

(2000) 10 MAD CK 0049

In the Madras High Court

Case No : W.P.SR. No's. 58714, 58948 and 61024 of 1999 and 13572, 41191, 49291, 55825, 56015 of 2000

M. Thanikachalam and others

APPELLANT

Vs

Maduranthakam Agricultural Producers co-operative
Marketing Society and others

RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 21, 226, 227
Contract Act, 1872 — Section 23
Employees State Insurance Act, 1948 — Section 1(3), 74, 75
Industrial Disputes Act, 1947 — Section 9
Tamil Nadu Shops and Establishments Act, 1947 — Section 75

Citation : (2000) 4 CTC 556 : (2001) 1 LLJ 285 : (2001) 1 LW 38 : (2001) WritLR 1

Hon'ble Judges : N.K. Jain, C.J.;K. Sampath, J;K. Raviraja Pandian, J;K. Gnanaprakasam, J;A.S. Venkatachalamoorthy, J

Bench : Full Bench

Advocate : Mr. V.T. Gopalan, Additional Solicitor General of India for Mr. S. Udayakumar, M.S. Subbaraj, M/s. Row and Reddy, Mr. Ganesan, C. Selvaraju, Mr. Parakasam, Mr. Thanaseelan, Mrs. Thilakavathi, Mr. Chandru, for the Appellant; Mr. T.R. Rajagopalan, A.A.G. for Mr. M.K. Hidayathullah, Additional Government Pleader, for the Respondent

Judgement

Judgement pronounced by N.K. Jain, CJ.

1. These W.P.Srs. have been posted before us to get an authoritative decision as to whether writ petitions, challenging the orders passed under the provisions of the Co-operative Societies Act are maintainable.

2. We will now advert to the facts in detail, as to how the matter, now being referred to us, had been set at naught by two Full Bench decisions of this Court

3. In the year 1989, a Full Bench of this Court, in R.Thamilarasan Etc., P.Kannan Etc., v. Director of Handlooms and Textiles, Madras and others, 1989 (1) LLJ 588,

while deciding the issue as to whether a writ will lie against Co-operative Society, rendered a finding in negative, holding that no writ is maintainable against Co-operative Society, because it is not a statutory body or an authority or agency or instrumentality of the State, under Article 12 of the Constitution of India. Subsequently, a Division Bench of this Court in the decision in Natarajan, A. v. The Registrar of Co-operative Societies, 1991 (2) L.W. 420, took a view that the decision of, the Full bench of this Court rendered in Tamilarasan's Case, 1989 (1) LLJ 588, which did not analyse the issue in the right perspective, is per incuriam. and ultimately held that the writ petitions challenging the orders passed under the provisions of Co-operative Societies Act are maintainable. The Division Bench also held that the judgment of the Full Bench (Supra) is per incuriam also for the reason that relevant provisions of the Tamil Nadu Co-operative Societies (Appointment of Special Officer) Act, 1976 were not noticed by it. It had further observed that the decision of the Full Bench (Supra) is per incuriam for the further reason that the statement of law, as found in the case of Brij Bihari Singh Vs. State of Bihar and Another, , has not been taken note of, and the Tamilarasan Case 1989 (1) LLJ 588 decision is only an obiter dicta, as the only question canvassed before the Full Bench was whether a writ would lie against a Co-operative Society invoking Article 226 of the Constitution of India and not whether a writ would lie against an order passed by a Special officer or other Government Official, so appointed to administer the affairs of the superseded society/s.

4. On a reference made by D.Raju, J. (as His Lordship then was) on the question whether it was open to the Division Bench in the abovementioned case A.Natarajan v. The Registrar of Co-operative Societies, 1991 (2) L.W.420 to characterise the Full Bench judgment in Tamilarasan's Case, 1989 (1) LLJ 588 as per incuriam or obiter dictum, the matter was once again referred to a Larger Bench and it has been held by its judgment dated 22.11.1993, that writ petition is not maintainable against Co-operative Societies.

5. When the matter stood thus, in a writ petition filed against the orders passed by a Housing Co-operative Society, a learned Single Judge of this Court, entertained the said writ petition holding that allowing the authorities concerned to take shelter under the decision of Tamilarasan Case, 1989 (1) LLJ 588 would amount to encouraging to manipulate, and to undermine the very principle of law. Again, a Division Bench of this Court in R.Varadarajan v. Special Officer, Kadambathur Co-operative Land Development Bank, Thiruvallur, 1995 (1) LLN 265, while answering a question about the maintainability of a writ petition against a Co-operative Society, applying the ratio laid down by the Supreme Court in Rothas Industries Ltd., v. Rothas Industries Staff Union, 1976 (1) LLN 165 wherein it has been held that "Article 226 is wide enough to affect even private individuals", and finding that the impugned order was passed without following the principles of natural justice, set" aside the order. In the same way, a learned Single Judge of this Court in M.Maylvaganan and others v. Government of India and others, 1995 (I) LLN 268 entertained a writ petition, and taking note

of the monstrosity of the situation, quashed the impugned order, holding that it was passed without following the principles of natural justice, In another case, in South Arcot District Central Co-operative Bank Ltd., Cuddalore v. Deputy Commissioner of Labour, Madras and another, 1999 (4) LLN 1102, a learned Single Judge of this Court, referring to all the earlier decisions of this Court, and Supreme Court, finding that if there is a patent violation of the mandatory provisions of the Industrial Disputes Act, which will constitute unfair labour practice, the powers of the High Court under Article 226 can be exercised to rectify the mistake committed by the management even if it is a Co-operative Society, and held that a writ petition filed, challenging the order passed under Co-operative Society's Act is maintainable.

