
(1989) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 7004 of 1988 and 10230/87

Andhra Pradesh Dairy Development Co-operative Federation
Ltd. Workers Union

APPELLANT

Vs

Guntur Dt. Milk Producers Cooperative Union Ltd.

RESPONDENT

Date of Decision : 16-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 12(3), 18(3), 19(2), 2, 25F

Citation : (1989) 2 APLJ 455 : (1990) 1 LLJ 367

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Judgement

1. This common judgment will dispose of both the writ petitions as they are interconnected. The petitioner in WP No. 7004/88 is the Andhra Pradesh Dairy Development Co-operative Federation Ltd. Workers" Union represented by its General Secretary and the respondent is the Guntur District Milk Producers" Co-operative Union Limited (Sangam Dairy) represented by its General Manager. On 23rd March, 1985, a settlement u/s 12(3) of the Industrial Disputes Act. 1947, was reached between the management of the Sangam Dairy and the petitioner-union and another union by the name Bharatiya Mazdoor Sangh, both registered unions. The Sangam Dairy was declared as a public utility service as stated in the memorandum of settlement. The settlement reached between the parties covers nine matters; paragraph 4 which concerns with the seniority list of workers employed on Nominal Muster Rolls (NMRs) reads as follows :

"The management have also agreed to prepare the seniority list of the workers working on nominal muster rolls before the end of April, 1985, and fix up to notice board under copy to the Unions. Preference would be given to the NMR workers in the matter of any regular appointments in the Dairy provided they fulfil the requisite qualifications as per Rules."

Besides the parties to the settlement, the memorandum was also signed by the

Deputy Commissioner of Labour, Guntur, the Conciliation Officer, as a result of whose endeavours the settlement could be reached. The seniority list of NMRs who worked during the period from 1st January, 1980 to 23rd March, 1985 was communicated on 6th January, 1986 to the petitioner-Union and the employees' associations attached to the Sangam Dairy. Subsequently, by circular No. 4145/A1-2/87, dated 3rd July, 1987, the seniority of NMRs was adjusted on the basis of the number of days the NMRs worked for the period from 1st September, 1986 to 30th June, 1987 and it is also mentioned in the circular that as per the above seniority the NMRs would be appointed depending upon the exigencies of the work. Except those whose services were terminated due to specific reasons, all the other NMRs will continue to figure in the seniority list, the circular stated. The petitioner-Union is challenging the legality of the circular dated 3rd July, 1987 contending that the basis for preparation of the seniority list was the number of days the NMRs worked between 1st January, 1980 and 23rd March, 1985, and that basis was arbitrarily and without any authority of law altered by the impugned circular under which the principle for fixation of seniority is the number of days the NMRs worked from 1st September, 1986 to 30th July, 1987. The settlement dated 23rd March, 1985 did not contemplate year-wise seniority lists; what it envisaged was the seniority list of NMRs drawn up on the basis of the number of days they worked during the period from 1st January, 1980 to 23rd March, 1985 and that list is intended to be acted upon until such time all the NMRs are regularly absorbed or the basis is altered by another settlement. The incident of the number of days the NMRs worked during the period 1st September, 1986 to 30th June, 1987 as contemplated by the impugned circular should not result in disturbing the earlier seniority list. The petitioner asserts that the respondent is "the State" within the meaning of Article 12 of the Constitution of India, its entire administrative and financial control is vested in the State Government and, therefore, it is amenable to the jurisdiction of the Court under Article 226 of the Constitution. The petitioner is, therefore, seeking a writ of mandamus declaring that the impugned circular is illegal, arbitrary and without jurisdiction and consequently the services of the NMRs should not be terminated based on the said circular. In the counter-affidavit filed on behalf of the respondent a preliminary jurisdictional question is raised; the respondent is only a Society registered under the Andhra Pradesh Co-operative Societies Act in the year 1978 and the composition of its membership comprises the co-operative milk producing societies within the territorial limits of Guntur District. It is neither an instrumentality of the State nor is there any deep and pervasive Governmental control. It is managed by a Board of Directors with a Chairman at its head. The Board consists of 17 members of whom 13 are Presidents of co-operative societies. One is a delegate of the National Dairy Development Board, one is a District Co-operative Officer (Ex-Officio), one is a representative of the Andhra Pradesh Dairy Development Co-operative Federation and the other is the General Manager. Even from a functional point of view the activities carried on by the respondent being purely commercial in nature, they do not satisfy the tests answering the description of an instrumentality of the State. As regards the

merits of the case, it is averred in the counter-affidavit that there is no threat of termination of the NMR workers and therefore, the writ petition is premature. The principle of "Last Come First Go" is adopted having regard to the exigencies of the seasonal nature of the industry. The NMR workers are employed to meet additional work-load arising during "flush season commencing from October and ending in May of every year". For smooth and effective implementation of the seniority of NMRs, a circular enumerating certain modalities basing on the principle of "First Come Last Go" was issued on 28th August, 1986 under which the seniority is subject to revision every year basing on the "number of days worked by the NMRs by the end of June, which was the financial year for the Union," and accordingly a fresh list was published on 14th July, 1987.

