

(2014) 09 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : LPA Nos. 236 of 2011, 182 and 183 of 2007

Laxmi Narain

APPELLANT

Vs

Kuldeep Singh
 Yog Raj Vs Jagat Ram

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 19, 5(c)(a)
Constitution of India, 1950 — Article 12, 136, 19(1)(a), 21-A, 226
Himachal Pradesh Co-operative Societies Act, 1968 — Section 10, 2(h)
Himachal Pradesh General Clauses Act, 1968 — Section 10, 17, 2(35), 2(42)
Trusts Act, 1882 — Section 20

Citation : (2014) 09 SHI CK 0052

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Surinder Saklani and Sunil Mohan Goel, Advocate for the Appellant; Dilip Sharma, Senior Advocate, Nishi Goel, Advocate, Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Addl. AGs, J.K. Verma, Kush Sharma, Dy. AGs, Ramakant Sharma and Bimal Gupta, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—The preliminary question required to be determined in these appeals is whether a writ petition is maintainable against Jogindra Central Co. operative Bank Ltd. The learned Single Judge considered this objection and concluded as follows:

"1. the respondent-Bank, i.e. Central Cooperative Bank Ltd. is an "instrumentality"/agency" of the State Government, thus it is a State within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court;

2. that the Central Cooperative Bank Ltd. is an "authority" as well as "person" within the meaning of Article 226(1) of the Constitution of India and amenable to the writ jurisdiction of this Court;

3. the writ would lie against the functionaries of the State who passes the order under the Himachal Pradesh Cooperative Societies Act, 1968 and Rules framed thereunder.

4. the State Government is having majority share capital in the respondent-Bank;

5. the State of Himachal Pradesh exercises deep and pervasive control over the Bank financially, functionally and administratively since out of 13 Directors, 4 are nominated through the State Government and one Managing Director who is also appointed by the State Government is also one of the Directors of the respondent-Bank;

6. the State Government exercises control over the functioning of the respondent-Bank in view of the provisions cited here-in-above commencing from the registration up to the winding up of the Co-operative Societies;....."

2. Before we proceed, it may be noticed that after the aforesaid impugned judgment had been rendered by the learned Single Judge, a learned Division of this court, while hearing CWP No. 3634 of 2012 vide order dated 20.7.2012 referred the following question of law for consideration by Full Bench:

(i) "Whether the Kangra Central Co. operative Bank, the Himachal Pradesh State Co. operative Bank Ltd. and the Central Co. operative Bank are State within the meaning of Article 12 of the Constitution of India and;

(ii) whether a writ would lie against them?".

3. While answering the first part of the question insofar the respondent Bank is concerned, it was held

"10. That takes us to Central Cooperative Bank, whether it is a State within the meaning of Article 12. As regards this Bank, the decision pressed into service is of the learned Single Judge of this Court in the case of Mehar Chand and another vs. Central Cooperative Bank and others 12. No decision of the Division Bench of this court has been brought to our notice, which has taken in CWP No. 641 of 2002 decided on 26th September, 2007 the view that the said Bank was State within the meaning of Article 12 of the Constitution. Thus understood, it is again not a case of conflicting opinion of two coordinate Benches of the same High Court on the point. If the matter of Bank were to proceed before the learned Single Judge of this Court perhaps the Single Judge Bench would be bound by the said decision, unless it was persuaded to take a different view in which case the only option available to that Judge would be to refer the matter to Larger Bench. In that case, the matter could proceed before the Division Bench of two Judges of our High Court and may not require consideration by a Full Bench. On the other hand, if the issue was to be raised before the Division Bench, in the first instance, and that Bench was not inclined to follow the view taken by the learned Single Judge Bench of this Court, it would be free to take a different view and hold that the Bank is not a State within the meaning of Article 12 of the Constitution of India. Since the writ petition pertaining to Bank is still pending,

ordinarily, therefore, the issue ought to be dealt with by the Division Bench in the first instance and not by the Full Bench of the High Court. In other words, the pending writ petition pertaining to Bank must proceed before the concerned Bench, who would be free to take appropriate decision in the matter and including keeping in mind the contours expounded by the Apex Court in S.S. Rana's case (supra). We are inclined to take this view as the question would be a mixed question of fact and law, which can be conveniently dealt with by the concerned Bench. In other words, we do not intend to express any view one way or the other with regard to the correctness of the decision in the case of Mehar Chand (supra) and leave the same open to be considered by the appropriate Bench."

4. Thereafter the Hon"ble Full Bench answered the reference in the following manner :

"15. For the view taken by us on both facets of the referred questions, we proceed to answer the Reference as under:

(1) The question as to whether Kangra Bank is a State within the meaning of Article 12 of the Constitution of India, is no more *res integra*. It has been authoritatively answered by the Apex Court in S.S. Rana's case (supra).

