

(1993) 08 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Appeal No. 327 of 1992

Mohinder Singh and Others

APPELLANT

Vs

O.P. Khatri and Others

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1993) 27 DRJ 424 : (1994) 1 ILR Delhi 347 : (1994) 1 LLJ 888

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Pardeep Nandrajog, S. Poddar, Vikram Nandrajog, Ramesh Chandra and Anand Yadav, for the Appellant;

Judgement

P.K. Bahri, J.

(1) The petitioners, who are members of Respondent No.2-The Narela Co-operative Marketing Society Limited (hereinafter called the Society) which is registered with Respondent No.3-Registrar of Co-operative Societies, Delhi Administration, under the Delhi Co-operative Societies Act, 1972, have filed this writ petition seeking writ of certiorari or any other suitable writ or order or direction for quashing the notice dated January 13, 1992, issued by Respondent No. 1, the Secretary of the Society. This notice has called for holding of annual general meeting of the members of the Society of January 29, 1992, at 11 Am in the premises of the Society at Mandi Narela. The agenda of the proposed meeting includes, inter alia, election programme for electing five members of the Managing Committee including one Vice President in accordance with the bye-laws Nos.28 & 29 in place of the five members so retiring. The election programme announced the date of filing of the nomination papers as January 18, 1992 from 11 Am to 4 Pm, receipt of objections on the following day, scrutiny of the nominations on January 20, 1992, withdrawal of the nominations on January 22, 1992 and polling, counting and announcement of result on January 29, 1992. These notices had been dispatched under certificate of posting to the members

on January 14, 1992 and were received by the petitioners and some of the members of the Society even after the expiry of the date of filing of nomination papers.

(2) It has been pleaded that under the statutory provisions and also under the bye-laws of the Society, 14 days clear notice was required for holding the annual general meeting and if reasonable time which is ordinarily spent in the post is excluded i.e. of 48 hours from the date of the dispatch of the notices, then the 14 days have to be calculated at the most from January 16, 1992 and the date fixed for holding the annual general meeting as January 29, 1992, does not comply with the requirement of 14 days clear notice.

(3) It appears that the petitioners as well as Respondents 1 & 2 were all along under the impression that Respondent No-2-the Society is governed by the provisions of the Delhi Cooperative Societies Act and that is why the petitioners had imp leaded the Registrar of the Delhi Cooperative Societies as one of the respondents. However, during the course of arguments, reference was made to the bye-laws, copy of which has been placed on the record, which show that the present Society has the area of operation not only in Narela, Nangloi Police Stations of Delhi but also Rai Police Station of Tehsil Sonapat (Haryana) and thus, by virtue of Section 2 of the Multi State Cooperative Societies Act, 1984, the Respondent No. 2 Society automatically stands governed by the provisions of Multi State Cooperative Societies Act, 1984.

(4) Rule 2(e) of the Schedule to the said Act requires 14 days clear notice for holding the annual general meeting of the society for purpose of conducting the election. So it is not in dispute before me that the said statutory provisions stand violated in the present case because 14 days clear notice has not been given for holding the annual general meeting for the purpose of election.

(5) However, the learned counsel for respondents 1 & 2 has vehemently argued that the writ petition is not at all maintainable against respondents 1 & 2 inasmuch as respondents 1 & 2 are not covered by the definition of the State as enumerated in Article 12 of the Constitution of India or an authority as contemplated by Article 226 of the Constitution of India. It is also urged that respondents 1 & 2 have not been statutorily given any public functions or duties for the enforcement of which the public law remedy of writ could be invoked by the petitioner.

(6) It is, indeed, not in dispute before me that Respondent No.2 -the Society does not fulfill the tests laid down by the Supreme Court in the cases of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , and *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , which are as follows:-

"1.One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. 2. Where the financial assistance of

the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. 3. It may also be a relevant factor..... whether the corporation enjoys monopoly status which is the State conferred or State protected. 4. Existence of "deep and pervasive State control" may afford an indication that the Corporation is a State agency or instrumentality. 5. If the functions are of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. 6. "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government."

