

(2002) 05 JH CK 0031
In the Jharkhand High Court
Case No : LPA No. 106 of 1997 (R)

Abdul Gaffar and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 01-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 05 JH CK 0031

Hon'ble Judges : M.Y. Eqbal, J;H.S. Prasad, J

Bench : Division Bench

Advocate : Nitu Sinha and Amitabh, for the Appellant; D. Roshan, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the counsel for the parties.

2. This appeal is directed against the judgment dated 14.1.1997 passed in CWJC No. 3090/95R where the writ petition filed against the respondent-Bihar State Milk Producers Federation, has been dismissed as not maintainable. The impugned order dated 14.1.1997 reads as under :--

"Heard learned counsel appearing on behalf of the petitioner and Mr. Tapen Sen, the learned counsel appearing on behalf of the respondent No. 2 and 3 onwards.

In the facts and circumstances of this case, this writ application is not maintainable against respondent Nos. 2 to 3 who are admittedly not State under Article 12 of the Constitution of India. This application is, accordingly dismissed.

However, if so advised, the petitioner may agitate the matter before appropriate forum."

3. From perusal of the counter affidavit it appears that no stand was taken by the respondent-Federation that the writ application is not maintainable. On the contrary the petitioner had earlier filed a writ petition being CWJC No. 2275/94

which was entertained by this Court and by order dated 9.1.1995 the same was disposed of with certain direction. In compliance of the said direction the respondents considered and disposed of the claim of the petitioners by office order dated 1.3.1995 which was impugned in the writ application out of which this appeal arises.

4. In the supplementary affidavit filed by the appellants it is stated that the Government has admitted that the respondent-Federation is a Government sponsored agency with 98% equity. It has also taken notice of the fact that the Managing Director of the Federation is IAS Officer appointed by the Government.

5. The learned single Judge dismissed the writ petition in limine observing that the respondent is not a State. Recently in the Biscoman's case 2000 (4) PLJR 273, a Full Bench of the Patna High Court has held that even a society registered under the Co-operative Societies Act, in certain circumstances, will be held to be an instrumentality of the State. Recently also in the case of Gagandeep Pratishthan Pvt. Ltd. and Others Vs. Mechano and Another, , the Apex Court has laid down certain guidelines which has to be considered before holding an institution or a society to be a State.

6. In our opinion, the matter needs consideration. This appeal is, therefore, allowed. The impugned order dated 14.1.1997 passed in CWJC No. 3090/95 (R) is set aside and the matter is remitted back to the learned single Judge for reconsideration of the matter and for disposal of the writ application in accordance with law.