6. The Hon''ble Supreme Court in Andi Mukta Satguru Shree muktajee Vandas Swami Suvarna Jayanthi Mahotsav Sanmark and others v. V.R.Rudani and others, 1989 (2) LLJ 324 has observed that 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, that the duty must be judged in the light of positive obligation owed by person or authority to the affected party, no matter by what means the duty is imposed, and if a positive obligation exists, mandamus cannot be denied. It has been further held that mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found, and that technicalities should not come in the way of granting that relief under Article 226. The contention urged on the maintainability of the writ petition was rejected.

7. Under such situation in these W.P.SRs. it is alleged that the affairs of the Co-operative Societies are carried on under the Statute, and when such Societies are functioning contrary to a statutory duty or a public duty vested on them, and when principles of natural justice are not followed the only remedy available under the writ jurisdiction will be invoked and therefore, it is prayed that the Full Bench decision's of this Court in Thamilarasan's case, 1989 (1) LLJ 588 need re-consideration.

8. We are discussing below in detail, as to how all the cases, which revolve on the narrow compass, have been tagged and placed before us. Relevant facts, out of which this reference has arisen, are as follows; W.P.SR.No.58714 of 1999 has been placed before a learned Single Judge, on the objection raised by the Registry, for deciding the maintainability, in view of the judgment of a Full Bench of this Court in Philip Jeyasingh v. Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin & 2 others, 1994 (2) L.W. 105, and considering the decision of the Hon''ble Apex Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, besides the decision of a learned Single Judge of this Court in South Arcot District Central Co-Operative Bank Ltd. Employees Association Vs. The Deputy Commissioner of Labour D.M.S. Compound, Teynampet, Madras-6, and another, .

9. W.P.SR.Nos.58714, 61024 and 58948, 58716, 58950, 61026 and 61027 of

1999 have been referred by a Division Bench of this Court to consider the question, whether the writ. petition under Article 226 of the Constitution of India is maintainable against a Co-operative Society, after considering the decision of the earlier Full Bench of this Court in *Ganesan. K. v. The Special Officer, Salem Co-op. Sugar Mills and 2 others*, 1994 W.L.R. 509, wherein it was held that writ petition was not maintainable. Another Division Bench in *R.Varadarajan v. Special Officer, K.C.L.D. Bank*, 1995 (1) LLN 265, observed that the scope of Article 226 of the Constitution was wide enough even to issue directions against a private individual. A learned Single Judge of this Court in *South Arcot District Central Co-Operative Bank Ltd. Empolyees Association Vs. The Deputy Commissioner of Labour D.M.S. Compound, Teynampet, Madras-6*, and another, considering the decisions of the various High Courts held that when there is patent violation of the mandatory provisions of the Industrial Disputes Act constituting unfair labour practice, and when it is found that there is alteration of service conditions without following procedure laid down by law a writ petition is maintainable even against a Co-operative Society. The Division Bench of this Court in the above W.P.SR.Nos. has also considered the decision of the Apex Court in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, , wherein it was observed that "the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has also 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. High Court does not interfere when an equally efficacious alternative remedy is available, or when there is established procedure to remedy a wrong or enforce a right".

10. References were also made to various other decisions namely., *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , *Kannan, P. Tamilarasan. H. & others v. The Director of Sugars, Office of the Director of Sugars*, 1991 (2) LW 409, *Varadarajan, A. v. Deputy Registrar, Co-op. Societies, Caddalore and another*, 1994 W.L.R. 516, *Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others*, *Shanmuganathan v. The Registrar, Tamil University, Thanjavur*, 1997 (II) MLJ 314, *Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled]*, , *Vinobha H.B. and Others Vs. Hindustan Photo Films and Another*, , *A.K.Ansari v. Bharat Overseas Bank Ltd.*, 1999 (3) LLN 310 and *N.Thomas v. Asst. Director of Handlooms and Textiles*, 1999 Lab.I.C. 2638.

11. Law will be bereft of all its utility if it is thrown into a state of uncertainty, by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. Keeping in mind, this view, this Larger Bench has been constituted to answer the question put forth as to whether the decision in *Thamiiarasan's Case*, 1989 (1) LLJ 588 which got the seal of approval by two Full Benches of this Court, requires re-consideration.

12. Mr.V.T.Gopalan, learned Senior Counsel submits that after the pronouncement of Tamilarasan's case, 1989 (1) LLJ 588. Single Benches, and Division Benches of this court, and the Hon'ble Supreme Court have broadened their view to the effect that writ jurisdiction is amenable against a private person, trust, and "Other Authority", and therefore, the decision in Tamilarasan's case needs re-consideration. He drew our attention to the monstrosity of the situations prevailed in various cases, wherein, though it has been held that writ will not lie against Co-operative Society, the impugned orders, which were passed in flagrant violation of principles of natural justice, or when technicalities stood in the way for granting reliefs, were quashed and reliefs were granted. He also drew our attention that to curtail the efficacious remedies, the special officers are passing the impugned orders, at the instance of Government Officials, and thus the common litigants are being left out without any redress.

