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

% *Date of Decision: 20<sup>th</sup> April, 2023*

+ W.P.(C) 9336/2018 & CM APPL. 36125/2018

PRAVEEN KUMAR SHARMA ..... Petitioner  
Through: Mr. Milind M. Bhardwaj and  
Ms. Renu Mishra, Advocates

versus

THE CENTRAL REGISTRAR MULTI STATE  
COOPERATIVE SOCIETIES & ORS ..... Respondents  
Through: Mr. Ruchir Mishra, Mr. Sanjiv  
Kumar Saxena, Mr. Mukesh Kumar Tiwari,  
Ms. Poonam Shukla, Ms. Reba Jena Mishra  
and Ms. Komal Sharma, Advocates for R-1.  
Mr. Avinash Sharma and Ms. Akanksha  
Kapoor, Advocates for R-2 & 3.

**CORAM:**  
**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGEMENT**

**JYOTI SINGH, J. (ORAL)**

1. Present writ petition has been filed by the Petitioner seeking a writ of Mandamus to Respondent No.1/Central Registrar, Multi State Co-operative Societies to issue directions to Respondents No.2 and 3 to withdraw the illegal acceptance of VRS application dated 01.08.2016 and reinstate the Petitioner on his post as Branch Manager-C with immediate effect. It is undisputed that Petitioner has retired on superannuation during the pendency of the writ petition in the year 2022.
2. At the outset, learned counsel appearing on behalf of Respondent No.2 takes a preliminary objection to the maintainability of this writ petition. It is submitted that Respondent No.2 is a Thrift

and Credit Society registered and governed under the Multi State Co-operative Societies Act, 2002 (hereinafter referred to as '2002 Act') and the Rules framed thereunder as well as the Bye-laws of the Society. The objects and functions of the Society is to promote interests of all its members to attain their social and economic betterment through self help and mutual aid in accordance with the co-operative principles. Its members contribute towards monthly compulsory deposit and Respondent No.2 is neither a statutory Corporation nor a public authority and the writ petition filed under Article 226 of the Constitution of India is thus not maintainable. Learned counsel places reliance on the judgment of this Court in ***Sushil Kumar v. Central Registrar of Coop Socy and Ors., W.P.(C) No.2059/2021 dated 19.07.2022.*** Reliance is also placed on the judgment of Karnataka High Court in ***Sri V Karunagaran v. The Secretary Railway Employees Coop. Credit Society Ltd. & Anr., W.P. No. 4011 of 2006*** and of this Court in ***Northern Zone Railway Employees Co-operative Thrift and Credit Society Ltd. v. Central Registrar Co-operative Society and Others, AIR 2012 Delhi 112,*** wherein Courts have held that Respondent No.2 is neither a statutory Corporation nor a public authority and thus not amenable to the writ jurisdiction.

3. Learned counsel appearing on behalf of Petitioner, *per contra*, submits that the writ petition is maintainable and it is not open to the Respondents to raise objection on the maintainability, as this issue already stands settled by this Court vide order dated 15.10.2019, whereby the Court held that the writ petition is maintainable and also observed that the action of the Respondents is in violation of Section 52 of the 2002 Act.

4. I have heard learned counsels for the parties and examined their contentions.

5. Having perused the judgment in *Sushil Kumar (supra)*, this Court finds merit in the contention of the Respondents that this writ petition is not maintainable under Article 226 of the Constitution of India. In the said case, two writ petitions were decided by a common judgment where the challenge was to the steps initiated by Northern Zone Railway Employees Thrift and Credit Society Ltd., which is Respondent No.2 herein, for the purpose of election of delegates. Preliminary objections were raised by the Respondents to the maintainability of the petitions. The Court while analysing various judgments on the subject as well as the aims and objectives of Respondent No.2 dismissed the writ petitions, as not maintainable and relevant paras are as follows:-

*“20. The judgment of a learned Judge of the Court in NZRECTC vs. Central Registrar, Cooperative Society & Ors., AIR 2012 Del 112, however, would be of some significance and would merit a more detailed consideration. It becomes pertinent to note that NZRECTC was principally dealing with the question of whether the respondent cooperative society would be amenable to the provisions of the Right to Information Act, 2005. The question which arose was whether it would be liable to be recognized as a public authority for the purposes of that Act. While dealing with the aforesaid question, the learned Judge made the following pertinent observations: -*

