



2024:DHC:1386



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Pronounced on: 22nd February 2024**

+ **W.P.(C) 7462/2022 & CM APPL. 22817/2022**

SUNITA SHARMA AND ORS. Petitioners
Through: **Mr.S.K. Kaushik and Mr.Shankar
Sharma, Advocates**

versus

THE DELHI STATE COOPERATIVE BANK LTD. AND ANR.
..... Respondents
Through: **Mr Rajesh Srivastava and Mr.
Gaurav Verma, Advocates for R-1
Mr.Santosh K.Tripathi, Standing
Counsel for R-2**

+ **W.P.(C) 5324/2021**

SATYAPAL SINGH Petitioner
Through: **Mr.Kshitiz Mahipal, Advocate**

Versus

**THE DELHI STATE COOPERATIVE BANK LIMITED AND
ANR** Respondents
Through: **Mr Rajesh Srivastava and Mr.
Gaurav Verma, Advocates for R-1
Mr.Santosh K.Tripathi, Standing
Counsel for R-2**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.



1. The instant batch of petitions has been dealt together by this Court since both the writ petitions involves a common issue that – whether the writ petition pertaining to service matter is maintainable against the respondent no. 1 i.e. Delhi State Cooperative Bank Limited.

W.P.(C) 7462/2022

2. The instant writ petition under Article 226 and Article 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:

*“A. That the enquires report dated 03.11.2021 passed by Sh. Anil Kumar Bansal and Smt. Nidhi Chandra and subsequent order dated 06.11.2021 passed by the Executive Sub-Committee of the bank and thereafter the order dated 22.02.2022 passed by board of directors in the appeals filed by the petitioners may kindly be set aside and the petitioners may kindly be reinstated along with their all back wages and seniorities in the interest of justice,
B. Cost of the litigation charges may also be awarded in favour of the petitioners and against the respondents.
C. Any other or further order in favour of the petitioners and against the respondents, which this Hon 'ble court may deem fit and proper in the facts and circumstances of the case may also be passed in the interest of justice.”*

FACTUAL HISTORY

3. The respondent no. 1 / Delhi State Cooperative Bank Ltd (hereinafter “respondent bank”) is a cooperative bank registered under the Delhi Cooperative Societies Act, 2003 (hereinafter “the Act”), with over 50 branches in Delhi. It has subsequently been classified as a scheduled bank and is subject to the supervision of the RBI along with its policies and procedures. The respondent no. 2/ Registrar of Cooperative Society is



the government institution that has control and oversight over Respondent no. 1.

4. Petitioner no.1 started working at the bank in the year 1993 at the post of clerk and was later promoted to the position of Assistant General Manager due to her professional effectiveness and dedication. She has been appointed as an inquiry officer in over 20 departmental investigations and has been entrusted with various significant responsibilities within the bank, such as managing industrial loans, overseeing the computerization process, implementing government schemes like ADWDR and DEAF, and leading the risk management committee. She has successfully completed these tasks to the satisfaction of higher authorities without any complaints.

5. Petitioner no. 2 started working at the bank in the year 2003 at the post of an Account Officer and was promoted to the post of Assistant General Manager at the bank. Petitioner nos. 3 and 4 started working with the respondent bank in 1997 as clerks and were later elevated to the positions of Chief Manager and Manager, respectively. Petitioner no. 3, was responsible for the branch management of Alipur of the respondent bank.

6. Petitioner no. 4 was tasked with significant responsibilities at the bank, such as computerization and re-verification of the ADWDR Scheme of the Government of India, which he successfully fulfilled to the approval of senior officials.

7. Petitioner no. 5 started working at the bank in 1995 as a clerk and was later promoted to Assistant Manager.



8. Thereafter, on 27th July 2021 the Managing Director and Managing Committee of the respondent bank issued a show cause notice on 27th July 2021 to petitioner no. 1, 2, 4, and 5, and on 23rd August 2021 to petitioner no. 3. The aforesaid notices accused the petitioners of accessing home branch accounts multiple times over a span of several years with malicious intent, sharing this information with external parties for hidden agendas, and breaching the confidentiality principle, which is detrimental to the bank's interests.

9. The petitioners responded to the show cause notices, thereby stating that they consistently kept the account holders' information confidential and never disclosed information to any unauthorised third party throughout their service. Moreover, they stated that the accusations against them are untrue, groundless, fabricated, and were manufactured with some hidden agenda. The petitioners requested copies of complaints or the basis of allegations, as well as the authentic log system, from the bank. However, the respondent bank failed to provide the said documents despite repeated requests made by the petitioners.

10. The respondent bank issued a statement of charges on 16th August 2021 against petitioner nos. 1, 2, 4, and 5, and on 6th September 2021 against petitioner no. 3. The petitioners filed reply to the aforesaid statement of charges seeking the complaints or documents supporting the charges levied. The respondent bank gave the Log System to the petitioners as evidence for allegations levied against them, which the petitioner claims were not initially created by the respondent bank's computer system.



11. The respondent bank appointed inquiry officers namely, Smt. Nidhi Chandra and Sh. Anil Kumar Bansal, who issued a letter dated 24th September 2021 for commencing the enquiry against the petitioners. In response, the petitioners sent a letter seeking the documents filed in complaint against them as well as requesting a change of inquiry officers due to lack of trust in them and doubts about the fairness and independence of the inquiries.

12. The petitioner no. 1 claimed that Sh. Anil Kumar Bansal, appointed as the investigation officer, was junior to her and his appointment as enquiry officer is unjust to the petitioner no. 1. However, vide letter dated, 30th September 2021, the respondent bank declined to remove the inquiry officer.

13. Further, the petitioners filed a civil suit numbered CS (OS) 4487/2021 titled *Smt. Sunita Sharma & Ors. vs. The Delhi State Co-operative Bank Ltd*, wherein the petitioners filed an application under Order XXXIX Rule 1 and 2 along with Section 151 of The Code of Civil Procedure, 1908 (hereinafter “CPC”) to stay the proceedings until the documents are provided to them. The bank received a notice in the aforesaid civil suit and submitted its response along with undisclosed complaints made by a third party.

