

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Partha Sarathi Chatterjee

MAT 24 of 2024

With

CAN 1 of 2024

NRS Agro Pvt. Ltd.

Vs.

**Bhagirathi Co-operative Milk
Producers' Union Ltd. and others**

For the appellant : Mr. Amallesh Ray,
Mr. Dhiraj Lakhotia,
Ms. Radhika Agarwal,
Ms. Meghana Joshi,
Ms. Khushi Kundu

For the respondent nos. 1 & : Mr. Pretom Das
2 : Mr. Sandip Guha Roy

For the State : Mr. Hirak Barman,
Mr. Pradip Sarkar

Heard on : 12.06.2024 & 14.06.2024

Judgement on : 20.06.2024

MADHURESH PRASAD, J.:

1. The present intra-court appeal has been filed challenging the judgment dated 02.02.2024 passed in the writ proceedings dismissing the writ petition on the ground of the same being not maintainable.
2. The brief and relevant factual matrix of the case is that the appellant/petitioner (hereinafter referred to as petitioner) is a private company engaged in the business of processing and packaging of milk and dairy products. It responded to an Expression of Interest (EOI) published by the respondent no. 1 for packaging of minimum of 15,000 lts. of milk per day and 1,000 kg of sour curd and lassi per day, for its marketing in different stations. The petitioner emerged unsuccessful in the process. The work was awarded to private respondent no.4.
3. Being aggrieved, the petitioner approached the writ court assailing the award to respondent no. 4 on several grounds including the ground that the respondent no. 4 was lacking the requisite qualification as it did not possess the requisite dimension of land as per EOI. The respondent no. 1 appeared in the writ proceedings and raised an issue of maintainability of the writ petition under Article 226 of the Constitution of India seeking issuance of directions against a private co-operative society. The

respondent no. 1 is a registered co-operative society under the West Bengal Co-operative Societies Act, 1973 comprised of members who are farmers and cattle owners in the District of Murshidabad. It was the specific case of the respondent no. 1, private society, that it was not receiving any aid from the Government nor there was any control in the affairs of the society by the State or its authorities. The society was also not performing any public duties and, therefore, would not be amenable to writ jurisdiction under Article 226 of the Constitution of India and invocation of writ jurisdiction seeking directions against it by the petitioner was impermissible. The contention of the respondent no. 1 has been accepted and the writ petition has been dismissed giving rise to the present appeal.

4. Under the above noted circumstances, we invited the learned Counsel for the appellant to address us on maintainability of the writ petition. It is thus submitted that milk supply is a public function for public good, catering to the public need for supply of milk; and for the collective benefit of the members of the petitioner society. Averments have also been made in the writ petition regarding control by the District Magistrate, respondent no. 3 over the affairs of the co-operative society. The issue whether such a society would be amenable to the writ jurisdiction has been

answered in the affirmative by various decisions, including decision of the Bombay High Court in the case of **Ajit T. Kossambe (Dr.) Vs. Goa State Co-operative Milk Producers Union Ltd.** reported in **2008 SCC Online Bombay 312**. It is submitted that since a public function is being discharged by the society, the plea that it is not amenable to the writ jurisdiction is unsustainable and the writ court has erred in not entertaining the writ petition.

5. The learned Counsel for the appellant has also relied upon a decision in the case **Bholanath Roy & Ors. Vs. State of West Bengal & Ors.** decided on 09.11.1995 reported in **1996 (1) CLJ 502**, Apex Court decision in the case of **Jatya Pal Singh & Ors. Vs. Union of India & Ors.** reported in **(2013) 6 SCC 452**, decision of the Karnataka High Court dated 30.11.2020 in **Writ Appeal 100141 of 2020**, in the matter of **Chandrakant S/O Tammanna Majagi Vs. Karnataka State Bar Council**, the Apex Court decision in the case of **Jigyasa Yadav (minor) (through guardian/father Hari Singh) Vs. Central Board of Secondary Education & Ors.** reported in **(2021) 7 SCC 535** and a recent decision of the Hon'ble Apex Court in the case of **Kaushal Kishor Vs. State of Uttar Pradesh & Ors.** reported in **(2023) 4 SCC 1**.