*“14. Admittedly, the petitioner is not a statutory corporation as it is a cooperative society stated to have been constituted in the year 1960. It is not relevant whether it was constituted under the Cooperative Societies Act, 1912 or under any other law relating to any cooperative society in force, or in pursuance of the Multi State Cooperative Societies Act, 1942 (MSCS Act) or not, since it is not in dispute that it is a cooperative society. All that Section 2(a) of the Multi State Cooperative Societies Act, 2002 purports to do, is to state to which class of cooperative societies the said act would “apply”. Section 2(b) states that the said Act “shall apply to” Multi-State Cooperative Societies “registered or deemed to be registered under this Act .....” [See Section 2(b)]*

*15. It is also not the case of the contesting respondents that the petitioner society receives any funds or financial aid from the*

Government. Even if the petitioner society is provided some facilities in the nature of accommodation on a reasonable rent- or rent-free accommodation, and its office bearers are provided casual leaves or special passes for travel on the railways to attend the affairs of the cooperative society, the same cannot be said to be a provision of “substantial finance” by the appropriate government, i.e. the Central Government to the petitioner cooperative society. Firstly, these facilities are provided to the office bearers, and not the petitioner society. Secondly, the respondents have not been able to show that the said facilities and amenities provided by the Central Government/Railways forms a significant fraction of the funds generated by the petitioner or the budget of the petitioner.

16. The petitioner is stated to be an organization of 72,000 railway employees, who contribute to the funds of the petitioner on a regular basis for being invested in schemes of LIC etc. There is no reason to accept that the amenities/facilities provided by the railways to the petitioner cooperative society translates into a “substantial finance” when compared to the revenues and budgets of the petitioner cooperative society. The method of collection of contributions is wholly irrelevant. That is only a mechanism evolved to enable smooth and punctual transmission of the subscription of the railway employees. It has no bearing on the issue at hand.

17. It is not even shown that the model bye laws in any way vest the Central Government/Railways with any direct or indirect control in the functioning, and in the organization of the petitioner cooperative society. The mere adoption of the model bye laws as prescribed by the railways is, therefore, of no consequence. The adoption of the model bye laws appears to be insisted upon, only to ensure that the funds entrusted to the petitioner cooperative society by its members is properly utilized and are not defaulted or dissipated.

18. The mere fact that the petitioner comes within the purview of MSCS Act also makes no difference to the status of the petitioner in relation to the RTI Act. If the submission of learned counsel for the respondents/querists were to be accepted, it would mean that every cooperative society to which the MSCS Act applies would, ipso facto, qualify as a public authority. This position cannot be accepted.

19. The enabling provision contained in Section 61 of the MSCS Act, which enables the Central and State Governments to provide aid to such multi state cooperative societies in one or the other way, specified in the said section by itself cannot lead to the inference that the petitioner is a public authority. For it to fall within the said definition, the respondent should have established that the Central Government or the State Government have, as a matter of fact, either subscribed to the share capital of the petitioner cooperative society; or given

loans and made advances to the petitioner; or guaranteed repayment of principal and payment of interest on debentures issued by the petitioner society, or like, which amounts to "substantial finance".

20. Unless and until, the said aid qualifies to be termed as "substantial finance", when looked at in the light of the overall financial dealings and budget of the petitioner, the grant of aid under Section 61 of the MSCS Act would not be sufficient to clothe the cooperative society with the character of a public authority."

21. The question of maintainability of a writ petition against a cooperative society again came up for consideration in **Mohinder Singh & Ors. vs. D.P. Khatri & Ors.**, [1993 (27) DRJ 424, where the Court held thus: -

"12. In *Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju*, AIR 1990 Andhra Pradesh 171, (5) a Full Bench of the said High Court has referred to the whole concept in a very detailed manner and at page 190 of the judgment, distinction between „public law“ and „private law“ has been pointed out as follows:—

"Difficult as this distinction is and incapable of precise demarcation, it is yet necessary to keep the broad distinction in mind. Lord Denning in his book "The Closing Chapter" has this to say on the subject:

"The first thing to notice is that public law is confined to "public authorities". What are "public authorities"? There is only one avenue of Approach. It is asking, in the words of Section 3(2)(b) of the supreme Court Act, 1981: What is the 'nature of the persons and bodies against whom relief may be granted by such orders', that is, by mandamus, prohibition or certiorari?

These are divided into two main categories:

First, the persons or bodies who have legal authority to determine questions affecting the common laws or statutory rights or obligations of other persons as individuals. That is the formula stated by Lord Justice Atkin in *R. v. Electricity Commissioners, ex parte London Electricity Joint Committee Co., (1920) Ltd.*, 1 KB 171/205 as broadened by Lord Diplock in *O'Reilly v. Mackman*, (1982) 3, WLR 1096/1104.