14. During the pendency of the aforesaid Civil Suit, the respondent bank conducted an investigation against the petitioners without waiting for the Court's decision.

15. Consequently, the petitioners asked for the list of witnesses and their statements to be provided before the inquiry. The petitioners then attended the inquiry as scheduled. The investigators instructed them to



return and await notification by mail on their written request letters dated 1st November 2021 and 2nd November 2021. The inquiry officers provided the petitioners with a report on 3rd November 2021 containing a list of witnesses, their statements, alongwith the next hearing date. On 6th November 2021, the petitioners were served with the report and an order imposing a major penalty of two demotions at the basic pay scale for petitioners no. 1 to 3, and one demotion at the basic pay scale for petitioners no. 4 and 5.

16. During the course of the proceedings of the present writ petition and other connected matter, the learned counsel appearing on behalf of the respondent bank has raised the issue of maintainability of the instant petitions. Hence, the limited question at the instance, is whether the present petitions are maintainable and adjudicate upon the fact whether this Court has the jurisdiction to entertain the reliefs as sought by the petitioners.

PLEADINGS BEFORE THIS COURT

17. The petitioner has contended the following grounds on the aspect of maintainability:

- a. *That the respondent No. 2 is the RCS Office which is controlling and observing authority of the bank with regard to -administration and the writ is filed against respondent no. 2 — also which does fall under the definition of state as provided under article 12 of constitution of India.*
- b. *That the respondent No. 1 (herein after called the bank) is an - Apex Co-operative Bank which maintains the accounts of all co-operative societies. being the mother banks of all cooperative and Thrift and Credit societies hence it cannot be said that the bank is mere a co-operative society.*



- c. *That all urban Thrift and Credit Societies. of Delhi are to maintain the reserve fund in the account of respondent No. 1 as per DCS Act itself and not in any other bank. Furthermore, the respondent No. 1 is maintaining the individual loan account of private customers in addition to the accounts of its | members / loanee members. .*
- d. *That the bank was constituted with the major share holding of © the Govt. of NCT of Delhi at the time of its constitution and — even the Delhi Gazetteer report of 1960-61 reflects that the share capital of the Govt. Of NCT was 66.4 % in the bank. (Copy of Delhi Gazetteer report of 1960 ~ 61 is attached as ANNEXURE P/1)*
- e. *That the bank is using the words “ The Delhi State “ in its name itself which is not permitteidn any corporation except to the state instrumentalities as per Company Act also. (Copy ’ of extract of Company Act is attached as ANNEXURE P/2).*
- f. *That the Gazetteer of Govt. Of NCT of Delhi which is issued by Delhi Administration includes the name of bank as Govt. established institution which is being refinanced by the Govt. of Delhi. (Copy of Gazetteer is attached as ANNEXURE P/3) g.*
- g. *That the directory of National Federation of the State Cooperative Bank Ltd. (NAF SCOB) reflects that out of total borrowings of Rs.1045 lakhs, Rs. 1042 lakhs has been. _ received from RBI and NABARD by the bank. (Copy of | directory of NAFSCOB is attached as ANNEXURE P/4) |*
- h. *That the government has appointed three members in the committee which are appointed in case the share capital held by the government is 51 % or but less than 60 % of the total _ issued share capital as per section 35 (10) (C) of Delhi Cooperative Societies Act. Three members in management ~ committee and Managing Director / CEO as appointed in the bank as per DCS Act is only to control the bank being the bank of major share holding by the Government of Delhi.*
- i. *That upto 1979-80 there was a share capital of Rs.40.30 lakh was of Delhi Government out of Rs.86.83 lakh and the*



same was Rs.60.03 lakh out of Rs.142.90 lakh in 1984-85 as per Delhi Gazetteer report. .

- j. That the bank is printing diaries in thousands and calendars in lakhs in which the bank is writing that “ The Delhi Government is the main / major share holder of the bank ” and the same has been written in all branches and in the Head Office of the bank. (Copy of diaries and photograph is attached as ANNEXURE P/5).
- k. That the bank is covered under the SARFESAI , CERSAI Act and hundreds of cases have been filed by the bank against its customers.
- l. That the employees of the bank have been and are being sent on deputation to the State Govt. and the Union Govt. departments and even the employees of State Govt. and Union Govt. have been sent in the bank on deputation which is permissible within the departments of the State Governments and Union Governments as per service rules _ and is not permissible in the private institutions / departments. (List of deputation employees is attached as ANNEXURE P/6) .
- m. That the bank is the public authority which is performing the public duties as an Apex Bank in entire Delhi through it's around 50 branches.
- n. That the writ petition civil no. 6767 of 2021 against the bank is still pending and being adjudicated by the Hon'ble Division Bench of this Hon'ble Court. (Copy of writ petition attached as ANNEXURE P/7) .
- o. That the bank has been constituted and working as per entry no. 45 of List 1 of Seventh Schedule of Constitution of India.
- p. That the bank has become Scheduled Bank now as per which it has to maintain the reserve fund with the RBI and ail policies and guidelines of the RBI are applicable to the bank being the direct supervision and control of the RBI Furthermore, the policies and rules applicable to the Nationalised Banks are applicable to the respondent no. 1 also after becoming the Scheduled Bank. (Copy of RBI notification is attached as ANNEXURE P/8).



- q. That as per Annual Reports. published and distributed by the bank reflects the Govt. Of NCT as major share holder of the bank in its share capital. (Copy of annual report is attached as -_ANNEXURE P/9).
- r. That the rule 58 of the DCS Act 2003 stipulates that the MD of the bank shall be appointed with prior approval and consultation of the Govt. of Delhi which is stipulated in respect of this bank only and not for any other co-operative society means thereby the government has the direct control - over the management of the bank. The rule 58 of DCS Act is read as under:

“58. Constitution and Strength of committee of Financing Bank .

