

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

Present :- Hon'ble Justice Amrita Sinha

WPA 95 of 2024

**NRS Agro Private Limited
Vs.
The Bhagirathi Co-operative Milk
Producers' Union Ltd & Ors.**

For the writ petitioner	:-	Mr. Dhiraj Lakhotia, Adv. Ms. Radhika Agarwal, Adv. Ms. Meghana Joshi, Adv.
For the State	:-	Mr. Hirak Barman, Adv. Mr. Pradip Sarkar, Adv.
For Respondent nos. 1 & 2	:-	Mr. Kunaljit Bhattacharjee, Adv. Mr. Tapan Bhattacharjee, Adv. Mr. Alok Sah, Adv.
Heard on	:-	24.01.2024
Judgment on	:-	02.02.2024

Amrita Sinha, J.:-

The petitioner is a private Company engaged in the business of processing and packaging of milk and other dairy products under the brand name of Hillman. The respondent no. 1 is a Cooperative Society who invited Expression of Interest for empanelment of dairy plants for packaging and marketing. The petitioner submitted its proposal in response to the said invitation but its proposal was not accepted.

Being aggrieved by the same the petitioner filed the present writ petition challenging the action of the respondent no. 1 in rejecting the proposal filed by the petitioner and in turn accepting the proposal of the private respondent.

The respondent no. 1 raises an issue of maintainability of the writ petition against the respondent no. 1. It has been submitted that the respondent no. 1 is a private Cooperative Society which cannot be termed and treated as 'State' under Article 12 of the Constitution of India. The government does not have any control or supervision in the activities of the Cooperative Society and, accordingly, the Society is not amenable to the writ jurisdiction of this Court. The State government is not at all involved in the decision making process of the Cooperative Society and the Cooperative Society is not the part of any department of the government.

It has been submitted that the State came out with a project to enable the farmers to form Cooperative Society at the village level to sell their products. The fund for running the Cooperative Society has been raised by its members who are the shareholders of the Society. The District Magistrate and the Collector of the District is appointed as Special Officer only for the purpose of holding elections of the Board of Directors of the respondent no. 1. The State merely extends help by guiding in implementation of various projects and finance to help the Society to tide over its financial difficulties.

In support of the submission that the writ petition will not be maintainable against the respondent no.1, learned advocate representing the respondent no.1 relies upon the decision delivered by this Court in the

matter of ***Bholanath Roy vs. State of West Bengal*** reported in **(1996) 100 CAL WN 657**.

Respondent no.1 prays for dismissal of the writ petition.

Learned advocate representing the petitioner relies upon the judgment delivered by the Constitutional Bench of the Hon'ble Supreme Court in the matter of ***Ajay Hasia & Ors. Vs. Khalid Mujib Sehravardi & Ors.*** reported in **(1981) 1 SCC 722** in support of the submission that the Cooperative Society will be amenable to the writ jurisdiction.

The petitioner also relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Vidarbha Irrigation Development Corporation & Ors. Vs. Anoj Kumar Agarwala & Ors.*** reported in **(2020) 17 SCC 577** to support the maintainability of the writ petition.

Reliance has been placed by the petitioner on the decision delivered by the Hon'ble Supreme Court in the matter of ***K.K. Saksena vs. International Commission on Irrigation and Drainage & Ors.*** reported in **(2015) 4 SCC 670** wherein the Court opined that for a body to fulfil the criteria of State under Article 12 the said body should discharge public duties. Merely because the State encourages in the functioning of the body, the same by itself would not make it a public duty. The said activities are undertaken voluntarily and there is no obligation on the part of the State to discharge activities of public character.

The petitioner also relies upon the judgment delivered by the Bombay High Court in the matter of ***Ajit T.Kossambe (Dr.) vs. Goa State***

Cooperative Milk Producers Union Limited reported in **2008 SCC Online BOM 312**. The challenge in the said case was the order of termination of the petitioner with decision to abolish the post in which the petitioner was serving. Objection was raised by the respondent with regard to the maintainability of the writ. It was contended by the respondent that no writ lies against the cooperative Society. The Court opined that milk is not luxury and it is a necessity for majority of the human population. The Court was pleased to hold that the same is a public function and the writ would be maintainable.

The private respondent, whose bid has been accepted, is not represented.

The matter is yet to be heard on merits. As an issue has been raised with regard to the maintainability of the writ petition, accordingly, I propose to decide the said issue first. Only if the writ petition is found maintainable, then the other issues will be gone into.

