

(1993) 03 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 17 of 1979 s, 64 and 65 of 1990

Chandresh Kumar Malhotra and Others

APPELLANT

Vs

H.P. State Co-op. Bank and Others
 Ram Prakash
Upadhay and Others Vs State of H.P. and Others

RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15(2), 16, 220
Criminal Procedure Code, 1973 (CrPC) — Section 197
Regional Rural Banks Act, 1976 — Section 3

Citation : (1993) 2 ShimLC 243

Hon'ble Judges : Devinder Gupta, J;D.P. Sood, J

Bench : Division Bench

Advocate : Kuldip Singh, Pratima Malhotra, H.M. Sharma and Sarwan Dogra, for the Appellant; Chhabil Dass and M.L. Chauhan, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The preliminary objection raised in these seven writ petitions arising for determination is as to whether the three Societies registered or deemed to have been registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (H.P. Act No. 3/69) (hereinafter referred to as "the Act") are amenable to the writ jurisdiction under Article 226 of the Constitution of India with respect to the matters pertaining to the service of their employees.

2. The three Co-operative Societies are the Himachal Pradesh State Co-operative Bank Ltd., The Mall, Shimla (hereinafter called the M.P. Co-op. Bank) the Kangra Central Co-operative Bank Ltd., Dharamshala (hereinafter referred to as the Kangra Bank) and the Himachal Pradesh State Co operative Marketing and Development Federation Ltd., Shimla (hereinafter referred to as HIMFED).

3. It is not in dispute that the Societies are Co-operative Societies duly registered under the Act and are governed by the provisions of the Act. They

have their own bye-laws and set of service rules governing the terms of employment of the employees. Before proceeding to deal with the case with respect to each Co-operative Society, we would like to give the background under which the preliminary objection has come up for consideration for which reference will be made to the facts of CWP No. 17/79.

4. The Respondent Society in its return had already taken up the preliminary objection as regards the maintainability of the writ petition against it. On coming into force of the Administrative Tribunals Act, 1985 and establishment of the Himachal Pradesh State Administrative Tribunal, an order was made on 5th September, 1986 to consider the question as to whether or not the case is required to be transferred to the Himachal Pradesh State Administrative Tribunal. On 14th November, 1986, the following order was passed:

In view of the affidavit filed on behalf of the Respondent-Bank in Civil Writ Petition No. 2 of 1978, *Rajesh Kumar Khachi v. Registrar Co-operative Societies Himachal Pradesh and Ors.*, which affidavit, with the consent of parties, has been read in the present proceedings, the Court is, prima facie, of the view that it has jurisdiction to entertain and try the present petition. The petition is, therefore, not required to be transferred to the Himachal Pradesh Administrative Tribunal at the present stage. The question of jurisdiction, if and when raised, will be finally adjudicated upon at the final hearing of the petition.

5. When the matter came up for final hearing along with a bunch of other writ petitions, it was the preliminary objection, which was heard by a Division Bench of the Court and on 19th November, 1991, the said preliminary objection was partly decided holding that a Co-operative Society registered under the Act shall be amenable to the jurisdiction of the High Court under Article 226 of the Constitution only when it can be characterised as a "State" or "Authority" under Article 12 or when a person enforces a statutory public duty, which such institution is bound to enforce. Otherwise no writ lies against such a institution.

6. The preliminary objection raised by the Respondent despite the aforementioned decision still remains to be finally decided and this is how that all these petitions were beard in order to decide as to whether the three different Societies, registered under the Act, will be amenable to the jurisdiction of this Court under Article 226 of the Constitution. Learned Counsel for the parties were heard at length on 4th December, 1992 and 17th December, 1992 and we now propose to dispose of the question raised before us.

7. In CWP No. 17/79, the Petitioner was working as a Clerk in the branch office at Mandi. Through letter dated 31st May, 1974, it was proposed to hold disciplinary enquiry against him with respect to certain charges. Charge sheet (Annexur was duly served upon him. Respondent No. 4 was appointed as the Inquiry Officer and ultimately on receipt of the report of Inquiry and serving show cause notice, order of termination of service was passed by Respondent No. 2. In terms of Rule 28 of the Service Rules of Respondent No. 1 Bank, appeal

was preferred to the Registrar, Co-operative Societies, Himachal Pradesh, which was dismissed on 22nd July, 1978. The Petitioner has in this writ petition challenged the order of termination of the services as also the order of rejection of the appeal.

8. In CWP No. 229/79, the Petitioner has challenged order Annexure P-10, passed by the Registrar, Co-operative Societies, Himachal Pradesh, In an appeal preferred by Respondent No. 4 R.P. Kohli against the order of Administrator advising the Administrator of the Bank that Kohli should be deemed to have joined back on 12th June, 1978 as an Accountant and not as Cashier and directing that the break in service from 29th April, 1978 to 11th June, 1978 will not be operative against Shri Kohli and he will continue to enjoy the same seniority, status and length of service etc., which he was enjoying before he resigned from the service. Simultaneously, order Annexure P.12 as also the order passed on 9th June, 1978 passed by the Registrar, have also been challenged seeking directions against Respondent No 3 Bank not to implement the order and has also sought mandamus directing Respondent No. 2, the Registrar of the Co operative Societies to decide the appeal of Petitioner No. 2 and to dispose of the matter afresh, after hearing all the affected parties.

9. In CWP No 181/80, the Petitioner has challenged the seniority list Annexures PD and PF and sought the quashing thereof and consequently the order of promotion Annexure PK.

10. In CWP No. 264/81, the Petitioner has challenged the order Annexure PD/1 passed on 7th February, 1980 by the Administrator of HIMFED as void ab initio and has sought mandamus against Respondent No that the order passed by the Joint Secretary (Co-operation) and addressed to the Registrar, Co-operative Societies be ordered to be complied with punctually through which order the Joint Secretary allowed the Petitioner's appeal and quashed the order passed by the Administrator regarding his superannuation.

11. In CWP No. 329/81, the order Annexure A passed on 17th October, 1979 by the Administrator of HIMFED is under challenge retiring the Petitioner with effect from 23rd October, 1979 after crossing the age of superannuation with further declaration that he continued to be in service of Federation till 30th September, 1981 or at any rate 4th September, 1981 and declaring him to be entitled to his pay, salary and other remunerations and other consequential benefits. The Petitioner has also sought the quashing of the order Annexures D, F and H with a writ of mandamus directing the Registrar, Co-operative Societies to entertain the reference petition of the Petitioner u/s 72 of the Act.

12. In CWP No. 64/90, the challenge made is against the selection to the post of Grade IV (Apprentices) in H.P. Co-operative Bank and restraining It from filling up the post of Grade IV (Apprentice). Further direction sought is that the Respondents may be directed to hold selection afresh in accordance with the rules. Similar directions have been sought in CWP No. 65/90 as well.

13. Each of the aforementioned three Societies have separate set of their own bye-laws, which have been framed under the provisions of the Act and the H.P. Co-operative Societies Rules, 1971 (hereinafter referred to as "the Rules") The bye-laws so framed are in respect of the matters enumerated in Rule 9 of the Rules. The Societies have also their separate set of service rules framed under the bye-laws with respect to the appointment, supervision and removal of the officer of the Society and the members of the Managing Committee or Board of Directors.

14. After having heard the learned Counsel for the parties, we may notice their respective contentions as also the judgments cited at the Bar.

15. On behalf of the Petitioners, their respective Counsel have contended that the Co-operative Societies in question can be characterised as a "State" (within the meaning of Article 12 of the Constitution by applying the tests evolved by the Supreme Court in that behalf, in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and would also be an "Authority" within the meaning, and for the purpose of Article 226 of the Constitution. Consequently, orders passed by the Society against its employee, in violation of the bye-laws, or service rules can be corrected by way of writ petition. In the alternative, the submission is that even if the Societies cannot be characterised as a "State" within the meaning of Article 12, even then a writ would lie against the Societies to enforce a statutory public duty, which an employee is entitled to enforce against the Society, irrespective of the fact whether the Society is treated as a "person" or "authority" within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty imposed upon the Society and the Court will enforce such statutory public duty.