13. Mr.C.Selvaraju, learned counsel appearing for one of the writ petitioners drew our attention to the various provisions of the Co-operative Societies Act, regarding the power under the statutory Rules to appoint Trustee, President, Special Officer, the Appellate, Revisionary, and Review powers under Chapter XVIII of the Act, the power of the Registrar to give directions in the public interest u/s 181 of the Act and in such cases, the orders so passed by the statutory body is certainly amenable to writ jurisdiction and in such case, writ is maintainable.

14. Mr.K.Chandru, learned Senior Counsel appearing for one of the writ petitioners drew our attention to so many decisions of this Court and Hon'ble Supreme Court, which/will be adverted to and analysed in detail hereinafter, and contended that the Full Bench, in the Tamilarasan's case, 1989 (1) LLJ 588 considered the Co-operative Society as not a "State" which itself is basically wrong, as the scope of writ jurisdiction under Article 226 is wide enough, and Writ can be issued even against bodies which are not necessarily a "State" within the meaning of Article 12, and so the Full Bench decision (Supra) requires re-consideration. He further submitted that the Full Bench considered the case laws relating to 1961 Act only, that it had no opportunity to look into the provisions of 1983 Act, under which the power and scope of the present. Act is far wider than the old one, and so it requires re-consideration. By referring to the Sections 75 and 75(7) "of the Tamil Nadu Shops and Establishments Act, 1947, the learned Senior Counsel contends that the fact that the employees work in a co-operative society is a mere formality and they are governed by the statutory service conditions framed by the Government. He further contended that even after the Tamilarasan's case, 1989 (1) LLJ 588 Single Benches and Division Benches of this Court held that a writ would lie against a Co-operative Society as the society carries out the directions of the Co-operative Department of the Government. He also submitted that the decision of the Supreme Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, set a new tone, calling for review of Tamilarasan's case, 1989 (1) LLJ 588. He put his argument in a nutshell stating that writ petitions filed against the orders

emanated under Co-operative Societies Act are maintainable, and the decision of the Full Bench in *Tamilarasan's Case*, 1989 (1) LLJ 588 needs re-consideration.

15. Mr. Jayachandran, learned counsel appearing for one of the writ petitioners, submitted that in view of the power vested under the provisions of the Act, directions can be issued in public interest by the Registrar and as such duty is cast upon him, as and when there is flagrant violation of the duty, naturally, availing of the writ jurisdiction is the only remedy for any person, and in such circumstances, the writ petitions challenging such orders are maintainable, and therefore, the Full bench decision in *Tamilarasan's case*, 1989 (1) LLJ 588 needs re-consideration.

16. The learned Additional Advocate General took much pains to make us to go through all the decisions relied on by the learned counsel, the origin of the case as to how it begun, and the latest developments that had been carried on by the Benches of this Court on various occasions. He took us to the preamble of the Act which regulates the affairs of the Co-operative Societies, and the power so exercised under the statutory provisions created by the statute. He submits that the power of appeal and revision have been provided in the Act itself. He submitted that it is a body created by the statute, that it is not an authority nor an instrumentality of the Government. He further submitted that if there is any flagrant violation, in such a situation, it can be challenged, but merely on that basis it cannot be said that the decision rendered in *Tamilarasan's case*, 1989 (1) LLJ 588 requires re-consideration.

17. Learned Additional Advocate General further submitted that there is no deep and pervasive State control over the Co-operative Societies and therefore, no writ will lie against the orders passed under the Co-operative Societies Act. He frankly submitted that if there is any violation in the order, and it has been passed without jurisdiction, or against the principles of natural justice, or the order creates a monstrous situation calling for interference, they are amenable to writ jurisdiction and the alternative remedy will not be a bar. He submitted that the cases decided by the Single Benches, and Division Benches to the effect that a writ can be maintainable against Co-operative Societies Act are all distinguishable, on facts and law.

18. The learned Additional Advocate General submitted that the decisions relied on by the counsel appearing on the side of the writ petitioners are not helpful in coming to the conclusion that in all cases, where any order is passed against, which a writ is maintainable.

19. The case in *South Arcot District Co-op., Bank*, 1999 (4) LLN 1102 is that service condition was issued by issuing notice u/s 9A of the Industrial Disputes Act. It was argued that even after issuing notice u/s 9A of the Act, service conditions contained in the earlier settlement cannot be changed. In such a situation, taking note of the fact that alteration of service conditions without following the procedure laid down u/s 9A of the Act, and considering that a

patent violation of the mandatory provisions of the Industrial Disputes Act would constitute unfair labour practice, it was held that the writ petition praying to rectify the mistake can be entertained. Even on" the basis of the facts of that case, one cannot file writ petition, ignoring the provisions for other alternative remedy available as per the Act. The learned Additional Advocate General then took us through the decision in *Andi Mukta Satguru Sanmark Trust, 1989 (2) LLJ 324* in which a public trust, running a Science College (affiliated to University), closed the institution without paying terminal benefits and arrears of salary. In such a situation, the writ petition filed was held to be maintainable as the service conditions of academic staff of such institutions were not purely of private character. In the case of *Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills)* and others, the respondent company was declared as a sick company by the Board for Industrial and Financial Reconstruction, which initiated action for revival. Pending action, the management and one of the unions entered into a settlement for voluntary separation scheme and it was reached, in accordance with Section 18(1) of the Industrial Disputes Act. The said settlement was challenged by another Union on the ground that it violated earlier settlement reached u/s 12(3) of the Industrial Disputes Act. In such a situation, it was held that implementation of settlement is not a public duty, and no writ will lie, and that the terms of settlement cannot be enforced by filing writ petition. He quoted the relevant portion in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, which quoted a good portion of the judgment in *Andi Mukta Satguru Case, 1989 (2) LLJ 324*. Finally, learned Additional Advocate General, took us through the observations made in *Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills)* and others, , which are to the following effect;