1) Subject to the provisions of section 35 of the Act ‘and notwithstanding anything contained in the bye-laws of the financing bank, the maximum strength of the committee shall be nineteen including two Government nominees (one from co-operative department and one from Finance department) nominated by the government and one nominee from NABARD. The Managing Director / Chief Executive Officer of the bank would act as member secretary of the committee in consultation with government. The remaining sixteen - - directors shall include five institutional directors and eleven elected directors.”

The point no. 44 of the bye-laws of the bank also says that the Managing Director and General Manager shall be appointed ‘in consultation with the Delhi_ Administration.

- s. That the bank is not mere co-operative society but is a distinguished Apex Co-operative institution as provided under section 74 of the DCS Act.
- t. That the constitution of the bank is as per specific enactment and under the control and supervision of NABARD which is the statutory authority as per NABARD Act.
- u. That the government of Delhi is having the share in the respondent bank and no government can have the share in a private institution.



- v. *That the directory of Govt. institution issued by the Delhi Government includes the name of respondent no. 1 bank as government institution. (Copy of Delhi Government directory attached as ANNEXURE P/10).*
- w. *That the vehicles purchased by the bank for official purpose and for the use of management committee are being plied with the tag as "GOVERNMENT OF DELHI" on it. The photograph of vehicle with registration no. is attached herewith. (Photograph of vehicles attached as ANNEXURE P/11).*
- x. *That the officials of the bank have been appointed as Assistant Collectors Grade ~ II for execution of awards by the Hon'ble LG of Delhi which can only be appointed in the financial institution coming under the control of Delhi Government as the Assistant Collectors have been appointed . from the officials of DCHFC in which the Government of Delhi has approximate 96 % shares and from 'the officials of The Delhi State Co-operative Bank Ltd. only. (Copy of order of Hon'ble LG for appointment of bank officials as Assistant Collector is attached herewith as ANNEXURE P/12).*
- y. *That the bank comes under the direct control of the RBI and NABARD (being the subsidiary of RBI) which proves from the fact that the RBI has imposed a monetary penalty of Rs.30.85 Lakh upon the bank vide order dated 19.12.2022 due' to the illegalities and misdeeds of the management of the bank for the financial year ending on 31 March 2020. The order dated 19.12.2022 of RBI is attached herewith. (Copy of RBI ~ order is attached as ANNEXURE P/13).*
- z. *That the government schemes are being implemented through the bank as such are being implemented through the Nationalised Bank."*

18. The respondent no. 2/ Registrar of Co-operative Society by way of their counter-affidavit has taken the following grounds in order to address the question of maintainability:



"Petitioner claims to be employed with Respondent no.1 Bank and averments made in the entire writ Petition are with respect to their services and subsequent termination with Respondent no.1 Bank. The Answering Respondent has no role whatsoever in the reinstatement or their back wages and seniorities The relevant provision of DCS Act 2003 and DCS Rules 2007 applicable are as under:

Section 135

"The Government shall as soon as may be after the commencement of the Act, direct all co operative societies or class of co-operatives to frame service rules for their employees and get them approved from the committee within a period of three hundred and sixty-five days."

Rule 166

"The committee shall frame service rules for its employees with regard to service matter viz. recruitment rules of all categories of posts, terms and conditions of appointment, leave, promotion, avenues of each category, education qualification, pay structure, retirement age, annual assessment report, conduct rules, disciplinary procedure for delinquent employees advance admissible to employees, medical reimbursement facilities, benefit on death of an employee during service, leave travel concession"

19. The respondent bank has filed a judgment compilation on the aspect of maintainability.

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20. The instant writ petition under Article 226 and Article 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:

"a)Issue a writ of Certiorari (along, with consequential reliefs) or any other appropriate writ orderidirection in the nature of writ of Certiorari to Respondent no. I for quashing/setting aside the order dated 10.03.2021 along



*with the disciplinary proceedings thereby reinstating the Petitioner into service with all consequential benefits; or,
(b) Issue a Writ of Mandamus or any other appropriate writ directing the Respondent no. 2 for taking necessary action to discharge the responsibility of erring officials of Respondent no. 1 to take appropriate action as per law
(c) Pass any other order(s) to direct the Respondent no. 1 for granting the cost of litigation to the Petitioner.
(d) Pass such other fit and proper orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

FACTUAL HISTORY

21. The petitioner was working with respondent bank as its employee. The respondent bank served the petitioner a show cause notice on 6th January, 2021, accusing him of stealing a lock. The notice also mentioned the petitioner took frequent leaves, a written complaint of insubordination dated 31st December, 2020, and multiple complaints and penalties during the petitioner's service.

22. The petitioner was directed to provide an explanation within 15 days to the aforesaid show cause notice accordingly, the petitioner filed its reply to the show cause notice on 3rd February, 2021.

23. The respondent bank proceeded to issue a chargesheet to the petitioner on 25th January 2021, which contained the statement of charges, statement of allegations, statement of imputation and other related documents in this regard.

24. The petitioner responded to the aforesaid chargesheet vide reply dated 4th February, 2021, wherein the petitioner denied all the accusations related to the alleged theft of a bike chain lock.

25. The petitioner's counsel sent a legal notice dated 5th February,



2021 to inform the respondent bank about harming the petitioner's reputation and demanding payment for damages.

26. The petitioner was summoned to appear at the office of the respondent bank on 23rd February 2021 at 11:00 am, vide letter dated 17th February, 2021. Accordingly, the petitioner and his lawyer were physically present at the specified time.

27. The petitioner's counsel submitted a letter dated 26th February, 2021 to inform the respondent bank that the petitioner had the right to refuse to engage in further inquiries without being satisfied with the requisite documents linked to the inquiry.