(2) Even in the case of H.P. State Cooperative Bank Ltd., the question has been answered by the Division Bench of our High Court in Chandresh Kumar Malhotra's case (supra). There is no conflicting decision of coordinate Bench of this Court necessitating pronouncement on that question by the Full Bench.

(3) In the case of Central Cooperative Bank, the decision in Mehar Chand's case (supra) is rendered by the learned Single Judge of this Court and no conflicting decision of the co-ordinate Bench muchless of the Division Bench or Larger Bench of our High Court with regard to the stated Bank has been brought to our notice. In any case, the said question can be conveniently answered by the Division Bench in appropriate proceedings whether in the form of writ petition or Reference made by the learned Single Judge of this Court, as the case may be. As and when such occasion arises, the issue can be answered on the basis of settled legal principles and including keeping in mind the exposition of S.S. Rana's case (supra) of the Apex Court concerning another Cooperative Bank constituted under the Himachal Pradesh State Cooperative Act.

(4) As regards the second part of the question as to whether a writ would lie against the stated Cooperative Banks, we hold that it is not appropriate to give a definite answer to this question. For, it would depend on several attending factors. Further, even if the said Banks were held to be not a State within the meaning of Article 12, the High Court in exercise of powers under Article 226 of the Constitution of India, can certainly issue a writ or order in the nature of writ even against any person or Authority, if the fact situation of the case so warrants. In other words, writ can lie even against a Corporative Society. Whether the same should be issued by the High Court would depend on the facts

of each case."

5. Now, coming back to this case it may be observed that the learned counsel for the respondents have candidly conceded that it would be difficult for them to support the proposition that the Jogindra Central Co. operative Bank Ltd. is a State within the meaning of Article 12 of the Constitution of India in view of the exposition of law laid down by Full Bench judgment of this court in Vikram Chauhan's (supra), but then after placing reliance on second part of the question framed in Vikram Chauhan's case (supra) would contend that a writ would still lie against the respondent bank under Article 226 of the Constitution whereby this court can certainly issue a writ, order or direction against any person or authority if the fact situation of the case so warrants.

6. Before we consider the aforesaid issue any further, we may take note of the fact that the learned Single Judge, after taking into consideration the objects of the bank, concluded that it was acting as a public authority and had public duty to perform and the obligation is also of a public nature. It was held in the following manner:

"Accordingly, the factor No. 5 of Ajay Hasia's judgment is also fulfilled and the respondent-bank can be termed as an agency/instrumentality of the Government. It is also clear from the objects of the Bank as enumerated in paras supra that it is acting as public authority and has a public duty to perform and the obligation is also of public nature."

Bye law-4 deals with the objects of the bank which are re-produced in entirety as under:

"4. Objects. -

The objects for which the Bank is established are as follows:-

a) to promote the economic interest of the members of the Bank in accordance with the co-operative principles and to facilitate the operations of the Co-operative Societies registered under the Act;

b) to serve as balancing centre and clearing house for Cooperative Societies in its area of operation;

c) to organize the provision of credit for agriculturists, artisans, labourers and others in its area of operation, to function generally as an integrated district organization for the provision of agriculture, marketing, production, supply and processing, credit to agriculturists, artisans, labourers and others and their societies to develop co-operative credit and to ensure efficient performance of the functions relating there to through the Co-operative Societies in the area of operation;

d) to make loans and advances and grant overdrafts and cash credit limits to,-

(i) member of societies and individuals members; and

(ii) a person other than a member with prior permission of the Board; subject to the loan making policy specified by the Bank.

e) to collect bills, drafts, cheques and other negotiable instruments on behalf of members and non members and to provide them remittance facilities also;

f) to buy and sell securities for the investment of its surplus funds and to act as an agent for buyers and sellers of securities of the Government of India or of the State Government, Treasury Bills or other securities as specified in clauses (a), (b), (c) and (d) of Section 20 of Indian Trust Act, 1882 and to transfer, endorse, pledge such securities or shares and other assets of the Bank for raising funds or to lodge them as collateral security for money borrowed by the bank;

g) to undertake exchange business by drawings, accepting endorsing, negotiating, selling or otherwise dealing in bills of exchange, or other negotiable instruments with or without security;

h) to receive money in current, savings, fixed or other accounts and to raise or borrow from time to time such sums or money as may be required for the purpose of Bank to such extent and upon such conditions as the Board may think fit;

i) to open its branches, pay offices, extension counters, etc. in the area of operation of the bank with the prior approval of Registrar;

j) to create and maintain funds for the benefit of its staff members or ex-staff members and their dependants;

k) to act as a Banking Agent for the Government of Himachal Pradesh, Public Bodies, corporations or for any bank or bankers in the area of operation on such terms and conditions as mutually agreed upon between the bank and other party subject to the provision of the Act, if any;

