

(1985) 05 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5998 of 1983

Harender Narain Banker

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-05-1985

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1985) PLJR 1078

Hon'ble Judges : S.S. Sandhawalia, C.J.;B.P. Jha, J

Bench : Division Bench

Advocate : Madan Mohan Prasad and Madhu Sudan Kr, for the Appellant; Kamla Pati Singh, Government Pleader V. and Ram Krishna Singh, Junior Counsel, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—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, an instrumentality or agency of the State and, consequently, amenable to the writ jurisdictions, is the meaningful threshold question in this writ petition. The facts deserve notice only in so far as they are relevant to the pristine issue aforesaid. The Bihar State Co-operative Marketing Union, Ltd., Patna (hereinafter to be referred to as the "Biscomaun") is an apex society Which, on the petitioner's own showing is duly registered under the Bihar and Orissa Co-operative Societies Act (hereinafter to be referred to as the "Act"). Harendra Narain Banker, petitioner, entered the service of Biscomaun in the year 1965 and was promoted to the post of the Accountant in the year 1970. A first information report pertaining to defalcation to the tune of Rs. 3.(sic) lacs or more was lodged on the 30th of March, 1977 in which the petitioner was implicated and arrested and admittedly the criminal case is proceeding in the court of a Judicial Magistrate, Patna. Departmental proceedings were initiated against the petitioner in which the Deputy Managing Director was appointed as the Inquiry officer who rendered a report holding the petitioner guilty of various charges on the basis of which he was dismissed. Aggrieved thereby, the petitioner preferred

an appeal to the Registrar of Co-operative Societies, Bihar, which, according to him is being inordinately delayed. Herein the petitioner primarily seeks a writ in the nature of certiorari for quashing letter No. C 1546 dated the 20th of October, 1979 dismissing him from the post of Accountant, and it is common ground that the primary relief sought was against Biscomaun. Threshold question that consequently arises is whether the present writ petition is maintainable at all against the co-operative. society known as Biscomaun.

2. It would appear that originally the writ petitioner was perhaps not alive to this aspect of the case and no relevant averments with regard thereto were made. However, the issue having been pointedly raised during the motion hearing, two supplementary affidavits have been filed on behalf of the petitioner to sustain his claim that the respondent Biscomaun is an instrumentality and agency of the State and, therefore, amenable to the writ jurisdiction under Article 226. It is averred on behalf of the petitioner that all the employees of Biscomaun are governed by the provisions contained in the Bihar Service Code and their pay scale and emoluments are at par with those of Government servants. Further the replacement scale of salary as contained in Government Resolution No. 3/P.R.C.-3/81/F-I0770 dated 30th of December, 1982, which was issued on the recommendation of the 4th Pay Revision Committee has also been made applicable to the employees of Biscomaun. It is averred that the share of the State Government in Biscomaun is 99 per cent and barring the shares held by co-operative societies and others to the tune of Rs. 2,87,502.00, the remaining share capital is held by the State. A vague averment has been made that "the Biscomaun is run and managed by 35 Government servants and amongst these one is an LAS. officer and 4 persons are in the rank of Additional District Magistrates.

3. In the counter affidavit filed by the Law Officer of the respondent Biscomaun, the stand of the writ petitioner in this context is stoutly controverted. It is pointed out that the respondent is a society registered under the Act and consequently conducts its business in accordance with the provisions of the said Act and the Bihar Co-operative Societies Rules, 1959 (hereinafter called the "Rules") framed thereunder along with its registered Bye-laws. It is denied that the said society is in any way an instrumentality or agency of the State and in terms it is averred that the entire share capital of the respondent is not held by the State Government but also by other member co-operative societies; though it is admitted that the major portion of the share-holding is with the State. It is pointed out that the Biscomaun does not receive any financial assistance from the State which may meet almost its entire expenditure nor does it enjoy any monopoly status which is State conferred or State protected. There is no deep and pervasive State Control over the answering respondent nor are its functions akin to, or identical with, matters of public importance closely related to governmental functions nor was it a department of Government later transferred to constitute Biscomaun. Reliance is primarily placed on the bye-laws of Biscomaun which have been placed on the record as annexure A. From bye-law 6

it is pointed out that the State Government is one of the four classes of shareholders and, therefore, it is only one class of members which contribute to the funds of Biscomaun. It is highlighted that it is not even the case of the petitioner that there is any-massive financial assistance by the State to Biscomaun (apart from its share-holding) and, indeed, the latter is by itself a profitable and financially viable body. It is then pointed out that the supreme authority of Biscomaun is vested in the general body of the share-holders and apart, from the State there are 524 co-operative societies and individual shareholders and each of them including the State has got only one vote in the general body meeting. Equally it is then pointed out that in sharp contradistinction with the companies registered under the Indian Companies Act every member of a co-operative society has only one vote irrespective of the number of shares held by him and consequently despite the major share-holding of the State, it has got only one vote in the general body meeting.