28. On 26th February, 2021, the petitioner filed a civil suit titled "Satyapal Singh vs. The Delhi State Cooperative Bank Ltd" bearing CS no. 5182021, seeking a permanent and mandatory injunction in their favour to prevent any investigation against the petitioner. The petitioner was notified of their dismissal from services with immediate effect vide order dated 10th March, 2021.

29. Eventually, the petitioner withdrew the suit for injunction on 17th March, 2021. The petitioner sent a letter to respondent No. 2/The Registrar of Co-operative Societies, regarding the alleged arbitrary and biased departmental proceedings against the Petitioner.

PLEADINGS BEFORE THIS COURT

30. The petitioner has contended the following grounds on the aspect of maintainability:

"It wrong and denied that the present writ petitioner is not maintainable as the respondent no. 1 is neither a State nor any public authority within the meaning of Art. 12 of the Constitution of India. The respondent no.1 has wrongly



interpreted the Hon'ble Supreme Court Judgment in the matter of Thalappalam Ser. Coop. bank Ltd. & Ors V/s State of Kerala & Ors (2013) 16 SCC 82 in which the Hon'ble Supreme Court held that the Cooperative Societies which are not received any aid or financial help from the state whereas, in the present case, the state of NCT Delhi had approx. 20% share in the respondent Bank's capital and the respondent and comes under the control and supervision of Reserve Bank of India and as such the above said judgment is per in curium in the present writ petition. Against the aforesaid falsehood of the respondent no 1, the case under Section 340 CrPC is under consideration in WP(c) 14917/2021 Delhi State Cooperative Bank Ltd. Vs. Central Information Commission and others. Even in the service case of another employee Virender Singh (WP (C) (a) 6002/2021 Delhi State Cooperative Bank vs. National Commission for Scheduled Castes), the bank chairman, has lied about the implementation of the reservation system in the bank and even denied the subsidy/ funding of NABARD or the state government. After which the said employee of the bank has filed a case against the bank chairman for making false statement on the record of the court under Section 340 w/f s/u 195(1)(b). Also, this lie of the bank has not been accepted in the case of WP (c) 70/2021 Virendra Singh Vs Delhi State Cooperative Bank and CS SCJ/1234/2020 VIRENDER SINGH Vs THE DELHI STATE COOPERATIVE BANK LIMITED THROUGH ITS MD. Despite this, instead of debating the real issue in the present case, the former counsel for the plaintiff and the defendants deliberately conspired to keep the plaintiff entangled in the legal web and also wasted the precious time of the Hon'ble Court.

31. The respondent bank has pleaded the following grounds on the aspect of maintainability :

"b. That on 20.04.2011 this Hon'ble Court in Writ Petition held that petitioner bank is not a 'State' within the meaning of



Article 12 of the Constitution of India. A true copy of the order dated 20.04.2011 passed by this Hon'ble Court in W.P. (C) No.105/2010 is annexed herewith and marked as Annexure R1/1.

c. That the present Writ Petition is not maintainable as petitioner has alternate remedy available under Delhi State Cooperative Bank Ltd. service rules 2016. Chapter IV of the said rules is applicable in the present case and part II appeals rule 4.17

provides that an employee shall have right to file appeal against any order passed by superior authority which affect his interest. In the present case the petitioner has a remedy available under rule 4.18 to file an appeal before the Board of Director. The petitioner having failed to avail of the remedy available under the rules cannot maintain the present Writ Petition and same deserves to be dismissed on this ground alone. The copy of relevant rules is reproduced along with the Counter Affidavit as Annexure R1/2."

32. The petitioner in rejoinder made the following submissions wrt maintainability:

"d. The supervision of the Respondent No. 1 is being controlled and governed by Respondent no.2 and its official with the powers and responsibility, being an instrumentality of the "State" within the meaning of Article 12 of the Constitution of India to provide every such information as demanded by the Petitioner on the representations made time and again where it is so mentioned de hors any statutory and/or other power to do so;

e. The illegality and arbitrariness of the Respondent No.2 by not providing any help to the Petitioner who was doing the Job of Security Guard and thereby terminating him without following the principles of Natural Justice and thereafter the Respondent No.2 aiding them by turning a blind eye to the said act of Respondent no.2 and thus being hand in glove with them acted in dereliction to statutory duty to do so."



SUBMISSIONS BEFORE THIS COURT

33. This Court has cumulatively recorded the submissions of the both the writ petitions.

(on behalf of the respondent)

34. Learned counsel appearing on behalf of the respondent bank submitted that the instant petition is not maintainable since, the respondent bank is not amenable to the jurisdiction of writ court in a service matter.

35. It is further submitted that the actions of the bank with regard to the dispute between the respondent bank and its employees fall within the ambit of private law since, there is no breach of any public duty or legal right of the petitioners.

36. It is submitted that the instant petition is filed for the enforcement of contract of service of the petitioner since the petitioners in the instant petition are the employees of the respondent bank. Hence, the instant writ petition has no element of enforcing of private duty as mandated by the statute.

37. It is submitted that the respondent bank is not an authority within the realm of Article 12 of the Constitution of India since the service conditions of the employees of the respondent bank are framed by the Board of Directors i.e., Managing Committee of the Society and exercising its powers under the bye-laws of the Society and the said aforesaid bye-laws are not statutory in nature.

38. It is further submitted that the affairs of the respondent bank are administered by its management in accordance with the consent of its



members. Moreover, as per Section 30 of the Act the ultimate authority in a co-operative society is vested with the General Body of the members of the Co-operative Society.

39. It is further submitted that merely because the respondent bank is performing banking functioning, would not make its amenable to writ jurisdiction under Article 226.

40. It is submitted that the petitioners had an alternate remedy available under Delhi State Cooperative Bank Ltd. Service Rules 2016 wherein Chapter IV of the said rules in its part II provided for a mechanism of appeals. As per the aforesaid rules, it is mandated an employee of the respondent bank shall have right to file appeal against any order passed by superior authority which affect his/her interest.

