
(1993) 06 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.P. No. 1573 of 1992

Dinesh Kumar Sharma

APPELLANT

Vs

M.P. Dugdha Mahasangh Sahkari Maryadit and Another

RESPONDENT

Date of Decision : 22-06-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1993) ILR (MP) 53 : (1994) 1 LLJ 513 : (1993) 2 MPJR 20 : (1993) 38 MPLJ 786 : (1993) MPLJ 767

Hon'ble Judges : Shacheendra Dwivedi, J;S.K. Dubey, J;R.C. Lahoti, J

Bench : Full Bench

Advocate : H.N. Upadhyaya and Arun Mishra, for the Appellant; R.D. Jain, for the Respondent

Judgement

S.K. Dubey, J.

The two petitions have come up before this Full Bench on a reference by a Division Bench of this Court constituted by one of us (S.K. Dubey, J.) and Shri S.K. Chawla, J. Before the Division Bench, during the course of hearing, a preliminary objection was raised by the respondents that the respondent No. 1, the Madhya Pradesh Dugdha Maha Sangh Sahkari Maryadit, Bhopal, was registered on May 13, 1980 by the Registrar, M.P. Co-operative Societies, Bhopal (for short, the "Registrar") u/s 9 of the M.P. Cooperative Societies Act, 1960 (forshort, the* Act), and was classified as "Federal Society" vide registration certificate (Annexure R/4), whereby bye- laws (Annexure R/5) were also approved u/s 9 of the Act by the Registrar. The respondent No. 2 was registered as a Co-operative Society on July 4, 1983 and classified as "Central Society", which also had its own approved bye-laws, Annexure R/7. The two societies arc not rendering any important public service nor carrying out governmental activity and governmental functions of vital importance; therefore, the respondents are not "the State" within the dynamics of Article 12 of the Constitution of India, and, hence, are not amenable to writ jurisdiction, as held by a Division Bench of

this Court at Indore Bench in an unreported decision in M.P. No. 836/1988, Dilipkumar v. State of M.P., decided on April 19, 1990. On the other hand, the petitioners relied two unreported Division Bench decisions rendered at the same Bench in M.P. No. 1139 of 1987, Krishnakant v. M.P. Dugdha Mahasangh, decided on August 28, 1990 and M.P. No. 1159/1987, Chandrakant v. Appellate Authority & others decided on January 9, 1991, wherein the respondent no. 1 has been held to be "the State". As there was a conflict between the two sets of above-said decisions, the Division Bench, hearing the aforesaid petitions, to get an authoritative pronouncement, referred the matter to Hon"ble the Chief Justice for constituting an appropriate larger Bench for resolving the difference: hence, this reference.

Where the two Co-operative Societies, registered under S. 9 of the Act, are, in essence, instrumentalities and agencies of the State and, consequently, amenable to writ jurisdiction of the High Court, is the question to be decided. If the answer to this question is in the negative, whether the High Court can issue an appropriate writ direction or order against the Co-operative Society or its officers who act in violation of the Act or the rules or the bye-laws and/or fail to discharge statutory public duty, is also the question, which we have been called upon to answer in this reference.

To appreciate a few facts relevant to the question aforesaid, deserve to be noticed. The two petitioners are presently holding posts of Village Organiser under respondent No. 2 at Banmore, District Morena. The respondent No. 1 by an order dated September 30, 1992 transferred the two petitioners, sending them on deputation to Raigarh and Sarguja respectively for working in the Intergrated Tribal Dairy Projects, which are not under the organisation of the two respondents. The transfer order is challenged as mala fide, being in violation of the statutory service rules governing the terms and conditions of employment, which are approved by the Registrar u/s 55(1) of the Act and are known as Madhya Pradesh Dugdha Maha Sangha (Sahkari) Maryadit, Karamchari Bharti, Vargikaran Tatha Sewa Shorten Vim-yam, 1985."

Before we proceed to have a look to the bye-laws of the respondents No. 1 and 2 for determining the questions, it would be appropriate to state that Government of M.P. through its Veterinary Department was carrying on in certain areas of the State the activity of supply of milk through its offices. On March 22, 1975, the Government of Madhya Pradesh for carrying on the said business of milk and its products, incorporated a Company, by name, M.P.State Dairy Development Corporation Ltd., registered under the Indian Companies Act, 1956, with the object of development and procurement of milk and for bringing out a white revolution. Though the articles of Association of the Company have not been placed before us, the same we find from Annexure R/8, which is not denied by petitioners. The activity of the Corporation was limited in nine western districts of the State of M.P., where the World Bank Scheme was made applicable, while in some parts the Veterinary Department carried on its activity.