1. A private body which is not a "State" within the meaning of Art. 12 of the Constitution of India is not generally amenable to Article 226 of the Constitution.
2. A writ can be issued against a private body to protect the fundamental rights declared under Part III of the Constitution of India.
3. A writ can be issued in extraordinary circumstances if the monstrosity of the situation warrants it.
4. A mandamus will be issued against a private body, if there is no equally convenient remedy, and if there is a public duty.
5. The implementation of a settlement u/s 12(3) of the Industrial Disputes Act, is not a public duty and no writ will lie against a private body.
6. If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Article 226 of the Constitution could be exercised to quash a settlement u/s 18(1) or Section 12(3) of the Industrial Disputes Act.

In arriving at such a conclusion, the Division Bench has held that the writ petition challenging the earlier settlement, will lie.

20. In Sadasivan's Case, 1998 (1) LLJ 349, while considering as to whether Clause 8 of the Agreement read with the order of termination dated 31.7.1995 are void and illegal, being violative of Section 23 of the Indian Contract Act, 1872, Article 21 of the Constitution of India and Sections 25-F and 25-N of the Industrial Disputes Act, after a careful analysis of case law put forth, instead of driving the petitioner to the appropriate forum, declared Clause-8 of the Agreement of service to be void. It had observed that it adopted the said course having regard to the facts that the writ petition has been filed and has been pending and on being entertained on the file of this Court. It further observed that the determination of the validity of such clause does not involve any factual investigation or appreciation of evidence and adjudication of factual issues, and thus partly allowed the writ petition. Pointing out these things, learned Additional Advocate General contends that the learned counsel for the petitioners cannot take advantage of the cases mentioned above, and submits that writ petitions against Co-operative Societies will not lie, as a matter of course. He then drew our attention to Chemplast Sanmar Ltd., Case 1999 (95) FJR 527, wherein, the settlement arrived at u/s 18(1) was altered without following proper procedure, under the provisions of Industrial Disputes Act, and in that fact situation, the Division Bench held that the denial without following the procedure mandated u/s 9-A of the Act was without the authority of law and opposed to Section 9-A of the Act.

21. Learned Additional Advocate General drew our attention to Administrator, Konch Sahakari Kraya Vikraya Samiti Ltd. Vs. Sarnam Singh and Others, , wherein an order of removal of the Secretary from service, was passed. It was found that the impugned order, being appealable, was statutory in nature and therefore amenable to writ jurisdiction of the High Court. On a perusal, the Division Bench in the said case observed that the order of removal from service of Secretary of a Co-operative Society by the Registrar is statutory in nature and as such, it is amenable to the writ jurisdiction. Learned Additional Advocate General pointed out that in that case, before the order of removal from service, an opportunity of being heard was not afforded and as such, the Bench held so, but on the issue now raised, it is not so, and in such circumstances, it cannot be said that in all cases writ is maintainable.

22. Learned Additional Advocate General then drew our attention to the decision in U.P. Cooperative Federation Ltd. Vs. Ram Singh Yadav and Others, . In that case, the employee initially challenged the order of termination dated 25.5.1978, on the ground that he abandoned his services from 21.7.1977 and that he would not be entitled to any pay and allowances. The said impugned order was set aside by the High Court, holding that no disciplinary proceedings was initiated, and the services could not have been terminated without proceedings, that there is wilful absence. Considering various aspects and the fact situation, that there were various complaints, a memo was issued, and he was transferred from one office to another and then lastly to PCF, Press and also taking note of the fact that he was transferred on 14.7.1977, and that he was reverted from the post to

Chaukidar, and the allegation that he was entitled for consideration to the post of Assistant. The Supreme Court held that the order of termination is good. It has been further observed, that it is always open to the appellate Federation to initiate disciplinary proceedings for remaining absent unauthorisedly, or not joining duty during the pendency of appeal, if circumstances warrant. Learned Additional Advocate General, argued that only in the facts and compelling circumstances only, this Court and the Supreme Court held that such writ petition was maintainable and not as a matter of course. Merely on the basis of the argument built upon the decision of the Supreme Court(Supra), writ petition is not maintainable.

23. The learned Additional Advocate General further contended that the writ petitioners cannot take advantage of the decision in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , wherein the U.P. State Co-operative Land Development Bank was constituted under the Uttar Pradesh Co-operative Land Development Bank Act, that Regulations were constituted u/s 122 of the Act, as well as Rules framed thereunder. Any order of dismissal by the Bank can be issued only after its approval by the Board. Considering the various case laws, it was observed that the employee had statutory protection, and therefore, coming under the instrumentality of the State, which would be amenable to writ jurisdiction. So, petitioners cannot take advantage of the U.P. Case, (Supra). The Court has not touched the question whether Article 226 is limited to the field of public duty, and does not cover that of private law. Elaborating the case laws in detail, as stated above, learned Additional Advocate General submitted that writ petition will not lie against a Co-operative Society as a matter of course.