2. The petitioners in W.P. No. 10230/87 are two NMRs and the respondent is the Sangam Dairy. They contend that the NMRs are workers entitled to the protection of the Industrial Disputes Act and without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, their services cannot be terminated. They assert that they worked for more than 240 days and, therefore, if their services should be terminated, they are entitled to retrenchment compensation. They assert that there are vacancies in the respondent-organisation and therefore, they should not be deprived of their employment. The respondent issued a circular on 28th April, 1987. Seeking to replace NMRs with permanent staff. In the seniority list of NMRs, the claim that their names are shown against Nos. 107 and 125 respectively and that seniority is sought to be disturbed by preparing another list. They are, therefore, seeking a declaration for regularisation of their services and that without following the procedure prescribed under the Industrial Disputes Act, their services should not be terminated. In the counter-affidavit filed by the respondent, it is stated that because of the revision of the seniority list their ranks were altered; during the period between 1st September 1986 and 30th June, 1987, the first petitioner worked only for 193 days and the second petitioner for 177 days and, therefore, in the revised seniority list prepared on 14th July, 1987 "their seniority had fallen". Depending upon the increase in additional work-load, the NMRs will be absorbed. As there was no retrenchment, it is pleaded, that Section 25-F of the Industrial Disputes Act has no application.

3. The first question that arises for consideration is whether the writ petitions are maintainable against the respondent-Sangam Dairy-a society registered under the Andhra Pradesh Co-operative Societies Act, One of the pleas raised is that the impugned circular being arbitrary is violative of Article 14 of the Constitution.

4. The fundamental rights guaranteed under Part III of the Constitution of India are available against actions of the State. Article 13(1) enjoins that all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of Part III shall be void to the extent of such inconsistency. Clause (2) mandates that the State shall not make any law which takes away or abridges the rights conferred by Part

III and any law made in contravention of Clause (2) shall be void. The inclusive definition of "law" as per sub-clause (a) of Clause (3) of Article 13, inter alia, encompasses bye-laws, rules and regulations. Article 12 defines "the State"; it is an inclusive definition. "Unless the context otherwise requires", says Article 12, "the expression "the State" occurring in Part III "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". For the enforcement of the rights conferred by Part III and for any other purpose, every High Court is empowered under Article 226(1) to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, to any person or authority, including in appropriate cases, any Government, within its territorial jurisdiction.

5. The question whether "the person or authority" to whom a writ of mandamus can issue under Article 226 should necessarily come within the ambit of Article 12 was considered by the Supreme Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, . "An order of mandamus", the Supreme Court held (p. 754) :

"is, in from a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibility. (Cf. Halsbury's Laws of England (3rd Ed) Vol. II, p. 52 and onwards)."

Oftentimes a doubt is raised that the *Praga Tools Corporation's* case (supra) is an authority for the proposition that against a company, a non-statutory body, no writ lies. This view is not correct. In the *Praga Tool's* case, a mandamus was sought to set aside a settlement reached between the company and the worker's union, under which the company was obligated to retrench 92 workmen. As there was no statutory or public duty imposed upon the company forbidding it from implementing the conditions of the settlement, the relief of mandamus sought was negated and this is very clear from the following observations at page 754 :

"The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for the enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of

mandamus could lie against the company".

6. In *Ramana Dayaram Shetty v. International Airport Authority of India* (1979 II LLJ 2170, Bhagwati, J. (as he then was), adverting to a similar argument and referring to the *Praga Tools*" case clarified the position thus (p. 235) :

"It is difficult to say how this decision (the *Praga Tool*"s case) can be of any help in deciding the present issue before us. This was not a case where *Praga Tools Corporation* claimed to be an instrumentality of Government or an "authority" within the meaning of Article 12. The only question was whether a writ of mandamus could lie and it was held that since there was no duty imposed on *Praga Tools Corporation* by statute, no writ of mandamus could issue against it".

7. In *T. Gattaiah and Others Vs. Commissioner of Labour and Another*, P. A. Choudary, J. considered the question whether a writ of mandamus could issue against the *IDL Chemicals Ltd.*, Hyderabad, a company incorporated under the Companies Act, declaring that the lay-off and the retrenchment brought about by it were in violation of the provisions of the Industrial Disputes Act, therefore, the same being void, the company should continue them in service with back wages. After considering elaborately the precedents, including the *Praga Tools*" case, bearing on the question and also the views of celebrated publicists like Prof. de Smith, the learned Judge held at page 63 in paragraph 28 :

"It is, therefore, clear that a writ of mandamus would lie against the respondent-company to compel it to carry out directions of the Parliamentary enactment contained in Chapter V-B of the Industrial Disputes Act. But because mandamus is a public law remedy, its use is governed by considerations which are peculiar an appropriate for the exercise of such public law remedy. In this case, there is no doubt that Chapter V-B of the Industrial Disputes Act imposes a public duty on the respondent-company not to retrench the petitioners except in accordance with the conditions laid down by the Parliament. Those limitations are conceived not merely in the interests of individual workmen but in the general interest of industrial peace. In an unreported judgment in W.P. No. 3086 of 1978, this Court has held that Chapter V-B of the Industrial Disputes Act imposes public duties on the manufacturing concerns. Following that, I hold that the respondent-company is under a public duty to observe those conditions mentioned in Chapter V-B of the Industrial Disputes Act. If so, for the reasons which are mentioned above, I hold a that a writ of mandamus should issue against the respondent-company not to retrench the petitioners except in accordance with the conditions laid down by the Parliament."

The correctness of this view was challenged in *IDL Chemicals limited v. T. Gattaiah* (Writ Appeal No. 1681 dated 4-12-1981) and a Division Bench comprising Alladi Kuppaswami CJ and P. Ramachandra Raju J, affirmed the view of P. A. Choudary J. The Division Bench held :

"This is not a case of a single employee or a few of employees whose terms of service were affected by an order of Corporation. This is a case where a large

number of workmen were retrenched contrary to the provisions of the statute. We therefore feel that this is a case where there is a breach of statutory duty or public duty and this is not a case of interfering merely with contractual rights."

His Lordship Jagannatha Shetty J., speaking for a Division Bench of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, after referring to the observations in *Praga Tools*" case quoted with approval the view of Prof. de Smith. (pp. 330-331) :

"To be enforceable by mandamus a public duty does not necessarily have to be one imposed by a statute. It may be sufficient for the duty to have been imposed by charter, common law or even contract".

and observed :

"The judicial control over the fast expanding maze of bodies affecting the rights of people should not be put into water-tight compartments. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226."

