
(1995) 11 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 4793 (W) of 1993

Bholanath Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : 100 CWN 657 : (1996) 3 LLJ 165

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Kashi Kant Moitra, Amar Nath Dhole and Bidyut Kumar Roy, for the Appellant; Milon Bhattacharjee and Rameswar Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—The petitioners are employees of Gour Co-operative Milk Producers' Union-the respondent No. 5 herein, which is a Co-operative Society registered under West Bengal Societies Act. The said petitioners filed this writ application, inter alia, for issuance of a writ in the nature of Mandamus directing the respondents to pay to them the scales of pay as payable to the employee of the State Government and yearly increments which allegedly had been given to other Milk Unions.

2. The Animal Husbandry and veterinary Services Department of the State of West Bengal allegedly evolved a scheme commonly known as Operation Flood II for establishing eight (8) Anand Pattern Co-operative Milk Unions out of which four were existing and four were to be set up. Requisites man power required for the said Milk Unions had been recruited through National Dairy Development Board hereinafter referred to as N.D.D.B for placement under various Milk Unions. The apprentices so inducted were to be absorbed by the existing and future Milk Unions and they were also required to execute a bond to serve under the Milk Unions for a period of three years. A sum of Rs. 38.13 crores were earmarked for the Dairy Co-operatives which was to be made available from

Union Dairy Co-operative over a period of six years.

3. The said programme was to be implemented as a 3 Dairy co-operative structure consisting of:-

(1) West Bengal Co-operative Milk Producers" Federation,

(2) 8 District Level Milk Unions and

(3) 3,980 Anand Pattern Primary Milk Producers Co-operative Societies. It is stated that standard bye laws were suggested by N.D.D.B.

4. The Maldah District was selected for implementing the Operation flood II Programme jointly by Government of West Bengal and National Dairy Development Board with the financial help and guidance etc. from N D.D.B and State or West Bengal the respondent No. 4 was registered on April 12, 1983. The petitioners alleged that N.D.D.B. is an authority within the meaning of Article 12 of the Constitution and thus the employees of the Board Milk Unions have acquired a status and, thus, they are entitled to all consequential service benefits. The petitioners have contended that the entire funds of the Project and Operation of the Gour Milk Union is being made by N.D.D.B. West Bengal and the control and supervision over the Gour Milk Union, Maldah is being headed by N.D.D.B. and the Government of West Bengal. The petitioners further contended that there was a public element in their employment and thus the said respondents cannot adopts hire and fire policy. The petitioners were appointed in between the period 1983 to 1986; their names having been sponsored for such employment by the Employment Exchange. The petitions were allegedly also confirmed in their services. The first Managing Committee of the respondent No. 5 was dissolved and one Special Officer was appointed. However, on December 7, 1967 a Managing Committee of the Gour Milk Union was constituted by an order dated December 7, 1981 issued by the Registrar of Co-operative Societies with nine members Development Board, Managing Director of the West Bengal Co-operative Milk Producers" Federation Ltd. were to send their nominees for being included in the Managing Committee of the Union.

5. Thereafter in or about 1980, however, the said Managing Committee was dissolved and a Board of Administrator consisting of 12 members were appointed. The Managing Director of the Federation authorised some Officers to carry out statutory inspection and supervision of various activities of the Society on April 2, 1991. On December 23, 1991 the General Secretary of the Employees" Association wrote a letter to the Manager of the Union with a prayer for withdrawal of freezing of salary and introduction of D A., yearly increments etc. On October 11, 1992 the District Magistrate, Maldah, being the Chairman of the Union addressed the letter to the Secretary, Animal Resources Development for financial help. Again on October 27, 1992 some financial allotment was sought for. The petitioners have contended that the respondent No. 5 is a project of, the State of West Bengal and for implementation of Operation Flood-II the Federation was established as apex body under which seven Milk Unions

including the said Gour Milk Union were established.

