

2023:PHHC:078105

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-9760-2017 (O&M)

Date of decision : 11.05.2023

Dildar Gandhi

..... Petitioner

versus

Primary Agricultural Cooperative Society and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: None for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. H.S. Bedi, Advocate
for respondents No.3 and 4.

PANKAJ JAIN, J. (Oral)

The petitioner is aggrieved of resolution dated 26.02.2016 (P-3) passed by respondent No.3-Cooperative Society having an effect of reducing salary of the petitioner from Rs.9,357/- to 7,000/-. Further prayer is for writ in the nature of mandamus directing the respondents to pay the salary of the petitioner @ Rs.9,357/- with interest claiming that the salary is to be increased in sync with the provisions of Payment of Wages Act.

2. Counsel for the respondent-society submits that the present writ petition could not be maintainable against the cooperative society. Reliance has been placed upon law laid down by Apex Court in **S.S. Rana vs. Registrar Cooperative Societies and others 2006(11) SCC 634, General Manager, Kisan Sahkari Chini Mills Ltd. Sultanpur, U.P. vs. Satrugan Nishad and others JT 2003(8) SC 235** and

2023:PHHC:078105

judgment rendered by this Court in **CWP No.27527 of 2017 titled as 'Krishan Kant vs. Punjab State Cooperative Agricultural Development Bank Ltd. and others.'**

3. I have heard counsel for the parties and after perusing records of the case, this Court finds that the present writ petition could not be maintainable. The resolution has been passed by respondent No.3 which is a cooperative society. In the case of **S.S. Rana (supra)**, it has been held as under:-

“xx xx xx

11. 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 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.

12. The decision of the Seven Judge Bench of this Court in Pradeep Kumar Biswas (supra), whereupon strong reliance has been placed, has no application in the instant case. In that case, the Bench was deciding a question as to whether in view of the subsequent decisions of this Court, the law was correctly laid down in **Sabhajit Tewary v. Union of India & Ors., (1975) 1 SCC 485**, and it not whether the same deserved to be overruled. The majority opined that the Council of Scientific and Industrial Research (CSIR) was a 'State' within the meaning of Article 12 of the Constitution of India. This Court noticed the history of the formation thereof, its objects and functions, its management and control as also the extent of financial aid received by it.

2023:PHHC:078105

Apart from the said fact it was noticed by reason of an appropriate notification issued by the Central Government that CSIR was amenable to the jurisdiction of the Central Administrative Tribunal in terms of Section 14(2) of the Administrative Tribunals Act, 1985. It was on the aforementioned premises this Court opined that Sabhajit Tewary (supra) did not lay down the correct law. This Court reiterated the following six tests laid down in ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722*** :

"(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.

(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.

(3) It may also be relevant factor ...whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(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.

2023:PHHC:078105

(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."

This Court further held :

"This picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

(Emphasis supplied)

13. As the respondent No. 1 does not satisfy any of the tests laid down in *Pradeep Kumar Biswas* (*supra*), we are of the opinion that the High Court cannot be said to have committed any error in arriving at a finding that the respondent-Bank is not a State within the meaning of Article 12 of the Constitution of India."

4. The aforesaid law laid down by Apex Court in the case of **S.S. Rana (*supra*)** was considered by this Court in **CWP No.27527 of**

2023:PHHC:078105

Agricultural Development Bank Limited and others” to hold that even though cooperative society is not ‘State’, yet the writ petition can be maintained in case statutory rules have been violated.

5. In the present case, there is no averment in the writ petition that any statutory rule has been violated. The grievance is against the resolution passed by the cooperative society against which the petitioner has a statutory remedy in form of appeal and revision.

6. In view of above, the present writ petition is dismissed as not maintainable.

(PANKAJ JAIN)
JUDGE

11.05.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No