l) to advise societies in the matters of principles and practices of banking and inspect them as and when necessary for the purpose;

m) to facilitate the operations of any society;

n) to act as a custodian of the Reserve Fund of societies;

o) to undertake liquidation work of affiliated societies indebted to the bank on conditions laid down by the Registrar and agreed upon by the Board with a view to facilitate recoveries from the affiliated societies;

p) to subscribe to the Share capital of the Cooperative societies, Rural Banks and other Cooperative institutions as and when necessary subject to the provisions of section 19 of the Banking Regulation Act 1949 (as applicable to the cooperative societies.);

q) to acquire, construct, maintain, alter building or work necessary or convenient for the purpose of the Bank and to sell, improve, manage, develop, exchange,

lease, mortgage, dispose of, or turn to account or otherwise deal with all or any part of the property;

r) to obtain refinance from Reserve Bank of India (RBI), National Bank for Agriculture and Rural Development (NABARD), Small Industries Development Bank of India (SIDBI), Industrial Development Bank of India (IDBI), Himachal Pradesh State Co-operative Bank Limited; (HPSCB) and other agencies for the promotion of the business of the Bank;

s) to invest the funds of the Bank as per its Bye laws;

t) to implement various schemes for the Development of affiliated Co-operative Societies such as providing guarantee for the deposits held by them and any other scheme of the State Government approved by the Registrar;

u) to do any other form of business which the Banking Regulation Act or State Government, the Registrar, National Bank for Agriculture and Rural Development may specify as a form of business in which it is lawful for the Bank to engage;

v) to provide to its constituents facility of safe deposit and lockers; and

w) to manage sell and realise any property which may come into the possession of the Bank in satisfaction or part satisfaction of any of its claims; and

x) to acquire and hold and generally deal with any property or any right, title or interest in any such property which may form the security or part of the security for any loan or advance or which may be connected with any such security; and

y) to carry on and transact every kind of guarantee and indemnity business; and

z) to do in general all such things as are incidental or conducive to the promotion or advancement of business of the Bank;

7. The learned Single Judge formulated the following points for consideration:

1. Whether the respondent Bank i.e. Jogindra Central Cooperative Bank Ltd. is an agency/instrumentality of the State Government?.

2. Whether the Jogindra Central Co. operative Bank falls within the scope of expression "any person" or "authority" under Article 226(1) of the Constitution of India or not?

3. Whether the petition is maintainable against the orders passed by the functionaries of the State under the provisions of Himachal Pradesh Co. operative Societies Act, 1968 and Rules framed thereunder?.

8. Point No. 1 was answered by holding the respondent Bank to be an authority/instrumentality of the State and the State within the meaning of article 12 of the Constitution of India and thus amenable to the writ jurisdiction of this court. In view of the concession now given by respondents with respect to point No. 1, we are primarily concerned with question No. 2 which reads thus:

"Whether the Jogindra Central Co. operative Bank falls within the scope of expression "any person" or "authority" under Article 226(1) of the Constitution of India or not?"

9. This point was answered in the following manner:

"Point No. 2:

The Hon"ble Supreme Court has held in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, that the term "authority" used in Article 226(1), in the context, must receive a liberal meaning unlike the term in Article 12. Their Lordships of the Hon"ble Supreme Court have held as under:-

"The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. 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 water-tight 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 wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

In the above cited judgment their Lordships have held that the form of the body concerned is not very much relevant and what is relevant is the nature of the duties imposed on the body.

It is evident from the observations made here-in-above that the respondent-Bank is discharging the public duties. The State Government exercises a deep and pervasive control over the functioning of the Bank share capital. In view of

the duties discharged by the respondent-Bank it can safely be held that the respondent-Bank is an "authority" within the meaning of Article 226(1) of the Constitution of India.

Now the Court has to consider the meaning of expression "person" given in the context of Article 226(1) of the Constitution of India. The expression "person" has been defined by the Himachal Pradesh General Clauses Act, 1968 u/s 2(35), which reads thus:

"2 (35), "person" shall include any company or association or body of individuals whether incorporated or not;"

Their Lordships of the Hon"ble Supreme Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, have held that "person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. Their Lordships have further held that when the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. The language employed in Section 2(42) of the General Clauses Act and of the Section 2(35) of the Himachal Pradesh General Clauses Act, 1968 is para-materia. Their Lordships have held in U.P. State Cooperative Land Development Bank Ltd. versus Chandra Bhan Dubey and Others as under:

"In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India." Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals,

whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association of body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

It is evident from the language employed in Section 10 that the respondent-Bank is a body corporate having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. The State Government is also a member of the Society as per Section 17 of the Act read with Bye-law 6. The State Government had contributed about 50% share capital as per the balance sheets reproduced herein-above. The respondent-Bank will fall within the expression "person" for the purpose of Article 226(1) of the Constitution of India on the basis of clause 2(35) of the Himachal Pradesh General Clauses Act, 1968 and also being a body corporate u/s 10 of the H.P. State Co-operative Societies Act, 1968.