4. Again the Board of Directors is elected, from among the members of the general body aforesaid for the day to day management of Biscomaun. It is the case that out of 24 Directors only 3 are the nominees of the State, and, therefore, the latter far from exercising deep and pervasive control is in a plain minority even in the said Board. It is then pointed out that the society mainly deals in the commercial distribution of fertilizers, seeds and pesticides through sale centers known as depots and it does not in any way occupy a monopoly position in the distribution of the same. On the aforesaid basis the stand taken on behalf of the respondent is that far from there being any deep and pervasive control of the State the latter is indeed in a hopeless minority both in the general body and the Board of Directors, and the autonomous character of the Biscomaun is in no way affected.

5. Ere one comes to the core of the primal issue involved, it seems apt to clear the decks of matters which are either admitted or at-least not in serious dispute. It is common ground that the respondent Biscomaun is a co-operative society duly registered under the Act. It was fairly conceded by the learned counsel for the petitioner that it is in no way a creation of a statute and, thus," one of the tests of being a local or other authority within: the meaning of Article 12 is, accordingly, not attracted. It is indeed well settled that merely because a cooperative society is registered, under the Act, it does not become amenable to the writ jurisdiction under Article 226 or come in the category of "other authorities" under Article 12, There is indeed a. virtually unbroken line of precedent of the Final Court as also of the other High Courts on the point beginning with *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, , *Sabhajit Tewary Vs. Union of India (UOI) and Others*, , and the *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, . Directly covering the issue is the Full Bench judgment in *Ajmer Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others*, .

6. However, equally well settled it is now that even a co-operative society, which, in, essence, is an instrumentality or agency" of the State would come within the wide sweep of Article 12 and hence become amenable to the writ jurisdiction under the provisions of Article 226 as well. Learned counsel for the petitioner, therefore, laboured hard in the uphill task of establishing that the respondent Biscomaun was under such total control of the respondent State of Bihar that it was nothing but an agency or a limb of the same. It was sought to be contended that there existed such deep and all pervasive State--control through every nerve of the respondent Biscomaun so as to make it a mere instrumentality thereof.

7. In order to appraise the rival contentions in the aforesaid context, it perhaps deserves highlighting at the very outset that it is not any finical kind of State control which is adequate to satisfy the stringent requirements for establishing that a body is an instrumentality of the State or an agency thereof. It can perhaps be said that in the ever expanding activity of the welfare State there would hardly be a field where it may not exercise some modicum of control or interference. However, this is not the kind of control which would convert any and every legal person into a State for the purpose of Article 12 of the Constitution. What has been authoritatively highlighted is that, firstly, the State control must be both deep and pervasive and such depth and pervasiveness must lead to the clear conclusion that the body is either a mere agency of the State or an instrumentality thereof. It is in essence this kind of control which is authoritatively visualised and it is on this anvil that one has now to judge whether the respondent Biscomaun satisfies the authoritative tests prescribed on this point in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, :

8. Before one quotes in extenso the six authoritative tests spelt out in the case above said, it is equally apt to notice the note of caution sounded by the Constitution Bench in the terms following:

These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and canton, 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 six tests referred to above were then summarised in *Ajay Hasia's* case as under:

(1) One thing is clear that if the entire share capital of the corporation is held by the 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 are 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.

9. Learned counsel for the petitioner set a great store on test No. 1 pertaining to the share capital of the Corporation. It was sought to be highlighted that there was no serious dispute that more than 90 per cent, of the share capital of Biscomaun was held by the State of Bihar. In comparison, it was pointed out that the share-holding of other members was somewhat insignificant. On this premise alone, learned counsel for the petitioner had attempted to contend that it must be held that Biscomaun was an instrumentality or agency to Government.

10. The contention aforesaid, though somewhat superficially attractive, would nevertheless appear to be wholly fallacious on a closer analysis. Reference to bye-law 6 would indicate that the membership shall consist of four distinct classes. Class "A" consist of Vyapar Mandal (V.M.S.S.), Co-operative Development and Cane Marketing Unions (C.D.C.M. Union), Large Scale Multi-Purpose Co-operative Societies (L.S.M P.C.S.) Large Sized Multi-purpose Co-operative Societies (LAMPS.) and Farmer "Service Societies (F.S.S.) and further such category or categories of processing Co-operative Societies as may be determined by the Registrar. Class "B" consists of traders, commission agents and merchants having dealings with the Union. Class "C consists of individuals holding shares of Biscomaun and such other societies not falling under class "A". Last but not the least is class "D", namely, the State Government. It is thus clear that State is one of the four categories of members of the Union. In the counter affidavit it has been categorically stated that the entire share capital of the respondent Biscomaun is not held by the Government. The shares are also held by the other three classes of members and they are to the tune of a sizeable amount of rupees three lakhs. Consequently, a monopoly share-holding by the State Government is denied and, indeed, it is not in dispute that there are other classes of members holding shares in the Union as well. Hence, test 1 strictu sensu is not even factually satisfied because it rests on the premise that the entire share capital of the Corporation is held by the Government which is not the case here.