(6) Respondent No.2 is purely a private cooperative society although registered under the Co-operative Societies Act. Its bye-laws do not meet any of the tests indicated above. So, obviously the Respondent No.2 is neither "a State" as defined in Article 12 of the Constitution nor "other authority" as contemplated by the said Article 12 and Article 226 of the Constitution of India. It is also evident that Respondent No.2 is not created by statute or under a statute. It is also well laid down by the Supreme Court that bye-laws of a co-operative society do not have the force of law (see *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, and *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*,). Article 226 of the Constitution lays down as follows:-

"226. Power of High Courts to issue certain writs -(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in 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, for the enforcement of any of the rights conferred by Part III and for any other purpose. (2) The Power conferred by clause (1) to issue directions, orders 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) Whether 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 favor 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 so 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. (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

(8) The very reading of the said Article shows that the High Court has power to issue writs or orders even against any person for enforcement of fundamental rights or for any other purpose. The question which arises for decision is: whether a writ or an order could be issued by the High Court under Article 226 of the Constitution against a cooperative society which is, no doubt, is covered by the definition of "person" to enforce any statutory provisions by which the said society may be governed?

(9) The rule of law is all pervasive in so far as our constitution is concerned. The three important wings of the Government, namely, legislative, executive and judicial, all the public authorities created by constitution or by the statute are amenable to the rule of law. It is axiomatic that a private person is not to be governed by law. The question is of remedy which should be available against private person for enforcing the provisions of statute which may be applicable to a private person. The writ jurisdiction conferred on the High Court under Article 226 is not a substitute for the legal remedies or forums available to the citizens for enforcing legal liabilities against particular citizens or authorities. The writ jurisdiction is in the field of public law. The writ jurisdiction is in the field of public law. The writ jurisdiction has its origin in the English law. In English law also there has taken place vast changes which have been discussed by H.M. Seervai in the Constitutional Law of India, Volume II, 3rd Edition, at pages 1221 onwards. The learned author has observed that:-

"SINCE 1950 the concept of public law has been greatly enlarged. Secondly, they show that the restrictions imposed on the grant of mandamus by the *Lewisham Case* could not be sustained because they deprived mandamus of its essential character as a public law remedy. Since private law remedies and public law remedies were granted by the same Courts, the Courts were slow to realize the full implications of the public law aspect of prerogative writs and the consequences which flowed from that aspect. This implication has been admirably brought out by Prof. Schwartz and Prof. H.W.R. Wade. Referring to the prerogative remedies of certiorari, prohibition and mandamus, they wrote:- "The important aspect of the prerogative remedies is that they belong exclusively to public law (with the exception of habeas corpus), their primary object being to make the machinery of government work properly rather than to enforce private rights. This introduces a valuable "public interest" element. An application for certiorari is, as the title of the case indicates, a proceeding by the Queen to call some public authority to account for

exceeding or abusing its power. Similarly in a suit for mandamus the Queen is calling for the proper discharge of some public duty. Although private persons are of course the real plaintiffs, the public character of the proceedings is more than a mere form."

Once this implication of the remedies being public law remedies is fully grasped and accepted, the concept of locus stands of persons to apply for those remedies is transformed to take in the public interest; and "public interest litigation" follows as a natural corollary. This was clearly recognised in the Inland Revenue Commissioner's Case. There, all the Law Lords were agreed that if it had been established that the Inland Revenue had yielded to improper pressure, or had committed a sufficiently grave breach of duty, the applicants, the Federation of Self-employed, might have succeeded. Lord Diplock stated the underlying principle most clearly when he said:-

"IT would be a grave lacuna in our system of public law if a pressure group, like the Federation, or even a single public spirited tax payer, were prevented by out-dated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped. ..It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of Central Government is unnecessary because they are accountable to Parliament for the way in which they carryout their functions. They are , accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge."

