IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.703 of 2018
In
Civil Writ Jurisdiction Case No.2513 of 2017

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Raj Bansh Singh son of Late Dukhan Prasad Singh retired Assistant Co-operative Extension Officer, Bihar State Schedule, Caste Co-operative Development Corporation Ltd, presently residing at Mohalla Niti Bagh, Lohia Path, Near Jagdev Path, P.O. B.B. College, P.S. Rupaspur, District Patna.

... ... Appellant/s

Versus

1. The Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Malayanil Bhawan, Buddha Colony, Patna;
2. The Managing Director, the Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Buddha Colony, Patna;
3. The Secretary, the Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Buddha Colony, Patna;
4. The Chief Executive Officer, The Bihar State Scheduled Caste Cooperative Development Corporation Ltd., Buddha Colony, Patna;

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Kumar Ravish, Advocate
For Respondent Nos. 1 to 4: Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-11-2022

Heard learned counsels for the parties.

2. In the present L.P.A., appellant has assailed the order of the learned Single Judge dated 01.12.2017 passed in C.W.J.C. No. 2513 of 2017.

3. Appellant is a former employee of Bihar State Scheduled Caste Cooperative Development Corporation Limited. His grievance is that he has not been extended certain

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service benefits, like gratuity and other monetary benefits. In this regard, he had invoked remedy under Article 226 of the Constitution in filing C.W.J.C. No. 2513 of 2017. The same was dismissed on the sole ground that Respondent- Bihar State Scheduled Caste Cooperative Development Corporation Limited would not fall under Article 12 of the Constitution. On this point, he has relied on a decision, namely, ***The Organizer, Dehri C.D. & C.M. Union Ltd. vs. State of Bihar*** reported in ***2014 (1) PLJR 695***.

4. Feeling aggrieved and dissatisfied with the order of the learned Single Judge dated 01.12.2017 passed in C.W.J.C. No. 2513 of 2017, present L.P.A. is presented.

5. Learned counsel for the appellant submitted that the learned Single Judge has committed error in holding that the Respondent-Corporation would not fall under Article 12 of the Constitution. It is submitted that no doubt Respondent-Corporation is a Society and it would fall under Article 12 of the Constitution for the reasons that 51% of the shares are being vested with the State Government. He has also pointed out various provisions of the bye-laws. In fact Managing Director is a Government official.

6. *Per contra*, learned counsel for Respondent-

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Corporation resisted the aforesaid contentions and further submitted that even assuming that if the Respondent-Corporation falls under definition of Article 12 of the Constitution, still appellant has remedy under Section 48 of the Bihar Cooperative Societies Act, 1935.

7. Heard learned counsels for respective parties.

8. Perusal of the records it is evident that Respondent-Corporation would fall under definition of Article 12 of the Constitution. Respondent-Corporation has been established in the year 1978 and it is created under Co-operative Society Act of Bihar and Orrisa with motive of multi dimensional development of Scheduled Caste Community. Directive principle of State is being implemented. It's Managing Director is being appointed by the State Government. Financial resource of the State being the chief funding source; functional character being governmental in essence; plenary control residing in government; prior history of the same activity having been carried on by government and made over to the body; some element of authority or command. Whether the legal person is a corporation created by a statute, as distinguished from under a statute is not an important criterion although it may be an indicium. In the light of the fact

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that State Respondent has 51% shares in the Corporation and further State officials were also involved in functioning of the Corporation, therefore, one has to draw inference that Respondent-Corporation would fall under the definition of Article 12 of Constitution. To the above extent, the learned Single Judge has committed error in not noticing the role of the State in the Respondent-Corporation. Accordingly, order of the learned Single Judge stands set aside.

Recently this Court in the case of ***Mr. Gyan Prakash Vs. State of Bihar, C.W.J.C. No. 1284 of 2019 dated 28.09.2022*** has examined Article 12 of the Constitution in so far as Institute of Entrepreneurship Development in which this Court has taken note of Article 12 of Constitution and various provisions of bye-laws.