8. If the respondent-society is an authority falling within the ambit of Article 12, it will be amenable to the jurisdiction of this Court under Article 226, since the grievance of the petitioner-Union is that the impugned circular being arbitrary, is violative of Article 14 of the Constitution of India. Alternatively, even if it is not an authority under Article 12, still a mandamus can issue to the respondent-society if it is under a public duty to implement the settlement dated 23rd March 1985.

9. At the threshold, a judgment of the Division Bench in *V. Narasing Rao v. Prudential Co-operative Bank* 1981 (1) ALT 300 was cited in support of the proposition that no writ will lie against a co-operative society. In *Narasingh Rao*'s case, the petitioner, an employee of Prudential Co-operative Urban Bank Ltd., a society registered under the Co-operative Societies Act, challenged the legality of the order of dismissal issued pursuant to a disciplinary enquiry. The Division Bench after analysing the structure and the composition of the bank and after referring to certain precedents bearing on the question, held that Prudential Co-operative Bank was not an "authority" under Article 12 nor the provisions of and Act or Rules were breached, since the conditions of service of the petitioner were governed by bye-laws, which were held to be non-statutory in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, . The Division Bench further held at page 303 :

"There can hardly be any dispute that a co-operative society does not satisfy the requirements of an authority. Neither it exercises a quasi-governmental function nor can its revenue be called public revenue."

Having stated so clearly the legal proposition, Division Bench again observed :

"It cannot, therefore, be stated as a rule of law that a writ does lie, or does not lie, against a co-operative society. Before answering the said question one has to make a further enquiry, viz., what is it that the petitioner is seeking to enforce by way of writ petition ? It is the nature of the power/function/duty that is decisive. For example, if what is sought to be enforced is a statutory obligation of a public nature a writ in the nature of mandamus will issue against a co-operative society. Similarly, where a writ is sought to quash quasi-judicial order passed by a co-operative society, a writ in the nature of certiorari would lie. These instances mentioned by us are not meant to be exhaustive-only illustrative"

And thus declared the susceptibility of a co-operative society not only to a mandamus but also certiorari, a writ available only against a person or authority falling under Article 12. The two statements of law are apparently inexplicable and incongruous. I am conscious of the fact that judgments are not interpreted like statutes, nonetheless there is no foundation in the fact that law-precedents, binding or persuasive-that every co-operative society is not an authority under Article 12 and, therefore, not amenable to the writ jurisdiction under Article 226.

10. *Som Prakash v. Union of India* (), while dealing with the question whether Bharat Petroleum Corporation Ltd. is "the State" under Article 12 and, therefore, amenable to the jurisdiction of the Supreme Court under Article 32, his Lordship Krishna Iyer, J., speaking for the Division Bench, after elaborately discussing the legal position, did not rule out the possibility of a co-operative society answering the description of "authority" contemplated in Article 12. The learned Judge, while "decocting" the relevant tests laid in *R. D. Shetty*'s case observed (p. 93) :

"The following factors have been emphasised in that ruling as telling, though not clinching. These characteristics convert a statutory corporation, a Government company, a co-operative society and other registered society or body into "a State" and they are not confined to statutory corporations alone."

The legal obligation of the National Agricultural Co-operative Marketing Federation of India (NAFED) to comply with the policy guidelines issued by the Government of India for purpose of allowing exports by private parties within certain ceiling limits came up for consideration before the Supreme Court in *Ajoomal Lilaram and Another Vs. Union of India (UOI) and Others*, . The Supreme Court issued directions compelling the NAFED to comply with the Government of India's guidelines. The NAFED was held to be "a State" within the meaning of Article 12 by a Division Bench of the Madras High Court in *A.M. Ahamed and Co., Madras and Others Vs. Union of India and Others*, .

11. The Delhi High Court in *D. C. Kapoor v. A. K. Aggarwal* 1989 Lab. & IC 940 ruled that the National Co-operative Consumer Federation of India, a society registered under the Bombay Co-operative Societies Act, is "a State" within the meaning of Article 12.

12. A purely private corporation-Shri Ram Foods and Fertiliser Industries-engaged in the manufacture of caustic soda, chlorine, etc., a licensee under the Factories Act and subjected to several laws like Water (Prevention and Control of Pollution) Act, the Air(Prevention and Control of Pollution) Act. 1981, and receiving sizeable assistance in the shape of loans and overdrafts from the Government through various agencies, was prima facie held to be falling within the ambit of Article 12 by the Supreme Court in M.C. Mehta and another Vs. Union of India and others, (a social action litigation).

13. My learned brother Ramanujulu Naidu, J. considered the question whether the Andhra Pradesh Co-operative Central Agricultural Development Bank is an "authority" within the meaning of Article 12 and answered in the affirmative in P. Krishna Rao Vs. Andhra Pradesh Co-operative Central Agricultural Development Bank Ltd., . A telephone operator, who was transferred as a Junior Clerk, questioned the transfer order in that case on two grounds : (1) The posts of telephone operators and Junior Clerks are not inter-transferable; and (2) the order was mala fide. My learned brother Ramanujulu Naidu, J. held in favour of the petitioner on both the grounds. The decision was carried in appeal in A. P. Co-operative Central Agricultural Development Bank Ltd. v. Krishna Rao W.A. No. 1488/84 to the Division Bench before which a statement was made on behalf of the bank that the writ petitioner was not likely to be transferred because of the change in the administrative set-up and in view of that statement the Division Bench held that there was no need to go into the question of mala fides. On the question of inter-transferability of the posts of telephone operators and the junior clerks, the Division Bench found that as per the service regulations of the bank the same was permissible. Although the judgment of the learned single Judge was reversed on merits, the finding that the Bank was "a State" within the meaning of Article 12 of the Constitution was not disturbed; in fact, no argument was advance on that aspect leading to the legitimate inference that the Bank did not dispute the correctness of the finding, nor did the Division Bench doubt it.