(10) Generally speaking an order of mandamus is a command directed towards any person, corporation or inferior tribunal requiring them to do some practical thing which pertains to his or their office and is in the nature of public duty. An order of certiorari is an order directing an inferior tribunal requiring the record of the proceedings in some case or matter to be transmitted into the High Court to be dealt with there. The learned author while discussing the Indian law at page 1324 of the Same edition has observed as follows:-

"HOWEVER, soon after the Constitution came into force, the wide terms of Article 226 were emphasized to support the contention that the High Courts were not limited to issuing directions or writs expressly mentioned in the Article but could issue "any order or direction" against "any person" for "any other purpose", that is, for "any purpose other than the enforcement of fundamental rights". This contention was negated in a number of cases, where the petitioners asked for reliefs to which they were not entitled according to well-settled principles governing the issue of prerogative writs. Thus, in *In re Nagabhushana*, (1950) Mad 1119, the petitioner asked for a writ of prohibition against the various organs of a political party. In *Re: Kallumattam Thippaswami* by next friend and father Rudrayya, , the guardian of a minor prayed for writ of mandamus restraining the respondents, who were private parties, from cutting trees

standing on certain survey numbers. In *Indian Tobacco Corpn. Vs. Madras*, (1954) Mad 754, the petitioner asked for a mandamus restraining the respondents from committing an alleged anticipatory breach of contract. The broad contention in these cases was that Article 226 gave the court jurisdiction even to decide private disputes. The following propositions emerge from the cases rejecting that contention: (1) The literal construction of Article 226 could not have been intended because "it would enable any person to obtain any relief by an application under this Article. This construction of the Article would practically abrogate the entire judicial system and the machinery set up for the administration of justice in the State." (2) There is internal evidence in Article 226 that the words "to any person" and "for any purpose" cannot be construed literally. For, whatever other power Article 226 confers on the High Courts, it undoubtedly confers the power to issue writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto. But these writs cannot be issued "to any person" and "for any purpose". The purposes for which, and the persons to whom, these writs can be issued have long been well settled. Therefore, the power to issue writs of the nature expressly mentioned "to any person" can only mean "the power to issue such a writ to any person to whom, according to well established principles the writ lay". And the words "for any other purpose" must mean "for any other purpose for which any of the writs would according to well-established principles issue" the word "other" being read in antithesis to "for the enforcement of fundamental rights". It is submitted that from the propositions set out in (2) above the following proposition must follow:- (3) Orders, directions or writs are to be issued "to any person" and for "any purpose", once the meaning of these words is ascertained with reference to writs, a different meaning cannot be given to them with reference to "orders" or "directions". Nor should this surprise us. In England, the writs of mandamus, certiorari and prohibition were replaced by "orders" of the same name in 1938; the writ of quo warranto was replaced first by information in the nature of quo warranto, and later by an injunction-that is, an order of the court. In India the writs of habeas corpus and mandamus were replaced by "directions" in the nature of, habeas corpus and by "directions" in the nature of mandamus by Section 491, Cr. P.C. and Section 45, Specific Relief Act, 1877, respectively. The words "orders" and "directions" were used to describe what at one time were called writs, and since the terminology had been in use in England and in India, all the three words have been used in Article 226 to describe well-recognized English writs. (4) Article 226 should not be construed so as to replace the ordinary remedies by way of a suit and application available to the litigant under the general law of the land."

(11) At page 1377 in para 16.289, it was again emphasized by the learned author that mandamus lies against a person holding a public office or against a corporation or inferior court for the enforcement of duties, which under any law for the time being in force, are clearly incumbent upon such person or court in his or its public character or of such corporation in its corporate character. At

page 1383 the author again observed that as mandamus lies to secure the discharge of public duties which are clearly incumbent under the law for time being in force, it will not lie against private parties or for the enforcement of contractual rights.