16. The submission on behalf of the learned Counsel appearing for the Co-operative Societies is that by no stretch of imagination, the Societies can be characterised as a "State" within the meaning of Article 12, nor it would fall within the ambit of "other authority" since there is no deep or pervasive control by the State over the functioning of the Societies and moreover the Societies are not carrying and discharging the public functions. The Societies are registered under the provisions of the Act and are autonomous. The same are neither the instrumentality of the State, nor the Agent of the State.

17. Definition of the "State", which is not disputed, is only for the purpose of application of the provisions contained in Part-III of the Constitution. The State for the purpose of Part-III has been defined in Article 12 of the Constitution:

In this part, unless the context otherwise requires, "the State" 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.

18. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, the Court after reviewing the case law held that the expression "other authorities" in

Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. The State, as defined in Article 12 is comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.

19. A company incorporated under the Companies Act, being a non-statutory body was held to be carrying on 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 writ of mandamus, nor its workmen were found to be having any corresponding legal right for enforcement of any statutory or public duty. This was held by the apex Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, . In holding so, the Court observed that:

In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to Issue to any person or authority orders and "ants including writs in the nature of habeas corpus, mandamus, etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of restatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owned by a company towards its workmen or to resolve any private dispute.

20. In *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, the Court held that the Hindustan Steel Ltd., a company, incorporated under the Companies Act, though was entirely financed by the Government and its management being directly the responsibility of the President was not a Department of the Government, and its servants holders of "civil post" under the State. It was held to be having its independent existence distinct even from its members. Employees were held not entitled to the protection of Article 311 of the Constitution.

21. The question in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, , raised was whether the Council of Scientific and Industrial Research, a Society registered under the Societies Registration Act, 1860 would fall within the ambit of "other authority" under Article 12 of the Constitution. It was held that the Society does not have a statutory character. It was only a Society, incorporated in accordance with the provisions of the Societies Registration Act. The mere fact that the Prime Minister is its President or that the Government appoints

nominees to its governing body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co operation of scientific and industrial research, the institution and the financing of specific researches, establishment or development and assistance to special institutions etc. are carried out in a responsible manner Relying upon the ratio of the judgment in Praga Tools Corporation; Heavy Engineering Mazdoor Union and S.L. Agarwal's cases (supra), it was held that the Council of Scientific and Industrial Research was not "other authority" and no writ lay against it.

22. Following the ratio of Rajasthan Electricity Board's case (supra), it was held in 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, , that the expression "other authority" in Article 12 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. The expression "other authority" will include all constitutional or statutory authorities on whom the powers are conferred by law. Consequently, Oil and Natural Gas Commission; Life insurance Corporation and Industrial Finance Corporation, all of whom were statutory authorities on whom the powers were held to have been conferred by law were held to be coming within the ambit of the "other authority". Justice Mathew, propounded a broader test, namely, when the statutory Corporation or "other body" or "authority", claimed to fall within the definition of State is an instrumentality or Agency of the Government and if It is, it would fall within the meaning of expression "other authority" and would be State.

23. The entire case law was reviewed In Rainana Dayaram Shetty v. The International Airport Authority of India and Ors. AIR 1979 SC 1628, wherein an objection came up for consideration that the International Air port Authority of India, even though was created by the International Air port Authority Act, 1979, was not amenable to writ jurisdiction because it was a Corporation and not an authority within the ambit of Article 12. Repelling such an objection, Justice Bliagwati speaking for the Court at page 14 of the judgment held:

A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act. 1956 or the Societies Registration Act 1860. Where a Corporation Is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government In respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management In

accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, 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. 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 exhaustive 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.

24. In para 19 of the report, the Court culled out six factors observing that the same may have to be considered as relevant in determining whether a Corporation is an agency or instrumentality of the Government, which were summarised as under:

...where there is any financial assistance given by the State, and if so, what is the magnitude of such assistance whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions. This particularisation of relevant factors is however not exhaustive and by its very nature It cannot be because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and Innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency. More over even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and 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.

25. The Constitution Bench in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, while considering the question whether the Regional Engineering College, Strinagar, being a Society registered under the Societies Registration Act, 1860, is an authority falling within the definition of the State in Article 12, considered the tests for determining as to when the Corporation can be said to be an instrumentality or Agency of the Government, as culled out from the judgment in *International Airport Authority's* case (supra) and in para 9 said that the tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution because while stressing the necessity of a wide meaning to be placed on the expression "other authorities" it must be realised that it should not be stretched so far as to bring in every autonomous body, which has some nexus with the Government within the sweep of the expression, it was further held that a wide enlarge. meat of the meaning must be tampered by a wise limitation. Tests were then summarised 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 of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.
- (6) Specifically, if a department of Government is transferred to a corporation. it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

If on 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 in Article 12.

The Court further held in para it that:

We may point out that It is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to bow It is created. The inquiry has to be not as to how the juristic person is born but why it has been

brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.

26. Applying the tests laid down in Sukhdev Sing case (supra) and Sabhajit Tewary's case (supra), the Supreme Court in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, held that the Super Bazar at Connaught Place, a Society registered under the Bombay Co-operative Societies Act, 1925 was not an instrumentality of the State and the Appellant therein, who was a member of the Indian Administrative Service and whose services had been placed at the disposal of the Co-operative Society Store was not employed in connection with the affairs of the Union within the meaning of Section 197 of the Code of Criminal Procedure, 1973.

27. The Indian Statistical Institute, a Society registered under the Societies Registration Act in B.S. Minhas Vs. Indian Statistical Institute and Others, was held to be under the control of the Government of India and thus an instrumentality of the Central Government. It was so held by applying the six tests, as called out in International Airport Authority's case (supra) and approved by the Constitution Bench in Ajay Ha case (supra) by holding that on a reference to the memorandum of the Association, the composition of the Indian Statistical Institute is dominated by the representatives appointed by the Central Government and even if any other moneys are received by the Institute, the same can be done only with the approval of the Central Government, the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction and the Society has also to comply with all the directions, as may be issued by the Central Government. "Thus, the control of the Central Government was found to be deep and pervasive and, therefore, for all intents and purposes, the Society was held to be an instrumentality of the Central Government and, as such, an authority within the meaning of Article 12 of the Constitution and subject to the constitutional obligations under Articles 14 and 16 of the Constitution.

28. One of the six tests relate to the deep and pervasive control. What is meant by control is no longer res-integra. The term "control" is of a very wide connotation and amplitude and includes a large variety of powers, which are

incidental or consequential to achieve the power vested in the authority concerned. In *The State of West Bengal Vs. Nripendra Nath Bagchi*, while interpreting the term "control" employed in Article 235 of the Constitution of India, which confers control by the High Court over the District Courts, it was held that the word "control" would include the power to take disciplinary action and all other incidental or consequential steps to effectuate this and made the following observations:

...The word "control" as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest", which is a strong word. It shows that the High Court is made the sole custodian of the control over the Judiciary. Control, therefore, is not merely the power to arrange the day to day working of the Court, but contemplates disciplinary jurisdiction over the Presiding Judge..."In our judgment, the control, which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal....

(Emphasis supplied)

29. In *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, while reiterating the afore mentioned view further held that the control includes therein the powers to pass an order of suspension and was comprehensive and effective in operation. The view was further upheld in *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, wherein in para 4 of the report it was held:

It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned....

(Emphasis supplied)

30. After tracing the historical background of Indian Council of Agricultural Research, a Society registered under the Societies Registration Act, the Supreme Court in *P.K. Ramachandra Iyer and Ors. v. Union of India and Ors.* (1984) 2 SOC 141, held that the administrative and financial control of the Government was all pervasive. Indian Council of Agricultural Research was found to have come into existence as an integral department of the Government of India and later on became an attached office of the Central Government. Subsequently it was registered as a Society under the Societies Registration Act, 1860. Considering its composition and finding that the administrative and financial control was all pervasive, it was held to be an instrumentality and agency of the Central Government and, therefore, "other authority within the meaning of expression used in Article 12 and thus was held amenable to writ jurisdiction.

31. Similarly, Bokaro Steel Plant, being an unit of Steel Authority of India Ltd., which in turn is a public limited company entirely owned, controlled and supervised by the Central Government was held to be an instrumentality of State and "an authority" within the meaning of Article 12 of the Bihar State Harijan Kalyan Parishad Vs. Union of India and Others,

32. Co-operative Society is defined u/s 2(3) of the Act to mean a Society registered or deemed to be registered under the Act. Section 10 of the Act makes a Society to be a body corporate and says that the registration of a Cooperative Society shall render it body corporate by name under which it is registered having perpetual succession and common seal, and with power to hold property, enter into contracts institute and defend suits and other legal proceedings and to do all things a necessary for the purposes for which it is constituted. Thus the moment a Society is registered under the Act, it becomes a body corporate or a corporation.