Second, the persons or bodies who are entrusted by Parliament with functions, powers and duties which involve the making of decisions of a public nature.....To which I would add the words of Lord Goddard, C.J. in *R. v. National Joint Council for Dental Technicians, ex parte Neate* (1953) 1 QB 704/707:

"The bodies to which in modern times the remedies of

*these prerogative writs have been applied to all statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction”.*

*But those categories are not exhaustive. The courts can extend them to any other person or body of a public nature exercising public duties which it is desirable to control by the remedy of judicial review.*

*There are many cases which give guidance, but I will just give some illustrations.*

*Every body which is created by statute and whose powers and duties are defined by statute is a „public authority”. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all „public authorities”. So are members of a statutory tribunal or inquiry, and the board of visitors of a prison. The Criminal Injuries Compensation Board is a public authority. So also, I suggest, is a university incorporated by Royal charter; and the managers of a State School. So is the Boundary Commission; and the Committee of Lloyd’s.*

*But a limited liability company incorporated under the Companies Act is not „public authority”; (see Tozer v. National Greyhound Racing Club (1983) Times, 16 May) Nor is an unincorporated association like the Jockey Club.....”.*

*13. The said full bench has culled out following propositions with regard to the maintainability of a writ petition against cooperative societies:—*

*“(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 against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a ‘state’, has to act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws.*

(ii) *Even if a Society cannot be characterised as a 'State' within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against 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. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.*

(iii) *The bye-laws made by a cooperative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its members, as the case may be. Hence, where a Society cannot be characterised as a „State“, the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co-operative society, Section 47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution.*

*Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishment Act; but, in an appropriate case, the Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.*

(iv) *Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a „State“ within the meaning of Article 12, does not necessarily belong to public law field. A society, which is a „State“, may have its private law rights just like a Government. A contractual obligation, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into contract, however, Article 14 operates, as explained by the Supreme Court in *E.E. & C. Ltd. v. State of West Bengal*, (1975) 1 SCC 70 : AIR 1975 SC 226 and *Ramana Dayaram Shetty*, (1979) 3 SCC 489 : AIR 1979 SC 1628.*

*14. The Supreme Court in the case of *Sohan Lal v. Union of India*, AIR 1957 SC 529, (6) had held that normally a writ of mandamus does not issue to or an order in the nature of mandamus is not made against private individual. Such an order is made against a person directing him to do a particular thing specified in the order which appertains to his office and is in the nature of public duty.*

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16. *It appears that the aforesaid observations of the Supreme Court have been somehow interpreted in different way by the High Court. Some of the High Courts have gone to the extent of laying down that if a statutory duty is to be performed by the cooperative society the same can be enforced by taking resort to Article 226 of the Constitution. The Supreme Court has not laid down such a proposition of law that even if the statutory duty or statutory obligation has no connection with the public interest even then resort to Article 226 could be had. The Supreme Court in this very judgment had also mentioned that it is, therefore, fairly clear that such declaration can be issued against a person or an authority or a corporation where the impugned act is in violation of or contrary to a statute under which it is set up or governed or a public duty or responsibility imposed on such person, authority or body by such statute. The dis-junctive “or” placed before the words “a public duty” has led some of the High Courts to hold that even if there is violation of any statutory duty which is not in the nature of public duty even then the High Court had jurisdiction to issue mandamus or any order for enforcing such statutory duty. I am afraid the Supreme Court judgment cannot be read to lay down such a law when in the whole of the judgment the view expressed is that it is the remedy in public law and it is the duty imposed on any person which can be enforced by issuance of a mandamus. The law laid down by the Supreme Court in the case of Sohan Lal (supra) was not dissented or varied by this judgment.*

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21. *The Full Bench of the Madhya Pradesh High Court in Ramswarup Gupta v. Madhya Pradesh State Cooperative Marketing Federation Limited, AIR 1976 MP 152, (14) also held that private institution can be said to be a statutory body, if it is created by a statute and must owe its existence to the statute and it will be necessary to mark a distinction between an institution which is not created by or under a statute but is covered by certain statutory provisions for the proper maintenance and administration of its affairs and the one which is created by the statute and owes existence to the same this judgment follows a number of judgments of the Supreme Court laying down this proposition of law. They are Sukhdev Singh v. Bhagat Ram, (1975) 1 SCC 421 : AIR 1975 SC 1331, (15) Sabhajit Tewari v. Union of India, (1975) 1 SCC 485 : AIR 1975 SC 1329, (16) and Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, (1976) 2 SCC 58 : AIR 1976 SC 888, (17).*

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23. *In Electrogears (P) Ltd. v. Rehabilitation Industries Corporation Ltd., AIR 1979 Calcutta 320, (19) it was clearly laid down that a writ petition is not maintainable against a*

company registered under the Companies Act even if there was a breach by the company of some statutory duty imposed upon it. The rationale behind this ratio is that the company is not performing any public duty and the jurisdiction under Article 226 of the Constitution can be invoked in public law field and not in private law field. Relying on the judgments of the Supreme Court in the cases of Sukhdev Singh, (supra), Sabhajit Tewary (supra) and Executive Committee of Vaish Degree College (supra), it was held that the company cannot be deemed to be a statutory body created by any statute.