9. Article 12 of the Constitution is applicable to all Governments, Local Authorities and other Authorities which function within the territory of India. It has been held that definition and extent of territory of India is the same as that embodied in Article 1(3) of the Constitution. Article 1(3) prescribes the territory of India to include territories of all the States, the Union Territories as listed under Schedule.

The term 'other authorities' has a wide amplitude

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connected with it as it has not been defined by any legislation, including the General Clauses Act, 1897, the Constitution itself or any other rule or statute. It is, therefore, only fitting that most disputes concerning the definition of State arises as enshrined to the difficulties in the interpretation of its phrase. The judiciary has strived to provide some clarity on the same. The legislative and executive powers of the Governments need not be exercised by them alone, but can be delegated and even sub-delegated to various departments and autonomous bodies. These autonomous institution may be in the form of companies, corporations, trust, society etc. Therefore, the criteria which determines function of autonomous body is in its capacity as a delegated entity of the State determines whether the action against violation of fundamental right is sustainable or not. The judiciary has determined three various judgments.

At this juncture, it is necessary to take note of application of Ejusdem Generis. It is a tool of interpretation which suggests that when a class of words is followed by general word, the general word is not absolutely wide but restricted to the implication of the class of words it is preceded by. Therefore, the use of the phrase and 'other authorities' in Article 12 must write in law of the preceeding terms such as

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local authorities, State and Central Governments. However, the Supreme Court has made an extension of this rule of interpretation to Article 12 and held that other authorities cannot be constricted to mean local authorities, State and Union Governments. The reasoning that contended for the same is that the word 'State' should be given the widest possible effect to include every statutory authorities which meet certain criteria to ensure the effective enforcement of fundamental rights. Another contention was that the phrase preceeding 'other authorities' do not fall under any generic which may be utilized to determine its extension to the general phrases.

Despite this, Supreme Court has also held that usage of Ejusdem Generis application. Phrases 'other authorities' to the extent that such authority is working in the capacity of Government body or is carrying out function of any kind, that is the fulfillment of public welfare and duties. Another strict rule that was laid down in persons, juristic and natural cannot fall under the definition of State, and by extension unaided private universities do not constitute State. The Court further employed its view by attributing avoid meaning to the general phrase in the case of ***Rajasthan State***

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Electricity Board vs. Mohan Lal reported in ***(1967) AIR 1857***. Therefore, 'other authorities' would include every authority created by statutes and vested with legal powers. This is irrespective of their functions being governmental or sovereign in nature. The carrying out of commercial function does not automatically disclose the entity from falling under the definition of State.

10. The learned Single Judge proceeded to hold that the Bihar State Schedule Caste Cooperative Development Corporation Limited would not fall under definition of Article 12 of Constitution in the light of larger Bench decision of this Court reported in 2***014 (1) PLJR 695, The Organizer, Dehri C.D. & C.M. Union Ltd. vs. State of Bihar.***

Perusal of the aforesaid decision it is noticed that the Organizer, Dehri C.D. & C.M. Union Ltd. is a private cooperative society. State has no role except to the extent of appointing Administrator in the event of mismanagement of aforesaid private society. Therefore, larger Bench is distinguishable on factual aspects of the case in hand, namely Bihar State Scheduled Caste Cooperative Development Corporation Limited. In this regard, It is necessary to quote para 109 and 111 of the aforesaid decision, which reads as

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under:-

"**109.** On the basis of the discussions made, hereinabove, I do agree with Mr. Bindhyachal Singh, learned counsel for the appellant and Mr. Lalit Kishore, learned Senior Advocate-cum-Principal Additional Advocate General for the State to the extent of their submission that the Co-operative by itself being a private co-operative would not be "State" within the meaning ascribed to it under Article 12 of the Constitution merely because of appointment of an Administrator for a temporary period while the Co-operative is under supersession. I further agree with their contention that the Administrator appointed under Sections 41(1), 41(2), 41(3) controls exercised by the Registrar Co-operatives under Section 41(7) of the Act would not have the attributes of "State" in terms of Article 12 of the Constitution. However, they are not correct in their submission that under the circumstances mentioned above, the actions and powers of Administrator would be beyond the ambit of Article 226 of the Constitution.