In view of the law laid down by the Hon'ble Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, the Central Co-operative Bank Ltd. falls within the expression "any person" or "authority" under Article 226(1) of the Constitution of India and is amenable to the writ jurisdiction of this Court though registered under the H.P. Co-operative Societies Act, 1968.

The matter requires to be considered from another angle by comparing Article 12 of the Constitution of India vis-à-vis Article 226(1) of the Constitution of India. Article 12 comes into play only when a person is seeking enforcement of his fundamental rights. The fundamental rights can be enforced against the bodies which are mentioned in Article 12 of the Constitution of India alone. The expression "authority" mentioned in Article 226(1) is required to be interpreted

differently from the expression "other authorities" in Article 12 of the constitution of India. The High Court under Article 226(1) of the Constitution of India can issue writs for the enforcement of fundamental rights as well as for any other purpose. The expression "authority" and "any person" as mentioned in Article 226(1) has to be interpreted liberally. The High Court has the jurisdiction to issue writs to any authority or a person which is discharging public duties akin to Governmental functions."

10. Relying upon the Bye laws and the aforesaid observations of the learned Single Judge, respondents would contend that in terms of the observations contained in paras 12 to 14 of the Full Bench judgment in Vikram Chauhan's case, writ petition would be maintainable against the bank as it was performing public duty and function. Here, it would be apt to collect quote paras 12 to 14 of the observations made by the Hon'ble Full Bench, upon which heavy reliance has been placed by the respondents:

12. That takes us to the second part of the question formulated by the Division Bench, as to whether a writ would lie against the State Cooperative Banks? This question, essentially, touches upon the scope of power of the High Courts to issue certain writs as predicated in Article 226 of the Constitution of India. This is completely independent issue. In a given case, in spite of the opinion recorded by the Court that the respondent concerned in a writ petition, filed under Article 226 of the Constitution of India, is not a State within the meaning of Article 12 of the Constitution of India. Even then, the High Court can exercise jurisdiction over such respondent in view of the expansive width of Article 226 of the Constitution of India. It is well established position that the power of the High Courts under Article 226 is as wide as the amplitude of the language used therein, which can affect any person-even a private individual-and be available for any other purpose -even one for which another remedy may exist (Rohtas Industries Ltd. and another vs. Rohtas Industries Staff Union and others). In the case of Engineering Mazdoor Sabha and another vs. Hind Cycles Ltd. 16, the Court opined that even if the Arbitrator appointed u/s 10-A is not a Tribunal for the purpose of Article 136 of the Constitution in a proper case, a writ may lie against his Award under Article 226 of the Constitution. In the case of Praga Tools Corporation vs. C.A. Imanuel and others, the Apex Court held that it was not necessary that the person or the Authority on whom the statutory duty is imposed need be a public official or an official body. That a mandamus can be issued even to an official or a Society to compel him to carry out the terms of the statute under or by which the Society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings Further, a mandamus would lie against a Company constituted by a statute for the purposes of fulfilling public responsibilities. In the same decision, the Apex Court examined the amplitude of the term "Authority" used in Article 226 of the Constitution. The Court opined that it must receive liberal meaning unlike the term in Article 12 of the Constitution. It went to observe that the words "any person or authority" used in Article 226 cannot be

confined only to statutory authorities and instrumentalities of the State. It may cover any other person or body performing public duty irrespective of the form of the body concerned. It is emphasized that what is relevant for exercising power is the nature of the duty imposed on the body which must be a positive obligation owned by the person or Authority. Depending on that finding, the Court may invoke its authority to issue writ of mandamus. In the case of Life Insurance Corporation of India vs. Escorts Ltd. And others the Constitution Bench opined that the question must be "decided in each case" with reference to particular action, the activity in which the State or the instrumentality of the State is enacted when performing the action, the public law or private law, character of the Constitution and most of the other relevant circumstances. In a given case, it may be possible to issue writ of mandamus for enforcement of public duty which need not necessarily 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, as noted by Professor de Smith, which exposition has found favour with the Apex Court.