6. The respondent No. 3 has filed an affidavit-in-opposition wherein it has been stated that the dispute raised by the petitioners comes within the purview of the Industrial Disputes Act. It is stated that the respondent Co-operative Society in West Bengal not a "State" within the meaning of Article 12 of the Constitution of India as it is essentially a private body founded at the initiation of the private individuals. It has been contended that conditions of service of the employees of the Union are governed by its staff rules and the same are not controlled by any statutory rule. The Co-operative Society is registered under the West Bengal Co-operative Societies Act. It has, however, been stated that Primary Milk Producers' Societies were formed by farmers themselves at the village level and affiliated themselves to the District Co-operative Milk Producers' Union being the respondent No. 5 formed by village level Co-operatives themselves. It is stated that the shares of the Primary Co-operative Societies are allotted to the individual members whereas shares of the Union are allotted to the Primary Co-operative Societies and no share of the Union has been allotted either to the respondent No. 3 or to the State Government. It is stated that service conditions of the employees are decided and controlled by the Directors of the concerned Union, according to the situation prevailing therein. It is stated that under Operation Flood-II loans were provided to the District Milk Union who are responsible for implementing the project in the area of the Operation according to the respective Union by N.D.D.B. Against disbursement of such payment by N.D.D.B. the State Government stood as guarantor for; repayment of such Loan. A copy of the staff rules has been annexed as Annexure "A" to the affidavit-in-opposition. It has, however, been submitted that under the Project, farmers were to be helped so as to enable themselves to get rid of the malpractices of the middlemen and market their own products through the various Co-operative Societies to help themselves which in their turn market their produce through their Union on commercial basis. It has been contended that the State Government was entitled to appoint Chairman of the Managing Committee of the Milk Union till the loans are fully repaid pursuant whereunto the District Magistrate, Maldah was appointed as Chairman of the said Union. It has further been contended that owing to persistent non-co-operation of the employees, the Union could not achieve the target and failed to make itself economically viable, as a result whereof all the member societies of the Union became non-functional. It is further contended that all along, the Employees' Association namely the petitioners did not try to put the management to come over the difficulties but merely agitated for getting their salary and other benefits, inspite of being aware of the fact that the Milk Union had no fund to pay even the milk bills to the farmers. They went on a pen down strike. On March 3, 1980. Thus the said Milk Union has become sick. It has been contended that there has been no effort on the part of the employees to become self sufficient for repayment of the loan forcing the State of West Bengal, the guarantor, to repay a portion of the loan to N. D. D.B. The respondents would urge that the employees of the Milk Union did

not appear to be ready and agreeable to co-operate in the matter of implementation of the proposal. However, a revival scheme was worked out in June 1980 pursuant where to a sum of Rs. 7.5 million was granted as loan in January 1991 but the concerned Union could not utilise the same under the prescribed heads, and the entire amount was disbursed to the employees towards their salary and other benefits. A further revival scheme was suggested, but the Milk Union could not adopt the same and allegedly the petitioners started agitation for non-payment of their salary without paying any heed to the revival proposal. The Manager of the Milk Union was gheraoed by the Employees' Association for salary. It is stated that the employees are only interested in their pay. It has been contended that the Employees Association compelled the Union to pay 9.82 lacs so the employees towards their salaries and other benefits out of the loan for Rs. 1.5 lacs and grant of Rs. 4.3 lacs aggregating to a sum of Rs 13.31 lacs. An attempt to re-commission of the Chilling Plant also could not take place because of non-co-operative attitude of the petitioners. It is stated that the employees had stopped all activities. It has been denied that the entire fund of the Union was being made by N.D.D.B. and the Government of West Bengal as alleged. It has been reiterated that only to help establishment of the union certain project was formulated for providing funds in the form of loan to ; be repaid by the Union after attaining and developing itself into a viable and profitable commercial venture generating its own fund for its own survival along with the liability of repayment of loan advanced to it from time to time. It is only in order to make the same viable, the Government also released certain grants. It has been denied that the Union is not an ordinary Co-operative Society or that it is fully controlled and financed by the Government. It is stated that nine members of the Board of Directors are individuals and only six are representatives of the State Government as guarantor and/or financier, being the respondent No. 3 and the N.D.D.B. Such nomination was made to secure repayment of the loan advanced by the respective respondents till the same is repaid. It has also been denied and disputed that seven Milk Unions were created with the scale of pay for their employees but only in the case of employees of the respondent- Milk Union the scale of pay is different. It has been contended that each Union has its own staff pattern and staff rules according to its need and suitability and each Union being an independent Co-operative Society, there is no question of discrimination as between the employees of different Unions.