24. Similarly the cooperative societies are not creatures of the statute, created by the statute or under the statute. They are independent private group of people organized themselves into a society which is got registered under the Cooperative Societies Act of a particular State. So, such a society may be governed by the provisions of the statute, still such a society cannot be termed as a statutory body created by a statute. Unless and until a particular cooperative society is enshrined with any public duty to perform, the action of such a society cannot be challenged by filing a writ petition and resort has to be made by the aggrieved person in filing a suit or filing any reference for arbitration or for decision of the Registrar in consonance with the provisions of the Cooperative Societies Act.”

22. A Five Judge Bench of the Allahabad High Court in **Vijay Behari Srivastava vs. U.P. Postal Co-operative Bank Ltd., (2003) 6 SLR 384**, made the following pertinent observations: -

“11. It is well settled by several decisions of the Supreme Court including the decisions hereinafter referred to that for the purpose of determination of question under Article 12, namely, if the authority, in question, is an instrumentality of the State, deep and pervasive State control and the composition of management and functions discharged by such society, namely, if they relate to public affairs are required to be considered in order to arrive at a conclusion that a writ lies against such a body. In Ajay Hasia v. Khalid Mujib, (1981) 1 SCC 722 : AIR 1981 SC 487, a society, registered under the Societies Registration Act, 1860, running an Engineering College, refused to take admission of a student. On a writ petition instituted before the Apex Court, it was held that it was immaterial for determining whether the corporation or an authority is created by statute or under a statute. The test was whether it is an instrumentality or agency of the Government and not as to how it was created. The enquiry is to be not as to how the juristic person is born but why it is brought into existence. The Corporation may be statutory corporation created by statute or it may be a government company or a company formed under the Companies Act or it may be a society registered under the Societies Registration Act or any other similar nature. After

*surveying various decisions and summarizing the relevant tests gathered from the decision in Ramana Dayaram Shetty v. International Airport Authority, (1979) 3 SCC 489 : AIR 1979 SC 1628, the following observations were made:—*

*“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 International Airport Authority’s case, (1979) 3 SCC 489 : AIR 1979 SC 1628. 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 realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation ...”*

*12. The Apex Court summarized six tests gathered from the decision in International Airport Authority's case (supra). These tests are as follows:—*

- 1. Majority of share capitals of the Corporation/Authority/ establishment must be held by the Government;*
- 2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the establishment, it would afford some indication of the establishment being impregnated with Governmental character;*
- 3. It may also be relevant factor, whether the establishment enjoys monopoly status which is State conferred or State protected;*
- 4. Existence of deep and pervasive State control may afford an indication that the establishment is a State agency or instrumentality of the State;*
- 5. If the functions of the establishment are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the establishment as an instrumentality or agency of the Government, and*
- 6. ‘Specifically, if a department 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.*

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*17. That apart, all the cases relating to the question in controversy were considered in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111,*

*wherein by majority judgment, the decision in Sabhajit Tewari v. Union of India, (1975) 1 SCC 485 : (AIR 1975 SC 1329) was over ruled holding that 'Council of Scientific and Industrial Research' registered under the Societies Registration Act, 1860 is State within the meaning of Article 12 of the Constitution of India. On examining the objects and functions it was found that CSIR was set up in the national interest to further economic welfare of the society by fostering planned industrial development in the country. It was further found that in the governing body the President of CSIR is the Prime Minister and such subjugation of the governing body is subject to the will of the Central Government. The financial aid was by the Central Government. It was, however, pointed out that when a corporation or society is an instrumentality or agency of Government, are to be considered keeping in view various factors, namely, the body is financially, functionally and administratively dominated by or under the control of the Government and whether such control is deep and pervasive and when the control is merely regulatory, whether under statute or otherwise, do not serve to make a body State, in paragraph 40 of the Report, it was observed that:—*

*“The 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)*

*18. A society registered under the Societies Registration Act, 1860, to a great extent, is controlled by the Registrar of the Societies. A society after it is registered has to submit every year a list of the names, addresses and occupation of the governing council, directors, committee or other governing body interested with the management of the affairs of the society. The Registrar has a power under Section 22 of the Act to require any society to furnish in writing such information and documents within such time being ordinarily not less than two weeks from the date of receipt of order by the society, he may specify in the order in connection with the affairs of the society or any documents filed by the society under the Act. Under Section 23 of the Act where the*