Specific stand of the respondent no. 1 is that the same is a private body and the State does not have any role to play in the day to day functioning of the said body. The respondent no. 1 has been primarily constituted to enable the farmers at the village level to sell their products. The State merely guides the respondent no. 1 in implementation of various projects for providing social security to the farmers in the village level. The petitioner has not been able to produce any document to show that the government is involved in any of the affairs of the respondent no. 1.

In *Bholanath Roy (supra)* the employees of Gour Cooperative Milk Producers' Union Limited was the subject Cooperative Society under the West Bengal Cooperative Society Act in the district of Malda. In the instant case, the Cooperative Society is in the district of Darjeeling. The manner of functioning of the two Cooperative Societies appears to be akin to each other. The Court took into consideration various decisions of the Hon'ble Supreme Court and held that the State merely made out a project so as to enable the farmers to form Cooperative Societies at the village level so that they can sell their products to the milk union. The State merely extended help, guidance and finance so as to enable the Society to tide over their financial difficulties. Upon consideration of all facts and the position of law, the Court opined that the Milk Union is not a State within the meaning of Article 12 of the Constitution of India.

In *Vidarbha Irrigation (supra)* the Court was of the opinion that if the essential tender condition which has to be strictly complied with was not complied, the same would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a Constitutional Court. The issue of maintainability was neither raised nor discussed by the Hon'ble Supreme Court in *Vidarbha Irrigation (supra)*. The Court decided the matter on merits. Accordingly, the ratio laid down in the said case does not help the petitioner to overcome the hurdle of invoking the writ jurisdiction of the Court.

In *Ajay Hasia (supra)* the Court held that, to ascertain as to whether or not the Society will fall within the definition of 'State' the Memorandum of

Association and the Rules of the Society has to be looked into. For a Society to be treated as State, the composition of the Society is to be dominated by the representatives appointed by the government. The money required for running the Society is to be provided by the government. The Rules to be made by the Society requires prior approval of the government. The accounts of the Society are to be submitted to the government for scrutiny and satisfaction. The control of the government should be deep and pervasive. The government would have power to appoint and remove members of the Society. The government should have full control of the working of the Society.

In *Ajit T.Kossambe (supra)* the writ was held to be maintainable against the cooperative Society as the respondent Society failed to make specific pleading in the opposition that the Society does not perform any public function. The Court opined that it was necessary for the respondent to make complete disclosure of facts to controvert the assertions in the petition and bare denial or vague averments would not be sufficient. Since the respondent wanted to dispute the contention of the petitioner that the respondent performs public function, the respondent should have disputed the same by disclosing relevant facts.

The ratio laid down by the Hon'ble Supreme Court in the matter of *K.K. Saksena (supra)* does not help the petitioner in any manner. On the contrary the Court clearly held that if no public law element is involved, the writ petition will not be maintainable. By the act of the Society in not accepting the bid of the petitioner no public law element has been infringed.

In the case at hand the respondent no. 1 has categorically denied that there is any involvement of the State in the affairs of the Society. The District Magistrate only acts as Special Officer for the purpose of holding election of the Board of Directors of the Cooperative Society. Apart from providing help and guidance to the Society in implementation of various projects of the government, there is no control, far less, pervasive control of the government in the affairs of the Society.

The petitioner has filed a supplementary affidavit annexing document to show that the Managing Director of the Society is an employee of the State and is being paid from the State exchequer. It has been submitted that the District Magistrate is the person who is running the show. The District Magistrate and Collector is a member of the Board of Directors and acts as the Special Officer of the Society. The State is providing huge subsidy for running the business. Money from the State coffers is being squandered by the Society. It has been contended that on account of the activity of the District Magistrate and the Managing Director of the Society it has to be taken that the State has deep pervasive control over the affairs of the Society. Milk being an essential commodity huge public interest is involved and, accordingly, the writ petition is liable to be entertained by the Court.

A report has been filed by the District Magistrate and Collector wherein it has been mentioned that the Society was never a part of any department of the Government. The State merely extends help, guidance for implementation of various projects and finance to enable the Society to tide

over financial difficulties. The Society has its own bye-laws and the State does not have any control over the affairs of the Society.

In view of the above discussion, I am of the considered opinion that the respondent no. 1 is a private Cooperative Society and the same is not amenable to the writ jurisdiction of the Court.

As the petitioner has failed to pass the test of maintainability of the writ petition before this Court, accordingly, the Court refrains from exercising jurisdiction in the matter.

The writ petition fails and is hereby dismissed. Dismissal of the writ petition will, however, not stand in the way of the petitioner to approach the appropriate forum for remedy, if so advised.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)