6. The preliminary issue, therefore, can be determined based on a consideration whether the respondent no. 1 is discharging any public duty and would come under the expression “other authorities” used in Article 12 of the Constitution of India or the expression “any person or authority” as contemplated under Article 226 of the Constitution of India; and thus amenable to the writ jurisdiction.
7. We find from the order passed by the learned Single Judge that during the writ proceedings, the District Magistrate and Collector, respondent no. 3 filed a report wherein it is mentioned that the society was never a part of any department of the Government and the Government merely extends help and guidance for implementation of various projects and finance to enable the Society to tide over financial difficulties. The report specifically asserted that the society has its own bye-laws and the State does not have any control over the affairs of the society. This fact has been taken note of by the learned Single Judge; and is not disputed by the learned Counsel representing the appellant.
8. It is, therefore, clear that there is no Government control whatsoever let alone there being any pervasive control with respect to the affairs and functioning of the respondent Society.

9. In so far as the other aspect regarding discharge of the public duties for some collective benefit for the public, we proceeded to consider the decisions cited by learned counsel for the petitioner.

10. In so far as decision of the Bombay High Court in the case of **Ajit T. Kossambe (Dr.)**(supra), reliance placed by the learned counsel for the petitioner is misplaced for two reasons. First, it is evident from bare perusal of the judgment that unlike the present proceedings the respondents therein before the Bombay High Court did not dispute the claim of the petitioner therein by filing any response to the claim of the writ petitioner that the respondents performed a public function of supply of milk in the State of Goa. The second aspect is that the decision relied upon is a *prima facie* opinion regarding the milk supply co-operative being amenable to writ jurisdiction merely for the purpose of grant of interim relief to the petitioners therein which is evident from paragraphs 9, 17 and 18 of the report relied upon by the learned counsel, relevant extract of which reads as follows:

“9. However, at this stage, we are not inclined to go in detail on this aspect. Since prima facie, in our opinion, the respondent performs a public function that would justify interference by us in writ jurisdiction.

.....

17. The letter dated 10-7-1990 related to the appointment of the petitioner as Animal Nutrition Officer on the basic salary of Rs. 2000/- per month in the pay scale of Rs. 2000-60-

2300-EB-75-3200-100-3500. The terms and conditions of appointment enumerated in the Appointment Letter disclose that during the period of probation the services of the petitioner could have been terminated within 24 hours as also that the respondent had reserved the right to discontinue his services during or at the end of the probation period by giving 24 hours notice. The letter also discloses that the probation period was of one year from the date the petitioner was to report to duty. Further, the Office Order dated 5-1-1996 discloses that vide Resolution dated 22-12-1995 the respondent-BOD had promoted the petitioner to the post of Manager w.e.f. 1-1-1996 in the pay scale of Rs. 3000-100-3500-125-4500. Prima facie, therefore, all these facts disclose that the petitioner is a regular employee of the respondent and not the contractual employee as is sought to be contended on behalf of the respondent. As regards the decision of the Apex Court in *State of Haryana v. Satyender Singh Ratore* (supra) that was a matter where the employee was on contractual basis and in that connection the Apex Court had held that "when the factual scenario of the present case is considered in the background of legal principles set out above, the inevitable conclusion is that the High Court was not justified in interfering with the order of termination". The legal scenario which was considered by the Apex Court is clearly revealed from para 9 of the said decision. The Apex Court held that "the question whether the inquiry purportedly held provided the motive or the foundation was required to be considered by the High Court in detail". That has not been done. The question whether termination of service is simpliciter or punitive has been examined in several cases e.g. (*Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna*), 2003 (3) Bom. C.R. (S.C.) 547 : 2003 DGLS (soft) 113 : 2003 (2) S.C.C. 386 : A.I.R. 2003 S.C. 1175 and (*Mathew P. Thomas v. Kerala State Civil Supply Corporation Ltd.*)⁵, 2003 DGLS (soft) 171 : 2003 (3) S.C.C. 263 : A.I.R. 2003 S.C. 1789. An order of termination simpliciter passed during the period of probation has been generating undying debate ...". Apparently, the Apex Court was dealing with a matter in relation to a person who was either on probation or who was employed on contract basis and not a person who was confirmed on regular basis. The decision is therefore of no help. In the facts and circumstances,

therefore, as far as the contention regarding efficacious alternative remedy sought to be raised on behalf of the respondent is rejected. As far as the issue pertaining as to whether to the facts and circumstances of the case the writ would lie or not on the ground the objection is sought to be raised the issue in that regard is kept open to be decided at the stage of final hearing. Prima facie, we are convinced that the writ is maintainable and therefore Rule.

18. *In the facts and circumstances of the case, we are also inclined to grant interim relief in terms of prayer Clause (e)."*

11. We, therefore, are not persuaded by the said decision as it does not lay down any binding precedent for this court to the effect that a co-operative society like the respondent herein can be said to be discharging a public duty.

