maintainable and accordingly stands dismissed."*

14. No new facts or circumstances have come to be brought to the notice of the Court during the course of hearing to distinguish the ratio of the judgment in ***L. Gojendra's*** case (supra) and this Court finds no reason to deviate therefrom.

15. For the foregoing reasons, the writ petition is held to be not maintainable and is dismissed accordingly.

A. K. CHAWLA, J.

SEPTEMBER 24, 2019

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