33. What a Corporation ordinarily means and comprehends in the Scheme of the Constitution was the subject-matter before the apex Court in the The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, . The question to be answered was whether the Board of trustees, which was originally registered under the Societies Registration Act, 1860 and a new Board of trustees, which was incorporated by an act of legislature called the Tibbia College Act, 1952, by which old board was dissolved and a new board was constituted were Corporations. The Court held that the old board was not, but a new board was a Corporation. The Court answered the question by quoting the statement contained in Haisbury's Laws of England as follows:

A corporation may be defined as a body of persons in the case of a corporation aggregate) or an office (in the case of a corpora ion sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question.

A corporation aggregate has been defined in paragraph 1204 as:

(A) collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and in immunities and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence.

A corporation aggregate has therefore only one capacity, namely, its corporate capacity. A corporation aggregate may be a trading corporation or a non trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special Acts of Parliament, (3)

companies registered under the Companies Act, etc. Non- trading corporations are illustrated by (1) municipal corporations, (2) district boards, (3) benevolent Institutions, (4) universities etc. An essential element In the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors are one. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself; for a corporation is a legal persona just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists In (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a Corporation; any expression showing an intention to incorporate will be sufficient.

34. Applying the aforementioned statement of law in *Daman Singh and Others Vs. State of Punjab and Others*, the Court held that a Cooperative Society is a Corporation which from its inception is governed by statute. Co-operative Societies are created by statute and controlled by statute. The Court was dealing with the challenge made to an order passed for amalgamation of two Cooperative Societies. One of the submission made while challenging the amalgamation was that members of one Society would be formed against their will and without being heard to associate themselves with members of the other Society. The same was rejected by holding that:

...Once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body

35. Merely because the Corporation is deemed to be an authority and is brought within the purview of Article 12, It may not be termed as State for all intents and purposes and cannot be subject to the constitutional limitation of fundamental rights in the performance of all its functions. This was so held in *M.C. Mehta and another Vs. Union of India and others*, . By holding, in para 29 of the report:

...We are aware that in America since the Fourteenth Amendment is a only against the State, the Courts, in order to thwart racial discrimination by private parties, devised the theory of State action under which it was held that wherever private activity was aided, facilitated or supported by the State In a significant measure, such activity took the colour of State action and was subject to the constitutional limitations of the Fourteenth Amendment. This historical context in

which the doctrine of State action evolved in the United States is irrelevant for our purpose especially since we have Article 15(2) in our Constitution. But It is the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action that is of Interest to us and that also to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. That we in no way consider ourselves bound by American exposition of constitutional law is well demonstrated by the fact that in *Ramanna Shetty (supra)* this Court preferred the minority opinion of Douglas I in *Jackson v. Metropolitan Edison Co. (1974)* 42 LD 477 as against the majority opinion of Rehnquist, 3. And again in *AIR India Vs. Nergesh Meerza and Others*, this Court whilst preferring the minority view in *General Electric Co. v. Martha Gilbert (1976)* 50 LD 343 said that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution and whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured, because the social conditions in our country are different. The learned Counsel for Shriram stressed the inapplicability of the doctrine of State action in the Indian context because, according to him, once an authority is brought within the purview of Article 12, it is State for all intents and purposes and the functional dichotomy in America where certain activities of the same authority may be characterised as State action and Ors. as private action cannot be applied here in India. But so far as this argument is concerned, we must demur to it and point out that it is not correct to say that in India once a corporation is deemed to be "authority", it would be subject to the constitutional limitation of fundamental rights in the performance of all its functions and that the appellation of "authority" would stick to such corporation, irrespective of the functional context.

(Emphasis supplied)

36. While making the aforementioned observations, the Court did not decide finally the question whether a private Corporation like Shriram Foods and Fertiliser Industries would fall within the scope and ambit of Article 12.

37. The question whether the Institute of Constitutional and Parliamentary Studies (ICPS) registered under the Societies Act, 1860 is a "State" within the meaning of Article 12 of the Constitution, was decided in *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, by applying the tests indicated in the *International Airport Authority's* case and in *Ajay Hosiya's* case (*supra*). In order to hold whether the authority would fall within the ambit of an "authority" within the meaning of Article 12 of the Constitution, whether all tests should be satisfied or presence of some of them would suffice was considered by the Court and in para 13 of the report, It was stated:

It is time to turn to the facts of the present case to find out as to what the conclusion should be when the tests formulated by the several cases of this

Court referred to above are applied. There cannot indeed be a strait jacket formula. It is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be "State". In a given case some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the border line and it would be difficult to take one view or the other outright.

(Emphasis supplied)

38. The Society, namely, ICPS from its object was held as not doing any governmental business, but was found to have come into existence to equip members of Parliament and State legislatures with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not found to be confined to the Houses of Parliament, but were intended to have an impact on Society at large. Thus, It was held not to be an agency or instrumentality of the State so as to come within the purview of the other authority under Article 12 of the Constitution. This conclusion was reached by the Court after giving the following caution to decide the question as to whether a Society, after applying the various tests, would be an authority or instrumentality of the State:

We have several cases of societies registered under Societies Registration Act which have been treated as "State" but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the "State" had been undertaken to be performed as a part of the Society's function. In a Welfare State, as has been pointed out on more than one occasion by this Court, 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 so to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion .

(Emphasis supplied)

39. Very apt following observation was made in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, in which case, the Government was held to be operating behind a corporate veil carrying out governmental activity and governmental functions of vital public importance through the Central Inland Water Transport Corporation, a Government company.

... For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State....

40. The Central Government by establishment of Rural Banks was held to be acting in discharge of its obligation under Articles 38 and 48 of Part IV of the Constitution through them. Thus the Regional Rural Banks established by Notification issued u/s 3 of the Regional Rural Banks Act, 1976 were held to be instrumentality of the Central Government and thereby State under Article 12 of the Constitution in *Prathama Bank, Head Office, Moradabad, through its Chairman Vs. Vijay Kumar Goel and Another*, .

41. What should be type of control whether financial control or functional control or which other test should be applied to bring a registered Society within the ambit of "other authority", under Article 12 of the Constitution, came up for consideration in *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], *National Council of Education Research and Training (NCERT)* is a Society registered under the Societies Registration Act. Object of the Council is to assist and advise the Ministry of Education and Social Welfare in the implementation of its policies and major programmes in the field of education particularly school education. The Society was held to be largely an autonomous body though the government control was found to be confined only to the proper utilisation of the grant. It was also held not to satisfy the requirements of State under Article 12 of the Constitution. In holding so, the tests culled out in *Sukhdev's case*, *International Airport Authority of India's case*, *Ajay Hasia's case* (supra) and *Som Prakash Rekhi v. Union of India* and *Anr.* AIR 1981 SC 212 case were held to be merely indicative indicia and by no means conclusive or clinching in any case. It was observed in para 2 that:

There are only general principles but not exhaustive tests to determine whether a body is an instrumentality or agency of the Government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. The powers, functions, finances and control of the Government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the Government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor.

42. Even the State control, however vast and pervasive was held not to be determinative. Even the financial contribution by the State was not conclusive. 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 function of the State were however considered which may largely point out that the body is "State". The Court in para 3 of the report held:

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, how ever vast and pervasive 4S 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. (See (i) P.K. Rarnachandra Iyer v. Union of India, (ii) Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly and (ii) Tekraj Vasandi @ K.L. Basandhi v. Union of India).

43. Following observations in Tekraj Vasandhi's case were quoted with approval at page 583:

In a Welfare State...governmental control is very pervasive and in fact touches all aspects of social existence 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.

44. Some of the decisions of various High Courts as relied upon by the learned Counsel for the parties dealing with the question whether a Co-operative Society registered under the Co-operative Societies Act would fall within the ambit of "other authority" and thus a State within the meaning of Article 12 of the Constitution and thus amenable to writ jurisdiction may also be noticed.