24. The learned Additional Advocate General further submitted that the cases cited above arose under exceptional circumstances and under certain exigencies, calling for the interference of the Court. He submitted that when a statutory duty is found to be vested on it, and when there are flagrant violations, and when the principles of natural justice were not followed scrupulously, in a catena of decisions, the Courts have extended their helping arms but, however, in the cases on hand, it can be clearly seen that there are remedies available to challenge the orders, and each case depends upon the facts and circumstances of its own, and as such, it cannot be said that writ petition will lie against the orders passed under Co-operative Societies Act. The Full Bench in the latter case of Philip Jeyasingh has categorically stated that, not only a writ petition against a Co-operative Society represented by Board of Directors, but also a writ petition against Co-operative society represented by Special Officer, also is not maintainable. The arguments advanced by the learned counsel appearing for the petitioners will not be sufficient for this Court to come to a conclusion that orders passed under Co-operative Societies" Act are amenable to writ jurisdiction under Article 226 of the Constitution of India. He submits that under such circumstances, Tamilarasan"s case, requires no re-consideration.

25. We have considered the respective arguments advanced by the learned counsel on both sides and the case law, and have given our earnest consideration. As seen above there was legal battle that had been going on from time to time. The plank of the attack on the maintainability of the writ petition under Article 226 of the Constitution of India, may now be examined. We are not inclined to go in detail, nor it is necessary, except stating the well settled proposition of law, that the expansive and extraordinary power of the High Court under Article 226 is as wide as the amplitude of the language used, and that the mentor of law is justice, and a potent drug should be judiciously administered, and accordingly this Court exercising the power under Article 226, in appropriate cases, can issue a writ or direction, as the need may be. It is also settled that Mandamus is a very wide remedy, which must be easily available to reach injustice, wherever it is found, however, such exercise of power cannot be made as a matter of course. If it is brought to the notice of the court that any order under Co-operative Societies Act is passed without jurisdiction, or where principles of natural justice have been violated, in such circumstances, this court can entertain such writ petition/s as maintainable.

26. On a careful analysis of the provisions of the Co-operative Societies Act, we find no reason to differ with the view of the Full Bench in *Tamilarasan's Case*, 1989 (1) LLJ 588 that a Co-operative Society is a body, governed in accordance with the provisions of the statute: We are in agreement with the view of the decision in *Tamilarasan's Case*, 1989 (1) LLJ 588 that a Co-operative Society is a body which after having come into existence is governed in accordance with the provisions of the statute.

27. Our reasoning as stated above is in line with the views of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, that the form of the body concerned is not very much relevant and what is relevant is the nature of the duty imposed on the body.

28. When the provisions of the co-operative Societies Act give the right of appeal, revision and review, we do not find that something more power is to be added. We quite appreciate the argument, that efficacious remedy is to be made available to one and all, and even if exercise of power under Article 32 is limited, power under Article 226 can be invoked. But what we want to emphasise is that the power under Article 226 cannot be allowed to be exercised, as a matter of course. Viewing in that angle, coupled with the well settled proposition of law enunciated in the judgment discussed earlier, we hold that writ petition against the orders passed under Co-operative Societies Act cannot be entertained as a matter of course.

29. The argument of Mr.V.T.Gopalan, learned Senior Counsel for one of the petitioners is that the Special Officers are passing orders at the instance of the Government and thus the litigants are left without any remedy, and therefore, such order can be challenged in the writ jurisdiction since the appellate remedy

is a farce. We have already stated that sufficient safeguards are provided under the Statute, by way of appeals, revision and review. That apart, as per the provisions of the Act and the Rules framed thereunder. Special officer is fully competent to pass the orders. Therefore, any order passed by the Special Officer, cannot be merely said that it is at the instance of the Government Officials, when admittedly, the Special Officer himself has got the power under the Act itself. So, the argument of Mr.V.T.Gopalan, learned Senior Counsel is not acceptable, and on this count, writ petition is not maintainable.

30. The next argument is that some of the orders passed under the provisions of Tamil Nadu Shops and Establishments Act and Industrial Disputes Act are appealable, and therefore, if any order is passed under the provisions of these Acts, as stated, it casts upon the positive obligation of a public duty, and thus, amenable to the writ jurisdiction. Even on the basis of this argument, every order passed by the Special Officer is not amenable to the writ jurisdiction, though the writ jurisdiction has got wide amplitude and scope. Considering the argument on the other aspect that under the provisions of the Industrial Disputes Act, as there is power of adjudication to adjudicate the issue before the competent authority under law, which can be adjudicated on the facts and circumstances of that case, considering the nature of appointment and purpose, its term, mode, whether it is temporary or for a fixed term or under what condition, and the basis for regular appointment, are to be seen along with the impugned order, and after satisfying the given circumstances, that if one has completed 240 days in one calendar year, or considering any violation of the Act under the provisions of the Act, even then, no order can be challenged in the writ jurisdiction, without exhausting the appropriate remedy, as a writ Court cannot be converted into an Industrial Tribunal. No doubt, as already discussed, an order passed without jurisdiction or tainted with mala fide, or of the principles of natural justice have not been followed, as required by the statute, then alternative remedy is no bar to maintain a writ petition.

31. It is also seen that Sections 10 and 11A of the Industrial Disputes Act, 1947 do not bar the entertainment of writ petitions under Article 226 of the Constitution of India, where it does not involve any disputed/complicated questions of facts, or needs no investigation of facts, and it is necessary in appropriate case to entertain a writ petition. But, at the same time, the discretion should be exercised with great care and caution.

32. A reference can be made to the decision in Union of India (UOI) Vs. T.R. Varma, wherein services of the petitioner was terminated, and the writ petition filed by him was allowed by the Punjab High Court, and on appeal the Hon'ble Supreme Court set aside the judgment of the High Court on the ground of availability of alternative remedy, and observed that "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are

good grounds therefor".