11. Again it deserves highlighting that even if the entire share capital of a

Corporation is held by the Government, the same is not conclusive and this factor is only one of the many indicia for determining the nature of the Corporation. It has been rightly said that this would go a long way towards indicating that the Corporation is an instrumentality or agency of the Government but it still does not go the whole way.

12. However, what is of paramount significance herein is that test 1 aforesaid has to be viewed in the context of the fact that respondent Biscomaun is a co-operative society run on co-operative principles, which stands, incorporated in the Act and the Rules framed thereunder as also the bye-laws of Biscomaun itself. 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 Robert Owen (1771-1828). His main thesis was a lack of trust in the State to solve the economic problems of 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 people 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 cooperative 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 cooperation became a State subject, the Central Act was followed by various State Acts including our own, namely, the Bihar and Orissa Cooperative Societies Act, 1935.

13. Now the whole gamut of this Act and the Rules framed thereunder as also the model Bye-laws for the co-operative societies (including those of Biscomaun) would show that in the ultimate analysis they are rested on the larger principles of co-operation which are sought to be codified and given a legalistic form by the statutory provisions. The golden web that runs through the fabric of the co-

operation movement is that of self-help and mutual help through democratic management and a conscious eschewing of the profit motive. In the field of democratic management the hallmark of the concept seems to be focused on the foundational premise that one member of the co-operative society should ordinarily be the exact equivalent of the other and each one of them should have one vote only. In the case of apex bodies having, co-operative societies as their members some marginal deviation from this rule is inevitable. This principle is in the sharpest contrast to the ordinary rules of commercial and. business management and that of company law where usually, if not invariably, the ultimate voting power is related to the quantum of share-holding. Therefore, in the realm of co-operation financial share-holding is on an entirely different footing and by itself is not in any way a conclusive or controlling feature. On the other hand, this may well be so in purely business and commercial organisations motivated wholly for profit. Herein lies the sharp line of distinction between such an organisation and a co-operative society resting on the recognised principles of co-operation.

14. It was in the aforesaid context that Mr. Kamla Pati Singh, the learned counsel for the respondents, had forcefully pointed out that, whereas in an ordinary commercial or business concern even a 51 per cent share-holding may mean a clear majority of voting power, yet in a co-operative society this would certainly be not so. This principle is explicitly taken care of by the Act in expression (sic)y providing as under in section 3:

Indian Companies Act, 1913 not for apply. The provisions of the Indian Companies Act, 1913 (7 of 1913) shall not apply to registered societies.

It is plain from the above that the detailed provisions of the Companies Act, which link voting power directly to share-holding and in any case permit doing the same by the Articles of Association of companies registered thereunder, are in express terms excluded from applying in the filed of co-operation. It is well to remind oneself that the provisions of the Indian Companies Act and, in particular, section 179 thereof give the right to the shareholders to demand a poll in a meeting and it was not disputed before us that in such a poll the voting rights may be directly in proportion to the financial share-holding of each member. Therefore, the Act with scrupulous care has excluded the applicability of such like provisions to the co-operative societies which are to run on different principles. Consequently, in the specialised field of co-operation and in cooperative societies registered under the Act the power of control in a society is not necessarily related to financial share-holding. That is one of the cardinal: distinctions between a co-operative society under the Act and a primarily commercial or a business organisation, inter alia, registered under the Indian Companies Act or other similar statutes. As was forcefully pointed out on behalf of the respondents, the State may well be the largest share-holder yet like any of the members it may not have more than one single non-transferable vote in the general meeting. The separation of the voting power from the money power and the rule

of one member one vote lies at the hearts of the co-operative principles now codified in the Act itself. This principle would, consequently, substantially whittle down the clout of a larger share-holding. Therefore, the genetically enunciated test No. 1 in *Ajay Hasia*'s case pertaining to. the share capital of a corporation has to be modulated and scaled down in view of the peculiarity of the co-operation law and the societies created thereunder.

15. It seems somewhat plain that significance was inevitably attached to the monopoly share-holding of a corporation by the State because ordinarily the same would govern the voting power in its meetings. However, if share-holding is effectively declined from the Voting power, it is inevitable that the significance of the test would dwindle. It is in this context that one has to view the provision of section 28 of the Act enshrining thereunder the principle of one member one vote in the co-operative filed in the terms following:

28. Votes of members. (1) Subject to the provisions of sub-section (2), each member of a registered society shall have one vote only as a member in the affairs of the society, provided that in the case of an equality of votes the Chairman shall have a casting vote.

(2) A registered society which is a member of any other registered society shall have as many votes as may be prescribed by the bye-laws of such other society, and may, subject to such bye-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power, provided that no member who is disqualified for such appointment under any rule shall be so appointed.

(3) Save as provided in sub-section (2), voting by proxy shall not be allowed except with the general or special sanction of the Registrar for any society of class of societies.