12. The other Single Judge Bench decision of the Calcutta High Court in the case of **Bholanath Roy** (supra) also, in our opinion, does not support the contention of the appellant's counsel that the respondent no.1 would be amenable to the writ jurisdiction. In the case of **Bholanath Roy** (supra), as in the instant case the cooperative society against whom relief was sought in those proceedings were extended help, guidance and finance so as to enable the farmers to form cooperative societies. The funds therein, as in the instant case, were raised by the members. Having considered this aspect of the matter, the court concluded as follows:

“42. In view of my findings aforementioned that the respondents No.5 Milk Union is not a State within the meaning of Article 12 of the Constitution of India no relief can be granted to the petitioner in this writ application.”

13. In so far as the decision in the case of **Jatya Pal Singh** (supra), we find that the petitioners therein were seeking directions against the Videsh Sanchar Nigam Limited by asserting that same was amenable to the writ jurisdiction under Article 226 of the Constitution of India. The petitioners therein raised an issue that right to communication is a facet of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The government is duty bound to ensure realization of this fundamental right. It was, thus, contended that the telecommunication service being provided would continue to be a public duty even after disinvestment.

14. After considering such arguments, the Apex Court in paragraph 53 of the said judgment has observed as follows:

“53. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or data through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 19(1)(a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information.”

15. Paragraphs 56, 57 and 58 proceeded to hold as follows:

“56. In these appeals, the claim of the appellants is that their services have been wrongly terminated by VSNL/TCL in breach of the assurances given by the Government of India and VSNL in Clause 5.13 of the shareholding agreement. If that be so, they would be at liberty to seek redress by taking recourse to the normal remedies available under law.

57. A perusal of the aforesaid documents, however, would show that VSNL had merely promised not to retrench any employee who had come from OCS for a period of two years from 13-2-2002. Such a condition, in our opinion, would not clothe the same with the characteristic of a public duty which the employer was bound to perform. The employees had individual contracts with the employer. In case the employer is actually in breach of the contract, the appellants are at liberty to approach the appropriate forum to enforce their rights.

58. We see no merit in the appeals and the same are accordingly dismissed.”

16. We, therefore, fail to appreciate how the present petitioner can find sustenance from this decision regarding maintainability of the writ petition seeking direction against a private milk supply co-operative society.

17. Insofar as the Karnataka High Court decision in the case of **Chandrakant S/O Tammanna Majagi** (supra), the petitioner’s counsel has emphasised that the writ petition was maintainable against the Bar Association. We find that the reason for holding the maintainability of the writ petition against a Bar Association

has been discussed in detail in the said judgment. Relying upon the decision of the Apex Court in (2011)13 SCC page 774 in the matter of Supreme Court Bar Association and others Vs. B. D. Koushik, the point has been considered in paragraph 15 of the decision in the case of **Chandrakant S/O Tammanna Majagi** (supra) in the following terms:

“15. The points for consideration formulated above are no more res integra as the Hon'ble Apex Court has in a catena of rulings consistently held that the central theme that requires to be looked into and ascertained is, as to whether the entity would answer the definition of "other authority" within the meaning of Article 12 and the term "any person or authority under Article 226 of the Constitution of India and thereby render it amenable to writ jurisdiction i.e., whether the said authority performs a public duty or discharges an obligation of a public character or the impugned order/proceeding is an affront to the rule of law. In our considered opinion, the answer to the above points for consideration is not far to seek. The Hon'ble Apex Court in the case of Supreme Court Bar Association and others vs. B.D. Kaushik reported in (2011) 13 SCC 774 has succinctly enunciated the concept, character and the role of the Bar Association and its unique position vis-à-vis other entities registered under the Societies Registration Act. The discussion on the subject as contained in para 27 to 29 are as under:

"27. The Supreme Court Bar Association, as the name suggests, is a society primarily meant to promote the welfare of the advocates generally practicing in the Supreme Court. The name, i.e., the Supreme Court Bar Association was formally registered under the Societies Registration Act, 1860 only on 25.08.1999. One of the prime objectives of the SCBA is to establish and maintain adequate library for the use of the members and to provide other facilities and convenience of the members. Thus, the formation of the

SCBA is in the nature of aid to the Advocates Act, 1961, and other relevant statutes including Article 145 of the Constitution.