45. A Full Bench of Punjab and Haryana High Court in Ajmer Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others, held that the Punjab State Co-operative Supply and Marketing Federation Ltd., registered under the Punjab Co-operative Societies" Act, 1961 is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. However, relying upon The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, the" Court held that where the relief is sought primarily against the Registrar of the Co-operative Societies, writ petition would be maintainable.

46. The same question when cropped up in Pritam Singh Gill Vs. State of Punjab and Others, . the learned single Judge placing reliance upon the decision in Ajmer Singh" case (supra), considered the preliminary objection raised that no

writ of certiorari lay against the Punjab State Co-operative Land Mortgage Bank Ltd., a Society registered under the Punjab Co-operative Societies Act, 1961 but in view of the subsequent decision of Supreme Court in Som Prakash Rekhi's case and Ajay Hasia's case (supra), reference was made to the Full Bench. The Full Bench reiterated the proposition of law laid down in Ajmer Singh's case (supra), but qualified the same by holding that:

...where a society registered under the Punjab Co-operative Societies Act is in essence an instrumentality or agency of the State, it would become amenable to the writ jurisdiction under Article 226 of the Constitution of India in the same manner as the State itself...

47. A Division Bench of Patna High Court in Harender Narain Banker v. The State of Bihar and Ors. (1986) 2 SLR 256, also considered the question as to whether the Bihar State Co-operative Marketing Union Ltd., a Society registered under the Bihar and Orissa Co-operative Societies Act, 1935 is, In essence, and instrumentality or agency of the State, and consequently, amenable to the writ jurisdiction. Mr. S.S. Sandhawalia, C.J., who also delivered the Full Bench judgment in Pritam Sing Gill's case (traced the following history of co-operative movement in this country:

...The history of the Co-operative movement and its principles in Europe and, in particular, in India as also its altruistic objects are too well known and it is unnecessary to launch an elaborate dissertation on the point. It would, perhaps, suffice to mention that the father of the Co-operative movement (who was also the founder of British Socialism) was one Rebert Owen (1771-1828). His main thesis was a lack of trust in the State to solve the economic problems of the people and a corresponding faith and hope in the voluntary association based on principles of mutual help. He projected the concept of co-operation as a basis of the new social and economic order and his movement was built upon the free choice of the peoples and the principles of democratic management This movement spread to all the democratic countries of the West and, in particular Rochdale Pioneers in England for the first time established their well-known Equitable Society In 1884 for self-help and mutual help. The underlying principles of co-operation projected by the Rochdale Pioneers consisted of Voluntary Association Democratic Management, self-help mutual help and no profit motive. etc. With this brief conspectus of the development of the movement in Europe, one may now turn to the co-operative movement in our own country. Long before the Constitution came into force, the Co-operative movement was regulated and governed by the Central Co-operative Societies Act, 1912. Its main provisions would indicate that the Co-operative movement in India was, more or less, the creation of the statute which had as its object the promotion of the economic interests of the members of society registered under it in accordance with the Co-operative principles. These co-operative societies, though conceived as democratic bodies, still had a large measure of control of the Registrar thereon. It would appear from the development of the co-operative movement from time

to time in India that the same has been somewhat Government initiated and has been largely nurtured and guided by the State. Later when co-operation became a State subject, the Central Act was followed by various State Acts....

48. The Bihar Act and rules framed there under and the bye-laws of the Co-operative Societies were considered. After applying the tests spelt out in *Ajay Hasia's* case (supra), it was held that no one test stands satisfied and, as such, the Society was not an instrumentality or agency of the State.

49. A similar question came up for consideration before the Delhi High Court, wherein Council of Indian Schools Certificate Examination, registered under the Societies Registration Act, 1860, was held to be amenable to writ jurisdiction under Article 220 of the Constitution. The Society was found to have entered into an arrangement with the Government to enable it to discharge its public function of imparting education and thereby not only receiving the authority or concession or privilege to conduct public examinations but also having been statutorily recognised u/s 2(a) of the Delhi Education Act as a body of person or a Society recognised and authorised by the Government to discharge public function or the governmental function of imparting education. The Society was found to be under the functional control of the Government, which was deep and impregnated with the governmental character and also found to be discharging public function.

50. A Full Bench of Kerala High Court in *P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others*, held that the Co-operative Societies registered under the Kerala Co-operative Societies Act were not State and no writ lies against it. In holding so, in para 29, the Court held:

The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the societies does not vest in the Government or in the representatives of the Government. The management is under the effective control of a committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not "an imprint of State under Article 12.

51. The single Bench of the Kerala High Court in *Saraswathi Amma v. Kerala State Co-operative Bank* 1990 (2) KLT 155, referring to the decision of the Full Bench in *Bhaskaran's* case (supra) and relying upon the later judgment of Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, held the Kerala State Co-operative Bank, a Society registered under the Kerala Co-operative Societies Act to be a body performing public duty and thereby

amenable to writ jurisdiction. In holding so, the Court made a reference to the bye-laws of the Bank and assuming that the management is vested in a private body, but the affairs of the Society were managed by the Board subject to the provisions contained in the Act discharging and performing public duty.

52. Khurda Central Co-operative Bank registered under the Orissa Co-operative Societies Act in Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another, was held not to be "an authority" within the Article 12 and thus not amenable to writ jurisdiction. On facts the Full Bench found that the acid test as to the formation of the share capital of the Bank and its functions and activities did not satisfy those tests as indicated by the Supreme Court. There was no deep and pervasive State control over the affairs of the Bank. The two questions that whether the Co-operative societies registered under the Co-operative Societies Act, as such, will come within the fold of Article 12 of the Constitution and are amenable to the writ jurisdiction of the High Court? and whether the Cooperative Society born under any Statute or is discharging any such functions which will make it an instrumentality of the State were answered as follows:

...A Co-operative society on merely getting registered under the (Co-operative Societies Act do not acquire any status of being an authority to render it amenable to the writ jurisdiction of the High Court. The supervisory powers given to the Registrar is with the object of better working of the societies and to give them guidance of well trained and expert officers.

If a Co-operative Bank is borne under or created by statute, then it may acquire the status of an "authority" within the meaning of Article 12 of the Constitution. Otherwise, it has to satisfy the essential tests formulated by the various decisions of the supreme Court for which, however, there cannot be a strait jacket formula. However, it may not be necessary that the society must satisfy all the tests for qualifying to be an "authority" and in a given case, only some of the prominent features may give it that status. But that must be so pre dominant that on tearing the veil, it may appear that the society is merely a projection of the State, the voice being that of the State and the hands also of the State.

53. A Full Bench of Madras High Court in R. Thamilarasan and Ors. v. The Director of Handlooms and Textiles, Madras and Ors. 1989 (1) LLJ 588, held that a Co-operative Society is not an authority, nor an instrumentality or agency of the Government to attract Article 12 of the Constitution and, therefore, not amenable to writ jurisdiction under Article 226 of the Constitution. The Court agreed with the view expressed by the Division Bench judgment of Patna High Court in Harendra Nara Banker's case (supra) and by the two Full Bench judgments of Kerala and Orissa High Courts in P. Bhaskaran and Banabihari Tripathy (supra).

54. In Sri Konaseema Cooperative Central Bank Ltd. Amalapuram and Anr. v. N. Seetharama Raju AIR 1990 AP 171 a Full Bench of Andhra Pradesh High Court after finding the main object of the Co-operative Central Bank, registered under