It is manifest from the above that by statutory mandate and in consonance with the cooperative principles, it is inflexibly laid down that each member of a society shall have one vote only as a member in the affairs of the society. It is of significance that this is so provided in the Act itself and, therefore, cannot be deviated from by any bye-law or rule framed by the co-operative societies. Consequently, the quantum of share-holding has no relevance to the voting power which, in line with the principle of democratic management, give an equality of vote to all members. The only exception envisaged is that in sub-section (2) which provides that in apex societies a member registered society may have as many votes as may be prescribed by the bye-laws of the apex society. This, in actual practice, may mean that whilst the State with the largest share-holding would be confined to one vote, the registered societies, which are members of Biscomaun, may well be granted a plurality of votes if so spelt out in the bye-laws. The State with the largest share holding may thus be actually at a disadvantage as against registered societies having only a minuscule share-holding by comparison.

16. To sum up in the context of test 1, it is undisputed that the State of Bihar does not hold the entire share capital of Biscomaun. Admittedly there are three other classes of share-holders, apart from the State. These share-holders hold shares to the tune of a sizeable amount of rupees 3 lakhs and further the share-holding in Biscomaun is unrelated to the voting power in its meetings. Therefore, test No. 1 is thus *strictu sensu* not satisfied herein. Further in view of the peculiarities of the cooperation law, it would stand considerably whittled down in the context of corporations which are registered co-operative societies under the Act.

17. Proceeding *seriatim* and logically, one may now advert to test No. 2 in *Ajay Hasia*'s case where the financial assistance is so much as to meet almost the entire expenditure of the corporation. Herein it was rightly highlighted by the learned counsel for the respondents that it is not even remotely the petitioner's case that total financial assistance is provided by the State of Bihar to meet the entire expenditure of Biscomaun. The averments made by the petitioner on this point both in the writ petition and in the supplementary affidavits are totally silent on the point. However, apparently under some misapprehension the learned counsel for the petitioner even in this context harped on the quantum of the share capital held by the State. One must, therefore, put sharply in focus the distinction between the monopoly share-holding on one hand and total financial assistance on the other. These are distinct and separate and tests No. 1 and 2 do not in any way overlap. As has already been noticed, the larger share capital of Biscomaun is undoubtedly held by the State but there is not even a title of evidence adduced on behalf of the petitioner to show any financial assistance as such, far from the same being total in the sense of meeting almost the entire expenditure of the corporation. In paragraph 2 of the counter affidavit any such innuendo has been expressly denied and it is therein stated that the State Government provides no financial assistance to Biscomaun. Indeed, Mr. Kamla Pati Singh, learned counsel for the respondents, pointed out that financial turn over and viability of Biscomaun is in itself such that it has hardly any need of any financial assistance from the Government. From the latest balance sheet of Biscomaun, it was brought home that the annual expenditure of Biscomaun is as high as rupees 4 1/2 crores. Counsel pointed out that the turn over in commercial terms of Biscomaun was of an order that it paid interest to the tune of rupees 2 1/2 crores to various financial houses on its business borrowings. The salary bill of the employees alone touches the figure of rupees 75 Lakhs or more. In this context, learned counsel for the respondents pointed out that the original contribution of even the share capital by the State has become virtually marginal. Consequently, there is nothing on the present record that would even remotely indicate a quantum of financial assistance meeting the entire expenditure of Biscomaun to satisfy one of the many tests for determining whether it is an instrumentality or agency of the Government. It must, therefore, be held--and indeed, was ultimately conceded (though I am not even remotely basing myself on any concession) that test No. 2 is not even remotely satisfied.

18. One may now come to test No. 3 where a corporation enjoys a monopoly status which is State conferred or State protected. It seems clear that there was some misapprehension on the part of the learned counsel for the writ petitioner with regard to this test. In Aiyer's Judicial Dictionary, "monopoly" has been given the following meaning--

A licence or privilege allowed by the Crown for the sole buying, selling, making, working and using of anything whatsoever, whereby the subject is restrained from that liberty of manufacturing or trading which he had before.

It is significant to note that the test does not talk of a mere monopoly but such status which is either conferred by the State or protected by the State. This test has been culled from *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, which would indicate that apart from other precedents it was arrived at in the context of the respondent Authority which had a State monopoly of building, maintaining or running international airports in the country and was constituted under the International Airport Authority Act, 1971. Thus, a State conferred or State protected monopoly status is in a way a term of art, the meaning of which is manifest that either by statute or by instruction having the force of law a monopoly status is either conferred by the State or, if already conferred, the protection therefor is continued. Herein again, in the counter affidavit it has been expressly averred that Biscomaun does not enjoy any monopoly status whatsoever which is State conferred or State protected.