7. The respondent No. 4 in the affidavit-in-opposition also stated the same facts. Similar affidavit in opposition has also been filed on behalf of the respondents Nos. 5. and 6, However, no affidavit in opposition has been filed by the State.

8. This writ application was listed under the heading listed motion before Altamas Kabir, J. on April 29, 1993 and the said learned Judge passed an interim order directing that pending hearing of the said application if the petitioners have been working, they are to be paid their salaries which according to the petitioners were withheld since November 1992. It was further directed that the arrears payments, if any, are to be made within a month from the said date and the

salaries of the petitioners are to be paid month-by-months. For alleged violation of the said order, a contempt application has also been filed alleging inter alia therein that no salary has been paid to the petitioner.

9. The respondent No. 3 in his affidavit in-opposition to the said contempt application inter alia has stated that he has got nothing to do with the payment of the salary. The stand of the alleged contemner-respondent appear to be the same as has been taken in their affidavit-in-opposition to the main writ application.

10. The writ application and the contempt matter were taken up for hearing together with the consent of the parties. During the course of hearing a question arose as to whether the petitioner had been working at all or not. 11. Mr. Bikash Ranjan Bhattacharjee, the learned Counsel appearing on behalf of the respondent No. 5 and Mr. Milon Bhattacharjee learned Counsel appearing on behalf of the respondent No. 3 wanted to file further affidavit-in opposition, such affidavits were directed to be filed stating as to whether salary if any, has been paid to the Petitioner and if so, upto what date and at what rate.

12. Mr. Kashikanta Maitra, the learned Senior Counsel appearing on behalf of the petitioners submitted that in view of the fact that the respondent No. 5. Milk Union was constituted pursuant to a scheme framed by the State of West Bengal and N. D.D.B. through a 3 tier Co-operative Structure and the entire scheme having been financed by the State of West Bengal and N.D. D. B. and the same should be held to be a State within the meaning of Article 12 of the Constitution of India. It has been stated that the State Government had entered into an agreement with the Indian Dairy Co-operative for implementation of the Operation Flood Scheme and : thus Gour Milk Union must be held to be a project of the Government of West Bengal. It has been submitted that the scale of pay in relation to the respective posts was revised by the Apex Body, namely, the Federation which has been enjoyed by the employees of other five Unions excepting the petitioners mainly, the employees of Gour Milk Union.

13. Mr. Maitra further submitted that the respondents beings State have no authority to withhold the salary and allowances as also the annual increments payable to the petitioners which the State Government has been paying to its own employees. According to the learned Counsel no salary has been paid to the petitioners from September 1992. The learned Counsel submits that as the State has implemented the ROPA Rules 1981 in relation to other Milk Union, the petitioners have been discriminated against and in that view of the matter insufficiency of fund cannot be a ground for nonpayment of just dues of the petitioners. It has stated that so long as the petitioners are working they are entitled to get the salary and other allowances. It has been pointed out that in the year 1994 only a sum of Rs. 900/-, per employee by way of advance has been paid. As regards the contention that the concerned respondent is a "State" within the meaning or Article 12 of the Constitution of India and thus this writ application is maintainable, reliance has been placed on K. V. Ponduronge Rao v.

Karnataka Dairy Development Corporation, AIR 1994 (NDC) Karnataka 8, Sri Anadi Mukta Sadguru, Sri Muktajee Vandasjiswami Suvarna Jayanthi Mahotsav Smarak Trust and Ors. v. V A. Rudani and Ors. reported in (1989 II LLJ 326), Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Dayapara Tea Co. Ltd. v. Assistant Collector Central Excise reported in 1988 (1) CalLT 407 (SC) and Rohtas industries Ltd. and Anr. v. Rohtas Industries Staff Union and Ors. reported in Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, .