14 The controversy whether the well-known statement of law, by Lord Atkin in R v. Electricity Commissioners (1924) I.K.B. 171, as to the application of Writ of Certiorari :

"Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King"s Bench Division exercised in these writs."

has no application in the India context for issuing writs or orders or directions under Art. 226 of the Constitution since under that Article power can be exercised not merely against a governmental authority but also against "any person" and as per the definition under the General Clauses Act. 1897, which applies for the interpretation of the Constitution by virtue of Article 267(1), "person" includes both natural as well as legal persons and, therefore, both are susceptible to all the writs specified in Article 226, is wholly unnecessary,

although P. A. Choudary, J. went into that question in Gattiah's case (supra) which concerns only with the maintainability of a writ of mandamus. The question of a private person exercising "legal authority" for determining "questions affecting the rights" of others and "having a duty to act judicially", I think. which is different from duty or obligation imposed by law, will hardly arise : only persons exercising governmental or statutory power (including power conferred by delegated legislation) alone fall within the ambit of the rule stated by Lord Atkin. That question will be quite unnecessary in cases where a specific plea is taken that the respondent, although does not enjoy governmental authority or statutory power, is under a statutory duty to perform certain acts-the alleged a situation, if true warrants issue of Writ of Mandamus.

15. In Pritam Singh Gill Vs. State of Punjab and Others, the validity of an order passed by the Punjab State Co-operative Land Mortgage Bank prematurely retiring one of its employees came up for consideration before a Full Bench. The petitioner in that writ petition sought a writ of certiorari for quashing the impugned order of retirement. Sandhwalia CJ, speaking for the Full Bench, held that the Punjab Co-operative Land Mortgage Bank registered under the Punjab Co-operative Societies Act is not an instrumentality of the State and, therefore, not an authority under Article 12 and on that view dismissed the writ petition. The learned Chief Justice, who spoke for the Full Bench exhaustive discussed Gattiah's case (supra) and disagreed with the views expressed by P. A. Choudary, J., relying upon the observations of the Supreme Court in Praga Tools Corporation case and certain other decisions. The learned Chief Justice held :

".. I would record my emphatic dissent from the observations in T. Gattiah's case (1981 Lab IC 942) (Andhra Pradesh), both as regards the nature and scope of the writ of certiorari (which, as noticed, did not arise for decision), as also with regard to the particular context in which the writ of mandamus has been granted."

On the question of the maintainability of the writ of mandamus, the observations of the learned Chief Justice of the Punjab & Harayana High Court in the context of the ruling in Gattiah's case cannot, in my considered view, be taken as representing the correct legal position. As already noticed, the Praga Tools Corporation case (supra) is an authority for the proposition that a mandamus can lie against a private company compelling it to perform its statutory obligations. I am constrained to advert to Pritam Singh's case (supra) decided by the Full Bench of the Punjab High Court for the reason that in Narasinga Rao's case (supra) the Division Bench of this Court agreed with the reasoning in Pritam Singh's case (supra) on the question of maintainability, observing :

".. The Full Bench (in Pritam Singh's case) held that the action of a society registered under the Punjab Co-operative Societies Act prematurely retiring an employee is not amenable to writ jurisdiction. We agree with their reasoning."

16. For deciding the question of maintainability of the writ petitions against the

respondent-Sangam Dairy-the first question that must be considered is whether the respondent is an "authority" under Article 12 of the Constitution ? "Authority", according to the Webster's Third New International Dictionary is.

"A public administrative agency or corporation having quasi governmental powers and authorised to administer a revenue producing public enterprise"

and this was quoted with approval by the majority judgment of the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, in which the question for consideration was whether the Electricity Board of Rajasthan is an "authority" under Article 12 of the Constitution. The majority answered the question in the affirmative observing (p. 262) :

"This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Art. 12 of the Constitution -"

"The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Article 298 to carry on any trade or business. The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Article 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence."

The ejusdem generis rule of interpretation followed by the Madras High Court in the case of The University of Madras Vs. Shantha Bai and Another, was held to be not applicable for the interpretation of the words "other authorities" occurring in Article 12. A Constitution Bench of five Judges of the Supreme Court in Sukhdev Singh v. Bhagat Ram (1975-I-LLJ-399) considered elaborately the scope of Articles 12, 14, 16 and 226 in their application to certain public corporations-Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation. A. N. Ray, C.J., speaking for himself, Y. V. Chandrachud, J. (as he then was) and Gupta J., after examining the composition, structure and constitution of the three corporations held that they are "authorities" within the meaning of Article 12. The learned Chief Justice citing Halsbury's Laws of England (3rd. Ed. Vol. 30 paragraph 1317 at p. 682) observed in paragraph 39 at p. 1342 :

"A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit."

And following the dictum laid down in Rajasthan Electricity Board's case held (p. 416) :

"The power to make rules or regulations and to administer or enforce them would be one of the elements of authorities contemplated in Article 12. Authorities envisaged in Article 12 are described as instrumentalities of State action."

Mathew, J., who delivered a separate but concurring judgment, formulated slightly broader test (p. 423) :

"A findings of State financial support plus as unusual degree of control over the management and policies might lead one to characterize an operation as state action.

Another factor which might be considered is whether the operation is an important public function. The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion."