41. The learned counsel for the petitioner has placed reliance on following judgments in order to strengthen his argument that the respondent bank does not fall within the definition of “authority” as per Article 12 and hence, is not amenable to the writ jurisdiction:

- Anand Prakash Versus The Delhi State Cooperative Bank Ltd. & Anr.¹
- Sukhbir Singh Gouchwal Versus The Delhi State Co-operative Bank Ltd. and Ors.²
- Vinay Kumar Tyagi Versus Harijan Sevak Sangh & Ors.³
- Mohinder Singh & Ors. Versus O.P. Khatria⁴

¹ W.P. (C) No. 105/2010 dated 20th April 2011 (Delhi High Court)

² W.P. (C) No. 6205/2018 dated 10th November 2021 (Delhi High Court)

³ 2004 (74) DRJ 542

⁴ ILR 1994 (I) Delhi



42. Learned counsel appearing on behalf of the respondent no. 2 submitted that the petitioners are employed by respondent bank and were terminated by the respondent bank. Hence, the respondent no. 2 had no involvement in decisions regarding the petitioners' reinstatement, back wages, or seniority.

43. It is submitted that the Delhi Act 2003 and Delhi Cooperative Society Act Rules 2007 enunciates that the requirement for cooperative societies to establish service rules for their employees, covering various aspects such as recruitment, terms of employment, promotion, disciplinary procedures, and benefits.

44. It is submitted that there is no deep and pervasive control of the State in the functioning of the respondent bank and the decisions pertaining to the service-related matters of employees lies with the managing committee of the respondent bank.

45. In view of the aforesaid submissions, the learned counsel appearing on behalf of the respondent submitted that instant writ is not maintainable and liable to be dismissed.

(on behalf of the petitioner)

46. *Per Contra*, learned counsel appearing on behalf of the petitioner opposed the averments raised by the respondent and submitted that the respondent bank, is the apex co-operative bank responsible for managing the accounts of all co-operative societies and overseeing all cooperative as well as thrift and credit societies, it cannot be considered merely a co-operative society.



47. It is submitted that as per the Act all urban thrift and credit societies in Delhi are required to maintain their reserve fund in an account with respondent bank, and not with any other bank. The respondent bank manages individual loan accounts of private customers alongside the accounts of its members.

48. It is submitted that the respondent bank was formed with a significant shareholding from the Government of NCT of Delhi at its inception. Even the Delhi Gazetteer Report of 1960-61 indicates that the state government's share in the bank stood at 66.4%.

49. It is submitted that the bank includes the words “The Delhi State” in its name, which is not permitted for any corporation except state instrumentalities according to the Company Act, 2013.

50. It is submitted that the Gazette of the Government of NCT of Delhi, issued by the Delhi Administration, lists the respondent bank as a government established institution that receives refinancing from the Government of Delhi.

51. It is submitted that the directory of the National Federation of the State Cooperative Bank Ltd. (NASCOB) shows that out of the total borrowings of Rs.1045 lakhs, the bank has received Rs.1042 lakhs from the Reserve Bank of India and NABARD.

52. It is submitted that the Government has appointed three members in the committee which are appointed in case the share capital held by the government is 51% or but less than 60% of the total issued share capital as per Section 35(10)(c) of Delhi Cooperative Societies Act. Three members in management committee and Managing Director/CEO as



appointed in the bank as per DCS Act are only to control the bank, having major shareholding by the Government of Delhi.

53. It is submitted that up to the year 1979-80, the share capital of the Delhi Government amounted to Rs. 40.30 lakh out of a total of Rs. 86.83 lakh and in the year 1984-85, this share capital had increased to Rs. 60.03 lakh out of Rs. 142.90 lakh in the respondent bank, as reported in the Delhi Gazetteer.

54. It is submitted that the respondent bank is covered under the SARFAESI Act, 2002 and the CERSAI Act, 2002 and hundreds of cases have been filed by the bank against its customers.

55. It is submitted that employees of the respondent bank have been and are being sent on deputation to the State Government and Union Government departments. Similarly, employees from State Government and Union Government departments have been sent to work in the bank on deputation. This practice is allowed within the departments of State Governments and Union Governments as per service rules but is not permissible in private institutions or departments.

56. It is submitted that the respondent bank is a public authority that performs public duties as an Apex Bank throughout Delhi, operating approximately 50 branches.

57. It is submitted that the respondent bank has been constituted and operates in accordance with Entry No. 45 of List 1 of the Seventh Schedule of the Constitution of India.

58. It is submitted that the respondent bank has attained the status of a Scheduled Bank, requiring it to maintain the reserve fund with the RBI. Additionally, all policies and guidelines of the RBI are applicable to the



bank, as it falls under the direct supervision and control of the RBI. Furthermore, after becoming a Scheduled Bank, the rules applicable to nationalized banks are also applicable to respondent bank.

59. It is submitted that the Annual Reports published and distributed by the respondent bank reflect the Government of NCT as the major shareholder in its share capital.

60. It is submitted that Rule 58 of the Act 2003 specifies that the Managing Director of the bank shall be appointed with the prior approval and consultation of the Government of Delhi. This rule applies specifically to this bank and not to any other cooperative society, indicating direct control by the Government over the bank's management. Additionally, Rule No. 44 of the bye-laws of the bank states that the Managing Director and General Manager shall be appointed “in consultation with the Delhi Administration”.

61. It is submitted that the bank is not merely a cooperative society but is recognized as a distinguished Apex Cooperative institution under Section 74 of the Act.

62. It is submitted that the constitution of the bank is in accordance with a specific enactment and is under the control and supervision of National Bank for Agriculture and Rural Development (NABARD), which is the statutory authority as per the NABARD Act, 1982.

63. It is submitted that the Government of Delhi holds shares in the respondent bank. Typically, no government can hold shares in a private institution.