the Andhra Pradesh Co-operative Societies Act, 1964, to raise funds to finance its members held that such functions were not of public importance and closely related to governmental function and thus the same cannot be characterised as 'State' within the meaning of Article 12 of the Constitution. Applying the six tests enunciated in the International Airport Authority's case and Ajay Hasia's case (supra) the Court held that the tests 2, 3 and 6 were not satisfied. On the remaining three tests, the Court held that even in a case where the Government's share holding is 95%, its representation to the committee of the society cannot exceed 1/3rd of the total number of members of the Committee. A substantial holding of share capital in a society by the Government, it was held, would not by itself go a long way towards indicating that such society is an instrumentality or agency of the State. Though the Government's representation may be in minority in the Committee, yet it may carry great weight consistent with the largeness of the interest it represents, but such large share-holding is not conclusive. On the other test of deep and pervasive control, after examining the provisions of the Andhra Pradesh Co-operative Societies Act, the Court found that the control vested in the Government and the Registrar, particularly, the power to amalgamate, divide or merge the Societies, power to conduct elections to the Committee, (disabling the Society to conduct such an election itself), power to supersede the committee, power to recover amounts due to the Societies as arrears of land revenue, power to provide common cordons (SIC) for the employees of several independent Societies, as also the extensive power to give binding directions vested in both the Government and the Registrar of only in the interest of share-holders, depositors and creditors, but and the interest of share-holders, and of co-operative movement, can be characterised as deep and pervasive control within the meaning of the fourth test. However, the last test as to whether the functions of the Society are of public importance and closely related to the governmental functions, it was held that this test was not satisfied. Thus, even if it was found that there was to some extent substantial holding of share capital by the Government and deep and pervasive control, yet the Society was not characterised as a State within the meaning of Article 12 of the Constitution. Bye-laws of the Society having no force of law were found to be in nature of contract between the Society and its employees and between the Society and its members and though the Society was not characterised as a State it was held that the service condition of its employees cannot be enforced through a writ petition. However, in the matter of termination of service, employees of Co-operative Society were found to be having some protection u/s 47 of the Andhra Pradesh Shops and Establishments Act, which protection was held as based on public policy and the Court held that the same could be enforced in an appropriate case by invoking Article 226 of the Constitution: In para 51, the Court summarised the propositions emerging for determination as follows:

(i) If a particular co-operative society can be characterised as a "State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an "authority" within the

meaning, and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of Its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society which is a "State", has to act in conformity with Article 14 and, for that reason, It will be made to follow the bye-laws.

(ii) Even if a Society cannot be characterised as a "State" within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a "person", or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.

(iii) The bye-laws made by a co-operative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the Society and Its employees, or between the Society and its members, as the case may be. Hence, where a Society cannot be characterised as a "State", the service conditions of employees, governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co oclet. 47 of the A.P. Shops it provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution, Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishments Act ; but, in an appropriate case, this Court will interfere under Article 226. if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.

(iv) Mandamus, certioraria and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a "State" within the meaning of Article 12, does not necessarily belong to public law field. A society, which is a "State", may have its private law rights just like a Government. A contractual obligations, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into contract, however, Article 14 operates, as explained by the Supreme Court in E.E. and C Ltd. v. State of West Bengal AIR 1975 SC 266, and Ramana Dayaram Shetty AIR 1 SC 1628.

55. A Division Bench of Bombay High Court in Sudam Vanaji Shirsat Vs. Shetkari Sahakari Sangh Ltd. and others, held that the Shetkari Sahakari Sangh Ltd. a Society registered under the Maharashtra Co-operative Societies Act does not

answer the description of the "other authority" under Article 12 of the Constitution. Reliance was placed in holding so on a Full Bench decision of Kerala High Court in P. Bhaskoron's case (supra) and that of Supreme Court in Tekraj Vasandhi's case (supra), the character of the control of the Government was found to be indirect and remote and not a plenary control. In para 8, the Court held:

The character of the control which has to be considered in this Context is the plenary control which is clearly different from some control or a few controls. In one sense, no individual or any institution, in modern times, is free from controls of the Statute As Duncan Meritt has put such regulation from statutes the cradle to the grave and even beyond. That does not, however, make out a plenary control in the sense in which the Apex Court intended to put. In the present case, having regard to the area of its functions, plenary control vests with the Managing Committee, over activities primarily, principally and proximately, associated with the society. The control exercised by the Government is indirect and remote and of an attenuated character. Counsel drew our attention to two propositions wherein, the society is discharging the functions of a sovereign character such as that in connection with grading of agricultural produce and its position as a licensing authority under the Warehousing Act. These are only some individual activities which the society is empowered to undertake. They are not main or essential functions of the society. There has not been any exterior entity with necessary proximity to Article 12 of the Constitution which got transmitted to the present position of co-operative society. There is no case of a Government department or authority under Article 12, which has undergone a change, only in its exterior garb, in the present case. The society was born as society and functions as such.

56. Before applying the aforementioned six tests and also the ratio of various judgments, provisions of the Act deserve to be noticed.

57. Section 3 of the Act provides for appointment of Registrar and other officers to assist him. Other officers, so appointed to assist the Registrar are to exercise their powers subject to the general guidance, superintendence and control of the Registrar. A cooperative society, which has as its objects, the promotion of the economic and social interests of its members or the public, in accordance with the co-operative principles, is to be registered as Society, as envisaged u/s 4 of the Act, which says:

Subject to the provisions of this Act, and any Rules framed there under, a co-operative society which has, as its objects, the promotion of the economic and social interests of its members or the public in accordance with the co-operative principles, or a co-operative society established with the object of facilitating the operation of such a society, including, a society formed by the division of any existing co society or amalgamation of existing co-operative societies, may be registered under this Act.

58. Society may be registered as limited Society or having unlimited liability, as envisaged u/s 5 of the Act. Restrictions on holding of the shares by any member other than the State Government is provided in Section 6 of the Act. The main purpose of Section 6 appears to be to prevent monopolistic tendencies in Co-operative Societies, as is evident from Section 4 of the Act, since the main object of a Society should be the promotion of the economic and social interest of its members or of the public, in accordance with the provisions of the co-operative principles.

59. Application for registration is to be addressed to the Registrar, who is required to take the decision thereupon within the time prescribed u/s 8 of the Act. Section 10 of the Act says that the registration of a Co-operative Society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal with power to hold property, enter into contracts, Institute and defend suits and other legal proceedings.

60. No amendment in the bye-laws of Co-operative Society shall be valid unless approved by the Resolution of general meeting as provided u/s 11 of the Act. The amendments are thereafter to be got registered with the Registrar, who is also empowered to refuse registration under certain eventualities.

61. Section 11A empower the Registrar to direct the amendment of the bye-laws, If found necessary or desirable in the public Interest or in the interest of Society or in the interest of co-operative movement. On failure of the society to make amendment, within the time specified by the Registrar, after giving the Society an opportunity of being heard, the Registrar can order the amendment to be carried out in the bye-laws.

62. Amalgamation, transfer of assets and liabilities, conversion and division of Societies Is envisaged u/s 14, subject to the approval of the Registrar u/s 14A of the Act, power is also given to the Registrar to direct amalgamation, conversion and reorganisation of the Societies, if he is satisfied that it is essential or desirable in the public interest of co-operative movement for the purpose of securing of proper amalgamation of any Society or Societies.

63. Section 18 of the Act enumerates two other type of members, namely, nominal or associate members and Section 20 says that nominal or associate members shall have no right to vote, otherwise every member of the Society shall have one vote in the affairs of the Society. Third proviso to Section 20 says that where the Government is a member of the Society, each person nominated by the Government shall have one vote.

64. Section 31 vests the final authority of a Co-operative Society in the general body of members in a general meeting and it says that:

The final authority in a co-operative society shall vest in the body of members in a general meeting:

Provided that where the bye-laws of a co-operative provide for the constitution of

a smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, the smaller body shall exercise such powers of the general body as may be prescribed or as may be specified In the bye-laws of the society:

Provided further that nothing in this section shall affect any powers conferred on a committee or any officer of a co-operative society by the rules or the bye-laws.

65. Section 35 deals with the nominees of the Government and other nominees on the Committee of the Co-operative Society. Whenever the State Government has subscribed to the share capital of a Co-operative Society or assisted indirectly in the formation or augmentation of the share capital, as provided u/s 4 of the Act or guaranteed the repayment of principle and payment of interest on loans and advances to a Cooperative Society, Section 35 of the Act authorises the State Government to nominate not more than three members or one-third of the total number of members of the Committee of the Society, whichever is less, It further says that in addition to the members, an additional member may also be nominated and appointed Managing Director, in case the share capital is to the extent of five lakhs or more. Learned Counsel for the Petitioners laid much emphasis on Sub-section (3) of Section 35, which is being extracted as under:

Wherein a co-operative society in which shares have been subscribed or "liability by way of guarantee for borrowing has been undertaken by the Government, exceeding fifty percentum of the working capital of the society, a difference of opinion in respect of any matter arises between any member of the committee nominated under Sub-section (1)(a) and other members thereof, the matter shall be referred by the committee to the Government whose deasion thereon shall be final and will operate as if the same were a decision taken by the committee.