14. Mr. Milan Bhattacharjee and Mr. Bikash Ranjan Bhattacharjee learned lawyers appearing on behalf of the respondents, on the other hand, submitted that the respondent Union being a cooperative Society is not a State within the meaning of Article 12 of the Constitution of India. The learned Counsel submitted that the respondents Co-operative Societies are neither owned nor controlled by the State. In support of the aforementioned contention, reliance has been placed on Sudam Vanaji Shirsat Vs. Shetkari Sahakari Sangh Ltd. and others, , Bijayalaxmi Tripathy and Others Vs. The Managing Committee of Working Women's Hostel and Others, and Arjek Ali Gazi v. State of West Bengal reported in 1991(2) CalLT 211(CAL).

15. The learned Counsel would submit that the petitioners having accepted the scale of pay now cannot turn round and contend that they are entitled to the same scale of pay as being paid to the employees of the State. According to the learned Counsel it is for the Managing Committee of the respondent-Union alone to change the pay structure as and when necessary. It has been pointed out that the Managing Committee is the appointing authority and the service rules under which the petitioners are governed are not statutory in nature. The learned Counsel contends that the contract of employment by and between the respondents that the petitioners are private in nature. My attention has further been drawn to the fact that as the employees were wholly non-co-operative the activities of the Society has come to a grinding halt, resulting in a total financial crunch and thus the respondents have no other alternative but to make only ad hoc payments. It is stated that the petitioners were project workers and now in view of the closing down of the chilling plant, no work can be given to the petitioners by the society.

16. The primary question which arises for consideration in this application is as to whether the writ petition is maintainable. The question as to whether a Co-operative Society is a State within the meaning of Article 12 of the Constitution of India is a vexed question.

17. It is now well known that in order to Judge as to whether a co-operative Society would be a "State" within the meaning of Article 12 of the Constitution of India or not, various factors have to be taken into consideration. The primary consideration is the extent of funding by the State as also whether it exercised a deep and pervasive control over the affairs of the society.

18. It is no longer in doubt or in dispute that a writ of mandamus can be issued by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India only against a State, the exception inter alia being a public body exercising public function or enjoying a monopoly status. It is now well settled that Article 12 cannot be stretched too far so as to bring within its purview all autonomous bodies which have some nexus or dealing with the Government and/or other public bodies. It has been pointed out times without number that a welfare State may exercise some amount of control over the various societies of the society but such exercise or control or grant of occasional loan or financial contribution would not make the society a "State" within the meaning of Article 12 of the Constitution of India.

19. In *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, the Supreme Court observed :-

"That in a welfare State, Governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-Governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

20. In *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], the Apex Court held at P.332 :

"Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution."

21. In *Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another*, a Full Bench of the Orissa High Court upon taking into consideration the Constitution Bench's decision of the Supreme Court in *Ajay Hasia v. Khalid Mujib Sehravardi* (supra) observed:--

The Constitution Bench of Supreme Court in *Ajay Hasia v. Khalid Mujib*

Sehravardi, (supra) considered the matter in great detail and clarified that Sabhajit Tewary's case was not an authority for the proposition that a society registered under the Societies Registration Act could never be regarded as an authority within the meaning of Article 12 of the Constitution. The bench laid down Various principles on which each individual case has to be tested. The principles which have been quoted from the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, by the Supreme Court with approval is Ajay Hasia's case are as follows :--

1. "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 as to meet 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 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 Govt. 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".

22. The Full Bench of the Orissa High Court inter alia took into consideration a Bench decision of the Patna High Court in Harendra Nath Banker v. State of Bihar reported in 1985 LIn Cas 1807 wherein it was held that Bihar State Co-operative Marketing Union Ltd. which was also a federation of Co-operative Societies was not a State, held that Khurda Central Cooperative Bank is not a State within the meaning of Article 12 of the Constitution of India.

23. In Raikot Co-operative Marketing-cum Processing Society Ltd. Vs. State of Punjab and Others, it was held-.

"That as the final authority in Co-operative Society in the General body of the members, it was not a State within the meaning of Article 12 of the Constitution"..

24. A Full Bench of the Andhra Pradesh High Court in Shri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju reported in AIR 1990 AP 171. found that the main object of the Cooperative Central Bank registered under the Andhra Pradesh Co-operative Societies Act was to raise funds to finance its members. The High Court after analysing the relevant material held that the

Bank although was a registered Co-operative Society was not State within the meaning of Article 12. It was further held in that decision that a writ petition does not lie to enforce a non-statutory contractual obligation.

25. In. *Sudam Vanaji Shirsat v. Shetkari Sahakari Sangh Ltd and Ors.*, (supra) a Division Bench of the Bombay High Court held that as the fund of a private society is essentially and substantially raised by the share capital of the members of the society although it gets helpful aids from various authorities including the Government which, however, does not establish a direct flow of funds of the society from Government or a substantial financial investment of the Government, the Co-Operative Society in question was not a State. It has further been held that a Cooperative Society is subjected to different controls even under the Co-operative Societies Act but such plenary control which is clearly different from some control or a few controls must be considered in the context of the character of control. The Division Bench pointed out that in some spheres the Society may perform sovereign function but the same being not main or essential function of the society, a Cooperative Society is not a State within the meaning of Article 12 of the Constitution of India.

26. In *Indian Association for the Cultivation of Science v. Ashoke Kumar*, reported In 1992(1) Cal LJ 319 (CAL) this, Court held that the Indian Council of Cultivation of science which is a society registered under the Societies Registration Act is not an authority within the meaning of Article 12 of the Constitution of India as its object inter alia was to cultivate science in all its department with a view to its advancement by original research and to its valid application to the arts and comforts of life, and to find, equip and maintain scientific laboratories and library or reading room for general use among the members or the students of the association.

27. In *Arjek Ali Gazi v. State of West Bengal* (supra) a Division Bench of this Court had clearly, held that a Co-operative Society would not be a State within the meaning of Article 12 of the Constitution of India but if the service conditions of an employee are governed by a statute, a writ will be maintainable.

28. In *The Parent Teacher Association, Maharaja's College Vs. State of Kerala*, six tests as laid down by a Division Bench of the said Court in *Sofi v. Fact* reported in 1984 Ker L T 32 was extracted and following the same it was held that Kerala History Association in the light of the said principles would not be State within the meaning of Article 12 of the Constitution of India.

29. In *J.S. Arneja Vs. National Co-Operative Consumers Federation of India Ltd. and Others*, , the Delhi Htgh Court held that National Co-operative Consumers Federation of India is not a State within the meaning of Article 12 of the Constitution of India.

30. In *Bihar State Co-operative Marketing Union Ltd. v. Indian Farmer Fertiliser Co-operative and Ors.* reported in 1994(2) BLJ 563 IFFOC was held not to be a "State" within the meaning of Article 12 of the Constitution of India.

31. 10 Serjng Singh v. The State of Bihar reported in 1994(1) BLJR 287 I, speaking for the Division Bench, held that a Co-operative Bank was neither a State nor a legal authority.

32. In Dayandeo Dattatraya Kale and Others Vs. State Of Maharashtra and Others, a Division Bench of the Bombay High Court upon consideration of a large number of decisions including the decision of The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, held that a Co-operative Bank is not a State within tile meaning of Article 12 of the Constitution.

33. Let me now consider the decisions relied upon by Mr. Maitra.

34. In K.V. Roy v. Karnataka Dairy Development Corporation (supra) it was held that Karnataka Co-operative Milk producers Federation Ltd. is a "State" inter aha on the ground that the Dairy Development is the part of the State endeavour to organise Agriculture and Animal Husbandry on Modern and Scientific basis and to take steps for preservation and improving breeds of cows and other milch cattle under the directive principles of State policy as contained in Article 48 of the Constitution. In that case the Dairy Development Units were originally run as the Department of the State Government and were transferred to the Federation. It may be noticed that the Supreme Court in Chander Mohan's case (supra) distinguished its earlier judgment in Dayandeo Dattatraya Kale and Others Vs. State Of Maharashtra and Others, on the ground that Indian Council for Agricultural Research was, originally attached to the Office of the Govt. of India and its position was not altered when it was registered as Society.