19. Apparently under some misapprehension the learned counsel for the petitioner had attempted to harp on the fact that Biscomaun was the sole selling agent of a commercial brand of fertilizer and pesticides and on this premise it was sought to be established that it enjoyed monopoly status within the meaning of test No. 3. That any such commercial arrangement of being a sole selling agent of a commercial product can in no way be State conferred or State protected monopoly status, seems to be manifest without any great erudition. However, even in this limited context the respondents in paragraph 5 of their counter affidavit have stoutly denied the allegation in the following term:

5. That Respondent" No. 2 Society mainly deals with distribution of fertilizers, seeds, and pesticides etc. among the agriculturists through its various sale centers known as Depots However, it does not occupy monopoly position in distribution of the same as there are so many other distribution agencies (Institutional & Private) for the same in the State of Bihar.

It is clear from the above that the allegation of the respondent Biscomaun enjoying any monopoly status, which is State conferred or State protected, is thus wholly baseless. Test No. 3 is again not even remotely met.

20. One may now advert to the significant test No. 4 pertaining to the existence of a deep and all pervasive control on the Corporation. Herein it bears repetition that what the law envisages is not any kind of financial control by the State, but instead a totality of control, or to put it in accepted terminology a control which

is both deep and all pervasive. In applying this test, it is better for clarity's sake to view it from a twin aspect. Firstly whether the State exercises any total control over the general body of Biscomaun Secondly whether it exercises, a similar control over its managing committee designated as the Board of Directors which is entrusted with the management of the Society. The learned counsel for the respondents was at pains to show that in neither of these two significant bodies could it possibly be said that there Was State control or in any case one which was deep and all pervasive.

21. Dealing first with the general body, a reference must be made to bye-law 17 which is in the following term:--

17. The supreme authority of the Union shall be vested in the General Meeting.

It is manifest from the unequivocal language above that the supreme and all residuary authority of Biscomaun has been conferred on the general meeting. To use the terminology of higher politics the sovereignty in Biscomaun thus rests in the majority constituted in general meeting. Bye-law 18 indicates that general meeting shall be of three kinds--ordinary (or annual), extraordinary and special. Apart from certain inevitable variations the conduct of proceeding in all the three classes of general meetings is uniform. Bye-law 23(a) in express terms prescribes that every delegate to the general meeting shall have one vote. Significantly bye-law 23(b)(v) then provides that the State Government which is a share-holder may appoint one delegate to annual general meeting of the Union. A reference to the bye-law 6 and the relevant averments in the counter-affidavit leave no manner of doubt that the vast majority of the membership of Biscomaun is constituted of "A" class of Co-operative societies whilst the other "members are "B" class and "C" class members, apart from the last category of membership, namely, the State Government. It has been averred in the counter-affidavit without any challenge on behalf of the petitioner that there are 524 co-operative societies and other individual share-holders who. are members and each of them has got only one vote in the general body, meeting. Even when pinpointed, the learned counsel for the petitioner was wholly unable to controvert the stand that in the general body meetings which as noticed are the supreme authority in the Biscomaun, the State as a member having only one vote would be in a hopeless minuscule minority against much more than 500 member-societies or individual who would be present and voting therein. Reference in this connection may then be made to rule 21 of the Bihar Co operative Societies Rules 1959 (hereinafter called "the Rules") which lays down the procedure at general meeting of the societies. In particular sub-rule (7) thereof provides that all questions before a general meeting shall be decided by majority of votes and in the event of equality of votes the Chairman of the meeting shall have a casting vote. It is thus plain that even by statutory rules in the general meeting the State Government's power of vote is not more or less than that of any other insignificant member or registered society. Inevitably it seems to follow from these provisions and admitted facts that if the general meeting is the supreme

body symbolising sovereignty in Biscomaun and therein the State Government's voting power is not better than one against 500 or more members, then it would be utterly farcical to say that there is any deep or all pervasive control by the State of Bihar over the supreme body of this Cooperative Society.

22. One may now move over to the managing committee of the Co-operative Society which is designated as the Board of Directors by the bye-laws of Biscomaun and will be referred to hereinafter as such. Section 14(2) of the Act provides that the management of a registered society shall be vested in a managing committee constituted in accordance with the rules.

23. Rule 22 then prescribes that subject to nomination by the Registrar of such number of members to the managing committee and in such manner as may be prescribed by him, the managing committee of a registered society including its office bearers shall be elected by vote from among the members of the society at the annual general meeting held in accordance with the bye-law. It is thus plain that the managing committee of a society and specifically the Board of Directors herein derives authority from the general meeting and in a way are the creatures of the general meeting from which they are elected. Bye-law 26 then spells out the constitution of the Board of Directors of Biscomaun. What meets the eye is the fact that the Chairman of the Board of Directors is again elected by the general meeting from among the members of the general body. It has already been noticed that in the general meeting the State is in a minuscule minority of one. Now apart from the Chairman the massive majority of the Board of Directors is constituted of 17 elected Directors. 16 of them are to be elected from the delegates representing "A" class share-holders as defined in bye-law 6(a) which comprises the bulk of 500 or more registered co-operative societies who are members and from the core of the membership of the Union. One Director is to be elected from "B" class and "C" class members. Clause (iii) of bye law 26(b) then provides for the ex-officio Directors of Biscomaun. Sub-clause (f) thereof mandates that an eminent co-operator is to be nominated by the State Government to the Board. Apart from him the remaining 5 ex-officio Directors are the Agricultural Production Commissioner, Finance Commissioner, the Registrar, Co-operative Societies, the Managing Director of the Bihar State Co-operative Bank, Patna and lastly the Managing Director of the Biscomaun to be appointed by the State on such terms and conditions as the Government may decide. It is thus manifest that if the Board of Directors is constituted of 24 persons, only 5 would be Government employees as such. Therefore, the nominees of the State in the Board are hopelessly out-numbered by the elected members who derive their source of authority from the general meeting. Even assuming that the ex-officio Directors were to act as a cause for the State they would still hardly be 1/5th of the total voting power in the Board of Directors in which again the elected Chairman would have the casting vote. Again the procedure for the meeting of the Board of Directors under rule 28(3) is indicative of the fact that the voting is by a plain majority and the ex-officio members of the Board who may be State nominees have no exceptional voting right as such.