111. To conclude, I would answer the reference in the following terms:-

(a) In absence of the duly elected Managing Committee of the Society, appointment of a Government Servant as an Administrator or Special Officer under Sections 41(1), 41(2), 41(3) or 41(5) of the Act is a mere fortuitous circumstance which has no effect upon the constitution or the functions of the Society. If, having regard to its constitution and its functions, the Society is not an "instrumentality of the State" or is not a "State" within the meaning of Article 12 of the Constitution, it does not become "Instrumentality of the State" or "State" merely because the Administrator or Special Officer happens to be a Government servant.

(b) The "public authority" appointed as Administrator or Special Officer in terms of Sections 41(1), 41(2), 41(3) or 41(5) of the Act, where the Society itself is not a "State" or

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"Instrumentality of State", such authority would not be an "authority" within the meaning of Article 12 of the Constitution. However, his actions and powers would still be within the reach of judicial review of High Court in exercise of powers under Article 226 of the Constitution on the anvil of all the codified and un-codified principles of Administrative Law including his actions/exercise of powers to be free from the vice of arbitrariness.

(c) For the reasons stated afore, the principle laid down by a Division Bench of this Court in the case of **Nand Kishore Rai vs. State of Bihar** reported in 1988 PLJR 1065, wherein, has been held that when the Managing Committee of a Co-operative Society has been superseded and a Special Officer has been appointed by the Registrar to manage the affairs of such Society, the Special Officer has to be held to be an authority within the meaning of Article 12 of the Constitution, being not a correct view, is overruled. Accordingly, the approval of the aforesaid view of the Division Bench in the case of **Nand Kishore Rai** (*supra*) by the Full Bench of this Court in the case of **Rajendra Prasad Sah vs. State of Bihar** reported in 2000(4) PLJR 273 also stands overruled."

11. On the other hand, Respondent- Bihar State Scheduled Caste Cooperative Development Corporation Limited submitted that various provision of bye-laws including aims and objects were required to be taken up. Aims and objects is for plan, promote, undertake and assist programmes of agriculture development, animal husbandry, marketing, processing supply and storage of agriculture products. Small Scale Industry, trade business etc. In other words, to enhance

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the standard of living of the members of the scheduled caste community at large. Further noticed that Corporation would undertake development work relating to scheduled caste including construction work, such as construction of houses, hostel buildings, residential schools buildings etc. These programmes are executed by Respondent-Corporation on behalf of State Government. In fact it specifies "To act as the agent of the Government for procurement, supply and distribution of agriculture or other produce or other goods as and when required to do so". Para 2 (xvii) deals with, To receive grants, gifts, donations, loans, advances other money in deposits, or otherwise from the Bihar Government or the Government of India and other Government Institutions; Funds of the Organizers is being raised in issue of shares arising out of loans from Government and other financial Bank as defined under the act, acceptance of deposits, Grants, subsidies and donation from Government and with the approval of the Director, Welfare, from others; Share Capital of the Corporation:- The authorized share capital of the Corporation including share capital contributed by the Government shall be Rs. 100 crores (Rupees one hundred crores) divided into 100 lakhs (one hundred lakhs) shares of Rs. 100/- (Rupees one

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hundred) each. General body is consisting of State Government, Ex-officio members of the Board of Directors, Chairman, Representative of member societies etc. Managing Director of the Corporation shall be appointed by the State Government.