64. It is submitted that the directory of government institutions issued by the Delhi Government includes the name of respondent bank as a government institution.

65. It is submitted that vehicles purchased by the bank for official purposes and for the use of the management committee are being used with the tag "Government of Delhi" on them.

66. It is submitted that officials of the bank have been appointed as Assistant Collectors Grade-II for the execution of awards by the Lieutenant Governor of Delhi. These appointments can only be made in financial institutions under the control of the Delhi Government. Assistant Collectors have been appointed from officials of DCHFC, in which the Government of Delhi holds approximately 96% shares.

67. It is submitted that the respondent bank is under the direct control of the RBI and NABARD, a subsidiary of RBI. This is evident by the fact that RBI imposed a monetary penalty of Rs. 30.85 lakh on the bank, as per the order dated 19th December 2022, due to illegalities and misdeeds of the bank's management for the financial year ending on 31st March 2020.

68. It is submitted that government schemes are being implemented through the bank, similar to how they are implemented through nationalized banks.

69. In view of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant writ is maintainable, and reliefs as sought in the instant petition may be granted.

ANALYSIS AND FINDINGS



70. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

71. It is the case of the respondent bank that the instant petition is not maintainable since, the government exercises no deep and pervasive control in the functioning of the bank. The management of the respondent bank manages the affairs of the bank in accordance with the consent of the members of the bank. It further submitted by the respondent bank that the instant petition pertains to a private dispute between the employees of the respondent bank and the bank. There is no ounce of public functionality or public duty involved in the same therefore, the instant petition is liable to be dismissed on ground of maintainability.

72. The respondent no. 2 submitted in this regard that no relief has been sought *qua* respondent no. 2 and it has no deep and pervasive control in the functioning of the respondent bank's functioning.

73. The short question for adjudication in the instant petition is that – *whether the respondent bank is amenable to the writ jurisdiction of Court in the instant writ petition which involves a service dispute.*

74. Before advertent on the merits of the instant petition, this Court finds it apposite to discuss the settled law with regards to the maintainability of writ petition pertaining to service matter against the cooperative bank.



75. Under Article 226 of the Constitution of India, any authority which falls under the definition of State under Article 12 of the Constitution of India is subject to the writ jurisdiction.

76. Article 12 of the Constitution of India has defined the term “State” as follows:

“12. Definition.—In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

77. On a perusal of the above provision, it is apparent that the term “State” is considered of utmost importance where the term “State” includes the following: (i) the Government and Parliament of India: (ii) the Government and the Legislature of a State; (iii) all local authorities; and (iv) other authorities within the territory of India, or under the control of the Central Government.

78. In the said provision, apart from the term “other authority”, the other terms are self-explanatory where the term local authority has also been defined under General Clauses Act, 1897. The Hon’ble Supreme Court has held that if a corporation is an instrumentality or agency of the government, it would be subject to the same constitutional or public law limitation as on the government itself.

79. At this juncture, it is apposite for this Court to delve into the aspect whether the instant writ petition pertaining to service matter is maintainable against the respondent bank. This Court will discuss the settled position of law in this aspect.



80. The Hon'ble Supreme in the judgment of ***Kulchhinder Singh v. Hardayal Singh Brar***⁵, wherein the Hon'ble Court adjudicated upon the fact whether a writ pertaining to service matters can be entertained against the cooperative society. The relevant portion of the judgment is reproduced herein below:

"8. The question as to whether a cooperative society is a public authority has fallen for judicial notice and Amir Jamia [ILR 1969 Del 202] contains an elaborate discussion of the controversial topic covering decisions, English and Indian. It is also true that at least Madhya Pradesh (Dukhooram [Dukhooram Gupta v. Cooperative Agricultural Association Ltd., AIR 1961 MP 289]) and Calcutta (Madan Mohan [Madan Mohan Sen Gupta v. State of W.B., AIR 1966 Cal 23]) have considered whether a writ will issue against a cooperative society, simpliciter. Kumkum Khanna [ILR (1976) 1 Del 31] deals with a private college governed by a university ordinance.

9. Many other rulings have also been brought to our notice, but we do not think it necessary elaborately to investigate these issues notwithstanding the fact that Shri Gupta, appearing for the contesting respondent, challenged each one of the grounds stabilising his submission on rulings of this Court, of the High Courts and the English courts.

10. The reason why we are not inclined to add to the enormous erudition on the point already accumulated in case law is that a close perusal of the writ petition will disclose that essentially the appellant is seeking merely to enforce an agreement entered into between the employees and the cooperative bank.

11. There is no doubt that some of the legal problems argued by Sri Ramamurthy deserve in an appropriate case jurisprudential study in depth, although much of it is covered by authority. But assuming, for argument's sake, that what

⁵ (1976) 3 SCC 828



he urges has validity, the present case meets with its instant funeral from one fatal circumstance. The writ petition, stripped of embroidery and legalistics, stands naked as a simple contract between the staff and the society agreeing upon a certain percentage of promotions to various posts or an omnibus, all-embracing promise to give a quota to the existing employees. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellent is that the remedy of Article 226 is unavailable to enforce a contract qua contract. We fail to see how a supplier of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Article 226 in the event of a breach of a contract, bypassing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction.

12. The controversy before us in substance will turn on the construction and scope of the agreement when the claim to a quota as founded cannot be decided in writ jurisdiction without going back on well-settled guidelines and even subverting the normal processual law — except perhaps in extreme cases which shock the conscience of the Court or other extraordinary situation, an aspect we are not called upon to explore here. We are aware of the wide amplitude of Article 226 and its potent use to correct manifest injustice but cannot agree that contractual obligations in the ordinary course, without even statutory complexion, can be enforced by his short, though, wrong cut.”



81. The Hon'ble Supreme Court in the aforesaid judgment enunciated that the dispute pertaining to the service conditions of the cooperative society is not amenable to the writ jurisdiction since, there is no element of public duty involved. Such kinds of disputes are of private nature and do not fall within the ambit of the writ jurisdiction.