13. The Apex Court after referring to catena of decisions and authorities in the case of UP State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others has succinctly delineated the scope of authority under Article 226 of the Constitution. In para 27 of this decision, the Court opined that Article 226 while empowering the High Court for issue of orders or direction to any Authority or person does not make any difference between public functions or private functions, but did not go to elaborate that question in the fact situation of that case. It is unnecessary to multiply the authorities on the point except to observe that a writ would lie against even a Cooperative Society or Company. But that does not mean that the Court is bound to issue such a writ. It is the prerogative of the High Court to issue writ to any person or authority, which is not a State or an instrumentality of the State. The Court would do so with circumspection and keeping in mind the well defined parameters. Whether in the fact situation of a given case, the Court ought to exercise its authority to issue writ or order in the nature of writ under Article 226 of the Constitution, will have to be answered on the basis of the settled principles, on case to case basis. Thus, it will be inapposite to put it in a straight jacket manner that every writ petition filed against the Cooperative Banks must be dismissed as not maintainable or otherwise.

14. Counsel appearing for the parties invited our attention to several other decisions. However, we do not intend to dilate on all those authorities any further, except to mention the same. Counsel appearing for the Kangra Bank had relied on two Judges Bench decision in the case of Zorastrian Cooperative Housing Society Ltd. And another vs. District Registrar, Cooperative Societies (Urban and others), which took the view that a Cooperative Society cannot be treated as State unless it fulfills the tests spelt out in Ajay Hasia's case by the Constitution Bench of the Apex Court, followed in the case of Praga Tools (supra). Reference was also made to the seven Judges Bench of the Apex Court in the

case of Pradeep Kumar Biswas vs. Indian Institutes of Chemical Biology and others and another decision in the case of Bhadra Shahakari S.K. Niyamita vs. Chitradurga Mazdoor Sangh and others, which deals with the question as to whether the appellant, Cooperative Society can be treated as State within the meaning of Article 12 of the Constitution. The learned Senior counsel for the H.P. Cooperative Society invited our attention to the decision of two Judges Bench of the Apex Court in General Manager, Kishan Sahkari Chini Mills Ltd. Sultanpur, UP vs. Satrugan Nishad and others, to contend that even if it is a case of nominated Directors of Society that does not presuppose that the State has perennial control over the Society. Reliance is also placed on the another decision of the Apex Court in the case of Shri Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust vs. V.R. Rudani and others and in case of Zee Telefilms Ltd. and another vs. Union of India and others."

11. The observations contained in paragraphs 12 to 14 in Vikram Chauhan's case have already been considered in detail by this bench in CWP No. 6709 of 2013 titled Sanjeev Kumar & ors Vs. State of HP & ors decided on 4.8.2014, and it was held:

"18. It was on the basis of the aforesaid reasoning that the principle in paragraph-15(4) was laid down by the Hon"ble Full Bench which have been completely read out of context by the petitioners. The fact situation in the present case does not attract the applicability of the principles laid down herein. This is not a case where the respondents have been imposed with the public duty, as already held by this court in Chandresh Kumar Malhotra's case (supra). Moreover, it is settled law that it is neither desirable nor permissible to pick out a word or a sentence from the judgment, divorced from the context of the question under consideration and treat it to be the complete "law" declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their reasoning. (See: Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . Likewise, it is also to be borne in mind that the observations in the judgment cannot be read like a text of a statute or out of context. [See: Hindustan Steel Works Construction Ltd. Vs. Tarapore and Co. and another,].

12. Admittedly, the Bank in question is a co. operative Society registered under the H.P. Co. operative Societies Act and Rules under which three types of societies have been contemplated:

"2(xx) "secondary society" is a society of which at least one member is a Co. op. society.;

(xxi) "primary society" means a society which does not enroll societies as its member"

(xxii) "apex society" means a secondary society the area of operation of which extends to the whole of the territory of Himachal Pradesh, or even beyond."

13. Indisputably, the H.P. State Co. operative Bank is the only apex Co. operative society which like the bank in question is conducting banking business. The second largest co-operative Bank is the Kangra Central Co. operative Bank which like the respondent Bank, it is only a secondary society. It is also not disputed that it has been conclusively held not only by the Hon"ble Full Bench of this court, but even by the Hon"ble Supreme Court that writ against both the aforesaid banks is not maintainable. Therefore, while determining the question involved in the present case, these facts will have to be borne-in-mind.

14. A body is said to be performing public functions when it seeks to achieve some collective benefit for the person or a section of public and is accepted by the public or that section of public as having authority to do so, a body is, therefore, said to be exercise public functions when it intervenes or participates in social or economic affairs in the public interest. The Hon"ble Supreme Court in Binny Ltd. and Another Vs. V. Sadasivan and Others, , while considering the right of an employee of a private company to enforce his contract or service by noting power of judicial review of the High Court under Article 226 of the Constitution observed as under:

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Nongovernmental bodies such as these are just as capable of abusing their powers as is government."

After considering various decisions, the Hon"ble Supreme Court further held as under:

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England 3rd ed. Vol. 30, page-682,

"1317. A public authority is a body not necessarily a county council, municipal

corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit."