28. *There is no manner of doubt that court annexed Bar Associations constitute a separate Class different from other lawyers' associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognized by the court concerned. Court annexed Bar Associations function as part of the machinery for administration of justice As is said often, the Bench and Bar are like two wheels of a chariot and one cannot function without the other The court annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practicing in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practicing in the court, parking place, canteen besides several other amenities. In the functions organized by the court annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration."*

Thus, having regard to the nature of activities of Court attached Bar Associations, the same being in aid of the Advocates Act and Article 145 of the Constitution of India; and considering the facilities being provided to lawyers for ensuring proper assistance

to the Court in administration of justice by the regular practitioners as officers of the Court, the Apex Court held the Bar Association to be amenable to the writ jurisdiction under Article 226 of the Constitution of India.

18. The Apex Court has thus clearly held for the reasons quoted above that the other lawyers' associations would form a distinct class and cannot be considered as performing a public duty for the reasons indicated therein. From the relevant portion extracted above, it is obvious that the nature and character of the petitioner private co-operative society supplying milk cannot be in any manner be held to be akin to the court attached Bar Association. The petitioner Co-operative Society cannot claim to be having any such character and, therefore, this decision also does not help the case of the writ petitioner.

19. In the case of **Jigya Yadav (minor) (through guardian/father Hari Singh)** (supra) relied upon by the petitioner. We find that the same also does not help the petitioner to meet the issue of maintainability of the writ petition against a private Co-operative Society. The issue in the case of **Jigya Yadav (minor) (through guardian/father Hari Singh)** (supra) and paragraphs 112 and 113 of the said judgment relied upon by the learned counsel for the petitioner is regarding the nature and

character of the Central Board of Secondary Education (CBSE for short). No parallel can be drawn by the petitioner private co-operative society with the CBSE since the Apex Court in Para 119 and 120 of the Judgment has held as follows:

“119. The argument that bye-laws of the Board are contractual elements as CBSE is a registered society unbacked by a statute cannot be accepted for at least four reasons — first, CBSE is not a private corporate body. It is a juristic person and a “State” within the meaning of Article 12, which in itself warrants its amenability to the courts including constitutional writ courts; second, the functions performed by the CBSE Board are public functions and not private functions; third, the test of “force of law” takes within its sweep the nature of rule, its authoritative impact on the subjects, nature of function performed by the rule-making body, the origin of the body, the binding value of the rules, existence of any competing set of rules and fourth, absence of statute does not automatically render the rules to be contractual terms, as already observed.

120. As in the ultimate analysis, the bye-laws operate as law, the scrutiny of this Court cannot be undermined by giving them an artificial colour. For a student enrolled with the CBSE, there is no other body of rules but the subject bye-laws for dealing with all significant aspects of her education. By now it is an established tenet that even body corporates, cooperative societies, registered societies, etc. can be declared as instrumentalities of the State, for the only reason that the outer form of organisation must not be allowed to defeat the ultimate constitutional goal of protection of fundamental rights as and when they suffer at the hands of the State, directly or indirectly. The Court ought to intervene with circumspection even when the public body derives its authority from a government resolution.”

20. The last judgment relied upon by the petitioner’s counsel in the case of **Kaushal Kishor** (supra), in our opinion, also does not

help the case of the petitioner. The said judgment is an authority on the issue whether the fundamental right under Articles 19(2) and 21 can be enforced against the person other than the State or instrumentalities. The issue being considered in the present proceedings, on the other hand is regarding petitioners alleged violation of fundamental right under Article 19(1)(c) and (g) of the Constitution of India and invocation of writ jurisdiction for issuance of an order in the nature of a writ against a private cooperative supplying milk, which as we have observed is not performing any public duty, has no Government control and not amenable to the writ jurisdiction. The reliance placed by the learned counsel for the petitioner on paragraph 83 of the said judgment, in our opinion, does not help the case of the petitioner.

21. Having considered the above citations relied by the learned counsel for the petitioner, we find that the respondent private co-operative society (petitioner) does not discharge any public duty for the collective benefit of the public. We, also find that there is no government control whatsoever into the affairs or management of the same and the society is governed by its own bye-laws.

22. We, therefore, find no reason to interfere with the decision of the learned Single Judge that the present petitioner has failed to pass the test of maintainability of the writ petition against a

private milk supply co-operative society; and, therefore, refusing to exercise the writ jurisdiction in the matter.

23. The appeal and pending applications, if any, are dismissed.

(MADHURESH PRASAD, J.)

(PARTHA SARATHI CHATTERJEE, J.)