

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

HEARD ON: 21.03.2025, 06.02.2026 & 18.02.2026
DELIVERED ON: 18.02.2026

CORAM:
THE HON'BLE JUSTICE PARTHA SARATHI SEN
WPA 444 of 2017
With
I.A. No. CAN 1 of 2019 (Old CAN 8127 of 2019)
Sri Pinaki Dutta
Versus
Eastern and North EAST
Frontier Railway Co-operative Bank
Limited & Ors.

Appearance:-

Mr. Yashraj Royfor the petitioner

Mr. Ayan Banerjee

Ms. Debasree Dhamali

Ms. Riya Ghosh

Ms. Deblina Ghoshfor the respondent nos. 1, 2 & 3

JUDGEMENT (ORAL):

PER, PARTHA SARATHI SEN, J.:-

1. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities, commanding them to set aside and/or quash and/or rescind the charge sheet dated 29.09.2014, the order of impugned judgment dated 27.08.2015 and the order of the appellate authority dated 17.10.2016.
2. At the time of hearing, Mr. Banerjee, learned advocate, duly assisted by Ms. Dhamali, learned advocate appearing on behalf of the respondents raises the question of maintainability of the instant writ petition and urged before this Court that the maintainability point, as raised by them may be decided first.

3. As agreed, the instant writ petition is taken up for hearing on the point of maintainability.
4. At the time of argument, Mr. Banerjee, at very outset, draws attention of this Court to the writ petition, as filed by the writ petitioner. It is submitted that from the prayer portion of the instant writ petition, it would reveal that the writ petitioner is aggrieved with the order of punishment dated 27.08.2015, as has been passed by the disciplinary authority and as has been affirmed by the appellate authority.
5. Drawing attention to the cause title of the writ petition, it is argued by Mr. Banerjee that since it is the specific case of the writ petitioner that the writ petitioner is an employee under the respondent no.1/cooperative society bank, by no stretch of imagination, it can be said that the respondent no.1/cooperative society bank is an authority under Article 12 of the Constitution of India and thus, on this score alone, the instant writ petition may be held to be not maintainable.
6. It is argued by Mr. Banerjee that a similar question arose before a coordinate Bench of this Court in **W.P. 6161(W) of 2016 (Sri Saptarshi Basu vs. Union of India & Ors.)**. It is submitted that by an order dated 19.04.2016, the said coordinate Bench considering the every pros and cons of the matter, as involved in the said writ petition, came to a finding that the said writ petition is not maintainable against the respondent/co-operative society, which is the main respondent in the instant writ petition.
7. In course of his submission, Mr. Banerjee also places reliance upon the judgment, as passed in the case of **S.S. Rana vs. Registrar, Coop. Societies**

& Anr. reported in **(2006) 11 SCC 634** and **Thalappalam SER. Coop. Bank Ltd. vs. State of Kerala** reported in **2014(1) CHN (SC) 44**.

8. It is submitted on behalf of the respondent/co-operative society bank that from the materials, as placed before this Court, it would reveal that the respondent/cooperative society bank is not a creature of a statute and on the contrary, the said co-operative society bank was constituted by the active participation of the railway employees in terms of the provisions of the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as the '**Act 39 of 2002**' for short).
9. It is further contended by Mr. Banerjee that sufficient materials have been placed before this Court to substantiate that over the respondent/cooperative society bank, there was neither direct nor indirect control of the railway authority and thus, by no stretch of imagination it can be said that the function and affairs of the society is akin to public function, as has been discharged by an authority within the meaning of Article 12 of the Constitution of India.
10. It is further submitted by Mr. Banerjee that the respondent/cooperative society bank is also not within the ambit of Right to Information Act (**'RTI Act'** in short) and thus, the respondent/cooperative society bank did not fall within the categories of section 2(h) of the RTI Act, which deals with the definition of 'public authority'.
11. Placing his reliance upon the judgment in the case of **Sandip Biswas vs. State of West Bengal & Ors.** reported in **2010 (2) CHN (CAL) 399**, as passed by a Division Bench of this Court, it is further submitted by Mr. Banerjee that nothing could be placed before this Court to substantiate that

the parameters, as set up by the Hon'ble Apex Court in the case of ***Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology*** reported in ***(2002) 5 SCC 11*** vis-à-vis in the case of ***Ajay Hasia vs. Khalid Mujib Sehravardi*** reported in ***(1981) 1 SCC 722*** in order to come within the definition of 'State' within the meaning of Article 12 of the Constitution of India is applicable in the case of the respondent no.1/ cooperative society bank.