12. In the light of these factual aspects of the Respondent- Corporation and cited decision (supra) by the larger Bench, Respondent-Corporation is a private society. Accordingly, the learned Single Judge has committed error in not apprising factual aspects of the Bihar State Scheduled Caste Cooperative Development Corporation Limited. Hence the decision by the learned Single Judge is distinguishable and it is not applicable to the case in hand. Accordingly it is distinguished while holding that the Bihar State Scheduled Caste Cooperative Development Corporation Limited would fall under Article 12 of Constitution and writ petition filed by the appellant is maintainable.

13. In the light of the aforesaid reasoning next question would be whether writ petition is maintainable or not? Writ petition is not maintainable as appellant has remedy before the Registrar, Cooperative Societies under Section 48 of the Bihar Cooperative Societies Act, 1935.

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Section 48 of the Bihar Cooperative Societies Act, 1935 reads as under:-

> "**48. Disputes.** - (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises -
>
> (a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties or members, past members or deceased members, whether such sureties are members or non-members; or
>
> (b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased member, whether such sureties are members or non-members and the society, its managing committee or any officer, agent or servant of the society; or
>
> (c) between the society or its management committee and any past or present officer, agent or servant of the society; or
>
> (d) between the society and any other registered society; [or]
>
> (e) between a financing bank authorised under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society;
>
> such dispute shall be referred to the Registrar:
>
> provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the

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estate of the deceased member has been extinguished by virtue of section 32 of section 63.

Explanation. - (1) A claim by a registered society for any debt or demand due to it from a member, [non-member], past member or the nominee, heir or legal representative of a deceased member or [non-member] or from sureties or members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment. **Explanation. - (1)** The question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section.

(2) The Registrar may on receipt of such reference-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf; or

(c) subject to any rules refer it for disposal to an arbitrator or arbitrators. **(3)** Subject to any rules, the Registrar may withdraw any reference transferred under clause (b) of sub- section (2) or referred under clause (C) of the said sub-section and deal with it in the manner provided in the said sub-section. **(4)** The appointment of an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrators shall be

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regulated by rule.

(5) In the case of dispute involving property which is given as collateral security, it shall be competent to the person deciding such dispute to issue mortgage award which shall have the same force as a mortgage decree of a competent Civil Court.

(6) Any person aggrieved by any decision given in dispute transferred or referred under clause (b) or (c) of sub-section (2) may, within three months from the date of such decision, appeal to the Registrar.

(7) The Registrar, in the case of dispute under this section, shall have the power of review vested in a Civil Court under Section 144 and under Order XL VII, rule 1 of the Code of Civil Procedure, 1908, and shall also have the inherent jurisdiction specified in Section 151 of the said Code.

(8) The Registrar may where it appears to him advisable, either of application or of his own motion, state a case and refer it to the District Judge for decision, and the decision of the District Judge shall be final.

(9) Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under clause (b) or (c) of subsection (2) shall be final."

14. In the light of aforesaid statutory provision, the appellant without exhausting remedy of appeal has approached this Court.

Apex Court in the case of ***Jammu and Kashmir V.***

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R.K. Zalpuri reported in ***AIR 2016 SC 3006*** at para 20 held as under:

> "20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwala and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-
>
> > "The Court while exercising its jurisdiction under Article 226 if 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;
> >
> > (f) grant of relief is against public policy or barred by any valid law; and host of other factors."

One of the principle laid down in the aforesaid decision is that before entertaining writ petition whether petitioner has exhausted remedy of appeal or not is to be ascertained. In the present L.P.A. appellant has not exhausted remedy under Section 48 of the Registrar Cooperative Societies

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Act.

15. Accordingly, writ petition stands dismissed on the sole ground that the appellant has not exhausted the remedy of appeal in terms of the aforesaid provision.

16. Dismissal of writ petition and L.P.A. would not come in the way of filing appeal before the appellate authority under Section 48 of Cooperative Societies Act within a period of two months from the date of receipt of this order. Appellate authority is hereby directed to take note of Section 14 of the Limitation Act, 1963 in order to overcome the delay, if any, in filing appeal. Appellate authority is also hereby directed to make necessary endeavour to decide the appellant's appeal within a reasonable period of time.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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