*Registrar is of the opinion that it is necessary or expedient so to do, he may, by written order require any society to furnish its accounts or a copy of the statement of receipts of expenditure for any particular year duly audited by a Chartered Accountant. He can also investigate the affairs of the societies under Section 24 of the Act. Under Section 25, if there is a dispute in respect of election or continuance in office of office bearers of the society, he may refer it to the Prescribed Authority or decide it himself summarily on the conditions mentioned therein. Similarly, under the U.P. Co-operative Societies Act, 1965 the Registrar exercises the powers in regard to management and also decision of the committee of management of the Co-operative Societies. The Registrar can suspend a Committee of management under Section 35 of the U.P. Co-operative Societies Act, 1965, seize the record under Section 37, remove an officer of the Co-operative Society under Section 38, decide the dispute as provided under Section 70, determine the terms of employment of a person in a society under Section 121, disciplinary control the employees of Co-operative Societies and resolution of Co-operative Society in certain cases under Section 128 of the Act.*

*19. The mere fact that the registrar has a power to control the affairs of the society itself will not make a society a 'State' unless other factors as enumerated in the decisions, referred to above, are existing. The supervision of these societies as held in Pradeep Kumar Biswas's case (supra) shall be treated as regulatory and shall not be taken as a control by a State Authority. A society to be an „authority“ is to be financially, functionally and administratively dominated by or under the control of Government. If such factors are missing, the mere fact that the control is regulatory of a society created or recognized under an Act will not itself make the society a 'State' or 'other authority' as contemplated under Article 12 of the Constitution of India.*

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*21. The view of the Division Bench in Jagveer Singhaa's case (supra) that every cooperative society can be treated as an 'authority' within the meaning of Art. 226 of the Constitution of India because of its control by the Registrar under the provisions of the Act, in our view, is incorrect. In Jagveer Singhaa's case (supra), the Division Bench further held that the view taken by the Full Bench in Radha Charan Sharma's case (supra) was inconsistent with the view taken by the Apex Court in U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey (supra). In U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey (supra), the facts were that the U.P. Co-operative Federation Ltd., employed the petitioner therein as Sales*

*Representative in its Co-operative Drugs Factory at Ranikhet. He was transferred as an Accountant-cum-Godown keeper in the Branch Office of the Federation at Ghaziabad. A report of theft of fertilizers and misappropriation of money and materials was received by the Federation and the employee was suspended. He instituted a writ petition under Article 226 of the Constitution. The Division Bench referred three questions. The first question was whether co-operative society which is an apex or State level co-operative society governed by the provisions of U.P. Co-operative Societies Act is statutory body or is 'State' within the meaning of Art. 12 of the Constitution. Referring the decision in Ajay Hasia's (supra), the Full Bench recorded finding that the petitioner failed to prove that the Government controls the activities or decision making power of the managing body of the Federation, Paragraph 16 of the Report in U.P. State Cooperative Land Development Bank Ltd.'s case (supra) reads thus:*

*"It is obvious that a juristic personality like a co-operative society which is registered under the Act but is otherwise free of governmental control will not be an authority within meaning of Art. 12. In the present case, it has been stressed that 40 to 60 per cent of the share-holding of the Federation is owned by the State Government. The President of the Federation is the Registrar of Co-operative Society, a Government Servant, and the Secretary of the Federation is the Deputy Registrar, another Government Servant. The petitioner has not indicated what is the constitution of the Federation in which organ or body of the Federation is the power of management and taking decisions resides. It has not been shown how far the Government controls the activities or decision-making power of the managing authority of the Federation. In these circumstances, it is difficult to hold that the Federation was an authority within meaning of Art. 12."*

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*32. Now we will deal with the topic 'obligation to follow the statutory rules'. If a society, corporation or company is an authority within the meaning of Art. 12 of the Constitution, it is obliged to follow the statutory rules in regard to its function or regulation in regard to service matters of its employees. In Administrator, Konch Sahakari Kraya Vikraya Samiti Ltd. v. Sarnam Singh, (1997) 11 SCC 144 : (1999 AIR SCW 4824) the respondent therein was removed from service from the co-operative society from the post of Secretary under Section 38 of the U.P. Co-operative-Societies Act, 1965. The Court held that the writ petition is maintainable under Article 226 of the Constitution. The Court observed*

thus (at page 4825 of AIR SCW):—

*“The scheme of the enactment clearly shows that the order of removal from service of Secretary of a Co-operative Society made under sub-section (1) of Section 38 by the Society or that under subsection (2) of Section 38 by the Registrar is, therefore, statutory in nature. For this reason alone, it must be held that such an order is amenable to the writ jurisdiction of the High Court under Art. 226 of the Constitution. The view taken by the High Court that the writ petition was maintainable in the present case does not, therefore, call for any interference.”*