82. The Hon'ble Supreme Court has further reiterated the concept of "public duty" regarding which a writ may be entertained by the Court under Article 226 of the Constitution of India, in the judgment of ***Binny Ltd. v. V. Sadasivan***⁶

"9. The superior court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction the High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing a public law function. Before considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subba Rao, J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in Dwarkanath v. ITO [(1965) 3 SCR 536 : AIR 1966 SC 81] (SCR, pp. 540 G-541 A):

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide

⁶ (2005) 6 SCC 657



language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

10. The writ of mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the Sovereign to subordinates. In England, in early times, it was made generally available through the Court of King's Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporations which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of





justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the Administrative Law (9th Edn.) by Sir William Wade and Christopher Forsyth (Oxford University Press) at p. 621, the following opinion is expressed:

“A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases.”

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public



function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. 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. In a book on Judicial Review of Administrative Action (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:

“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. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides ‘public goods’ or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure



compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."

X X X

21. Another decision on the same subject is *G.M., Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad* [(2003) 8 SCC 639] . The appellant was a cooperative society and was engaged in the manufacture of sugar. The respondents were the workers of the appellant and they filed various writ petitions contending that they had to be treated as permanent workmen. The appellant challenged the maintainability of those writ petitions and applying the principles enunciated in *VST Industries case* [(2001) 1 SCC 298 : 2001 SCC (L&S) 227] , it was held by this Court that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function.

X X X

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to





discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. 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. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p. 682,

“1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.”

There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

83. The aforesaid principle of law has been recently discussed in the judgment of ***Ramakrishna Mission v. Kago Kunya***⁷

“29. More recently in K.K. Saksena v. International Commission on Irrigation & Drainage [K.K. Saksena v.

⁷ (2019) 16 SCC 303



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.

X

X

X

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.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved.

36. For the above reasons, we are of the view that the Division Bench of the High Court was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an authority within the meaning of the Article.

37. For the reasons that we have adduced above, we hold that neither the Ramakrishna Mission, nor the hospital would constitute an authority within the meaning of Article 226 of the Constitution.

38. Before concluding, it would be necessary to also advert to the fact that while the learned Single Judge had come to the conclusion that the appellants are “State” within the meaning of Article 12, the Division Bench has not accepted that finding. The Division Bench ruled, as we have noticed earlier, that the appellants do not fall within the description of “State” under Article 12. This finding has not been challenged before this Court by the State of Arunachal Pradesh.



39. Even otherwise, we are clearly of the view that the tests which have been propounded in the line of authority of this Court in Ajay Hasia v. Khalid Mujib Sehravardi [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] , Pradeep Kumar Biswas v. Indian Institute of Chemical Biology [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] and Jatya Pal Singh v. Union of India [Jatya Pal Singh v. Union of India, (2013) 6 SCC 452 : (2013) 2 SCC (L&S) 617] support the conclusion of the High Court that the appellants are not “State” within the meaning of Article 12 of the Constitution of India.

40. For the above reasons, we allow the appeal and set aside the judgment and order of the High Court dated 6-4-2018 in Writ Appeal No. 25 (AP/2017). In consequence, the writ petition filed before the High Court, namely, WP (Civil) No. 520 (AP/2015) shall stand dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.”

84. It is a settled position of law that for any other authority to fall within the domain of the writ jurisdiction it should be discharging a “public duty” and the dispute between the parties shall persist regarding the non- performing of such public duty. It is pertinent to note that the Hon’ble Supreme Court has time and again reiterated that when the dispute pertains to the service matters and there is no element of public duty involved in it, then the dispute falls within the domain of private dispute and is not amenable to the jurisdiction of the writ Court.

85. Now this Court will discuss the judgments passed by this Court wherein the writ petition filed against the respondent bank has been held as non- maintainable.



86. The Coordinate Bench of this Court in the judgment of **Chander Bhan v. Delhi State Co-Operative Bank Limited**⁸ has held that the respondent bank is not amenable to the writ jurisdiction. The relevant portion of the judgment has been reproduced herein below:

“9. In my considered opinion, in the facts and circumstances of the present case it is not necessary to consider the question as to whether the respondent No. 2 being a Society could be characterised as a State within the meaning of Article 12 of the Constitution of India, for in the present case the petitioner has sought to enforce a statutory public duty and he is entitled to get the same enforced against the Society. The petitioner has served the institution namely—the respondent No. 2 and has retired from the service on completion of his age of superannuation. No proceeding was drawn-up against the petitioner before his retirement relating to any misconduct. It transpires from the record that there are certain allegations against the petitioner, but only because of the fact that there are certain allegations against him he could not be deprived from getting the retiral benefit particularly when no proceeding was drawn up against him in accordance with law. When a person is allowed to retire from service on reaching the age of superannuation without recording any blemish against him he is entitled to receive all his retiral benefits in accordance with law. A statutory public duty is cast on the respondent to pay the retiral benefits to the petitioner at the end of his service career and upon his superannuation and when the petitioner has sought to enforce the said statutory public duty as against the respondent Bank, a writ could be issued to the petitioner to enforce such a right of the petitioner.

10. In that view of the matter the writ petition stands allowed....”

⁸ 2002 SLR 1 490



87. The Coordinate bench of this Court has put a nip in the bud by the judgment of **Anand Prakash v. The Delhi State Co-Operative Bank Ltd. & Anr.**⁹ wherein it was held that the writ petition against the respondent bank is not maintainable as follows:

“10. I have put to the counsel for the petitioner whether, if a private company instead of framing its own rules adopts the rules aforesaid applicable to the government servants to its employees, a writ petition would lie against the private company also. The counsel for the petitioner has fairly stated that it would not be. Similarly, merely because a Society adopts the rules applicable to Government servants to its own employees would not convert the said Co-operative Society into Government. The said contention of the petitioner is thus rejected.