A corporation may be established by a statute or incorporated under a law such as the Companies Act, 1956, or the Societies Registration Act, 1860 Ramana's case. Speaking for the three-Judge Bench in Ramana's case. Bhagwati, J. (as he then was), after posing the question, when does a Corporation become an instrumentality or agency of the Government, answered the same (1979 II LJ 217) :

"Now, one thing is clear that if the entire share capital is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an all-inclusive or

exclusive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

The learned Judge held that (p. 228) :

"It may, therefore, be possible to say that 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."

"But "a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action". Vide *Sukhdev v. Bhagatram*. So also the existence of deep and pervasive State Control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporations" ties to the State. Vide the observations of Douglas, J., in *Jackson v. Metropolitan Edison Co.* 419 US 345 : 42 L Ed. 2d 477)".

Observing that it is difficult to distinguish between governmental functions and the non-governmental functions, the learned Judge referred to the views of Mathew, J. expressed in *Sukhdev Singh's* case (p. 230) :

"The contrast is rather between governmental activities which are private and private activities which are governmental. (Mathew J. in *Sukhdev's* case). But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specially, if a department of Government is transferred to a corporation it would be a strong factor supportive of this inference."

Cautioning that no one single factor will yield satisfactory answer, the learned Judge observed (p. 230) :

"The Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case."

Applying the above tests, it was held in *Ramana's* case that the International Airport Authority falls within the ambit of Article 12.

17. The enquiry should be as to why the authority or legal person is created by law, but not how it was created. The true test must be functional. There must be an element of ability to effect legal relations by virtue of power vested in the legal person by law while discharging functions or carrying on business as a proxy of the State. Article 12 does not restrict the concept of State but it

enlarges the scope and embraces all authorities under the control of Government. If the functions of a Corporation are of public importance and are skin to government functions it would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.

18. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, one of the questions for consideration before a Constitution Bench of the Supreme Court was whether the Regional Engineering College, Srinagar, established and managed by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898, is an authority within the meaning of Article 12. This case was decided on 13th November, 1980, the same day when the judgment in *Som Prakesh* case was rendered. The Society, as its composition disclosed was dominated by the representatives appointed by the Central Government and the Government of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The funds were provided entirely by the Central Government and the Jammu and Kashmir Government. The rules to be made by the Society required prior approval of the States and Central Government and the account are submitted to the two Governments for scrutiny. The Society was bound to comply with all the directions issued by the State Government. Bhagwati, J., (as he then was) speaking for the Constitution Bench answered the question in the affirmative. The earlier view of the three-Judge Bench in *Ramana's* case and the views of Mathew, J., in *Sukhdev Singh's* case received "full approval". The Constitution Bench also approved the views of Chinnappa Reddy, J. in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, . All the relevant tests gathered from *Ramana's* case were summarised as follows (pp. 112-113) :

"(i) One thing is clear that 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 almost 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 whether the corporation enjoys monopoly status which is the 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 government 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 is an instrumentality or agency of Government."

If one a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an "authority" and, therefore, "State" within the meaning of the expression of Article 12."

The Indian Council of Agriculture Research (ICAR), a Society registered under the Registration Act and financed wholly by the Government of India, was held to be an "authority" under Article 12 of the P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, :

"At no stage, the control of the Government of India ever flinched and since its inception it was set up to carry out the recommendations of the Royal Commission on Agricultural. In our opinion, this by itself is sufficient to make it an instrumentality of the State."

It is possible to raise a doubt that a co-operative society is not a corporation at all, based on the following observations of the Supreme Court in S. S. Dhanoa v. Delhi Municipality (1981 I LLJ 231) :

"In our opinion, the expression Corporation" must, in the mean a corporation created by the legislature and not a body or society brought into existence by an act of a group of individuals. A co-operative society is, therefore, not a corporation established by or under an Act of the Central or State legislature."

The question whether a co-operative society is an authority under Art. 12 did not arise for decision in Dhanova's case and this has been clarified subsequently by the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, :

"In S. S. Dhanoa's case the Court was not called upon to decide and did not decide whether a Government company was an instrumentality or agency of the State for the purposes of Parts III and IV of the Constitution and thus, "the state" within the meaning of that expression as used in Art. 12 of the Constitution."

The Central Inland Water Transport Corporation Limited, a Government of India undertaking was held to be a State within the meaning of Article 12. Art. 12 was held to :

"include within it also what otherwise may not have been comprehended by that expression when used in its ordinary legal sense."

19. Whether Osmania College, Kurnool, a minority institution receiving aid from the State and administrated by a Society registered under the Societies Registration Act "is a State within the coverage of Article 12 of the Constitution" was considered by a five-judge Bench of this Court in Hassan Ali Khan v. Director of Higher Edn 1987 (1) ALT 378. The earlier opinion of Jeevan Reddy, J. who spoke for the majority in B. Satyanarayana and Others Vs. State of Andhra Pradesh and Others, that it is necessary that all tests pointed out in Ramana's

case should be satisfied to decide the question whether a corporation is an instrumentality or agency of that State and that the question should be determined "on an aggregate of the relevant circumstances," was approved by the five judge Bench. Rama Rao, J., who spoke for the larger Bench held :

"The essence of the tests that can be gathered from the decisions are substantial financial aid, control by the Government, performance of public functions and the entrustment of governmental activities. The full-fledged presence of each of the factors is not necessary and the combinations of one or other may land in the conclusion of label of State. The look and cumulative effect of all aspects is the determinative factor. The financial aid must be substantial but not merely first-aid. The control of the Government through finance or otherwise should permeate the activities of the Corporation by appropriate strings and the litmus test is that interruption or hating or limping aid should not result in gasping by the corporation or body. The origin or geneology or modalities of creation of the corporation is not germane and the authority need not be creature or tributary of the Government."