These Directors, therefore, do not. in any way command any control or exclusive influence over the largely elected Board of Directors. Consequently it seems plain that far from having deep or pervasive control even over the subsidiary body of the Board of Directors of Biscomaun, the State seems to be in equally hopeless minority in the same as well.

24. It remains to consider one of the vehemently pressed submissions of the learned counsel for the petitioner that because the Managing Director of Biscomaun is appointed by the State Government this would by itself confer on the State an all pervasive control over the society. This argument has to be noticed and rejected. It is true that by-law 26(b)(iii)(e) provides that the Managing Director of Biscomaun is to be the appointee of the State of Bihar. A reference to rule 34 is indicative of the fact that the statute does visualise a deputation of Government officials to responsible posts in Co-operative Societies. However, it is a far cry therefrom that merely because a Government Officer is deputed to serve with Biscomaun (apparently because of the paucity of administrators of eminence for a larger body like Biscomaun which does not have a prestigious cadre of Officers of its own) it would follow that such an official on deputation assumes total and all pervasive control on the organisation and makes the same an instrumentality or agency of the Government. It was plausibly argued on behalf of the respondents that if the Biscomaun were to borrow a Managing Director on deputation from a well known business house like the Tata known for their efficient business practices, it would not mean that the said company would have deep and pervasive control of Biscomaun. This apart what next calls for notice is that the Managing Director does not have any inflexible statutory power as such. He is merely a person under the control of the Board of Directors. Bye-law 37(a) lays down that his functions may be prescribed, in the Rules of Business framed by the Board of Directors with the approval of the Registrar of Co-operative Societies. Bye-law 42 pin-points that the Managing Director shall be subject to the general and special direction Of the Board of Directors and Working Committee. The duties of Managing Director specified in bye-law 43 will indicate that he is more in charge of the ministerial staff of the Biscomaun rather than in any way exercising any control or authority over the Board of Directors as such or the supreme body of the Biscomaun, namely, the general body. Reference in this connection may be made to bye-law 30 which lays down that the Board of Directors shall have full authority to carry on the business of the Union subject of course to the provisions of the bye-laws, and the directions conveyed in the resolution of the general meeting. Therefore, I am inclined to hold that in the particular context the mere appointment of the Managing Director by the State Government who remains subservient of the orders and directions of the Board of Directors, is by itself only a marginal factor.

25. In fairness to the learned counsel for the petitioner one may also in passing notice his subsidiary argument with regard to the staff regulations framed by Biscomaun that its employees are governed by the Bihar Service Code. It is common ground that this is so not by any statutory rule or mandate but by

express voluntary adoption by Biscomaun itself. One is unable to say how a voluntary adoption of any provisions or framing of staff regulation in line with those applicable to the government employees would render an otherwise independent organisation as an instrumentality or agency of the State. Equally the submission that Biscomaun had adopted the latest Pay Revision Committee's report of the State Government would be an entirely neutral and almost irrelevant factor in the context of State control.

26. To conclude on this aspect it seems plain that the petitioner has been singularly unsuccessful in establishing any State control on Biscomaun far from there being any deep and all pervasive control of the same by the State Government.

27. Lastly we may move to test No. 5 pertaining to the functions of Corporation being of public importance or closely related to Governmental functions as such. In this context, our attention was rightly drawn on behalf of the respondents, to bye-law 4 which enumerates the objects of Biscomaun. Clause (6) thereafter enumerates as one of the objects being to encourage thrift, self-help and co-operation among its members. The other objects of the Union, namely, to arrange for the sale of agricultural and other produce of the members; to process agricultural and other produce belonging to the members; to arrange for grading of agricultural produce; to make arrangement for the supply of manures, seeds, implements and other essential requirements to the registered societies and individuals would all be indicative that these are the functions primarily resting on the co-operative principles for the commercial betterment of its members. Viewing particularly the objects of the Union as a whole would leave no manner of doubt that the very purpose and direction is to facilitate the productive marketing and other incidents of Agricultural and other produce of the members of Biscomaun who may be registered societies and in turn the individuals who constituted the latter's membership. That these functions are indeed very far from being the functions of public importance or being directly linked and related to sovereign Governmental functions is too plain and manifest. No elaboration seems to be necessary and it is obvious that test No. 5 is equally not at all satisfied.