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

15. In *Jatya Pal Singh Vs. Union of India*, the Hon'ble Supreme Court has considered in detail as to what would be the public functions and has categorically held that a body would be said to be performing public functions when it seeks to achieve some collective benefit for the public or a section of the public as would be clear from the following:

"48. Dr. K.S. Chauhan had also relied on the United Kingdom Human Rights Act, 1998 (Meaning of Public Function) Bill which sets out the factors to be taken in account of determining whether a particular function is a public function or the purpose of sub section (3) (b) of Section 6 of the aforesaid Act. Section 1 enumerates the following factors which may be taken into account for determining the question as to whether a function is a function of public nature.

"1. (a) the extent to which the State has assumed responsibility for the function in question;

(b) The role and responsibility of the State in relation to the subject matter in question

(c) the nature and extent of the public interest in the function in question.

(d) the nature and extent of any statutory power or duty in relation to the function in question.

(e) the extent to which the State, directly or indirectly, regulates, supervises or inspects the performance of the function in question.

(f) the extent to which the State makes payment for the function in question.

(h) the extent of the risk that improper performance of the function might violate an individual's convention right. For the avoidance of doubt, the purposes of Section 6(3)(b) of the Human Rights Act, 1998, as per the said Bill a function of a public nature includes a function which is required or enabled to be performed wholly or partially at public expenses, irrespective of:

"2.(a) the legal status of the person who performs the function, or

(b) Whether the person performs the function by reason of a contractual or other agreement or arrangement."

"49. In our opinion, the functions performed by VSNL/TCL examined on the touchstone of the aforesaid factors cannot be declared to be the performance of a public function. The State has divested its control by transferring the functions performed by OCS prior to 1986 on VSNL/TCL."

"50. Dr. Chauhan had also relied on Binny Ltd. whereby this Court reiterated the observations made by this Court in Dwarka Nath V ITO. It was observed that (Binny Ltd. case, SCC pp. 665-66, para 11)

"11.....It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest."

51. This Court also quoted with approval Commentary on Judicial Review of Administrative Action (5th Edn) by de Smith, Woolf and Jowell. In Chapter 3 Para 0.24 therein it has been stated as follows: (Binny Ltd. case, SCC p. 666, para 11)

" A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.. Bodies therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest.

Public functions need not be exclusive domain of the State. Charities, self regularity organizations and other nominally private institutions (such as Universities, the Stock Exchange, Lloyd's of London, Churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted. Non governmental bodies such as these are just as capable of abusing their powers as is Government."

"52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so.

"53. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or data through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 19(1)(a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information.

"54. The function performed by VSNL/TCL cannot be put on the same pedestal as the function performed by private institution in imparting education to children.

It has been repeatedly held by this Court that private education service is the nature of sovereign function which is required to be performed by the Union of India. Right to education is a fundamental right for children up to the age of 14 as provided in Article 21-A. Therefore, reliance placed by the learned counsel for the appellants on the judgment of this Court in *Andi Mukta* would be of no avail. In any event, in the aforesaid case, this Court was concerned with the non payment of salary to the teachers by *Andi Mukta Trust*. In those circumstances, it was held that the Trust is duty bound to make payment and, therefore, a writ in the nature of mandamus was issued."

16. Now, we proceed to determine as to whether the respondent bank is discharging any public duties closely related to the governmental function. In our considered view, the duties and functions of the respondent bank can best be compared with the *H.P. State Co. operative Bank Ltd.* since, as observed earlier, both are Co. operative societies and at the same time are also conducting banking business. The *H.P. State Cooperative Bank Ltd.* has framed its Bye-laws and Bye-law No. 4 deals with the objects of the Bank and is reproduced in entirety as under:

"4. Objects. -

The objects for which the Bank is established are as follows:-

a) to promote the economic interest of the members of the Bank in accordance with the co-operative principles and to facilitate the operations of the Co-operative Societies registered under the Act;

b) to serve as balancing centre and clearing house for Cooperative Societies in the State of Himachal Pradesh registered under the Act.

c) to organize the provision of credit for agriculturists in the State of Himachal Pradesh, to function generally as an integrated State organization for the provision of agriculture, marketing, and processing credit to agriculturist and their societies to develop Co. operative credit and to ensure efficient performance of the functions relating there to through the Central Co-operative Bank and other Co. operative Societies in the State.

d) to make loans and advances to and pen overdrafts and cash credit accounts for the members of the society with or without security.

(e) To lend money or grant overdraft or open cash credits for all persons against the security of:

(i) Gold and Silver, either in bars or ornaments

(ii) Agricultural or Industrial produce.

(iii) Licenced warehouse receipts, life insurance policies, salary bills or Government servants, Trustee securities as defined u/s 20 of the Indian Trust Act and such other securities as may be approved by the Registrar/Reserve Bank of

India from time to time.