12. In course of his submission, Mr. Banerjee also draws attention of this Court to paragraph 7 of the affidavit in reply, as has been used by the writ petitioner. It is submitted by Mr. Banerjee that though a case has been made out by the writ petitioner that the respondent no.1/ cooperative society bank is situated at the railway premises and its Chief Executive Officer is appointed by the railway authority and further since the employees of the respondent no.1/cooperative society bank gets railway pass from the Indian Railway Authority, however, in absence of any proof of any deep or pervasive control of the railway authority over the respondent/cooperative society bank, there cannot be any justification to hold that the respondent/cooperative society bank is an authority within the meaning of Article 12 of the Constitution of India.

13. At this juncture, attention of this Court is drawn to section 49 of the Act 39 of 2002, which deals with powers and functions of the board, as defined in section 3(b) of the said Act. It is submitted by Mr. Banerjee that on careful perusal of section 49 of Act 39 of 2002, it would reveal that it is the board to appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive. It is, thus, submitted by Mr. Banerjee that the proper interpretation of section 49 of the

Act 39 of 2002 clearly indicates that the respondent no.1/cooperative society bank is practically run by its board, which is an independent body having no control of the railway authority. It is, thus, contended on behalf of the respondents that the instant writ petition may be dismissed on the ground of maintainability.

14. *Per contra:* Mr. Roy, learned advocate for the petitioner in course of his submission, at the very outset, draws attention of this Court to page no. 40 of the instant writ petition, being a copy of the charge-sheet dated 29.09.2014, as has been issued by the Chief Executive Officer of the respondent no.1 co-operative society bank. It is argued that from the very first line of the charge-sheet, it would reveal that the respondent authorities by issuing the said charge-sheet, proposed to hold an inquiry against the writ petitioner as per Railway Servants (Discipline and Appeal) Rules, 1968. It is submitted that this averment clearly indicates that the respondent no. 1/cooperative society bank applies the Discipline and Appeal Rules of the Railway Authority, which clearly indicates that the respondent no.1/cooperative society bank is practically discharging the function of an authority within the meaning of Article 12 of the Constitution of India.

15. In course of his submission, Mr. Roy also places his reliance upon the affidavit in reply filed by the writ petitioner. It is argued by Mr. Roy in paragraph 7 of the affidavit in reply as filed by the writ petitioner, it has been specifically contended by the writ petitioner that from the materials placed before this Court, it would reveal that the Chief Executive Officer of the respondent no. 1 co-operative society bank is a high official of the railway authority, who is deputed to the respondent no. 1 co-operative society bank to

discharge his function as Chief Executive Officer thereof, which again indicates that the respondent no. 1 is an authority under Article 12 of the Constitution of India inasmuch as a public servant cannot be deputed to an organisation, which is either non-Governmental in nature or an organisation, which does not discharge public function. It is, thus, submitted that there cannot be any justification to hold that the respondent no. 1 co-operative society bank is not an authority within the meaning of Article 12 of the Constitution of India.