28. Test No. 6 pertains to the specialised circumstances where a department of Government is transferred to a Corporation and here in it was common ground that no such contingency had ever arisen. Therefore, the last test No. 6 as enunciated in Ajay Hasia's case is admittedly not attracted here.

29. It appears to me that the learned counsel for the petitioner faced with uphill and virtually impossible task of bringing his case within the four corners of the well established tests in Ajay Hasia's case had attempted to skirt the issue by citation of a mass of case law. It is unnecessary to advert to each of these authorities some of which have no direct bearing on the issue, yet the compliment of distinguishing or refuting some of the judgments cited has inevitably to be extended.

30. Pride of place must first be given to the judgments of the final court which were referred to, and reliance was first placed on the case of Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . Therein the status of U.P. Warehousing Corporation was in issue and after considering the factual position elucidated by pleadings and the discussion of case law it was held as follows:--

It is a statutory body wholly controlled and managed by the Government. Its status is analogous to that of the Corporation which were under" consideration in Sukhdev Singh's case. The ratio of Sukhdev Singh's case, therefore, squarely applies to the present case

It is obvious that on the aforesaid finding the conclusion that U.P. State Warehousing Corporation was an instrumentality of the State was necessarily inevitable. This case is plainly distinguishable and in no way advances the stance of the writ petitioner. In Om Prakash versus Union of India (A.I.R. 1981 SC 212) the Corporation under consideration was the Bharat Petroleum Corporation Ltd. It was found that the Company was a Central Government company and the finding was that there was all pervasive control of the Central Government and indeed it was held be managed by a Board which was entirely a creature of the State. This case has no analogy to what we are called upon to consider here. Reference was then made to the Supreme Court decision in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, . What fell for consideration therein was the true character of the Indian Council of Agricultural Research. It was found that the said Council came into existence as an integral department of the Government of India and later on became an attached office of the Central Government. The governing body of the same was invariably to be presided over by the Cabinet Minister of the Government of India for the time being in charge of Agriculture and the other members of the governing body were to be appointed by the President of India. It was found that there was none outside the Government in the said governing body. Apart from this, from the other statutory rules applicable thereto it was found that the administration and the financial control of the Government was all pervasive. On this finding, it was held that the Indian Council of Agricultural Research is an" instrumentality or agency of the Central Government. It is thus manifest that this decision is plainly distinguishable.

31. The Supreme Court judgment in B.S. Minhas Vs. Indian Statistical Institute and Others, was then also cited pertaining to Statistical Institute of India governed by the Statistical Institutes Act which was held to be an authority under Article 12. This was so held on the finding that the composition of the Institute is dominated by the representatives appointed by the Central Government, the money required for running the Institute is provided entirely by the Central Government, the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction; the Statistical Institute has to comply with all such directions as may be issued by the Central

Government. On these findings it was found that the control of the Central Government was deep and all pervasive. It needs no great erudition to see that this case has not the least analogy to the present one.

32. Lastly in this context a passing reference to the Supreme Court judgment in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, would suffice. Therein it was not even disputed and indeed it was admitted the Project and Equipment Corporation of India Ltd. was an instrumentality or agency of the State and consequently a writ would lie against it.

33. Reliance was then attempted to be placed on the Single Bench judgment of Gujarat High Court in *K.P. Patel Vs. Gujarat Small Industries Corporation Ltd. and Others*, . Therein it was expressly found that the Gujarat Small Industries Corporation was a Government company within the terms of section 631 of the Companies Act and further its functions were entirely of public nature and impregnated with the Governmental character. This apart it was found that the degree of control by the State was deep and pervasive and the State Government could issue directions or instructions of binding nature not only in the conduct of the business of the company, but also in such affairs which would clearly circumscribe the routine day to day management by the Directors as well. It was further found that in the said institution the State had 65 percent shareholding in the Corporation and the right to nominate one-third members of the Directors of the Board which would give it a majority in the Board of Directors as well. All these considerations impelled the Court to hold that the Corporation was an instrumentality or agency of the State. Not one of these indicia seems to be relevant or similar to the situation with regard to the Biscomaun.

In *Rajasthan Co-operative Dairy Federation Ltd. versus Manohar Lal Sharma* (1983 LabIC 1782) the Division Bench was considering the case of Rajasthan Co-operative Dairy Federation Ltd. being another authority under Article 12. On the pleadings it was found that the Board of Director of Federation was entirely nominated by the State Government and further the Chairman was also to be nominated by the Government as also the Managing Director. The finances of the Federation were principally coming from the Government by way of aid and loans. The Government further had the power to extend the term of nominated Board for a period not exceeding 2 years and subsequently thereto also the State Government would have a clear majority of its nominees as Directors in the Board. It was on these factual findings that the Court came to the conclusion that the Federation was an instrumentality or agency of the State Government. Plainly enough the factual findings in this case have-little analogy or relevance to the case in hand.