(12) In *Srikonaseema Co-operative Central Bank Ltd. & Another Vs. N. Seetharama Raja*, Air 1990 AP 171, a Full Bench of the said High Court has referred to the whole concept in a very detailed manner and at page 190 of the judgment, distinction between "public law" and "private law" has been pointed out as follows:-

"DIFFICULT as this distinction is and incapable of precise demarcation, it is yet necessary to keep the broad distinction in mind. Lord Denning in his book "The Closing Chapter" has this to say on the subject:- "The first thing to notice is that public law is confined to "public authorities". What are "public authorities"? There is only one avenue of Approach. It is by asking, in the word of Section 3(2)(b) of the Supreme Court Act 1981: What is the "nature of the persons and bodies against whom relief may be granted by such orders", that is, by mandamus, prohibition or certiorari? "These are divided into two main categories:- First, the persons or bodies who have legal authority to determine questions affecting the common laws or statutory rights or obligations of other persons as individuals. That is the formula stated by Lord Justice Atkin in *R. Vs. Electricity Commissioners, ex-parte London Electricity Joint Committee Co., (1920) Ltd., (1924)1 Kb 171* as broadened by Lord Diplock in *O' Reilly Vs. Mackman (1982)3 Wlr 1096*. Second, the persons or bodies who are entrusted by Parliament with functions, powers and duties which involve the making of decisions of a public nature....To which I would add the words of Lord Goddard, C.J. in *R. Vs. National Joint Council for Dental Technicians, ex-parte Neater (1953)1 Qb 704*. "The bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction". But those categories are not exhaustive. The courts can extend them to any other person or body of a public nature exercising public duties which it is desirable to control by the remedy of judicial review. There are many cases which give guidance, but I will just give some illustrations. Every body which is created by statute and whose powers and duties are defined by statute is a "public authority". So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". So are members of a statutory tribunal or inquiry, and the board of visitors of a prison. The Criminal Injuries Compensation Board is a public authority. So also, I suggest, is a university incorporated by Royal charter; and the managers of State School. So is the Boundary Commission; and the Committee of Lloyd's. But a limited liability company incorporated under the Companies Act is not a "public authority"; (see *Tozer Vs. National Greyhound Racing Club Ltd. (1983) Times, 16 May*). Nor is an unincorporated association like the Jockey Club..."

(13) The said Full Bench has culled out following propositions with regard to the maintainability of a writ petition against co-operative societies:-

"(I).If a particular co-operative society can be characterised as a State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an "authority" within the meaning, and for the purpose, of Article 226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a Writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the byelaws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the byelaws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a "State", has to act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws. (ii) Even if a Society cannot be characterised as a "State" within the meaning of Article 12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a "person", or an "authority", within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed up to it, and the Court will enforce such statutory public duty. (iii) The bye-laws made by a co-operative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its employees, or between the Society and its members, as the case may be. Hence, where a Society cannot be characterised as a "State", the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co-operative society, Section 47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishments Act; but, in an appropriate case, this Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty. (iv) Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a "State" within the meaning of Article 12, does not necessarily belong to public law field. A society, which is a "State" may have its private law rights just like a Government. A contractual obligations, which is not statutory, cannot be enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into contract, however. Article 14 operates, as explained by the Supreme Court in. *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, and *Ramana Dayaram Shetty Vs. International Airport*

Authority of India and Others, ."

(14) The Supreme Court in the case of Sohanlal Vs. The Union of India (UOI), , had held that normally a writ of mandamus does not issue to or an order in the nature of mandamus is not made against private individual. Such an order is made against a person directing him to do a particular thing specified in the order which appertains to his office and is in the nature of public duty.

(15) In The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, , the Supreme Court had expressed itself as follows after referring to the judgment given in the case of Sohan Lal (supra):-

"THEREFORE, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of 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 authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (Cf. Halsbury's Laws of England (3rd Ed.), Vol. Ii, p.52 and onwards.)"

(16) It appears that the aforesaid observations of the Supreme Court have been somehow interpreted in different way by the High Courts. Some of the High Courts have gone to the extent of laying down that if a statutory duty is to be performed by the cooperative society the same can be forced by taking resort to Article 226 of the Constitution. The Supreme Court has not laid down such a proposition of law that even if the statutory duty or statutory obligation has no connection with the public interest even then resort to Article 226 could be had. The Supreme Court in this very judgment has also mentioned that it is, Therefore, fairly clear that such declaration can be issued against a person or an authority or a corporation where the impugned act is in violation of or contrary to a statute under which it is set up or governed or a public duty or responsibility imposed on such person, authority or body by such statute. The dis-junctive "or" placed before the words "a public duty" has led some of the High Courts to hold that even if there is violation of any statutory duty which is not in the nature of public duty even then the High Court has jurisdiction to issue mandamus or any order for enforcing such statutory duty. I am afraid the Supreme Court judgment cannot be read to lay down such a law when in the whole of the judgment the view expressed is that it is the remedy in public law and it is the public duty imposed on any person which can be enforced by issuance of a mandamus. The law laid down by the Supreme Court in the case of Sohan Lal

(supra) was not dissented or varied by this judgment.

(17) In *P.B.K. Raja Chidambaram Vs. R.P. Rathna Sarma and Others*, , this distinction between public duty and statutory duty was not kept in view. So also in the case of *Firozali Abdulkarim Jivani and another Vs. The Union of India and others*, , which was also a case pertaining to action of Multi State Cooperative Society.

(18) *Madan Mohan Sen Gupta and Another Vs. State of West Bengal and Others*, , had gone to the extreme by laying down the law that even a cooperative society is a public authority. It is not possible to agree with such a proposition of laws laid down in the judgment. Mere fact that a private co-operative society is governed by bye-law framed by it and approved by the Registrar, Co-operative Societies, does not make that society a public authority by any stretch of reasoning. Any company incorporated under the Indian Companies Act has to go by its Memorandum of Articles and Memorandum of Association registered with the Registrar of Companies. It would not be possible to hold that any company constituted under the Indian Companies Act would be a public authority. There is no difference between incorporation of a public company or a private company under the Indian Companies Act and a cooperative society constituted under the provisions of the Cooperative Societies Act".

(19) In *Kumkum Khanna and Others Vs. The Mother Aquinas and Another*, , the Division Bench was considering whether a principal of college is public authority or not. After referring to the observations of the Supreme Court in the case of *Praga Tools Corporation (supra)* and the principles mentioned in Halsbury's Laws of England, the Division Bench did lay down that for a person to be subjected to a mandamus he is required to do a public duty appertaining to his office and the Division Bench went on to hold that principal of the college is performing public duty. This judgment was over-ruled on this aspect by a Full Bench of this Court in the case of *Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another*, , but it appears that in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the affiliated colleges under the Gujarat University Act were held to be performing public duty. It was observed by the Supreme Court that if the rights are purely of a private character no mandamus can issue and if the management of the college is purely private body with no public duty, mandamus will not lie. It was clearly held in this judgment that the words "any person" or "authority" used in Article 226 of the Constitution 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 Supreme Court held that the said affiliated colleges are governed by the conditions of service laid down in respect of academic staff by the University and thus, are performing public duty and are amenable to the writ jurisdiction and it was observed that judicial control over the fast expanding maze of bodies affecting

the rights of the people should not 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.

(20) However, the broad the reach of the court is for issuing mandamus, the same is limited by the exception laid down in this judgment mentioned above. The mandamus cannot issue to a private body which has no public duty to perform.

(21) The Full Bench of the Madhya Pradesh High Court in Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others, , also held that private institution can be said to be a statutory body, if it is created by a statute and must owe its existence to the statute and it will be necessary to mark a distinction between an institution which is not created by or under a statute but is covered by certain statutory provisions for the proper maintenance and administration of its affairs and the one which is created by the statute and owes existence to the same. This judgment follows a number of judgments of the Supreme Court laying down this proposition of law. They are Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Sabhajit Tewary Vs. Union of India (UOI) and Others, and Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, .

(22) In The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, , the Supreme Court clearly held that the view of the High Court that a writ petition can be maintained against a co-operative society is not strictly in accordance with the decisions of the Supreme Court. In the said case, however, the challenge was to an order passed by the Registrar of the Co-operative Societies who was acting as a statutory authority in the exercise of powers conferred on him by the Co-operative Societies Act and thus, it was held that relief can be granted against such an order of the public authority. The Supreme Court, however, left the question open as to whether a writ in any circumstances can lie against a co-operative society or not.

(23) In Electrogears (P.) Ltd. Vs. Rehabilitation Industries Corporation Ltd. and Others, , it was clearly laid down that a writ petition is not maintainable against a company registered under the Companies Act even if there was a breach by the company of some statutory duty imposed upon it. The rationale behind this ratio is that the company is not performing any public duty and the jurisdiction under Article 226 of the Constitution can be invoked in public law field and not in private law field. Relying on the judgments of the Supreme Court in cases of Sukhdev Singh, (supra) Sabhajit Tewary (supra) and Executive Committee of Vaish Degree College, (supra), it was held that the company cannot be deemed to be a statutory body created by any statute.

(24) Similarly the cooperative societies are not creatures of the statute, created by the statute or under the statute. They are independent private group of people organized themselves into a society which is got registered under the Co-operative Societies Act of a particular State. So, such a society may be governed by the provisions of the statute, still such a society cannot be termed as a statutory body created by a statute. Unless and until a particular cooperative society is enshrined with any public duty to perform, the action of such a society cannot be challenged by filing a writ petition and resort has made by the aggrieved person in filing a suit or filing any reference for arbitration or for decision of the Registrar in consonance with the provisions of the Co-operative Societies Act.

(25) The Full Bench of the Punjab & Haryana High Court in *Ajmer Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others*, , has also laid down that a cooperative society registered under the Co-operative Societies Act is neither a State nor an authority as contemplated by Article 12 and Article 226 of the Constitution of India. In the said case, the order of the Registrar was challenged who was performing public duty and thus, was held to be amenable to the writ jurisdiction.

(26) The Full Bench of the Kerala High Court in *P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others*, , has also laid down the same law that a co-operative society registered under the Cooperative Societies Act is not created by a statute and is not a statutory body and thus, is not an authority or a State as contemplated by the Constitution. Same ratio has been laid down by Orissa High Court in the case of *The Managing Director and Another Vs. Natabar Mohanty and Another*, .

(27) The Full Bench of Madras High Court in *R. Thamilarasan, J. Rajesekaran, C. Karamani, D. Ramanujam and P. Kannan Vs. The Director of Handlooms and Textiles, Madras and Others*, , also laid down the same principles of law that the cooperative society which does not owe its very existence to any statute cannot be termed an authority or a State or a statutory body and that the bye-laws framed by the cooperative society are not laws" and also do not have the force of law.

(28) The learned counsel for the petitioner, has cited two judgments of this Court of which short notes appear in *Yashpal Kapoor & Ors. Vs. George P. Peter, Election Officer & Ors.* 43(1991) Dlt 33 and *R.K. Aggarwal Vs. Registrar, Co-operative Societies, Delhi & Ors.*, 46(1992) Dlt 6. I have sent for the original Files and have seen the full judgments and find that in both these cases the orders of the officers appointed under the Co-operative Societies Act were challenged and writs were not brought against an action of the co-operative society independently. It is obvious that if any action of the cooperative society is endorsed by Registrar of the Co-operative Societies such an endorsement or approval of the Registrar, Co-operative Societies, who is a Government official, is open to challenge by filing a writ petition.

(29) In the present case the perusal of the writ petition shows that no order of any Registrar is under challenge. It is only the action of Respondent No. 1, Secretary of the Cooperative Society, which is under challenge. