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**(1993) 10 PAT CK 0011**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 7303 of 1993

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| Bihar State Co-operative Marketing Union Ltd. and another | APPELLANT  |
| Vs                                                        |            |
| Indian Farmers Fertilizer Co-operative Ltd. and Others    | RESPONDENT |

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**Date of Decision :** 15-10-1993

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 32  
Multi-State Cooperative Societies Act, 1984 — Section 74

**Citation :** (1993) 10 PAT CK 0011

**Hon'ble Judges :** R.M. Prasad, J;B.P. Singh, J

**Bench :** Division Bench

**Advocate :** R.B. Mahto and P.K. Shahi, for the Appellant; K.D. Chatterjee, Abhay Kumar Singh, N.K. Malhotra, Rajiv Ranjan Mishra, Sanjay Singh, Shambhu Sharan Singh for Co-operative, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Radha Mohan Prasad, J.—This writ application has been filed for quashing the resolution of the Board of Directors of the Indian Farmers Fertilizer Co-operative Ltd., 34, Nehru place, New Delhi, in its 206th meeting held on 14.5.1993 communicated by respondent no. 2 vide his letter dated 15.5.1993 whereby and whereunder it has been resolved that in view of the prolonged default, the Bismaun have incurred disqualification as per Rule 19 of the Multi-State Co-operative Societies Act, 1984 (hereinafter referred to as "the Act") and that they will forfeit their right to send their nominee on the Board of the respondent Co-operative from the next Board meeting of the same till they clear all pending dues as arrived at settled mutually. Besides this, it was further resolved authorising the Managing Director to take further necessary action as required under the provisions of the Act. Mr. K.D. Chatterjee, learned Senior Counsel appearing on behalf of the respondent Co-operative has raised a preliminary objection as to the maintainability of the present writ application on the grounds that the respondent Co-operative is not "State" within the meaning of Article 12 of the Constitution of India and rather it is merely a Co-operative Society

registered under the Act. Further, it has been contended by him that the respondent Co-operative is neither an agency nor instrumentality of the State. The other preliminary objection, as taken by Mr. Chatterjee, is that in view of section 74 of the Act, the writ petition is fit to be rejected on this score as well inasmuch as in view of the dispute which touches the management or business of the respondent Co-operative is subject to statutory determination under the aforesaid provision which envisages that any dispute touching the Constitution, management or business shall be referred to the Central Registrar, Co-operative Societies for decision.

2. The counter affidavits have been filed on behalf of the respondents, one on behalf of respondents no. 1 and 2 and the other on behalf of respondent no. 2, sworn by the same person, namely, Senior Manager (Co-operative Services). Besides raising the aforesaid preliminary objections, the respondent Cooperative has also given the details of fact in support of the reasons for passing of the impugned resolution which we need not go into in the present case, in view of the order which we propose to pass in this case.

3. As regards the first question Mr. R.B. Mahto, learned Advocate General appearing on behalf of the Biscomaun (petitioners) has at first ventured to submit that respondent no. 1 is a "State" as the majority of the share capital is subscribed by the Government of India and other public financing institutions, Further, it has been contended that the Board of Directors of respondent no. 1 consists of different categories of Directors and live of them are to be nominated by the Government of India, financing agency or agencies providing long term credit. Thus, even from the composition of the general body, Board of Directors and authorised paid up share capital of respondent no. 1 all taken together the same is a "State" within the meaning of Article 12 of the Constitution of India and is thus amenable to the writ jurisdiction of this Court.

4. On the other hand, Mr. Chatterjee appearing for the Indian Farmers Fertilizer Cooperative Limited (hereinafter referred to as "IFFCO") has produced its registered Bye-laws, as amended upto May 11, 1992 Clause 3 of the said Bye-laws contains the objects, according to which its main object is to promote the economic interests of its members by undertaking manufacture of chemical fertilisers and its marketing. Clause 4 provides for the membership of IFFCO and clause 5 regarding the share capital.

5. It appears that the respondent Society being unique one was initially started in the year 1967 with a huge capital of more than a million on experimental basis.

6. After going through the Bye-laws we feel satisfied that the respondent Society is neither a "State" nor an Authority" under Article 12 of the Constitution of India. From the said Bye-laws it appears that the Government has subscribed only a small part of capital and that can also be retired. The Government has no control over the management of IFFCO. In no way the function of IFFCO can be said to be the functions of a State.

7. Mr. Chatterjee appearing for the IFFCO has produced several judgments and order of different High Courts about which reference has been made in sub-paragraph (ii) of paragraph 4 of the first counter affidavit filed on behalf of respondents no. 1 and 2. In the said judgments, the question as to whether the respondent Society is a "State" or its agency or instrumentality of the State was considered, in detail, and it was held that it is neither "State" nor an "Authority" under Article 12 of the, Constitution of India. We are in respectful agreement with the reasoning given in the aforesaid judgments.

8. Mr. Mahto, learned counsel appearing for the petitioners, then submitted that even assuming that it is not a "State" within the meaning of Article 12 of the Constitution, yet this Court in exercise of its power under Article 226 can issue writ to the respondent Cooperative which performs public duty. He submitted that Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. He further contended that the word "any person or authority" used in the said Article are not to be confined only to statutory authorities or instrumentalities of the State. It can cover any other person or body performing public duty as well. He also submitted that what is relevant is the nature of the duty imposed on the body and the duty must be judged in the light of positive obligation owed by the person or authority to the affected party. Further, he submitted that the High Court cannot refuse to exercise its power under Article 226 on the ground that the duty to be enforced is not imposed by the statute. In this regard he referred to the Supreme Court decision in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others, reported in AIR 1989 Supreme Court 1607, the relevant portion of which as extracted from the placitum, is quoted hereunder :

If the rights are purely of a private character no mandamus can issue, if the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. The law relating to mandamus has been made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority." It can be issued "for the enforcement of any of the fundamental rights and for any other purpose." The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State, They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on

the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the last expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirement 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.

9. By placing reliance on the said decision, learned Counsel appearing for the petitioners submitted that the respondent Co-operative performs public duty in promoting the economic interests by undertaking manufacture of chemical fertilisers and allied products/bye-products and their conversion, storage, transportation, marketing etc. Thus, according to him, the submission of Mr. Chatterjee that the writ is not maintainable cannot be sustained.

10. On the other hand, Mr. Chatterjee submitted that in the facts and circumstances of this case, no public duty is involved nor there can be any question of performance of public duty by the respondent Co-operative. According to him, the matter relates to internal management and there is nothing to show that the respondent Co-operative is required to perform duty of any public nature. In this regard he has placed reliance on the decision of the Supreme Court in the case of Life Insurance Corporation of India v. Escorts Ltd. and others reported in AIR 1986 Supreme Court 1370, in which the Supreme Court while considering the State action and action of instrumentality of the State's with reference to Articles 14, 12, 32 and 226 of the Constitution of India, held as follows:

While it cannot be doubted that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate case, actions uninformed by reason may be questioned as arbitrary in proceedings under Art. 226 or Art. 32 of the Constitution, Art. 14 cannot be construed as a charter for judicial review of the State action and to call upon the State to account for its actions in its manifold activities by stating reasons for such action. For example, if the action of the State is political or sovereign in character, the Court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and it may not be attempted. The question must be decided in each case with

reference to the particular action, the activity in which the State or the instrumentality of the State that engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the share of a company it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a share holder should be expected to state its reason when it seeks to change the management by a resolution of the Company, like any other shareholder.

11. In my opinion, in the facts of the present case, it is difficult to hold that while passing the impugned resolution, any duty was imposed on the respondent Body which can be said to be of public nature or involving people at large. It is true that there appears to be long standing business relationship between petitioner no. 1 and the respondents but the prolonged default which disqualified them as per Rule 19 of the Rules framed under Multi State Co-operative Societies Act, 1984 led to passing the impugned resolution. The alleged default and the claim of the petitioners that the disqualification cannot be automatic and unilateral in view of section 34 of the Act which contemplates disqualification only after receipt of the notice of default issued to the members of such Society within the date fixed for repayment or payment of which according to the petitioners, they were never given any notice by respondent no. 1, is purely an internal dispute between the petitioners and the respondent Co-operative and the same has nothing to do with the performance of any public duty. Thus, in my opinion, this Court in exercise of its power under Article 226 cannot adjudicate upon such a dispute by entertaining a writ application under Article 226 of the Constitution. Moreover, it has been rightly contended by Mr. Chatterjee, learned Counsel appearing for the respondents that the petitioners have remedy for settlement of such dispute u/s 74 of the Multi-State Co-operative Societies Act, 1984, by the Central Registrar which is wide enough to include even the present dispute which exists between the member and the Board and, thus, even according to the Supreme Court decision in the case of *Shri Anadi Mukta Sadguru S. M. V. S. J. M. S. Trust v. V. R. Dudani* (Supra) in which it has been held that if the rights are purely of a private character no mandamus can issue, if the management of the college is purely a private body with no public duty mandamus will not lie. But besides these, their Lordships also have held that once the aforesaid are absent and when the party has no other equally convenient remedy, mandamus cannot be denied.

12. In this instant case as I have already noticed above, the parties have the remedy for settlement of the dispute u/s 74 of the Multi-State Co-operative Societies Act, 1984 and, thus even assuming for argument sake that the aforementioned two conditions are absent, yet the parties here have equally convenient remedy. Thus, in my opinion, the writ is not maintainable on this score as well.

13. Mr. Mahto, learned Counsel appearing for the petitioners, has ventured to submit that as the default has not yet been determined or reconciled, the question of disqualification under Rule 19 does not arise. Thus, according to him, the dispute has not as yet arisen which can be referred to the Central Registrar for settlement u/s 74 inasmuch as it has been submitted that the Registrar does not come into picture before even a dispute is raised. In this regard Mr. Mahto has submitted that the question of dispute would only arise if the disqualification for a member of a Board is finally determined in terms of section 34 of the Multi-State Co-operative Societies Act, 1984. The relevant provision in this regard referred to by Mr. Mahto is quoted hereunder :

34. No member of any multi-State Co-operative Society or nominee of a member society on a national co-operative society shall be eligible for being chosen, as, or for being, a member of the board of such Multi-State Co-operative Society or national co-operative society or of any other cooperative society to which the Multi-State Co-operative Society is affiliated, if such member?

(g) has taken loan or goods on credit from the society of which he is a member, or is otherwise indebted to such society and after the receipt of a notice of default issued to him by such society, has defaulted?

(i)-----

(ii) When such loan or debt or the price of goods taken on credit is to be paid in instalments, in payment of any instalment, and the amount in default or any part thereof has remained unpaid on the expiry of six months from the date of such default ;

He, therefore, contended that as no such notice of default was ever issued to the petitioners, the petitioners cannot be held to be ineligible for being chosen as a member of the respondent Co-operative. According to him, thus the dispute would only arise when the default is finally determined and not before that. In my opinion, the said submission is fallacious and fit to be rejected.

14. The point urged by Mr. Mahto is by itself a dispute as to whether the disqualification of the petitioners under Rule 19 without giving any notice is permissible. Further, the questions formulated in paragraph 2 of the writ application in which the action of the respondents to disqualify the petitioners under Rule 19, who have acquired membership by virtue of having subscribed to the share capital of respondent no. 1, on the false plea of being defaulter when the accounts have not been reconciled, by itself is a dispute. Thus, in my opinion, the remedy of the petitioners very much lies u/s 74 of the Multi-State Co-operative Societies Act, 1984 and even assuming for argument sake that it is held that the rights involved in the present case are not purely of a private character and that the management of respondent no. 1 is not purely of a private body with no public duty, yet on the ground of the aforementioned equally convenient remedy available to the petitioners, they cannot maintain the present writ application.

15. For the reasons aforementioned, I hold that the writ application is not maintainable and, thus, it is fit to be summarily dismissed. In the result, this writ application is dismissed but without costs.

B.P. Singh, J.

I agree.