The Osmania College, admittedly a minority institution, was held to be discharging a public function by imparting education. It was receiving full teaching grant. The conditions aid down by the Government from time to time in respect of the conditions of service of teaching staff were applicable to the staff employed by the Osmania College. After referring to the details of the composition, structure and management of the College, Rama Rao, J. held :

"The expose of the facts set out above disclose that the college is receiving substantial financial aid and performing public function of imparting education and the service conditions are regulated and modulated from time to time by the Government. Therefore, substantial aid by the Government, performance of public function and control by the Government, are present and in view of these features the college can be easily accommodated within the precincts of "other authorities"".

20. "Public Authority" is defined by Halsbury's Laws of England. (4th Edn) Vol. I, para 6 as :

"a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit."

21. In the light of the principles laid down in the forgoing precedents the question whether the Sangam Dairy, the respondent, is an authority under Art. 12 must be decided. It was registered in the name and style "Guntur District Milk Producers" Co-operative Union Limited" under registration No. 836/D.D, on the basis of limited liability as a co-operative society under the A.P. Co-operative Societies Act. Bye-law No. 30 incorporates the objectives. Some of the objectives inter alia are : to carry out activities conducive to the "economic and socio-economic development of the milk producers" by organising effective production, processing and marketing of commodities. To achieve those objectives the

society may, inter alia, undertake marketing activities, insurance work, arrange training of employees, create trust, establish research and development associations, organise milk producers co-operative societies, develop affiliated societies, produce, process, distribute and market and milk products. As per bye-law No. 2.4 the society is affiliated to A.P. Dairy Development Co-operative Federation. As per bye-law No. 16 the Society is also affiliated to the District Central Co-operative Bank, District Cooperative Union and the Co-operative Milk Products Federation. The management of the Committee as per bye-law No. 17 is vested in a Board of Directors consisting of 17 members, out of whom 12 members are elected, and five nominated. The nominated members are : (1) Registrar of Co-operative Societies or his nominee, (2) Director of Animal Husbandry or his nominee, (3) Managing Director, A.P. Dairy Development Co-operative Federation Limited or his nominee. (4) General Manager of the Union and (5) One nominee of Indian Dairy Corporation. The term of elective Board of Directors is three years. Bye-law 17.2 named as transitory bye-law says that notwithstanding anything contained in the bye-laws, the first Board of Directors including the Chairman of the Society may be nominated by the State Government in consultation with the National Dairy Development Board for a period of one year which may be extended from time to time up to a maximum of three years. Bye-law 21 says that the officers of and above Grade-II Managers and all Officers of the equivalent cadre in all Officers of the equivalent cadre in accordance with the provisions contained in Sec 166-A of the Co-operative Societies Act. The membership of the Society consist of two categories (1) Ordinary and (2) Nominal. Bye-law 4 which deals with funds says that the funds may be raised by (1) Entrance Fee, (2) Shares, (3) Deposits, (4) Loans, (5) Grants, Aids and Subsidy and (6) Funds from any development agency or any financial institution. The authorised share capital is Rs. 5 Crores. The audit report placed before me shows that the share capital of the Government was Rs. 81 lakhs and only a paltry sum of Rs. 3,56,200/- was from primary societies.

22. The respondent-society carries on a public utility service. Its objective was not to make profit, but to promote socio-economic development of the milk producers. Almost the entire share capital was invested by the State Government to the extent of Rs. 81 lakhs as against the negligible sum of Rs. 3,56,200/- contributed by the primary unions. The first Board of Management in its entirety was the creation of the State Government. The auditing is carried on by the District Co-operative Auditing Officer. The Government have absolute power to transfer the management of any of the component wings of the Society. G.O.Ms. No. 515 dated 17th July, 1978 is one of the instance of exercise of absolute power by the Government : regard to the control and supervision of the society. The Chief Executive Officer was appointed by the Government. The Register of the Co-operative Societies has power u/s 116-A to constitute a common cadre for the posts relating to the societies specified therein. The respondent-society is included under S. 116-A. The managerial and supervisory staff of the respondent society are liable for transfer from one society to another and their service

conditions are governed by the regulations framed by the Register of Co-operative Societies u/s 116-A (2). The Register frames the model bye-laws under Rule 4 of the Co-operative Societies Rules : Amendment of bye-laws must be done in accordance with the procedure contemplated in Section 16. The Register has power u/s 16(5) to direct the society to amend its bye-laws in the interests of Society or of the Co-operative movement. u/s 59 the Register has power to suspend any paid officer or servant of the society. The Managing Committee has no discretion but to comply with the directions issued by the Register u/s 59 placing a paid officer or servant under suspension. If the Committee disobeys the directions of the Register it can be suspended u/s 34 of the Act. Financial aid flows to the societies u/s 43 of the Act. Any dispute touching the constitution, management or the business of the society except the expected categories specified in Section 61 are referable to the Register for decision. The order passed by the Register is amenable to judicial review under Art. 226 of the Constitution. The State Government has power u/s 116-B to give directions to a society or class of societies to make provisions for the reservations of appointment and for grant of special concession in favour of Schedule castes, scheduled tribes and backwards classes.

23. From the foregoing it is clear that the respondent society is an authority under Art. 12 of the Constitution. It carries on functions for the benefit of the public. The Control exercised by the Government and the Register over the society is deep and pervasive. It received almost full financial aid from the State Government. Its officers belongs to a common cadre and are liable for transfer u/s 116-A of the Co-operative Societies Act. The society has no control over the transfer or conditions of service of its officers. Any disobedience of the society to comply with the orders issued by the Register or the Government will result in the supersessions of the Board of Management u/s 34. The tests laid down in *Ramana's* case are cumulatively present in a substantive measure. All these features of the respondent-society clearly point out that it bears no analogy to a company registered under the Companies Act. The respondent-society performs public functions in the interests of the community.