34. In *P. Krishna Rao Vs. Andhra Pradesh Co-operative Central Agricultural Development Bank Ltd.*, the learned Single Judge of the Andhra Pradesh-High was considering the case of Andhra Pradesh Co-operative Central Agricultural Development Bank Ltd. After considering the peculiar factual findings enumerated in paragraphs 11, 12 and 13 it was concluded as follows:--

The objects and functions of the bank enumerated under Bye-law No. 3 of the Bye-laws framed by the Board of Directors of the Bank more fully extracted here-under also leave No. doubt that the Bank is a statutory body wholly controlled and" managed by the Government and that it is therefore an "Authority" within the meaning of Art. 12 of the Constitution.

It seems plain that this case also in no way goes to aid the stand taken on behalf of the Writ petitioner with regard to the respondent Biscomaun. Only a passing reference was made to 1984 LabIC 875 (D.P. Seshachalam versus Administrative Staff College of India) where it was held that the said institution was State for the purpose of Article 12. Obviously enough the Administrative Staff College of India which was plainly a Government run institution of entirely a different character and was discharging purely public functions and receiving substantially the State aid is on altogether a different footing. Reliance was then placed on the Full bench judgment of the Rajasthan High Court in Bhanwar Lal & ors. v. Rajasthan State Road Transport Corpn. & anr. (1984 LabIC 1794) which relates to the Rajasthan State Road Transport Corporation. Mr. Kamalapati Singh, the learned counsel for the respondents apart from other distinguishing features highlighted the facts that this was a case where the Transport Department of the Government was en bloc transferred to and passed on to the Corporation and, therefore, in terms it satisfied test No. 6 in *Ajay Hasia's* case. It was common ground here that the said test No. 6 is in no way attracted in the case of Biscomaun. Apart from this, the very exhaustive judgment of the Full Bench exhibits innumerable other distinguishing features to which individual reference is rendered unnecessary. The case is entirely distinguishable.

35. In *M. Kunju Mohammad and others v. State of Kerala and others* (1984 LabIC 1124) the Full Bench of the Kerala High Court, which was considering the legal status of Kerala Industrial Development and Employment Corporation, found that the same was a Government Company in which all the shares of the company were vested in the Government and equally the Directors of the Company were representatives of the company. It was provided that the Director shall reserve for the decision of the Government and take action only after the approval of the Governor is obtained, in respect of any programme of capital expenditure, involving 50 lakhs and above and further many other matters required prior approval of the Governor. Equally the Governor had the power from time to time to issue such directions or instructions as he may consider necessary in regard to the affairs of the company and the conduct of its business and the Directors are obliged to comply with and give immediate effect to such directions or instructions. The Auditors of the company were appointed by the Central Government and practically the entire financial assistance was given by the Government. It was all these facts which impelled the conclusion that the said Corporation was a State and it seems manifest that none of these considerations are attracted here.

36. Apparently under some misapprehension the learned counsel for the

petitioner had. attempted to place reliance on 1982 B.B.C.J. 460 (Biscomaun Versus Presiding Officer, Labour Court) as well. It is important to notice that in the two connected writ petitions Biscomaun itself was the petitioner in one case whilst the other was preferred by one of its employees. What, however, is of significance is the fact that the writ petitions were directed against the award of the Labour Court No question whatsoever of Biscomaun being an instrumentality or agent of the State was even remotely raised in the said judgment. As noticed earlier, the writ petitions were directed against the award of the Labour Court and it is elementary that writ petition would lie against such award even in cases where they pertain to a wholly private employer. This case has thus not the least relevance to the issue before us.

37. In fairness to the learned counsel for the respondents Mr. Kamalapati Singh one must also notice his reliance on the Full Bench judgments in *Ajmer Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others*, and in *Pritam Singh Gill Vs. State of Punjab and Others*, . Equally the counsel canvassed for the acceptance of the view in *Satish Kumar Vs. Punjab State Co-operative Bank Ltd., Chandigarh and Others*, . Undoubtedly these judgments fully aid and advance the stand taken on behalf of the respondents.

38. To finally conclude, it is manifest that not one of the six authoritative tests spelt out in *Ajay Hasia's* case stands satisfied with regard to Biscomaun. The judgments relied upon by the learned counsel for the petitioner as discussed are wholly distinguishable. Consequently it must be held that the Bihar State Co-operative Marketing Union Ltd. is in no way an instrumentality or agency of the State. Admittedly Biscomaun is a co-operative society registered under the Bihar and Orissa Co-operative Societies Act, 1935. Inevitably, it follows that it is not, therefore, amenable to the writ jurisdiction under Article 226. The answer to the threshold question posed at the very outset is, therefore, rendered in the negative. In the light of the above, the present writ petition is obviously not maintainable and is dismissed as such. The writ petitioner is, therefore, relegated to his ordinary remedies under the law. There will be no order as to costs.