35. The said distinction would, therefore, apply in the case of Karnataka High Court also wherein it was also found as of fact that the bye-laws of the Federation show that its functions are of public importance and closer relating to Government's functions relating to Animal Husbandry Federation and it enjoyed Monopoly status in its field and most of the funds, loans and bank guarantees required for running the affairs of the Federation have been provided by the State Government.

36. AjayHasia (supra) was rendered in the facts of the said case. The said decision has been considered and distinguished by the Apex Court in its subsequent decisions as also in the decisions rendered by various High Courts. As noticed hereinbefore, the Supreme Court lays emphasis on the fact that the enquiry as regards the question as to whether a society registered under the Societies Registration Act is an authority falling within the definition of State in Article 12 is how it has been brought into existence. In the fact of that case it was. noticed that Regional Engineering College, Srinagar was one of the Engineering Colleges in the countries sponsored by the Govt. of India. It was held to be a "State" having regard to the Memorandum of the Association and the Rules of the society inter alia on the ground that the position of the society is dominated by the representative 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 monies required for running the College are provided entirely by the Central Government and the Government of Jammu and Kashmir and even if any other monies are to be received by the Society it can be done with the approval of the State and the Central Government. The Rules to be made by the Society were also required to have prior approval of the State and the Central Government and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The society was also required to "comply with all the directions of the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Revenue Committee.

37. In *Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanthi Mahotsav Smarak Trust and Ors. v. V R. Rudani and Ors.* reported in (supra) it was held that the school had been exercising a public function and, thus a mandamus can be issued against it. The Supreme Court itself held that if the rights are purely of private in character no mandamus can issue. If the management of the College is purely a private body with no public duty mandamus will not lie. This aspect of the matter has recently been considered by me in *Ram Saran Sashtri v. State of West Bengal and Ors.* reported in 1995 (1) CHN 419, wherein this Court inter alia followed a Division Bench decision of this Court in *Anupam Ghosh v. Union of India and Ors.* reported in 1991(2) CHN 451.

38. In *Rohtas Industries Ltd. and Anr. v. Rohtas Industries Staff Union and Ors.* reported in (supra) the Supreme Court was considering an award of an arbitrator made u/s 10A of the Industrial Disputes Act. It is only in that context it was held that the expansive and extraordinary power of the High Court under Article 226 is of wide amplitude and the language used therein indicates that it can affect any person-even a private individual-and be available for any (other) purpose--even one for which another remedy may exist. However, the Supreme Court observed:--

"But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extra-ordinary remedy and High Courts will not go beyond those, whole some inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate."

39. There cannot be any doubt that a writ issued under Article 226 of the Constitution of India may affect any person. It can be issued also against a private individual as in the case of *Haebus Corpus*. Such a writ, as noticed hereinbefore, can also be issued against a private individual exercising monopoly power or carrying out any public or statutory functions or where its activities are. regulated by statutes.

40. It is now well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is further well settled that even

some difference in facts of case may make a lot of difference in the outcome.

41. In the instant case it is not disputed that the respondent Union was not earlier a Department of the State. The State merely made out a project so as to enable the farmers to form Co-operative Societies at the village level so that they can sell their products to the respondent No. 5 Milk Union. The fund for running such Co-operative Societies had to be raised by the members themselves who were their shareholders. The State and/or N.D.D.B. merely extended their help, guidance and finance so as to enable the society to tide over their financial difficulties. The respondents in their affidavits-in-opposition have clearly stated that some members had been nominated in the Board I with a view to realise the loan advanced by the State and the N.D.D.B.

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

43. However, regard being had to be peculiar facts and circumstances of this case, I hope and trust that all concerned namely, the Petitioners and/or (their authorised representatives, the respondent No. 5 Milk Union and the respondent Federation shall sit together and sort out their differences. It is also expected that the petitioners shall render all Cooperation in reviving the unit so that the Milk Union can fulfil the objects for which it was set up. It also goes without saying that the petitioners would be entitled to seek alternative remedy for ventilating their grievances.

In the result, this application is dismissed but the parties are directed to pay and bear, their own costs.