24. The deep and pervasive control of the State Government and the overwhelming financial support extended by the State are absent in respect of the two co-operative societies which were held to be outside the ambit of Article 12 in *Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another*, . and *P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others*, . Therefore, both the persuasive precedents are of little help in the case on hand. The realities of the exercise of governmental power should be one of the principal considerations in the determination of the question whether a person or authority comes within the ambit of Article 12. Being an authority under Article 12 of the Constitution of India actions of the respondent-society can be judicially reviewed under Art. 226 of the Constitution. I must also say in this context that every co-operative society does not fall within the ambit of Article 12 : societies which do not

receive financial aid and in respect of whom the control exercised by the Government is not deep and pervasive are clearly out-side the ambit of Article 12.

25. When once a particular co-operative society is held to be an authority under Art. 12 of the Constitution, the writ sought against it cannot] fail on the sole ground that the grievance complained of relates to breach of bye-laws. Bye-laws are a special form of delegated legislation with several peculiar features which normally do not apply to other forms of delegated legislation and their validity can be questioned by seeking judicial review (J. F. Garner : Administrative Law, 5th Edn. pp. 85-91). The inclusive definition of "law" by sub-clause (a) of Clause (3) of Art. 13, encompasses bye-laws also and the constitutional mandate of Article 13(2) is that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention thereof shall be void to the extent of the contravention.

26. The views expressed in certain rulings give rise to a doubt that the bye-laws of a co-operative society do not have statutory force and, therefore, the same are outside the purview of judicial review. I think the legal position is fairly clear. A. N. Ray, C.J. speaking for the majority of the Constitution Bench in Sukhdev Singh's case explained the scope of subordinate legislation Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, :

"Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. Bye-laws are made in the main by the local authorities or similar bodies of the statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of a breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. Re. Langlois and Biden (1891) 1 QB 349 and Kruse v. Johnson 1898) 2 QB 91."

In Rashid Ahmed v. Municipal Board, Kairana (AIR) 1952 SC 163 one of the earliest cases concerning the validity of bye-laws, the question for consideration was whether a local authority acting under a bye-law could deprive a person of his right to carry on trade under Article 19(1)(g) of the Constitution. A Constitution Bench of the Supreme Court ruled :

"This certainly is much more than reasonable restrictions on the petitioners as

are contemplated by clause (6) of Art. 19. This being the position the bye-laws would be void under Art. 13(1) of the Constitution."

Another Constitution Bench in Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, dealing with the validity of certain bye-laws of the Town Area Committee, the operation of which had the effect of depriving the petitioner therein of his right to carry on business, held :

"In our opinion, the bye-laws which impose a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee including any public street, are obviously ultra vires the powers of the respondent Committee and, therefore, the bye-laws cannot be said to constitute a valid law which alone may, under Art. 19(6) of the Constitution, impose a restriction on the right conferred by Art. 19(1)(g). In the absence of any valid law authorising it, such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by Art. 19(1)(g) of our Constitution."

A three-judge Bench of the Supreme Court speaking through Bhargava, J in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, :

"The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-law would be bindings between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a company incorporated under the Companies Act and such Articles of Association have never been led to have the force of law".

Rashid Ahmed's case and Mold. Yasin's case were cited in the Co-operative Central Bank's case. If a co-operative society falls within the ambit of Article 12 even in respect of regulating conditions of service of its employees it cannot act arbitrary, the rigour and amplitude of the application of Art. 14 does not depend on the label as to the class or category assigned to the authority falling under Article 12.

27. In Central Inland Water Transport Corporation Limited case, as already noticed, conditions of service of employees if arbitrary would attract the

inhibition of Article 14. In *B.S. Minhas Vs. Indian Statistical Institute and Others*, one of the questions that came up for consideration was whether the appointment of the fourth respondent therein as Director of the Institute was contrary to one of the bye-laws. Bhagwathi, J (as he then was) speaking for a two judge Bench of the Supreme Court, after holding that the Institute, a society registered under the Societies Registration Act, is an "authority" within the meaning of Article 12 and bye-law No. 2 required the vacancy to be suitably publicised before the process of selection was taken up, and after referring to the binding precedents including *B.S. Minhas Vs. Indian Statistical Institute and Others*, :

"In view of the pronouncement of this Court on the point it must be held to be obligatory on the part of the respondent No. 1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Respondent No. 1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-law.

Compliance with this bye-law also seems to be necessary in the name of fair-play. If the vacancy in the post of Director had been publicised as contemplated by bye-law 2, all the persons eligible for the post may have applied and in that case, the field of consideration would have been enlarged and the selection committee or the Council would have had a much larger field from which to choose the best available person and that would have removed all doubts of arbitrariness from the mind of those eligible for the post".

The Co-operative Central Bank case was followed by a three-judge Bench of the Supreme Court in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, . Section 73-B of the Maharashtra Co-operative Societies Act contained mandatory provisions regarding reservation of seats for Scheduled Castes and Scheduled Tribes on the Board of Directors of specified societies. In the case of *Nasik Merchants Co-operative Bank*, bye-law No. 40 did not provide for such a mandatory reservation. Elections were held without complying with the mandatory provisions of Section 73-B and long thereafter the bye-law was amended making reservation obligatory. Holding that the election held without making reservation in favour of Scheduled Castes and Scheduled Tribes was wholly illegal, D. A. Desai, J speaking for a three-judge Bench, after referring to the Cooperative Central Bank case, held.

"They (bye-laws) are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with".