16. To substantiate his contention, Mr. Roy places his reliance upon office order dated 18.02.2014, as issued by the Chief Personnel Officer, Eastern Railway Authority. It is submitted by Mr. Roy that from the said office order dated 18.02.2014, it would reveal that the authority, which issued the charge-sheet, was posted as Chief Executive Officer of the respondent no. 1 while holding the post of Deputy CPO (Con.)/ Eastern Railway.
17. Mr. Roy places his reliance upon clause 103(43) of the Indian Railway Establishment Code. It is submitted by Mr. Roy that clause 103(43) of the said Code clearly defines a railway servant and indicates that railway servant means not only a person, who is a member of the service but also a person, who holds a post under the Administrative control of the railway board including a person, who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board.
18. It is submitted by Mr. Roy that on joint perusal of clause 103(43) of the said Code vis-à-vis the office order dated 18.02.2014, it would reveal that the charge-sheet issuing authority being the Chief Executive Officer of the respondent no.1/cooperative society bank comes within the purview of the

definition of railway servant and therefore, there cannot be any justification to take a contrary view that the said Chief Executive Officer of the respondent no. 1 and/or the respondent no. 1 co-operative society bank do not discharge its public function.

19. It is further argued by Mr. Roy that the Railway Servants (Discipline and Appeal) Rules, 1968 is made applicable to the employees of the respondent no. 1/ cooperative society bank and therefore, in essence, the employees of the respondent no. 1/ cooperative society bank comes under the purview of the employees of an authority within the meaning of Article 12 of the Constitution of India.
20. In course of his submission, Mr. Roy places his reliance upon the judgment, as passed in the case of ***U.P. State Cooperative Land Development Bank Ltd. vs. Chandra Bhan Dubey & Ors.*** reported in ***(1999) 1 SCC 741.***
21. It is further submitted by Mr. Roy that in the reported decision of ***Chandra Bhan Dubey & Ors. (supra)***, the Hon'ble Apex Court had occasion to consider the genuine feature of an organisation, where a Government sends one of its employees on deputation to head a body or institution not controlled by that Government even though the employee may be paid out of the funds of that body or institution in absence of any specific provision of law so entitling the Government. It is contended on behalf of the writ petitioner that in the said reported decision of ***Chandra Bhan Dubey & Ors. (supra)***, the Hon'ble Apex Court also observed that when an organisation and its employees had statutory protection and they are covered by the Rules of the said organisation, there cannot be any difficulty to hold that the action of

such an authority and/or organisation is amenable to the writ jurisdiction of this High Court under Article 226 of the Constitution of India.

22. It is, thus, submitted by Mr. Roy that the point of maintainability, as raised on behalf of the respondents may not be considered favourably.

23. This Court has given its due consideration over the submissions of the learned advocates for the contending parties. This Court has meticulously gone through the entire materials, as placed before this Court.

24. On careful perusal of the entire materials, as placed before this Court and after hearing the learned advocates for the contending parties, this Court, at the very outset, proposes to look to the provisions of section 49 of Act 39 of 2002, which reads as under:

“49. Powers and functions of board

(1) The board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

(2) Without prejudice to the generality of the foregoing powers, such powers shall include the power-

(a)

(aa).....

(b)

(c)

(d) to appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive;

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m)"

25. On careful perusal of the aforementioned statutory provisions, it thus, appears to this Court that it is the legislative mandate that the board, which

runs a multi-State Cooperative Society has the power to appoint and remove a Chief Executive and such other employees of the Society, as are not required to be appointed by the Chief Executive.

26. At this juncture, if I look to the office order dated 18.02.2014, as placed before this Court by Mr. Roy in course of his argument, it is clear that the authority, which issued the charge-sheet in the name of the writ petitioner was at that material point of time was posted as Chief Executive Officer of respondent no.1 co-operative society bank and at that time his designation was Deputy CPO(Con)/Eastern Railway.

27. At this juncture, the moot question arises for consideration before this Court is as to whether the appointment of the Chief Executive Officer by the railway authority of the respondent no.1/ cooperative society bank brings the respondent no.1/ cooperative society bank within the purview of Article 12 of the Constitution of India.

28. In considered view of this Court, the said core issue has been duly addressed by the Hon'ble Apex Court in the case of **Ajay Hasia (supra)**, as has been quoted in paragraph 13 of the reported decision of **Sandip Biswas (supra)**.