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35. In the light of foregoing discussions, we answer question as to whether a writ petition in the nature of certiorari will lie against a cooperative society or it comes within the meaning of the words “other Authority” occurring in Art. 226 of the Constitution, as follows:

*The writ petition in the nature of certiorari will lie against a Cooperative Society only when such Society has ingredient of an ‘Authority’ within the meaning of Art. 226 of the Constitution and not otherwise. The following guidelines are culled out from the various decisions of the Supreme Court, referred to above:—*

- 1. The constitution of the Managing Body/Committee constitutes the function arise of the Government.*
- 2. There is an existence of deep and pervasive control of the management and policies of the Co-operative Societies by the Government.*
- 3. The function of the Co-operative Society is of public importance and closely related to the governmental functions.*
- 4. The financial control is by the Government or it provides financial aid controlling its affairs.*
- 5. The violation of statutory rules applicable to the society in regard to the service matters of its employees, and*
- 6. Statutory violations or non-compliance of it by an authority under the Act.”*

23. Explaining the concept of a public function, the Supreme Court in **K. K. Saxena vs. International Commission on Irrigation & Drainage, (2015) 4 SCC 670**, observed as under:

*“14. We may also like to point out that the aforesaid examination of the issue undertaken by the High Court is keeping in view the principles laid down by this Court in a catena of judgments and the tests which are to be applied to*

*arrive at the decision as to whether a particular authority can be termed as "State" or "other authority" within the meaning of Article 12. It took note of the Constitution Bench decision in Ajay Hasia v. Khalid Mujib Sehravardi [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] wherein the following six tests were culled out from its earlier judgment in Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] : (Ajay Hasia case [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] , SCC p. 737, para 9)*

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

*(6) 'Specifically, if a department of the 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 the Government."*

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*53. In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no "public law rights" have accrued in favour of the appellant which are infringed. The service conditions of the appellant are not governed in the same manner as was the position in Andi MuktaSadguru [Andi MuktaSadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691]"*

**24. In S.S. Rana v. Registrar, Coop. Societies, (2006) 11 SCC 634** the Supreme Court pertinently observed: -

*"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 partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control there over would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] . [See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)* [(2005) 5 SCC 632] .]

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. ”

25. The scope and extent of the expression ‘public function’ was more succinctly explained by the Supreme Court in its recent decision in ***Ramakrishna Mission and Anr. vs. Kago Kunya and Ors.***, (2019) 16 SCC 303, in the following terms: -

27. In *Binny Ltd. v. V. Sadasivan* [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus: (SCC pp. 665-66, para 11)

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for

*the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”*

28. *The Bench elucidated on the scope of mandamus: (SCC p. 673, para 29)*

*“29. ... However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action ... There cannot be any general definition of public authority or public action. The facts of each case decide the point.” (emphasis supplied)*

29. *More recently in K.K. Saxena v. International Commission on Irrigation & Drainage [K.K. Saxena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] , another two-Judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus: (SCC p. 692, para 43)*

*“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.”*

30. *Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.*

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32. *Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an “authority” within the meaning of Article 226. State Governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of State control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.*

33. *It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act, 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In Federal Bank [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733], while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the Court held thus: (SCC pp. 758- 59, para 33)*

*“33. ... in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank.” (emphasis supplied)*

*34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.*

*26. Having noticed the legal principles which would govern, it would be apposite, at this stage, to review the functions, aims and objectives of the respondent cooperative society. Those stand enumerated in its Byelaws and read thus: -*

*“OBJECTIVES AND FUNCTIONS:*

*Objects:*

*The principal object of the society will be to promote the interests of all its members to attain their social and economic betterment through self-help and mutual aid in accordance with the cooperative principles.*

*(ii) Functions:*

*The object of the Society shall be to promote the economic interest of the members. In furtherance of the above objects, the society may undertake any or all the following:*