33. So also, a reference can be made to *State of U.P. v. Mohammed Nooh*, AIR 1958 S.C. 86, wherein the aggrieved party, having adequate remedy, challenged the impugned order. Considering the question. Their Lordships held that "the fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decision of inferior courts subordinate to it, and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any".

34. In *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, , which relates to Industrial Disputes Act, and questioning the validity of Section 1(3) of the Employee's State Insurance Act, 1948, the Apex Court observed that "therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievance in respect of the said act is recourse to Section 10 of the I.D. Act, or seek relief, if possible, under Sections 74 and 75 of the E.S.I. Act".

35. So the argument that the Preamble of the Co-operative Societies Act gives the supervisory power to the State and the State is controlling and managing its affairs, and therefore, the arguments of the counsel that writ petition will tie, is not sustainable. A reference can also be made to the observations made by the Hon'ble Supreme Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, .

"This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash."

36. When a case is arising under the Industrial Disputes Act itself, and any violation of any of the orders pertaining to retrenchment or termination or challenging Section 25-F of the Act under Chapter V-A, or violation of principles of natural justice, recourse of statutory remedy under the I.D. Act is necessary. A writ petition can only lie, as already stated, when the order passed is without jurisdiction, or if it is passed in flagrant violation of the principles of natural justice, which is to be required as per the statute. As already stated Co-operative Society is not an instrumentality of the State under Article 12 of the Constitution.

So no writ petition is maintainable. So far as the argument that a public duty is cast upon them is concerned, in such circumstances, only if there is any flagrant violation, of the principles of natural justice, which is required to be followed as per the statute, writ can be maintainable. If these observations are looked into with the observations of the Apex Court, as stated, no writ petition will lie. As already stated, each case depends upon the facts and circumstances of its own.

37. Now, we consider the case as the question posed before us is whether the decision in *Tamilarasan's Case*, 1989 (1) LLJ 588 approved by other Full Benches of this Court needs any re-consideration. On a perusal of the catena of the decisions of the Supreme Court, and as observed by the Supreme Court in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , we are of the view that it should be borne in mind that the High Courts will not go beyond the wholesome inhibitions, except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. We have gone through the passage of Judicial Review of Administrative law which reads thus:

"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."

38. We are also of the view that the duty cast upon the officials, to perform public duty, as stated in the statute, 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, and technicalities should not come in the way of granting relief under Article 226. In the decisions cited by the learned counsel for the petitioners it is seen that this Court had decided as to what is the nature of the duty cast upon and the positive obligation to the affected only and not in what amount it had been given to. Admittedly, the Co-operative Societies Act is only, for the benefit of the people. No doubt, there is a procedure formulated for every action.. If there is any flagrant violation in the procedures followed, certainly everybody has got the right to agitate it-before this Court, but depending upon the facts and circumstances of that case.

39. As stated in the previous paragraphs, when there is gross violation in following the provisions of Industrial Disputes Act, such writ petitions am be entertainable and suitable reliefs can also be granted.

40. We have gone in detail the decision of the Supreme Court in the recent case in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, , wherein it has been held that directions/orders can be issued under Article 226, to. any person or authority, in appropriate cases, including the Government. It will be appropriate to quote the observations of the Hon"ble Supreme Court which reads as follows:

"The Constitution is not a statute. It is a fountain head of all the statutes. When

the language of Article 226 is clear, one cannot put shackles on the High Courts by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step into protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual".

41. It is also seen in Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another v. N.Seetharama Raju, AIR 1990 A.P. 171, following the Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, wherein petitioner sought to enforce a contract. While considering the issue Their Lordships held that he cannot invoke the jurisdiction under Article 226 by-passing the normal channels of civil litigation. So also, terminating the services of its own employees, the Co-operative Society cannot be said to be acting in the discharge Of a public duty, and while considering the issue whether a particular body was an institution amenable to the writ jurisdiction, after elaborately considering the case laws, it was observed that it is to be ascertained whether the particular act complained of is one which was done in discharge of a public duty. A statutory body entrusted generally with the performance of a public duty may still perform several acts which cannot be considered to be public functions like entering into a contract for the purchase of goods to other property. While doing so, it is not discharging a public function. Similarly, it was held that termination of services is one connected only with the contract of employment. The stoppage of increments cannot be regarded to be a public function, but is only one connected with the contract.

42. In U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , Their Lordships while considering the Full Bench decision in Sri Konaseema Co.op. Central Bank Ltd., v. N.Seetnarama Raju. AIR 1990 AP 171 held that even if a society could not be characterised as a "State" within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person" or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it and the Court is to enforce such statutory public duty.

43. In A.R. Vaikunta Raja v. State of Tamil Nadu and another, 1995 (1) LLN 169 it was observed that

"both the petitioner and another co-accused were acquitted in the criminal case in respect of the very same allegations.,

But the respondent had reinstated the co-accused only in service, without reinstating the petitioner in spite of his repeated requests and representations"

Holding the view that there is discrimination and the mandatory requirements have not been complied with in issuing the order, the writ petition was allowed.

Following the proposition of law in Rothas Industries Case, 1976 (1) LLN 165 and the decision in C.Marianandam v. Government of Tamil Nadu and others, 1989 (1) LLN 728, and taking note of the monstrosity of the situation in the case on hand, the learned Judge quashed the impugned order.