66. Section 35A empowers the Registrar to constitute new Committee in certain cases.

67. In addition to the provision for nomination of the State Government to the committee of management u/s 35 of the Act by having an additional member, who is to be appointed as Managing Director, Section 35B of the Act, which was inserted by the Himachal Pradesh Co-operative Societies (Amendment) Act, 1986 (Act No. 20 of 1986 further empowers the State Government to do so and defines the powers and functions of the Managing Director and says:

35B. Appointment, powers and function of Managing Directors.

(1) Where the Government has subscribed to the share capital of a cooperative society to the extent of rupees five lakhs or more, the Government may notwithstanding anything contained in the bye laws of the society, nominate Anr. member in addition to those nominated u/s 35 and appoint him as Managing Director:

Provided that no person shall be appointed as Managing Director of a co-operative society unless he is a member of the Indian administrative Service or

Himachal Administrative Service or (Officer of the Co-operative Department, except the Himachal Pradesh State Co-operative Land Development Bank and the Himachal Pradesh State Co-operative Milk Federation where technical persons may be appointed as Managing Directors.

(2) A person nominated and appointed as the Managing Director under Sub-section (1) shall be ex-officio member of the committee and shall hold office during the pleasure of the State Government and shall have a right to participate in the deliberations of the committee and shall also have the right to vote.

(3) The Managing Director appointed under Sub-section (1) shall exercise such powers as are assigned to him under the bye-laws or delegated to him by the committee. He shall discharge all such functions" consistent with the bye-laws, as are assigned to him by the Government or the Registrar. He shall work under the superintendence and control of the committee.

(4) The Managing Director of a co-operative society shall be its principal executive officer. All employees of the society shall function and perform their duties under his superintendence and control.

(5) The Managing Director appointed under Sub-section (3) shall be deemed to be on deputation with the society and his salary and allowances, as determined by the State Government shall be paid from the funds of the society

68. Section 36 empowers the State Government, on the application of a Society and on such conditions, s may be prescribed, to depute a Government servant to the service of Society for the purpose of managing its affairs. Powers to be exercised y such Government servant and duties to be performed by him may be such as may he prescribed. Co operative Sc can be superseded, alter the Registrar has formed an opinion that the Committee or Society or any member thereof persistently makes default or is negligent in the performance of the duties imposed on it or him by the Act rules, or bye laws; or commits any act which is prejudicial to the interest of the Society or its members. On supersession, the committee may be removed and fresh elections may be ordered. Pending such elections, the Registrar is also empowered to appoint an Administrator to manage the affairs of the Society The Registrar is also authorised to secure possession of the records, if he is satisfied that the books and records of the Society are likely to be suppressed or tam pered with, destroyed or the funds arc likely to be misappropriated.

69. Section 48 enumerates the forms of State Aid to Cooperative Societies and says:

Other forms of State aid to co-operative societies. Notwithstanding anything contained in any law for the time being in force the Government may,-

(a) subscribe to the share capital of a co-operative society;

(b) give loans or make advances to a co-operative society

(c) guarantee the payment of share capital of a co-operative society and dividends thereon at such rates as may be specified by the Government;

(d) guarantee the repayment of principal and payment of interest on loans and advances to a co-operative society and

(e) give financial assistance in any other form, including subsidies to any society.

70. Apportionment of profits earned by the Co-operative Society is dealt with in Section 56. Profit earned or any part thereof may be appropriated if approved by the Society in its Annual General Meeting and in conformity with the Act, rules and byelaws. The role, which the Registrar has to play is to notify the extent of contribution to the educational funds of the Society.

71. Chapter VIII of the Act deals with the audit, inquiry, inspection and surcharge. Every Society is required to be audited once during the co-operative year u/s 61 of the Act. Nature of audit is provided u/s 62 and the Auditors report has to be in consonance with Section 63 of the Act. Section 64 says that the Registrar shall afford to the Co-operative Society an opportunity of explaining any defect(s) or irregularities pointed out by the auditor and the Society is required to remove such defect(s) and irregularities within the time specified by the Registrar. Section 65 authorises the Registrar to himself inspect the Society or have a person (SIC) done by general or special order inspection of the books of an indebted co-operative society is required to be done by the Registrar by general or special order as envisaged u/s 66. Inquiry into the Constitution, working financial condition of Society may be done by the Registrar, as provided u/s 67 of the Act. Costs of the inquiry or communication is to be borne by the Society as contemplated u/s 68. Section 69 says that if in the course of audit, inspection or inquiry or the winding up of the Co-operative Society it is found that any person entrusted with the organisation or management" of the Society or being an officer or employee of the Society, has made any payment, contrary to the provisions of the Act or bye-laws or has caused deficiency in the assets of Society by breach of trust or willful negligence or mis-appropriated the funds, the Registrar may of his own motion or on the application of the Committee etc. make an order to inquire into the conduct of such person and then pass appropriate order in this behalf in the restoration of the money or property. Section 70 authorises the Registrar or any other person to have access to the records of the Society.

72. The Registrar on receipt of a reference of a dispute under section. 72 of the Act is authorised by virtue of Section 73 to decide the same himself, or transfer the same for disposal to any other person, who has been invested with the power of Registrar.

73. Chapter X deals with the winding up and dissolution of co-operative Societies. Section 78 authorises the Registrar to make an order for the winding up of Society in certain eventualities, after he has formed an opinion that the Society ought to be wound up. This order passed by the Registrar is appealable. After having passed an order of winding up, the Registrar is authorised, by virtue of

Section 79, to appoint a liquidator and make further appropriate orders in this behalf. Order of winding up of Cooperative Society may be revoked by the Registrar, as envisaged u/s 83 of the Act. Section 96 deals with various offences and provide for punishments, which can be imposed. Power to make rules by the State Government is contained in Section 109 of the Act. Sub-section (3) of Section 109 says that in making the rules, the State Government may direct that any person committing a breach thereof shall on conviction be punishable by a Court with fine which may extend to fifty rupees or with further fine of Rs. 10 per day, if the breach is continuing one.

74. In exercise of the powers u/s 109 of the Act, the State Government has framed rules known as the Himachal Pradesh Co-operative Societies Rules, 1971. The learned Counsel for the Petitioners made a special reference to Rule 56, which deals with the officers and employees of the Co-operative Societies, which says:

Officers and employees of Co-operative Societies-(I) Notwithstanding anything contained in the bye-laws of a society, no Co-operative Society shall appoint any person as its paid officer or employee in any category of service unless he possesses the qualifications and furnishes the security, if so specified by the Registrar, from time to time, for such category of service in the society, or for the class of society to which it belongs. The conditions of service of the employees of the societies shall be specified by the Registrar.

(2) No Co-operative Society shall retain in service any paid officer or employee, if he does not acquire the qualifications or furnish the security as is referred to in Sub-rule (1) within such time as the Registrar may direct.

(3) No Co-operative Society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees one thousand without the previous permission of the Registrar. The promotion of an employee to a higher post shall be deemed to be an appointment under this sub-rule.

(4) The Registrar may for special reasons to be recorded in writing relax in respect of any paid officer or employee, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish.

(5) Where in the course of an audit u/s 61, or an inspection u/s 6 or an inspection u/s 66, or an inquiry u/s 7, it is brought to the notice of the Registrar that the paid officer or servant of the society had committed, or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society or he willfully neglected or failed to discharge his duties and functions as enjoined on him under the Act, rules or bye-laws or is otherwise responsible for any act or omission thereby adversely affecting the interest of the Society, the Registrar, if in his opinion there is prima facie evidence against the paid officer or servant, and suspension of such paid officer or servant is necessary in the interest of the society, direct the committee of the society, pending the investigation and disposal of the matter, as the case may be, to

place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him.

(6) On receipt of a direction from the Registrar under Sub-rule (5), the committee or society shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.

(7) If the committee failed to comply with the direction issued under Sub-rule (5), the Registrar may make an order placing such paid officer or servant under suspension from such date and for such period as he may specify in the order and thereupon the paid officer or servant, as the case may be, shall be under suspension.

(8) The officer or servant suspended under this rule shall be reinstated only after the previous approval of the Registrar.

75. Rule 67 enumerates the financial assistance by the Government subject to the provisions of the Act. It mentions therein the details and the type of the State aid in addition to what is provided in Section 48 of the Act. Rule 147 makes wilful breach of mandatory provisions of the Act and Rules punishable.