- a. To raise funds by means of issuing shares, acceptance money on compulsory deposit or otherwise from members.*
- b. To lend money to share-holder at interest.*
- c. To undertake welfare activities particularly for the members and employees and their children for the promotion of their moral, educational and physical improvement.*
- d. To own lands, building or to take them on lease or rent for the business of the Society and residential quarters for the staff of the Society.*
- e. To open Branches within the area of operation of the society, subject to the approval of the General Body.*
- f. To undertake other measures designed to encourage in the members the spirit and practice of thrift self and mutual help.*
- g. To do all such things as are incidental or conducive to the attainment of any or all the above objects.*
- (i) The Society shall help, maintain and promote the aims and object of the following funds, the rules of the working of which shall be framed by the General Body from time to time.*
  - (1) The “Share holder Death Cum Retirement Benefit Funds”.*
  - (2) The “Share holder relief funds”.*
  - (3) The “Staff Welfare Funds”.*

27. The following undisputed facts emerge from the aforesaid discussion. The cooperative society has essentially been formed to promote and safeguard the welfare of its members who are all employees of the Indian Railways. As its objects would indicate, it is enjoined to work towards the upliftment and betterment of the condition of its members through self-help and mutual aid in accordance with “cooperative principles”. It raises funds from its members by requiring compulsory deposits, issuing shares and other means permissible under the Byelaws. In **NZRECTC**, the learned Judge albeit dealing with the issue of whether the respondent cooperative society could be treated as a public authority for the purposes of the Right to Information Act, 2005, in unambiguous terms found that it receives no funds or financial aid from the Government. That decision significantly noted that the cooperative society was not a statutory corporation and had merely applied for registration under the Act. It was then observed that it was not found to satisfy the test of substantial finance by the Government and was funded principally on the basis of contributions made by its members. **NZRECTC** then found that even the Byelaws did not vest any control in the Central Government or the Railways over its affairs. It was further observed that the mere fact that the cooperative society was governed by the provisions of the Act would have no bearing on the question of whether it was a public authority. It ultimately and in light of the conclusions noticed above found that

*the cooperative society would not be covered by the Right to Information Act, 2005.*

28. *From the aforesaid findings on facts as recorded in NZERCTC and which were not disputed by the petitioners, it is manifest that there is no deep or pervasive control exercised by the Government. It is a cooperative society formed by employees of the Indian Railways to promote and safeguard the interests of its members. From its aims and objects it is apparent that it is principally concerned with ameliorating the conditions of its members, to extend loans, work toward their welfare, acquire land for the purposes of establishing its offices and for construction of residences for its members and to lend money to its shareholders and members. Its finances are founded on share money and contributory deposits made by its members. In order to hold that a body would be amenable to the writ jurisdiction of this Court as conferred by Article 226 of the Constitution it would have to be necessarily found that it is either State or an authority as envisaged by Article 12. The well settled tests propounded in the decisions of the Supreme Court noticed above include whether the body is substantially funded or financially controlled by the Government, whether it is functionally or administratively controlled by the Government and whether it performs a public function or discharges a public duty.*

29. *From the facts noticed above, it is apparent that the cooperative society is neither substantially financed nor funded by the Government. A reading of its Byelaws establishes beyond a measure of doubt that it is also not administratively controlled by the Government. There is no dominant or overriding power that the Government may be recognised to wield over the affairs of the cooperative society. The Government is not shown to control the cooperative society either in the management of its affairs or the formulation of policy. The Court also bears in mind that the cooperative society has not been conferred with any monopoly status. It clearly comes across as an autonomous body formed by employees of the Indian Railways as a part of their intent to adopt “cooperative principles” for the promotion of the welfare and well-being of its members. The Court thus comes to the firm conclusion that the cooperative society fails to satisfy the test of “deep and pervasive control” as enunciated in the body of precedents noted above.*

30. *That then takes the Court to consider whether the cooperative society discharges a public function and whether its registration under the provisions of the Act would have any bearing on the question that stands posited. Dealing firstly with the issue of a public function, it becomes apposite to note that the Supreme Court in **Ramakrishna Mission** pertinently observed that in order to satisfy the public function test it must be found that the body is discharging functions that are akin to the sovereign functions of the State. For a body to be recognised as performing a public*

*function, it must be found that its activities and functions are imbued with a character touching upon public interest as opposed to something which may be of a purely private character. The Court fails to discern any public function element that may flow from the Byelaws of the society. That instrument in fact and to the contrary indicates that the cooperative society is essentially concerned with protecting the private interests of its members.*