Provided that the financial accommodation against the above mentioned securities shall be allowed subject to such condition as the Registrar may prescribe from time to time.

Provided that loans and advances may also be granted to the depositors against the security of their deposits without their being enrolled as members of the Bank.

Provided further that subject to prior approval of the Registrar, the loans and advances under this bye-laws may also be made without security.

f) to collect bills, drafts, cheques and other negotiable instruments on behalf of members and non members and to provide them remittance facilities also;

g) to buy and sell securities for the investment of its surplus funds and to act as an Agent for buyers and sellers of securities of the Government of India or of the State Government, Treasury Bills, or other securities as specified in clauses (a), (b), (c) and (d) of Section 20 of Indian Trust Act, and to transfer, endorse, pledge such securities or shares and other assets of the Bank for raising funds or to lodge them as collateral security for money borrowed by the bank;

h) to undertake exchange business by drawings, accepting endorsing, negotiating, selling or otherwise dealing in bills of exchange, or other negotiable instruments with or without security;

i) to receive money in current, savings, fixed or other accounts and to raise or borrow from time to time, such of money as may be required for the purpose of Bank to such an extent and upon such conditions as the Board may think fit;

j) to open its branches/offices, in the State or outside the State within the previous sanction of the Registrar;

k) To carry on and manage the affairs of a society, the committee of which has been suspended or superseded under the Act and rules framed there under.

l) To start and maintain funds calculated to benefit its staff members or ex-staff members and their dependents;

m) to act as a Banking Agent for the Government of Himachal Pradesh, Public Bodies, corporations or for any bank or bankers in the State on such terms and conditions as mutually agreed upon between the bank and other party with the sanction of the Registrar;

n) to advice Banks and Societies in the matter of principles and practice of Banking and inspect them as and when necessary for the purpose;

o) (i) to receive from constituents for safe custody and/or realization of interest Govt. paper; shares, debentures and deposit receipts and valuables title deeds, insurance policies etc. with or without any fees.

(ii) to provide to its constituents facility of safe deposit lockers.

p) to act as a custodian of the Reserve Fund of Central Co. operative Bank and Societies.

(q) to undertake liquidation work of affiliated societies indebted to the bank on conditions laid down by the Registrar and agreed upon by the Board with a view to facilitate recoveries from the affiliated societies;

r) to take over the Central Co. operative Banks with their Branches or any other Banking institutions functioning in the State as a going concern or otherwise on such terms and conditions as may be deemed proper and agreed upon between the Bank and the party subject to the approval of the Government/Registrar;

s) to subscribe to the Share Capital of the Cooperative societies, Central Cooperative Banks and other Cooperative institutions if and when necessary subject to the provisions of section 19 of the Banking Regulation Act.

t) to acquire, construct, maintain, alter building or work necessary or convenient for the purpose of the Bank and to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, or turn to account or otherwise deal with or any part of the property;

u) to establish, promote and maintain the cadre of key personal for the benefit of affiliated Central Co. operative Banks and the Co. operative Societies.

v) to engage in any form of business which the State Govt. may specify and to do in general all such things as are incidental or conducive to the promotion or advancement of business of the bank.

17. Now in case the objects of the H.P. State Co. operative Bank are compared with the objects of the respondent bank, as set out in detail in para-6 supra, it would be seen that the objects of both these Banks are virtually *pari materia*. If that be so, then the next question which would arise for consideration is as to whether the H.P. State Co. operative Bank based upon its objects is discharging public functions. This question is no longer *res integra* and has been considered in detail by a Division Bench of this Court in *Chandresh Kumar Malhotra and Others Vs. H.P. State Co-op. Bank and Others*, and this court repelled the argument in the following manner:

"87. The 5th test, namely, functions of the society being of public importance and closely related to the Government function. In *international Airport Authority's* case (supra) the expression "Government function" has been pointed out to be vague and of indefinite description. In a welfare State like ours, it is difficult to demarcate between Governmental and non governmental function and it is also equally difficult to say with precision as to what is function of public importance and what is not. For the two Banks, as per their respective bye laws, the main objects are to promote the economic interests of the members of the Bank in accordance with co. operative principles and to facilitate the operations of the Co.

operative Societies registered under the Act. The others are to serve as balancing centre and clearing house for Co. operative Societies to organize the provisions of credit for agriculturists in the State, to function generally as an integrated organization for providing agricultural, marketing and processing credit to agriculturists and other societies, to develop co. operative credit, to make loans and advances etc. to the member of the societies, to lend money and grant over drafts, to do the other normal banking functions to act as banking agent for the Government of Himachal Pradesh/Public bodies, Corporations etc. to advise banks and Societies in the matters of principles and practices of banking and numerous other objects mainly connected with normal banking business and also to engage in any other form of business that the State Government may specify.