76. The learned Counsel for the Petitioners, after having referred to the aforementioned provisions of the Act and the Rules, contended that there is deep and pervasive control of the State Government over the functioning of the Co-operative Societies. State Government can have effective control by contributing towards the share capital. Thus providing financial assistance. Monopoly status and functions of the Society being governmental function or In any other manner some of the functions of the Departments of the Government having been transferred, atleast some of the tests, out of six tests, are fulfilled. In order to examine the sub mission, we will proceed to apply the six tests incorporated and enumerated in International Airport Authority's case (supra), as affirmed in Ajay Hasia's case (supra).

(a) Goernment's contribution to the share capital:

77. Authorised capital of the H.P. Co-op. Bank is Rs. 2,00,00,000, with 2,00,000 shares of Rs. 100 each and the subscribed capital is Rs. 1,24.58,500. Out of 1,24,585 shares, individuals have 277 shares, Co operative institutions 37073, other Institutions 515. The State Government has 86,720 shares. Thus, the State Government has about 70% shares holding in the total subscribed capital of the Bank. By virtue of bye-law 19 of the Bank, such share capital of the State Government can neither be with drawn nor transferred except by the express orders of the Registrar. There is no such information on record as regards the other two Societies. Assuming that the majority of the share capital in the three Co-operative Societies with which we are dealing is of the State Government, whether any importance can be given to the share holding in the first test enunciated by the Supreme Court, keeping in view the nature and functioning of

the Co-operative Societies?

78. As noticed above, Section 20 of the Act says that every member of the Society shall have one vote. When the Government is a member each person nominated by the Government on the committee shall also have one vote. S 35 says that the State Government shall have right to nominate not more than three members or one of the total number of members of the committee of the Society, whichever is less. In case share capital is to the extent of Rs. 5,00,00,000 or more, one additional member can be nominated, who is to be appointed as Managing Director.

79. Section 34 of the Act says that the management of the Society shall vest in the Committee which shall exercise such powers and perform such duties as may be conferred or imposed by the Act, rules and bye-laws. Powers of the Managing Director are enumerated in the respective bye-laws of the three Societies. It is only in the eventuality, as mentioned in sub. 3) of Section 35 that the difference of opinion in respect of the matter arising between any member of the committee nominated under Sub-section (1)(a) and other members thereof, shall be referred by the committee to the Government, whose decision shall be final and will operate as if the same is a decision taken by the committee. But we may notice that such a decision may be binding on the committee in case share holding of Government is 50% or more but it cannot have the effect of superseding the final authority of the co authority, which actually vests by virtue of Section 31 of the Act in the general body of members in a general meeting. In Sri Konaseema Co-opera Central Bank's case (supra). where the Government's share holding was assumed to be 9 and the Government's representation on the committee of the management could not exceed one-third of the total number of members, "1 it was held that a substantial holding of share capital in a Society by the Government would not by itself go a long way towards indicating that such society is instrumentality or agency of the State. Even if share holding in the three Societies is substantial, even if the Managing Director is State's nominee, we have no hesitation in holding that the mere fact that the State Government has rendered some aid or assistance by subscribing to the share capital that will not by itself make the Societies an instrumentality or agency of the State.

80. The second test, as admitted by the learned Counsel for the Petitioners is not applicable in the present case since the financial assistance of the State In the three Societies is not so much as to meet the entire expenditure of the Society.

81. On the third test that whether the Co-operative Society is enjoying monopoly status, though the learned Counsel for the Petitioners laid much emphasis, but were not in a position to point out the monopolistic status of the Societies. Two of the Societies are the Banks. In addition to these Co Banks, there are other numerous banking institutions in the State and in addition to the activities of the HIM FED similar activities and business is conducted and done by numerous other individuals and institutions. Thus, the third test is also non in the present

case.

82. The most important is the fourth test on which much emphasis was laid by the learned Counsel for the Petitioners, namely, existence of deep and pervasive State control, which may now be dealt with. Before dealing with the nature of control, what has to be kept in mind is the type of or kind of control. The control, as envisaged in the judgment of the Supreme Court, is the plenary control, which is clearly distinguishable from nominal or some kind of control. Control has to be a functional control, namely, control over the framing of policy and in the entire functions and management of the Society. In Sudam Vanaji Shirsat's case (supra) as rightly pointed out, in one sense no individual or any institution in modern times, is free from controls of the State As Duncan Merrit has put "from the cradle to the grave and even beyond". There is no doubt of some type of control being present on behalf of the State Government but whether that control is deep and pervasive or whether that can be called as nominal and some type of control being not plenary.

83. No doubt, the Registrar can exercise power to divide, amalgamate or merge societies, but that cannot be done at his own whims. It is only when an opinion is formed by him that it is essential or desirable in the public interest of cooperative movement for the purpose of securing the proper management of the Society or Societies that such an order can be passed u/s 14A of the Act. Otherwise u/s 14 of the Act, a Cooperative Society may itself resolve by 3/4th majority for transfer, amalgamation and division of Societies or for transfer of assets and liabilities.

84 Final authority by virtue of Section 31. as noticed above, vests in the general body of the members in a general meeting. Bye-law 36 of the H.P. Co-operative Bank and bye-law 37 of the Kangra Bank say that the management of the affairs of the bank, subject to the provisions of the bye-laws shall vest in the different bodies first of which is the general body, which shall determine the general policy of the Bank. Other bodies are board of Directors, executive committee, President and Managing Director. Similarly, HIMFED Bye-law No. 20 provides that the supreme authority of the Federation shall vest in the general body of the member in general meeting. Thus, in the framing and determining the general policy of the three Societies, the role played is by the general body and there is absolutely no control either of the Registrar or of the State Government. The policy of a Society has to be strictly in consonance with the provisions of Section 4 of the Act, wherein It is stated that the main objects have to be the promotion of the economic and social interest of its members or the public in accordance with the co-operative principles.

85. Bye-laws of the H.P. Co-operative Bank says that the management of the Bank shall vest in the Board of Directors, which shall constitute of six Directors from six Districts. One Director each from five different Co-operative Societies, namely, Kangra Central Co-operative Bank, Jogindra Central Co-operative Bank, HIMFED. H P. Co-operative State Land Development Bank and the Weavers and

Industrial Co-operative Societies Besides these 11 Directors, three Directors or 1/3rd of the total number of Directors, whichever is less to be nominated by the State Government. One Director has to be the Registrar's nominee and one Managing Director as Ex-officio Director in consonance with the provisions of Section 35 of the Act. Out of 16 Directors, 5 can be terminated as the State representatives 5 Directors cannot thus control the affairs of the Bank or frame the policies at their whims. In some of the matters, as provided in Sub-section (3) of Section 35 that In case of difference in opinion, amongst the Directors, matter has to be referred to the Government, whose decision shall be final; the same can at the most be termed as power of veto but the mere existence of this power of veto in some eventualities cannot be termed as having deep and pervasive control over the Societies, since the supreme authority still continues to vest in the general body whose decision cannot be vetoed either by the Registrar or by the State Government. Even if the State Government has to take any decision, as is envisaged in Sub-section (3) of Section 35 of the Act, it has to be in consonance with the policy formulated by the General body or in any manner it cannot be arbitrary or whimsical and has to be in consonance with the provisions of the Act, rules and bye-laws. In Pritam Singh Gill's case (supra), similar provisions contained the Punjab Co operative Societies Act were noticed and the learned Judges pointed out that such a power at the highest necessitates a reference to the State Government for final decision, but the same does not necessarily mean that thereby total and pervasive control of the same is passed over to the State Government. In holding so, the apt example highlighted was that of United Nations where the big powers are clothed with power of veto in particular situation, but that does not mean that each of these powers exercising the veto power has deep and pervasive control over the world organisation.