In order to implement the World Bank Scheme effectively, it was decided to promote the sale of milk and its products for the purpose of providing employment to agriculturist milk suppliers as also for the purpose of making milk supply available to urban areas. A Co-opera live Society was formed and was registered in the name of the respondent No. 1, to which, after voluntary winding up, the assets, both movables and immovable, of the said Company were transferred forming part of share-holding of the State Government.

The respondent No. 1 is a "Federal Society". Section 2(k) defines a Federal Society, which means a society of which not less than fifty per cent of the share capital excluding Government share capital is held by societies, According to respondent No. 1 it is also known as "Apex Society", which term is defined u/s 2(a-1) to mean a society whose principal object is to provide facilities for the operation of other societies affiliated to it and whose area of operation extends to the whole of the State of MadhyaPradesh. Respondent No. 2 is a "Central Society." which term is defined u/s 2(c-1) to mean a Co-operative Land Development Bank or any other society whose area of operation is confined to a part of the State and which has as its principal object the promotion of the principal objects and the provision of facilities for the operation of same type of societies and for other societies affiliated to it and not less than five members of which are societies.

The objects of respondent No. 1 are suited in bye-law No. 3 which are mainly for the purposes of betterment of the economic conditions of agriculturists and milk producers, by monitoring the activities and different programmes relating to production, collection, processing, distribution and marketing of milk and milkproducts (dairy products and allied milk products and from time to time give help and provide technical assistance to the primary societies, independent bodies and agriculturists, who are engaged in the production of milk and its proper distribution in urban areas, and issue guidelines relating thereto. To achieve the said objects the respondent No. 1 has to perform various activities, functions and duties which are enumerated from bye-laws No. 3.2.3 to 3.2.26.

Funds : Bye-law No. 4.0 deals with the capital and its funds which can be raised by share holding, loan-bonds, deposits, loans, grants, subsidies, gifts and donations and also from other sources. Bye-law No. 4.9 speaks of the authorised capital of 10 crores rupees which in the year 1985-86 was to the tune of Rs. 55,24,200/- as is evident from the balance sheet for the year 1985-86, Annexure P/33, and that capital continues to be the same, the details of which are as under:-

(i) State holding Rs. 30,00,000/- (ii) I.D.A. holding Rs. 14,32,000/- (iii) Holding by Unions Rs. 10,80,000/- (iv) From other sources Rs. 12,000/-. Besides this, a huge amount of Rs. 70 crores was advanced to respondent No. 1 by Indian Dairy Development Corporation and the World Bank.

Membership: The following may be admitted as members as per bye-law No. 5;

Bye-law No. 5.1.1 Union Government/State Government/Indian Dairy Development Corporation/Pradeshik Shirsh Sanghon Ka Rashtriya Sangh.

Bye-law No. 5.1.2, Ordinary members.

Bye-law No. 5.1.3. Nominated members.

Board of Directors, Bye-law No. 22 speaks of the Constitution of the Board of Directors, which is vested with the control. The Board of Directors of respondent No. 1 is constituted of:

- (1) Presidents of Unions of Milk Producers affiliated to the Federal Society.
- (2) Secretary/Additional Secretary of the State Government, of Dairy Development Department.
- (3) Secretary/Addl. Secretary of the Finance Department of the State Government.
- (4) Registrar/Addl. Registrar of Co-operative Societies.
- (5) Joint Secretary of Union Government in Dairy Department/Director of Dairy Development.
- (6) Director/Addl. Director of Veterinary Services of Madhya Pradesh State.
- (7) Representatives of Indian Dairy Development.
- (8) Representatives of Financial Institutions, and
- (9) Managing Director of the Federal Society.

It will be appropriate to state here that Section 52 of the Act confers power on the Government to appoint Government nominees where the State Government subscribes to the share-capital of the society or has assisted in-directly in the formation or augmentation of the share capital of the society as provided in Section 45, or has guaranteed their payment of principal and payment of interest on debentures issued by a society or has guaranteed the repayment of principal and payment of interest on the loans and advances to a society. However, the number of Government nominees cannot be more than three.

If we look to the bye-laws of the respondent No. 2, Annexure R/7, it is apparent that the objects of the Union have been stated in bye-law No. 5, O i.e., to purchase the milk products from its members and to collect, transport, process, store and deposit products without affecting the interest of its members and other producers, and to manage in such a way and with an object to discharge the programme of upliftment of the social and economic conditions of the agriculturists.

