

(1997) 11 BOM CK 0038

In the Bombay High Court

Case No : O.O.C.J. Writ Petition No. 1737 of 1997, decided on November 26, 1997

Digamber Shankar Bhalerao

APPELLANT

Vs

Maharashtra State Co-op. Housing Finance Ltd.

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1998) 1 ALLMR 277

Hon'ble Judges : B.P. Saraf, J; A.Y. Sakhare, J

Bench : Division Bench

Advocate : Mr. A.V. Bukhari, for the Appellant; Mr. V.D. Patil, for the Respondent

Judgement

A.Y. Sakhare, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the decision to revert him from the post of Deputy Manager to the post of Class I Officer.

2. In the year 1976, the petitioner joined the services of the respondents as Junior Officer. In the year 1991, the petitioner was promoted as Deputy Manager. The respondents found certain lapses on the part of the petitioner while discharging his duty as Deputy Manager. In the year 1996, show cause notice was issued and after holding enquiry, the enquiry officer submitted his report holding that the charges levelled against the petitioner are proved. The Staff Committee, Disciplinary Authority by its resolution dated 26th August 1997 resolved to revert the petitioner from the post of Deputy Manager to the post of Class I Officer. The said decision/resolution was challenged before the Appellate Authority viz., Directors, who in the Board of Directors' meeting dated 17th September 1997 resolved to reject the petitioner's appeal. The said decisions are impugned in the present petition.

3. The respondents have filed affidavit in reply dated 17th October 1997 raising therein an issue of maintainability of this writ petition under Article 226 of the Constitution of India on the ground that the respondents are not a State or

instrumentality or agency of State within the meaning of Article 12 of the Constitution of India. As per the respondents, they are not amenable to the writ jurisdiction of this Court being not covered by Article 12 of the Constitution of India.

4. The respondents are a co-operative society initially registered under the provisions of the Bombay Co-operative Societies Act, 1925 and now deemed to be registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. The respondent society is engaged in the business of financing to the co-operative housing societies and to individuals within the State of Maharashtra. The affairs of the respondents are managed by the elected Board of Directors and are controlled by the provisions of the Maharashtra Co-operative Societies Act and the bye-laws registered under the said Act. Being a co-operative society, the State Government and its authorities have some control over the functioning of the respondent. The petitioner has also in para 3 of the writ petition given details about the functioning of the respondents.

5. Mr. A. V. Bukhari, learned counsel for the petitioner, submitted that having regard to the aims and objects of the respondents, it is instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India. He further submitted that the writ of mandamus can be issued to any person or authority performing public duty. In support of these submissions, he has placed reliance upon the decisions of the Supreme Court in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and the decision of this Court in *Kamgar Sabha v. State of Goa & Ors.* reported in 1996 2 CLR 565.

6. The respondents have contended that the respondents being a society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 is not an instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India nor it performs public duty. Consequently, the present writ petition is not maintainable. The respondents have placed reliance upon Full Bench decision of this Court in *Shamrao Vithal Co-op. Bank Ltd. & Anr. v. Padubidri Pattabhram Bhat & Anr.* reported in 1993 M.L.J. 91 and the decision of the Division Bench of this Court in *Dnyandeo Dattatraya Kale & Ors. v. State of Maharashtra & Ors.* reported in 1995 (2) Mah.L.J. 930.

7. The respondent society is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960, its administration and management is looked after by duly elected Board of Directors. Upon consideration of the nature of administration, management and functioning of the respondents, it cannot be said that the respondent is an instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India. The decisions of the Supreme Court in *The Managing Director, U.P. Warehousing Corporation & Ors. v. Vijay Narayan Vajpayee*, (cited supra) and in *Ajay Hasia etc. etc. v. Khalid Mujib*

Sheravardi & Ors. etc. etc. (cited supra) on facts are not applicable to this case. The respondents' case is squarely covered by the Full Bench decision of this Court in Shamrao Vithal Co-operative Bank Ltd. & Anr. v. Padubidri Pattabhiram Bhat & Anr. (cited supra). The Full Bench of this Court, after considering the provisions of the Maharashtra Co-operative Societies Act, 1960 its functions, regulations/control exercised by the State, has held that the Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 does not fall within the expression "State" under Article 12 of the Constitution of India nor it is instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India. Simply because the respondents carry an activity of some importance, it does not become a State or instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India. In our judgment, the law laid down by the Full Bench of this Court squarely applies to this case. Consequently, it must be held that the respondents are not a State or instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India and as such not amenable under writ jurisdiction of this Court under Article 226 of the Constitution of India.

8. As far as the petitioner's second submission that writ of mandamus can be issued against any person or authority performing public duty is concerned, as the respondents are not performing public duty, the respondents cannot be made amenable to the writ jurisdiction of this Court. Even in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V. R. Rudani & Ors. (cited supra), the Supreme Court has held that the service contract cannot be enforce. Thus, on facts, the decision of the Supreme Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust's case (cited supra) and the decision of this Court in Kamgar Sabha's case (cited supra) relied upon by the petitioner are of no assistance to him the petitioner herein to contend that the writ of mandamus can be issued against the respondents. The Division Bench of this Court in Dnyandeo Dattatraya Kale's (cited supra) has held that District Central Co-operative Bank, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 does not perform public or statutory duty. Consequently, writ of mandamus could not be issued against the District Central Co-operative Bank. The respondents, herein are also co-operative society engaged in business of financing. The ratio laid down in case of Dnyandeo Dattatraya Kale's case is applicable to the facts of the present case as the respondent society is not performing public or statutory duty. Thus, writ of mandamus cannot be issued against the respondents herein.

9. As the respondent society is not a State or instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India and as the respondent society is not performing any public or statutory duty, no writ can be issued against the respondents herein. Thus, this writ petition will have to be dismissed in limini.

10. Writ petition to stand dismissed in limini with no order as to costs.