31. Turning then to the registration of the cooperative society under the Act, it may at the outset be observed that the affairs of various bodies may be regulated and controlled by myriad statutes in respect of a wide range of activities and functions that may be performed by them. However, merely because the affairs of a particular body may be regulated by statute, that cannot be determinative of the question that stands raised. As was aptly observed by the Supreme Court in **Ramakrishna Mission**, law is a “ubiquitous phenomenon” and touches various aspects of the functioning of a body. It was observed that merely because a body is obligated to comply with various statutory requirements, that cannot be conclusive to answer the question of whether it is discharging a public function. The fact that the cooperative society is registered under the Act or that the Byelaws or the procedure of elections owe their genesis to the Act and the Rules, would not be sufficient to hold that it would be amenable to the writ jurisdiction of the Court. This Court also bears in mind the principles enunciated by the Full Bench of the Allahabad High Court in **Vijay Behari Srivastava** where it was pertinently observed that merely because the affairs of a society are controlled by the Registrar that would not make that body “State” as contemplated under Article 12 of the Constitution. In **S.S. Rana** the Supreme Court held that the general regulation of a society by statute is merely meant to ensure its proper functioning and would not render the activities of that entity as being subject to State control. The aforesaid position in law clearly emerges from the decision of this Court in **Mohinder Singh**. It would be pertinent to note that both **Sushila Devi Bhaskar** and **S.K. Gambhir**, on which reliance was placed by Mr. Garg, were dealing with cases where the Court had found that the cooperative societies had become instruments and vehicles for implementation of State policy and acting as an adjunct to the Delhi Development Authority. It was in that backdrop that the writ petitions were held to be maintainable.

32. The Court further notes that the writ petition neither rests on an allegation of a statutory provision having been violated nor does it impugn a decision or action of a public authority. The decision of the Supreme Court in **A. Umarani** which was cited by Mr. Garg also does not come to the aid of the petitioners for the aforesaid reasons. It may be observed that Byelaws constitute a contract between the society and its members and members inter se. A mere infraction of those Byelaws would not justify the invocation of Article 226 of the Constitution. For this reason, also it must be held that the writ petition would not be maintainable.

33. *The Court may while parting note that while Mr. Garg had addressed various contentions touching upon the merits of the dispute, those have not been dealt with in light of the conclusion of the Court that the writ petition itself is not maintainable. The Court consequently leaves it open to the petitioners to raise those issues, if so chosen and advised, before the appropriate forum and in accordance with law.*

34. *Accordingly, and for the aforesaid reasons, since the writ petition has been found to be not maintainable under Article 226 of the Constitution, it shall stand dismissed. All interim orders shall consequently stand discharged."*

6. From a perusal of the judgment, it is explicitly clear that the Court examined the matter from the point of view of supervision and control as well as the public nature of the duties performed by the Respondent No.2, before coming to a conclusion that it is not amenable to the writ jurisdiction and this Court finds no reason to take a different view.

7. Insofar as the contention of the Petitioner that the issue of maintainability of the writ petition stands decided by order dated 15.10.2019 is concerned, in my view, the contention is wholly misplaced. Order dated 15.10.2019 is extracted hereunder for ready reference:-

*"Section 52 of the Multi State Co-operative Societies Act, 2002 categorically provides that the Chief Executive shall under the general superintendence, direction and control of the Board, exercise the powers and discharge the functions specified therein inter alia making the appointments to the posts in the Multi State Co-operative Societies in accordance with the bye-laws. The impugned order dated 3<sup>rd</sup> August, 2016, however, does not appear to have been passed by the Chief Executive as defined under Section 51 of the said Act.*

*Let the respondent No.1 file an additional affidavit, specifically stating as to whether the impugned order has come to be passed on the decision taken by the Chief Executive. Copy of the decision taken by the Chief Executive, if any, in passing the impugned order, shall be annexed with such an affidavit. Such affidavit be filed within four weeks, as prayed. Response thereto, if any, may be filed within 4 days from the adjourned date.*

*List on 2<sup>nd</sup> December, 2019."*

8. Reading of the aforesaid order makes it clear that the Court had only noted that under the provisions of Section 52 of 2002 Act, it is the Chief Executive who exercises the power and functions specified in the Section under the general superintendence, direction and control of the Board and that the impugned order does not appear to have been passed by the Chief Executive. Respondent No.1 was directed to file an affidavit stating as to whether the impugned order came to be passed on a decision by the Chief Executive. The Court has neither noted nor decided the issue of maintainability.

9. In view of the judgment in *Sushil Kumar (supra)* as well as the other judgments cited by Respondent No.2 on the same proposition, this Court agrees with the Respondents that the writ petition is not maintainable. It is left open to the Petitioner to approach the appropriate forum, in accordance with law, to ventilate his grievances, if so advised. It is made clear that this Court has not touched upon the merits of the dispute arising in the present petition in light of the conclusion that the writ petition is not maintainable.

10. Accordingly, the writ petition is dismissed as not maintainable along with the pending application.

**JYOTI SINGH, J**

**APRIL 20, 2023/kks**