Membership: Bye-law No. 8 deals with the membership which is of two types (i) ordinary members (for clarity solely of primary societies of milk producers), and (ii) nominated members.

Funds The balance-sheet of the respondent No. 2 for the year 199-91 shows that the share capital of the society was Rs. 32,88,400/- from various sources, but there is no share-holding of the State Government.

Board of Directors: Bye-law No. 19 lays down the constitution of the Board of Directors, in which besides three Government officials, namely, Revenue Commissioner of the Division, Joint Registrar of Co-operative Societies and Joint Director of Veterinary Department, Director of M.P. Co-operative Bank of Financial Institutions, Indian Dairy Corporation/Indian Dairy Development Board, Director of Dugdha Nigam/Managing Director of the Union, Members and 12 representatives of the Primary Cooperative Societies, out of whom one each will be from Scheduled Castes, Scheduled Tribes and women and the rest from general category. This body elects its Chairman as per bye-law 19.2.11 which also provides, none of the members from the Government or Financial Institutions can contest the election for the post of Chairmanship of the Board.

To determine whether a body is an instrumentality or agency of the Government within the meaning of Article 12, the Supreme Court in case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, has observed that it is material whether the Corporation or the Society is created by a statute or is under a statute. The test is whether it is an instrumentality or agency of the Government, and how it is created. The enquiry 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 or it may be a society registered under the Societies Registration Act or under any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12, viz., 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.

In para 9 of the report, for determining as to when a corporation can be said to be an instrumentality or agency of the Government, the Supreme Court culled out six authoritative tests from its earlier judgment in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and gave a note of caution that these 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. A wide enlargement of the meaning must be tempered by a wise limitation. The tests gathered in *Ajay Hasia's* case (para 9) by the Supreme Court from the decision in the *International Airport Authority's* case (supra) are extracted thus: *Ajay Hasia and Others Vs. Khalid Mujib*

Sehravardi and Others,

(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) "Whether the financial assistance of 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 State conferred or State protected."

(4) "Existence of "deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality."

(5) "If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government."

In a recent report of the Supreme Court in case of *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and others* [OVERRULED], after referring to its earlier decisions, the Supreme Court observed that Article 12 should not be stressed so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State, may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activities 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.

More recently, in case of *Unni Krishnan, J.P. v. State of A.P.* AIR 1993 SCW 863, the Supreme Court in para 77 of the judgment, for determining whether a Society or corporation is an instrumentality or agency of Government reiterated the six authoritative tests culled in *Ajay Hasia's case* (Supra). Further, in para 78-LLJ the Supreme Court referred to *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, wherein, in para 19 at p. 354 after an analysis of the

entire case law and the six authoritative tests culled in *Ajay Hasia's* case (supra), observed thus:

"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 to be applied keeping the realities and human experience in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of this case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of "other authorities" in Article 12 of the Constitution. We must say that ICPS is a case of its type--typical in many ways and the normal tests may perhaps not properly apply to tests its character."

In the backdrop of the law laid down by the Supreme Court and from the facts of the case and the record placed by the parties in the law petitions, the six tests either singly or by jointly or even cumulatively by *stricto sensu* are not satisfied, as it is amply clear that the first test of holding entire share capital by the State Government, either of respondent No. 1 or of respondent No. 2, is missing.

Coming to the second test of financial assistance of the State, which is so much as to meet almost entire expenditure of the co-operative societies to have an indication of the societies being impregnated with Governmental character, is also missing.

The test No. 3 of enjoying a monopoly status which is State conferred or State protected is also not available, as the sale of milk and dairy products and allied products is not a monopoly business of the State, a fact well known.

Adverting to test No. 4, a bare look to the bye-laws of societies clearly demonstrates that there is no existence of "deep and pervasive State control" over the societies, that is to say, there is no totality of control of the State, which is both deep and all pervasive, either on the Board or on the general body of the Societies. Though Bye-law No. 30 relates to Managing Director, who is appointed by the State Government and is a Member of the Board also, neither he nor the Government nominees have got a right to contest the election of office of the Chairman of the Board, who is elected out of the elected members, which is clear from the Bye-law dealing with the election of Chairman. The Managing Director so appointed is the Chief Executive who acts under the control and supervision of