11. Similarly, merely because the respondent is performing banking function would also not make the writ petition maintainable. It is not shown that the function so performed by the respondent is monopolistic. According to the document handed over by the petitioner himself there are as many as 32 Co-operative Societies in Delhi performing the banking functions. This is besides the other banks operating in Delhi. Thus the said ground for maintainability of the writ petition is also rejected.”

88. In the aforesaid judgment, the Coordinate Bench of this Court addresses two arguments put forth by the petitioner regarding the maintainability of the writ petition. *Firstly*, the Court questions whether the mere adoption of rules applicable to government servants by a private company or a society would warrant the filing of a writ petition against them. The petitioner's counsel conceded that this would not be the case. Similarly, the Court notes that simply because a society adopts rules

⁹ 2011 SCC ONLINE DEL 1841



applicable to government servants for its own employees does not automatically transform the society into a governmental entity. Thus, the court rejects the petitioner's contention based on this argument. *Secondly*, the petitioner argues that the respondent's engagement in banking functions should make the writ petition maintainable. However, the Court disagreed with the aforesaid contention of the petitioner and held that the mere performance of banking functions by the respondent does not automatically justify the filing of a writ petition.

89. The Court highlights that the banking function performed by the respondent is not monopolistic, as evidenced by the existence of 32 other cooperative societies in Delhi engaged in similar banking activities, along with other banks operating in the region. Therefore, the Court rejects this ground for the maintainability of the writ petition as well. Hence, the Court dismissed both arguments presented by the petitioner regarding the maintainability of the writ petition, finding them insufficient to warrant legal intervention against the respondent.

90. Now this Court will adjudicate upon the issue whether the disputes pertaining to service conditions of the respondent bank is amenable to the writ jurisdiction.

91. The respondent bank, being a Cooperative Society, is governed by a Board of Directors in the management of its affairs and the said Board of Directors in normal course of events is an elected Board as per the Act. Thus, the respondent Bank has a democratic control and the final authority of the respondent Bank pertaining to the service conditions of its employee's vests with the management of the respondent bank. Hence,



there is no deep and pervasive control of the State in the appointment of the respondent bank's employees.

92. The learned counsel for the petitioner has relied on the judgment of the Division Bench of this Court in the case of *Mrs. Kanak Rastogi v. Delhi Co-operative Bank Ltd. & Anr.*¹⁰ in support of his contention that the writ against the respondent bank is maintainable. *Mrs. Kanak Rastogi (Supra)* has placed on the judgment of *Kuldip Mehta v. Union of India*¹¹ wherein the Division Bench of this Court held that while adjudicating upon a writ under Article 226, the High Court shall not distinguish between the public function and the private function of the authority concerned. In this regard, this Court distinguishes the judgment on the ground that the Hon'ble Supreme Court has time and again held that a writ can be issued against an authority only with regards to public duty performed by it.

93. This Court distinguishes the instant writ petition on the ground that an authority is amenable to the writ jurisdiction only with respect to its public duty. In the instant petition, the dispute between the employee of the respondent bank and the respondent bank is of private nature, hence there is no public duty involved.

94. In the case of the respondent bank was not created as a result of a legislation and it owes its origin a particular statute, therefore, it is pertinent to differentiate between an institution which is not created by or under a statute but is covered by certain statutory provisions for the

¹⁰ W.P(C) 112/1993 dated 6th January 1993 (Delhi High Court)

¹¹ CWP no. 2414/1991 dated 12th March 1991 (Delhi High Court)



proper maintenance and administration of its affairs and the one which is created by the statute.

95. This Court opines that the petitioners are the employees of the respondent bank, however, there is no ounce of public duty performed by them. They are performing the functions as a regular employee of a bank. Hence, the dispute between the respondent bank and its employees is one of private nature therefore, not amenable to the writ jurisdiction.

96. In view of the aforesaid discussion, it can be elucidated that the dispute of employees of the respondent bank are not amenable to the writ jurisdiction of this Court and the functions performed by them are neither of monopolistic nature nor it is a public duty.

97. It is pertinent to note that the petitioner had an alternative remedy of filing appeal wrt to the decision of the respondent bank, the petitioners in the instant batch of petitions have not approached the authority for the same instead directly approached this Court under its writ jurisdiction.

98. In the instant petition, the respondent bank/Delhi State Co-operative Bank is governed by Act, since the service conditions of the employee of the respondent bank are framed by the Board of Directors i.e., Managing Committee of the respondent bank in exercising its powers under the bye-laws of the respondent bank and the aforesaid bye-laws are not statutory in nature.

99. Accordingly, the instant batch of writ petitions pertaining to a service dispute between the employees of the respondent bank and the respondent bank is a dispute of private nature; hence it is not amenable to writ jurisdiction.

CONCLUSION



100. The interpretation of the amenability of an authority has evolved over a period of time where the judicial dictum, at various instances has decided for inclusion or exclusion of various authorities under Article 12 of the Constitution of India.

101. The settled position of law regarding exclusion of disputes pertaining to service matter which does not involve any public duty being discharged by the authority is not covered under the ambit of Article 226 of the Constitution of India. The aforesaid position has been made clear by the Hon'ble Supreme Court in the cases as discussed above.

102. A cooperative bank's employee is neither a State nor the function performed by it can be covered in the aspect of a public function. Moreover, there is no violation of any statutory provision when there is a dispute pertaining to the dispute between the bank and its employees.

103. The instant batch of writ petition along with the pending applications, is accordingly disposed of, granting liberty to the petitioners to take recourse to remedies available before a Competent Forum.

104. The time period for which the writ petition has been pending in this Court shall be excluded for the purpose of computation of limitation in case, since the petitioners may seek any remedy by instituting fresh proceedings before a Competent Forum, then the question of limitation may arise.

105. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 22 , 2024
Dy/db/da

W.P.(C) 5324/2021 & 7462/2022

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