None of the binding precedents laid down by the larger Benches of the Supreme

Court was considered in B. K. Garad's case. In *The Megna Mills Co. Ltd. Vs. Ashoka Marketing Co.*, a three-judge Bench of the Supreme Court had taken the view that a contract under the Forward Contracts (Regulation) Act is void if it is not in compliance with the requirements of the relevant bye-laws. In *Chandrika Jha Vs. State of Bihar and Others*, a two-judge Bench of the Supreme Court ruled that neither the Chief Minister nor the Minister for Co-operation has the power to "arrogate to himself the statutory functions of the Registrar under Bye-law 29" of the District Central Co-operative Bank which concerns with the power of nominating Board of Directors. B. K. Garad's case, and the Co-operative Central Bank's case. In my humble view, cannot be considered as binding precedents for the proposition that breach of bye-laws of a co-operative society falling within the ambit of Article 12 are outside the purview of judicial review under Article 226. As already noticed those two decisions did not consider the law laid down by the larger Benches. For the same reason the decision of the Division Bench in *Narasing Rao's* case based on the Co-operative Central Bank's case cannot be understood as laying down the proposition that breach of bye-laws does not give a valid cause of action for interference under Article 226 even if the respondent is an authority under Article 12. In *J.R. Raghupathy and Others Vs. State of A.P. and Others*, the Supreme Court approvingly referred to the following view of Durga Das Basu : (Durga Das Basu's Administrative Law, 2nd Ed. at p. 145) :

"Eventhough a non-statutory rule, bye-law or instruction may be changed by the authority who made it, without any formality, and it cannot ordinarily be enforced through a Court of law, the party aggrieved by its non-enforcement may, nevertheless, get relief under Art. 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fair-play or discrimination, - particularly where the authority making such non-statutory rule or the like comes within the definition of "State" under Art. 12."

It is, therefore, beyond doubt that matters concerning bye-laws of bodies falling within the ambit of Art. 12 are not outside the purview of judicial review.

28. The next question to be considered is whether the respondent society is under a statutory obligation to implement the settlement dated 23rd March, 1985 concluded between the management of the society on the one hand and the two recognized registered workers unions on the other. "Settlement defined u/s 2(p) of the Industrial Disputes Act as one arrived at in the course of a conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where the agreement has been signed by the parties in the prescribed manner and a copy thereof has been sent to the authorised officer. Dairy industry is one of the public utility services u/s 2(h) of the Act. The settlement in question, it is not in dispute, falls within the ambit of Section 12(3). Being a settlement arrived at in the course of conciliation proceeding, it is binding on all the parties by

virtue of Section 18(3). The settlement does not mention the period of operation and therefore, u/s 19(2) it shall be in operation for a period of six months from the date of the settlement and shall continue to be binding on the parties after the expiry of the said period, until the expiry of two months from the date on which a notice in writing of intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. No such notice was given seeking termination of the settlement by any of the parties and, therefore, the settlement continues to be in operation till date. A statutory obligation is cast upon the respondent-society to comply with the terms of settlement so long as it is in force. It is not open to the respondent-society during the currency of the settlement to devise any modalities for the purpose of scuttling or debilitating the terms of settlement. What cannot be done directly, cannot be endeavored to be achieved indirectly. The basis for reckoning the seniority of N.M.Rs. as agreed to in the settlement must be adhered to. If the different mode of drawing up of seniority envisaged by the Circular dated 31st July, 1987 is allowed to stand, it is common ground, the ranks of many of the N.M.Rs who were assigned higher places in the original seniority list prepared in accordance with para 4 of the settlement dated 23rd March, 1985 would be radically altered to their disadvantage. The question whether such a course of action would be in the best interests of the organisation is outside the scope of the writ petition. So long as the settlement dated 23rd March, 1985 is in operation such a plea is not open to the respondent society. The limited question for enquiry is whether or not there is settlement in existence and if so whether the respondent society has committed any breach of conditions of the settlement. The Circular dated 31st July, 1987, being contrary to condition No. 4 of the settlement which continues to be in operation, the impugned action of the respondent must be faulted. Thus, even if the respondent society were to be outside the ambit of Article 12 still it would be amenable to the jurisdiction of this court under Article 226 of the Constitution in view of its statutory obligation to implement the terms of settlement.

29. For the exercise of the power of judicial review under Article 226 in relation to a co-operative society, the following propositions emerge from the foregoing discussion :

(1) A statutory duty enjoined on a co-operative society can be enforced by a writ of mandamus even if the society is not an authority under Article 12.

(2) If a co-operative society is funded by the State in full or substantial measure and the governmental control is deep and pervasive it falls within the ambit of Article 12 of the Constitution and, therefore, its actions can be questioned by a writ of certiorari.

(3) Since every bye-law of a co-operative society falling under Article 12 is comprehended by the inclusive definition of "law" under Article 13(3)(a), it being void to the extent of its inconsistency with the provisions of Part III of the Constitution, this Court cannot decline to grant judicial review by a writ of

certiorari against such a society on the sole ground that the relief claimed by the petitioner is founded on breach of bye-laws.

30. W.P. No. 7004/88 is accordingly allowed and the Circular issued by the respondent in No. 4145/A1-2/87 dated 31st July, 1987 is set aside and consequently the seniority list prepared on the basis of that Circular shall not be implemented.

31. So far as W.P. 10230/87 is concerned, the relief sought by the petitioners is for regularisation of their services. Their claim is disputed in the counter-affidavit. For how many days they worked, what would be their ranks in the seniority list and when their turn would come for regular absorption are in controversy. No material is placed before me to resolve these questions and having regard to the disputed nature of the pleas raised, I am of the view that the writ petition must fail and accordingly it is dismissed. No costs in both the writ petitions. Advocate fee Rs. 350/- in each.

32. Before closing the case I record my high appreciation of the able arguments advanced with commendable clarity by all the learned counsel, notably Mr. G. Raghuram, who forsaking the adversarial stance, voluntarily assumed the role akin to *amicus curiae*.