the Board and works under their guidance, as per directions of the Board, which is evident from Bye-law No. 30.2. Therefore, his position is only that of an employee of the respondent No. 1. The petitioners could not point out from the bye-laws or place any material on record to demonstrate that there is an unusual degree of control over the management and policies of the societies, which are rendering an important public service, being the obligatory functions of the State. The control is neither deep nor pervasive, as the respondents deal in their business independently to achieve the objects of the Societies without any rider of the State Government or its nominees or officials who are on the Board. It is of no significance that respondent No. 1 through its nine Unions, of whom respondent No. 2 is one, who are all members of the Board of respondent No. 1, is assisting in implementing the projects, schemes and programmes of the State Government as and when they are undertaken by the State Government under "white revolution" or "operation flood" for facilitating the supply and distribution of milk and milk products (dairy products and allied milk products) and for betterment of the economic conditions of agriculturists and persons who are engaged in the supply of milk and its products. This also does not reflect that the respondents are hand in glove with the Government under the mask of the society and are roped in within the welfare philosophy of the State Government. The fact that the Government nominees and the "Managing Director" are on the Board, does not establish anything more than the fact that the Government only takes a special care to see that the societies achieve their objects for which they are formed.

Test No. 5 pertains to the functions of the Societies being public importance and closely related to governmental functions. From the objects of the two societies contained in the bye-laws, it is clear that to encourage the villagers and persons engaged in sale of milk and dairy products, to give them employment, primarily resting on the co-operative principles, and for the commercial betterment of its members, i.e., to facilitate production and sale of milk, dairy and allied products, the respondents are performing functions, which cannot be said to be governmental functions or functions closely related to governmental functions, which can be said to be pursuant to State requirement, in discharge of State's obligation for health, safety or general welfare of public generally.

Test No. 6 -- No Government department was transferred to the Societies; therefore, this test is also not available to the petitioners.

In the circumstances and the facts of the case, in our opinion, reliance by Shri R.D.Jain, counsel for the respondents, on Full Bench decisions of Orissa, Punjab & Haryana and Andhra Pradesh High Courts and a Division Bench decision of Patna High Court, which were the cases of Co-operative Societies dealing with the question involved, is well merited. See *Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another*, *Pritam Singh Gill Vs. State of Punjab and Others*, *Sri Konaseema Co-operative Central Bank Ltd, v. N. Seetharama Raju* AIR 1990 A.P. 171, and *Harender Narain Banker v. State of Bihar* 1985 Lab. I.C.

1807.

As an upshot of the above discussion, on the material placed, none of the tests is satisfied, we hold that the two respondents are not instrumentalities and/or agencies of the "State" within the meaning of Article 12 of the Constitution, and are not amenable to writ jurisdiction of the High Court.

This takes us to consider the unreported decisions of this Court rendered at Indore Bench, which have given rise to this reference. At the outset, we may state that, in fact, in none of the decisions, the question whether respondent is an authority under Article 12 of the Constitution or not, has been dealt with. In M.P. No. 1159 of 1987 in para 3 the Court simply stated that because of the view taken in Misc. Petition No. 1139 of 1987 and M.P. No. 267/1988, decided on August 28, 1990, respondent No. 2, Dugdha Mahasangh, has been held to be "State" within the meaning of Article 12 of the Constitution and, therefore, amenable to writ jurisdiction of this Court on a complaint of violation of fundamental rights, but the Court did not feel it necessary to state reasons for deciding the question involved.

In Krishnakant's case (M.P. No. 1139 of 1987), the Court in para 12 referred to the law laid down by the Supreme Court in Ajay Hasaia's case (supra). In para 13 of the judgment, a reference was made of the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and the unreported decision in Misc. Petition No. 819 of 1988, Nazir Khan Pathan v. M.P. Rajya Bhandar Grih Nigam, decided on April 5, 1990, wherein M.P. Rajya Bhandar Grih Nigam has been held to be instrumentality of the State, but the Court refrained itself from giving any decision on the question. We quote para 13 in extenso:

"13. The other decision referred is Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, Central Inland Water Transport Corpn. v. Brojonath Ganguly and Anr. Applying the various tests it was held that the said Corporation is an instrumentality of State within Article 12 of the Constitution of India. A recent decision of this Court in Misc. Petition No. 819/1988, Nazir Khan Pathan v. M.P. Rajya Bhandar Grih Nigam, decided on April 5, 1990, has been referred where this Court held that the M.P. Rajya Bhanar Grih Nigam is an instrumentality of "State". However, this aspect has not been further argued and no other submissions have been made before us for applying the salient tests to persuade us to hold whether or not the Mahasangh is "State" within Article 12 of the Constitution of India. We, therefore, refrain from giving any decision on that point, particularly because, for the reasons given hereinafter, the respondents are even otherwise amenable to the writ jurisdiction."