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

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

18. It would thus be seen that while considering the same objects, similar functions and similar Bye-laws, learned Division Bench of this court had clearly opined that the nature of business being carried out by it could not be termed as functions impregnated with government character or tied or entwined with government and it did not satisfy the 5th test enunciated in *Ajay Hasia's* case (supra).

19. This judgment was a binding precedent not only on the Single Judge but is also binding upon this Bench. We need not delve on the issue of binding precedents any further as the same has been repeatedly concluded by various Constitution Bench judgments of the Hon'ble Supreme Court. Reference in this regard can conveniently be made to the Constitution Bench decision in *Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another*, wherein after considering the law laid down by the various Constitution Benches, the legal position was summed up in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the

matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh & Ors.* and *Hansoli Devi & Ors.* (*supra*).

20. There is yet another reason for holding the writ petition to be not maintainable and that is the recent judgment rendered by the Hon''ble Supreme Court in *Thalappalam Ser. Coop. Bank Ltd. and Others Vs. State of Kerala and Others*, . No doubt, the primary issue in this case pertained to the applicability of the provisions of Right to Information Act to the Cooperative society and also the Registrar. However, one of the issues therein also related to the question as to whether the cooperative society was a "State" within the meaning of Article 12 of the Constitution. The Hon''ble Supreme Court after discussing the entire law on the subject has come to a categorical finding that the cooperative societies which were the subject matter of the lis do not fall within the expression "State" or an "instrumentality of the State" within the meaning of Article 12 of the Constitution and were therefore, not subject to all constitutional limitations as enshrined in Part-III of the Constitution.

21. The Hon''ble Supreme Court drew a distinction between a body which is created by a statute and a body which after coming into existence is government in accordance with the provisions of the statute and held that the societies and the bodies falling under the latter could not be termed to be statutory bodies, but only corporates. It also took note of the fact that merely because a private body is acquired in public interest it did not mean that the party whose property was acquired was performing or discharging any function or duty of public character though it would be so for the acquiring authority. The Hon''ble Supreme Court further took note of the celebrated decision in *S.S. Rana Vs. Registrar, Co-operative Societies* and held that the State had no say in the functions of the society and all matters regarding membership, acquisition of shares and all other

matters were governed by the Bye laws under the Act. The relevant findings of the Hon"ble Supreme Court are as follows:

"Co-operative Societies and Article 12 of the Constitution:

13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression "State" within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , while dealing with the question of the maintainability of the writ petition against the U.P. State Cooperative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In All India Sainik Schools Employees" Association Vs. Defence Minister-cum-Chairman Board of Governors and Others, , this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.""

14. This Court in Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, , while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

"10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character....."

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Cooperative Societies Act having perpetual succession and

common seal and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided u/s 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

16. This Court in *Federal Bank Ltd. Vs. Sagar Thomas and Others*, , held as follows:

"32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided u/s 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority".

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in *S.S. Rana Vs. Registrar, Co-operative Societies and Another*, . In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Cooperative Societies Act this Court held as follows:

"9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of

shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr. Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterized as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control there over would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi*. [See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)*.]

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment."

22. Article 226 of the Constitution states that:

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, or for the enforcement of any part of the rights conferred by Para-III and for any other purposes.

(2) The power conferred by clause (1) to issue directions, order or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated."

The language of Article 226 is no doubt very wide when it states that a writ can be issued "to any person or authority" on an enforcement of any rights conferred by part-III and for any other purpose. However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting this Article or else it would follow that a writ can even be issued to any private person or to settle even private disputes.

23. Undoubtedly, individuals and private bodies and in certain cases societies and companies registered under the statutes do not fall within the inclusive definition of State under Article 12 of the Constitution. However, persons and legal entities created under various laws have been brought within the expansive definition by judicial interpretation. It is no more *res integra* that the body can be termed to be an instrumentality or agency of the State while performing public functions and discharging public duties irrespective of its birth by non-legislative action as the existence of such entity, be statutory or non-statutory is irrelevant because it is only the nature of the activity which becomes a determinative factor to bring it within the purview of instrumentality or authority under Article 226 of the Constitution of India.

24. From the above discussion judged by any yardstick, the functions to be performed by the respondent bank are, in no manner, governmental functions so as to bring them within the compass of public duty or public functions to enable us to compel the respondent bank to yield to the jurisdiction of this court under

Article 226 or for that matter to enable the court to assume jurisdiction over the respondent bank.

25. In view of the aforesaid clear exposition of law, not only by this Court but also by the Hon''ble Apex Court, we have no other option but to hold that no writ petition against Jogindra Central Co. op Bank Ltd. would be maintainable where the writ is directed and relief claimed is only against the Jogindra Central Co. operative Bank Ltd. Therefore, appeals are allowed accordingly and the judgment passed by learned Single Judge taking contrary view is set aside.