

31.01.2023.
p.b.
Sl. No.3.

W.P.A. 2173 of 2023

Sri Suman Sengupta & Anr.
Vs.
Union of India & Ors.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Mr. Rahul Kumar Singh.
.....for the petitioner.

Mr. Saptansu Basu,
Mr. Ayan Banerjee,
Ms. D. Dhamali,
Ms. Riya Ghosh.
.....for respondent no.4 & 5.
Ms. Ashima Roy Chowdhury.
.....for the UOI.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned notices dated 13th January, 2023 and 24th January, 2023 being Annexures P-2 and P-3 respectively issued by the Eastern & North East Frontier Railway Co-operative Bank/respondent no.4 in the writ petition.

Mr. Basu, learned senior advocate representing the respondent no.4/bank concerned opposes this writ petition by taking the point of maintainability by relying on an unreported judgment of another Co-ordinate Bench of this Court dated 19th April, 2016 in W.P. 6161 (W) of 2016 (Sri Saptarshi Basu Vs. Union of India & Ors.) which was filed against the same respondent bank and this Court dismissed the writ petition by holding the same as not

maintainable by taking the view that the respondent no.4/ bank is not a 'State' within the meaning of Article 12 of the Constitution of India. Mr. Basu has relied on another decision of the Hon'ble Supreme Court in the case of S. S. Rana Vs. Registrar, Co-operative Societies & Anr. reported in (2006) 11 SCC 634 particularly on paragraphs 9 to 12 of the said judgment and for the sake of convenience, the same is recorded hereinbelow:-

"9. It is not in dispute that the society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the society. The State has no say in the functions of the society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr. Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over

the affairs of the society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the society pertain to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent no.2, the society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia V. Khalid Mujib Sehravardi*. (See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)*).

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative 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 are 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.”

Considering the facts and circumstances of this case and submission of the parties and in view of the ratio laid down by this Court and the Hon’ble Supreme Court in the

judgment, referred hereinabove, this writ petition being WPA 2173 of 2023 is dismissed, on the ground of being not maintainable. However, dismissal of this writ petition will not be a bar on the part of the petitioner to avail any remedy before any forum if so available under the law.

(Md. Nizamuddin, J.)