44. In South Arcot District Central Co-operative Bank Ltd., Employees Association, Cuddalore v. Deputy Commissioner of Labour, Madras, 1999 (4) LLN 1102, it has been held that,

"If a patent violation of the mandatory provisions of the Industrial Disputes Act, which will constitute unfair labour practice, and alteration of conditions of service without following the procedure laid down under section-9A of the Act, the powers of the High Court under Article 226 of the Constitution of India can be exercised to rectify the mistake committed -by the management even if it is a co-operative society".

45. It will be fruitful to refer to the observations of Supreme Court in Andi Mukta S.M.V.S.S.J.M.S. Trust v. V.R.Rudani, 1989 (2) LLJ 324 which reads thus;

"Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by charter, common law, custom or even contract. 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",

46. In Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, a Division bench of this Court, on an analysis of decisions of this Court and Supreme Court made out certain propositions, out of which we think it would be apt to quote the following:

"(1) A private body which is not a "State" within the meaning of Article 12 of the Constitution of India is not generally amenable to Article 226 of the Constitution.

(2) A writ will issue against a private body to protect the fundamental rights declared under Part III of the Constitution of India.

(3) A writ will issue in extraordinary circumstances if the monstrosity of the situation warrants it.

47. In Sadasivan"s Case, 1998 (1) LLJ 349 a Division Bench of this Court has categorically held as follows:

"In our view, the expansive use and exercise of powers under Article 226 of the Constitution of India cannot be made as a matter of course, merely because some grievance of a wrongful dismissal is made, despite the fact that such grievance is against a private party and not even any other authority and notwithstanding the position that an adjudication of the issues raised involve determination of question of fact which could be properly and effectively

determined only on appreciation of materials placed on record documentary or oral, or gathered in the manner known to and in accordance with law."

48. As observed in *S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others*, , we are of the view that any officer appointed in the place of the governing body, stepping into the shoes of the governing body, and discharging the functions as such, definitely is not a Government Servant.

49. A reference can be made to the Hon'ble Apex Court's decision in *Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others*, 1976 (2) SCC 58, wherein a Principal of the College was dismissed from the College by the Executive Committee, which is registered under the Societies Registration Act and agreed to be governed by the statutes and ordinances of the University, to which the College was affiliated, without prior approval of the Vice-Chancellor, as required by the University Act. No agreement in terms of the University Statutes had been entered into between the respondent Principal and the appellant Executive Committee. Under the circumstances, the validity of the dismissal order was questioned. One of the questions for determination was whether the appellant Executive Committee was a statutory body. Their Lordships held that "before an institution can be considered a statutory body, it must be established that it was created under the statute and owes its existence to the statute. This is distinct from 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. The adoption of certain statutory provisions by itself is not sufficient to clothe the institution with a statutory character. The institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly, it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. Therefore, merely because the Executive Committee followed certain statutory provisions of the University Act or Statutes it cannot be deemed a statutory body".

50. In *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, Judges Bench of the Hon'ble Supreme Court while dealing with the Andhra Pradesh Co-operative Societies Act observed that "we are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to byelaws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the "internal management", business or

administration of a society.....The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law".

51. As already stated petitioners cannot take advantage of the observation made in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, in view of Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others, 1976 (2) SCC 58 and Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , which is a decision of 3 Judges Bench. No doubt, this Court is bound to follow the verdict of the Hon'ble Supreme Court, and it is also settled that the latter view will prevail. But, at the same time, it is also settled that if the earlier decision has not been taken into consideration in the latter decision, the earlier view cannot be said to be bad. In view of this, as discussed above, the writ petition is not maintainable. Therefore, reconsideration of the earlier two decisions of this Court is not required.

52. In Union of India (UOI) Vs. T.R. Varma, , the Supreme Court relied upon the observation of the Supreme Court in Rashid Ahmed Vs. The Municipal Board, Kairana, that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and held that where such remedy exists, it will be a sound discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds therefor.

53. A reference can be made to State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, . In that case, the High Court granted State largesse to an ex-ruler of an erstwhile princely state, whose claim was on the basis of contractual right and on his erroneous assumption of being equal in status to the State Government. On appeal, by the State of Himachal Pradesh, the Supreme Court held that the constitutional Court should insist upon the party to avail of the efficacious alternative remedy instead of invoking extraordinary writ jurisdiction of the Court. It was also observed by the Apex Court that it does not debar the Court to grant appropriate relief under the peculiar and special facts notwithstanding the existence of an efficacious alternative remedy and the existence of the special circumstances are required to be noticed before issuing a direction by the High Court while invoking the jurisdiction under the said Article. It was observed that in that case, the High Court did not notice any special circumstance, which could be held to have persuaded it to deviate from the settled proposition of law regarding the exercise of the writ jurisdiction under Article 226.

54. On a careful analysis of the above cases, it is crystal clear that no writ lies against a co-operative society. The argument of Mr.Chandru, learned Senior Counsel, that more power under the 1981 Act is given in comparison to the Act of 1961 and there was no opportunity to consider those in the earlier Full Bench decisions, will not be helpful to maintain writ petition against the society, as

discussed above. His other argument that the persons" work in the co-operative society is a mere formality but they are governed by the statutory service conditions framed by the Government and as such the writ petition is maintainable, is also not acceptable as per the discussions in the preceding paragraphs. The decision in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, is also not helpful in view of what we have discussed above.

55. From the above discussion, it is also clear that the power under Article 226 has to be and should be extended to the helpless persons and that the technicalities should not come in their way. The litigant should not be the sufferer, in the absence of efficacious remedy.