86. The other powers which can be exercised by the Registrar in the conduct of the elections, power to supersede the committee in some eventualities, power to recover amounts due to the Societies as arrears of land revenue, inspection of the records of the Society having special audit done etc. are some of the aspects, which have to be considered and termed as statutory functions of the Registrar for the smooth and efficient working of the Co-operative Societies in accordance with the provisions of the Act rules and bye-laws lest some of the Directors due to their acts of mismanagement, negligence etc., may not cause loss and harm to the members of the Society. When the policy is to be framed and determined by the general body in whom the supreme power vests, the managing committee or the Board of Directors have to act and function within the frame work of the policy. Board of Directors and executive committee or even the Managing Director cannot act, in a manner, contrary to the policy and the bye-laws of the Society and even the bye-laws of the Society cannot be framed in derogation to the provisions of the Act and the Rules. The State Government or the Registrar have no control or say in the framing of the policy of the Society. Thus it cannot be said that there is any deep and pervasive control of the State Government over the functioning of the Co-operative Societies and the type of control, which

can be exercised by the Registrar or even by the State Government is only limited in order to see that the Co-operative Society functions in accordance with its bye-laws. Thus, the 4th test also cannot be said to be present or satisfied in this case.

87. The 5th test, namely, functions of the Society being of public importance and closely related to the Governmental function. In *Inter national Airport Authority's* case (supra) the expression "Governmental function" has been pointed out to be vague and of indefinite description. In a Welfare State like ours, it is difficult to demarcate between Govern mental and non-governmental functions and it is also equally difficult to say with precision as to what is function of public importance and what is not. For the two Banks, as per their respective Bye-laws, the main Objects are to promote the economic interests of the members of the Bank in accordance with co-operative principles and to facilitate the operations of the Co-operative Societies registered under the Act. The Ors. are to serve as balancing centre and clearing house for Cooperative Societies, to organise the provisions of credit for agriculturists In the State, to function generally as an integrated organisation for providing agricultural, marketing and processing credit to agriculturists and other Societies, to develop co-operative credit, to make loans and advances etc. to the member of the Societies, to lend money and grant over drafts, to do the other normal banking functions, to act as backing agent for the Government of Himachal Pradesh/Public bodies, Corporations etc., to advise banks and Societies in the matters of principles and practices of Banking and numerous other objects mainly connected with normal banking business and also to engage In any other form of business that the State Government may specify.

88. Considering these objects of the two banks, generally what can be noticed is that the main objects are for conducting the normal banking transactions particularly in relation to Co-operative Societies and also to act as banking Agent for the Government The entire function has to be with the sole aim and object for promoting the economic Interest of the members of the bank in accordance with the co principles and to facilitate the banking operations of the Co-operative Societies registered under the Act.

89. Similarly, the objects of the HIMFED are to arrange for the sale of Agricultural produce of the members, to advance loans to the members, to process raw material belonging to the members, to arrange for grading and packing of agricultural produce, to supply to members through local Societies manure, seeds and implements etc.; to act as an agent of Cooperative Societies for recovery of production loans, to encourage thrift, self help and co-operation among its members, to act as an agent of the Government for the procurement or distribution of agricultural produce; to arrange and supply consumer articles to its members, to purchase raw material, tools and appliances connected with the Industries and for supplying it to its members etc.

90. These functions of the HIMFED leave no manner of doubt that the very purpose and directions is to facilitate the productive, marketing and other

incidents of agricultural and other produce of its members which may be the registered co-operative Societies (primary Societies) and in turn the individuals who constitute the members of the latter Societies. These functions are indeed far from being functions of public importance or being directly linked and related to sovereign Governmental functions. No doubt Article 48 of the Constitution says that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and Improving the breeds and prohibiting the slaughter of cows and calves and other much and draught cattle, but the mere fact that an endeavour has to be made by the State Government to organise agriculture on modern and scientific lines alone will not make this to be a Governmental function when the aims and objects of the Society are to encourage thrift, self help and co-operation amongst its members with a view to arrange for the sale of agricultural and other produce of its members; to process agricultural and other raw material belonging to its members, to arrange for grading and packing of agricultural produce etc.

91. By having these aims and objects the HIMFED or the two Banks, who have in their aims and objects, the principle aim to promote the economic Interests of their members in accordance with the c principles and to help the Cooperative Societies in banking operations and also working as on banking agent of the Government cannot be termed as agencies created by the State for distributing the rural credit provided by it For the two banks, normal banking business is to be conducted with the sole aim, as noticed above, which banking function cannot be said to be closely related to the Governmental functions Reference at this stage may be made to the International Airport Authority's case (supra) wherein Justice Bhagwati after pointing out that the distinction between Govern- mental and non-governmental function is no longer valid in the Welfare State and observed that (page 164):

The contract is rather between governmental activities which are private and private activities which are Governmental. (Mathew, J. in 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, But the public nature of the function, if impregnated with governmental character of tied or entwined with Government" or fortified by some other additional factors may render the Corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inferences.

92. The aims and objects of the three Societies and the nature of business being carried on cannot be termed as functions impregnated with Governmental character or tied or entwined with Government, thus, It is not possible to say that the three Societies satisfy the 5th test enunciated by the Supreme Court.

93 The 6th test on the face of it is not satisfied. No department of the Government is transferred to the Societies.

94. After having applied the tests and finding that none of the tests are satisfied the natural corollary which follows is that the three Societies cannot be characterised as the "other authority", so as to bring them within the ambit of a "State" within the meaning of Article 12 of the Constitution.

95. It was contended by the learned Counsel for the Petitioners that since in some of the cases orders, which have been passed, in accordance with the provisions of the Service Rules have been either upheld or varied by the Registrar, and such order also being under challenge in the writ petition, the writ petition would be maintainable and this Court will be competent to issue suitable directions interfering with the orders so passed by the statutory authority. This submission also has no force. The power which has been exercised by the Registrar is under various service regulations framed by the Societies under their respective Bye-laws by virtue of Rule 9(j) of the Rules and is not a statutory power exercised by the Registrar under the provisions of the Act and Rules. The power exercised is under service regulation framed by the Societies by virtue of powers contained in the Bye laws. Since the bye-law have no force of law as held in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, and affirmed in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, the service regulations also have no force of law. No doubt, the orders under challenge are passed by the Registrar, but the Registrar has exercised his powers under the service Regulations and not under the Statute or the Rules.

96. In *Nayagarh Co-operative Central Bank's case (supra)*, the Supreme Court did not actually decide the question as to whether a writ petition could be maintained against a Cooperative Soc but after having reversed the decision of Orissa High Court that the writ petition would lie, the Apex Court observed that such a decision was not strictly in accordance with the other decision of the Court and proceeded to hold that since in that case order which had been passed by the Registrar was also challenged, therefore, the writ petition was maintainable. The order, which the Registrar had passed in the said case was in exercise of his statutory authority in the purported exercise of powers conferred on him. In the instant case, as noticed above, the Registrar has not passed the impugned orders acting as a statutory authority in the purported exercise of powers conferred on him by the Act or the Rules framed there under but such order has been passed by virtue of his having been named an authority to hear and decide appeals in the Service Regulations framed under the Bye-laws which have no force of law. It will not be a statutory exercise of power but an exercise of power under the Bye-laws.

97. The other submission made on behalf of the learned Counsel for the Petitioners that the HIMFED and if Banks are discharging public duties stands already answered while dealing with the 5th test, and the consequential submission that writ of Mandamus can be issued also cannot be upheld, since in order that Mandamus may issue, to compel an authority to do something, It must be shown

that the Statute imposes a legal duty on that authority and the aggrieved party has a legal right under the Statute to enforce its performance. The rights which the Petitioners are claiming are not the rights under the Statutes, but the same are claimed under the Bye-laws of Society which have no force. The Societies are also not discharging any public duty or any public functions and, as such, the writ of Mandamus would not lie.

98. Consequently, we have no hesitation in holding that the three Societies, namely, The Himachal Pradesh State Co-operative Bank Ltd. The Kangra Central Co-operative Bank Ltd., and the Himachal Pradesh State Co-operative Marketing and Development Federation Ltd., are not "other authorities" and, as such, cannot be characterised as "State" when the meaning of Article 12 of the Co and the same are also not authority within the meaning and for the purpose of Article 226 of the Constitution. Order passed by the Societies under their respective service regulations against its employees, as such, or in connection with employment cannot be corrected by way of writ petitions. The petitions also would not be maintainable in order to challenge the action of the Registrar since the same is not an exercise of statutory power conferred upon him under the provisions of the Act or the Rules but an exercise of powers by him under service regulations framed under Bye-laws having no force of law. The writ petition also will not be maintainable since none of the three Societies are discharging any public functions.

99. In view of our having upheld the preliminary objection all the writ petitions are dismissed as not maintainable in this Court for the reliefs claimed. We leave the parties to bear their respective Costs.