Coming to the last unreported decision in the case of Dilip Kumar v. State of M.P. (M.P. No. 836/1988), decided on April 19, 1990, the Division Bench relying on the tests laid down in case of Tekraj Vasandi (supra), observed that the counsel

for the petitioner was unable to demonstrate that respondent No. 2, Dugdha Mahasangh, is a "State". 3

In view of our finding that respondents No. 1 and 2 are not instrumentalities or agencies of the State Government falling within the sweep of Article 12 of the Constitution and are not: amenable to writ jurisdiction, the decision in M.P. Nos. 1159/1987 (Chandrakant v. The Appellate Authority and Anr.); 1139/1987 (Krishnakant v. Appellate Authority & Chairman, M.P. Dugdha Mahasangh and Ors.) and M.P. No. 267/ 1988 (Rakesh Mohan v. Appellate Authority & Chairman of M.P. Dugdha Mahasangh and Anr. so far as they relate to holding of respondent No. 1 and its Union as an "authority" under Article 12 of the Constitution are not correctly rendered and are overruled. The decision rendered in M.P. No. 836 of 1988 (Dilip Kumar v. State of M.P. and Ors.) is of no assistance, as in that the Court observed that as no material was placed by petitioners to demonstrate that respondent No. 1 and its Union in the said petition are instrumentalities and agencies of the State falling within the sweep of Article 12.

Now, it takes to question No. 1, it is not-necessary for us to delve into the question in details, as we respectfully agree, with the view taken by the Full Bench of this Court in case of Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others, wherein the Court after holding the Society was not an "authority" under Article 12, while dealing with question No. 2, framed in the said reference, whether a writ of mandamus direction or order can be issued under Article 226 of the Constitution by High Court against a Cooperative Society registered under M.P.Co-operative Societies Act, 1960, has answered the question that "such society which does not fall within the definition of the term "other authority" and is not a statutory body, it will suffice to observe that normally such societies will not be amenable to writ jurisdiction of the High Court except in cases where according to the provisions of the statute or rules or regulations framed under the Act by which the Society is governed, there is a statutory or public duty imposed on it, and the enforcement of which is being sought. Article 226 of the Constitution provides that every High Court shall have power to issue any person or authority orders or writs in the nature of habeas corpus, mandamus, etc., for the enforcement of the rights conferred by Part III of the Constitution and for any other purpose. It is well understood that a mandamus lies to secure the performance of public or statutory duty in the performance of which, one who applies for it, has a legal right and interest." (pp. 273-274).

The Full Bench of Andhra Pradesh High Court in Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju (supra), on the material placed in that case, held that the cooperative 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.

Learned counsel for the respondents tried to persuade us to differ from the view taken in Ramswaroop's case (supra) in answer to question No. 2, and submitted that the decision rendered in Ramaswaroop's case, (supra) deserves reconsideration by a larger Bench, but, besides the view taken in Ramswaroop's case (supra) and by Andhra Pradesh High Court in Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju (supra), learned counsel for petitioners drew our attention to the development of law and scope of Article 226 of the Constitution, and cited the Supreme Court decision in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, by which the view taken in Ramswaroop's case finds support. The Supreme Court while considering the scope of Article 226 has observed thus in para-20, which we quote (p-330)

"20. The term "authority" used in "Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

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"22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative Act, 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice where it is found. Technicalities should not come in the way of granting that relief under Article 226."

The view taken in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, has been

reiterated by the Supreme Court in para 82 of the judgment in Unnikrishnan J.P.'s case (supra).

Therefore, in view of the law having been settled by the Supreme Court about the scope of Article 226, and the view taken in Ramswaroop's case being in line with the highest judicial pronouncement, we are not inclined to differ.

In the result, we dispose of the reference made in the two petitions by giving our answer to question No. 1 in negative. However, we answer question No. 2 as follows:-

Even if the respondents/Societies cannot be characterised as "State" within the meaning of Article 12 of the Constitution and, as such, are not amenable to writ jurisdiction, if the Society or its officers act in violation of statutory provisions and/or fail to discharge statutory public duty, a writ would lie for enforcement of statutory obligations and public duty.

Now let the records of the two petitions be placed before the referring Bench for deciding the two petitions in the light of the opinion given by us in this reference.