56. What is necessary to be seen is, if the order passed is without jurisdiction, or before passing any order, it is required to hear the affected party, as per the statute, but not followed, meaning thereby, if the principles of natural justice is not followed, or if there is any flagrant violation of law, or if situations warrant, due to the prevailing of monstrous situation, a writ petition can lie. It is also settled that before invoking the writ jurisdiction, the Court has to satisfy that some special circumstances exist to persuade it to deviate from the settled proposition of law regarding the exercise of a writ jurisdiction under Article 226 and only in such circumstances, efficacious alternative remedy is not a bar to entertain a writ petition. At the same time, as stated above, mere mentioning that there is no efficacious alternative remedy will not give a right to invoke the extraordinary jurisdiction under Article 226 of the Constitution. That apart, we cannot lose sight of the fact that it may not be possible to dispose Of a writ immediately. Rather they may be pending for some years or even a decade. As such, the argument that they have no efficacious alternative remedy is not acceptable in toto and writ petition is not maintainable on this count also. It is also to be seen that while agitating the issue before the competent authority, to avail efficacious alternative remedy. the other party will get an opportunity and also cross examine the witness and one has to prove his case. Under the circumstances, a writ petition cannot be entertained to circumvent the other remedies available under the statute. So, no writ lies. Similarly, by merely using the word "monstrosity", without making any specific averment that there is an outrageous or offensive wrong, no writ will lie, as the facts needs investigation. However, no straight jacket formula can be followed, as each case depends upon the facts and circumstances of its own.

57. The Supreme Court in The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, has observed that the High court has dealt with the question whether a writ petition can be maintained against a co-operative society, but the Supreme Court was inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Apex Court. The Supreme Court further held that it would like to observe that the judgment

of the High court should not be treated as an authority for the proposition that a writ petition is maintainable against a co-operative society.

58. A perusal of the Preamble of the Act reveals that it is an Act to amend and consolidate the law relating to and to make better provision for, the organisation, management and supervision of co-operative societies in the State of Tamil Nadu. It is manifestly clear that the Act has been enacted to provide for an orderly development of the co-operative movement in accordance with co-operative principles such as open membership, democratic management, limited interest on capital, distribution of surplus based on patronage, provision for co-operative education and co-operation among co-operatives for the promotion of thrift, self-help and mutual aid among persons with common socio-economic needs so as to bring about improvement in agriculture and industry, better methods of production, better business and better living and for that purpose to amend and consolidate the law relating to co-operative societies in the State of Tamil Nadu. Section 151 of the Tamil Nadu Co-operative Societies Act provides for Tribunal, Section 152 of the Act provides for Appeal, Section 153 of the Act provides for Revision and Section 154 provides for Review.

59. In view of the above said provisions of the statutory remedy, and as discussed herein above, no writ is maintainable against a co-operative society, as a matter of course.

60. However, we can attempt a broad classification of cases where this Court can invoke the powers under Article 226. For mandamus to be issued to direct a person to do some particular thing, it should appertain to his office and should be in the nature of public duty. The person or the authority on whom the statutory duty is imposed, need not be a public official or an official body. (Vide *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, . If there is contravention of the principles of natural justice, which is required as per the statute and not followed. However, as pointed out by the Constitution Bench of the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function. The question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions, but in the light of the statutory provisions. Where no such provisions which could be said to have been contravened by a Tribunal is brought to the notice of the Court, it is no ground for interference either under Article 226 or 227 simply because the Tribunal had viewed the matter in a light which is not acceptable to the Court. A duty to act fairly can be interpreted as meaning duty to observe certain aspects of rules and natural justice. Sometimes duty to act fairly can also be sustained without providing for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein. (Vide *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, . When power has

been exercised mala fide, arbitrarily or in absolute disregard of constitutionalism, the Court would intervene (Vide Somnath Sahu Vs. The State of Orissa and Others, . The monstrosity of the situation as stated or other exceptional circumstances may cry for timely judicial interdict or mandate (Vide Rothas Industries,. If the terms of Contract and Employment Service Rules detrimental to the employees are found to be unconscionable, unfair, unreasonable, against public policy and public interest and against principle of distributive justice in the context of Parts III and IV of the Constitution, it would be violative of Article 14 of the Constitution (Vide Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, can be instances.

61. It is also to be noted that this Court while exercising power under Article 226 of the Constitution, which is discretionary in nature, is a Court not being a Court of Appeal, more so, when alternative remedy is available under a particular statute, and when the Act and the Rules provide for so many safety measures, and when the discretionary power of this Court under Article 226 remains in tact, we do not want to substitute our view that the writ petition against Co-operative Societies is maintainable in the garb of efficacious remedy as a matter of course, as discussed above. Unless the petitioner is able to show some special circumstances, and the fact that the Authorities concerned while passing orders have failed to perform their duties imposed by the statute, as discussed above, no writ petition can be maintainable. In view of what we have discussed, and for the reasons mentioned above, we approve the decisions of the two Full Benches that no writ petition is maintainable against a co-operative society. The same need no re-consideration. Writ petition against a Co-operative Society is not maintainable. However, as stated each case depends upon the facts and circumstances of its own. So, to decide the question of maintainability, the matter may be posted before the Court with S.R.Number for maintainability. The learned Single Judge will consider and decide the cases on maintainability in the light of the observations made by us in this judgment. We answer the reference accordingly.