29. In considered view of this Court, paragraph 13 of the reported judgment of **Sandip Biswas(supra)** is required to be looked into and the same is quoted hereinbelow in verbatim:

“13. As pointed out by the Supreme Court in the case of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology, reported in 2002 (5) SCC 111, in deciding a question as to whether a non-statutory society would come within the definition of a “State” within the meaning of Article 12 of the Constitution of India, the following six tests as laid down by the Apex Court in the case of Ajay

Hasia vs. Khalid Mujib Sehravardi, 1981(1) SCC 722, must be satisfied:

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

(2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

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

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

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government."

30. Keeping in mind the parameters, as fixed by the Hon'ble Apex Court in the case of **Ajay Hasia (supra)** and as has been reproduced in the decision of **Sandip Biswas (supra)**, if I look to the factual aspects of this case, it appears to this Court that no material could be placed on behalf of the writ petitioner that entire share capital of the respondent no.1/cooperative society bank is either held by the Government or the said cooperative bank, at all gets any financial assistance from the Railway. It does not transpire to this Court that any material has been placed before this Court that over the functioning of the respondent no.1 co-operative society bank, any control, either active or

passive of the railway authority is there. On the contrary, *prima facie* materials have been placed before this Court on behalf of the respondent authorities by filing affidavit in opposition categorically indicating that the respondent no.1 co-operative society bank is basically a private bank, which is registered under the Act 39 of 2002 and that there is no deep and pervasive control of the Government/railway authority over the functioning of the respondent no.1 co-operative society bank.

31. Such being the position, this Court has got no hesitation to hold that the writ petitioner has miserably failed to substantiate that the criteria, as fixed by the Hon'ble Apex Court in the case of **Ajay Hasia (supra)** is attracted in relation to functioning of the respondent no.1 co-operative society bank.
32. This Court has meticulously perused the reported decision of **Chandra Bhan Dubey & Ors. (supra)**, as has been cited on behalf of the writ petitioner. This Court has also noticed that in the subsequent judgment of **S.S. Rana (supra)**, wherein the Hon'ble Apex Court had occasion to consider the case of **Chandra Bhan Dubey & Ors. (supra)** and in doing the same, the Hon'ble Apex Court in the case of **S.S. Rana (supra)** distinguished the judgment of **Chandra Bhan Dubey & Ors. (supra)** by holding that the Cooperative Bank Limited in the case **Chandra Bhan Dubey & Ors. (supra)** was a creature of the statute.
33. As already observed by this Court that no material could be placed before this Court that the respondent no.1 co-operative society bank is creature of a statute; on the contrary, there are sufficient averments in the affidavit in opposition on the part of the respondent authorities that such cooperative

society bank has been created by the employees of the railway authorities and the same has been registered under the Act 39 of 2002.

34. This Court has also noticed that the earlier judgment as passed by a coordinate Bench of this Court in the case of **Sri Saptarshi Basu(supra)**, wherein the said coordinate Bench categorically held that mere registration of a cooperative bank from a public body does not make that organisation as an authority under Article 12 of the Constitution of India in absence of any proof that such an authority, though private in nature, discharges public functions or duties.
35. In considered view of this Court, there cannot be any justification to make a departure from the view taken by the earlier coordinate Bench in the case of **Saptarshi Basu (supra)** especially in the light of the observation, as taken by the Hon'ble Apex Court in the reported judgments of **S.S. Rana (supra)** and **Thalappalam SER. Coop. Bank Ltd. (supra)**.
36. In view of the discussions made hereinabove, this Court is thus, constrained to hold that the writ petitioner has miserably failed to prove that the respondent no.1/cooperative society bank comes within the periphery of Article 12 of the Constitution of India and thus, this Court holds that the instant writ petition is not maintainable.
37. In view of such, W.P.A. 444 of 2017 is dismissed as not maintainable. Connected application is also dismissed.
38. There shall be, however, no order as to costs.
39. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(PARTHA SARATHI SEN, J.)

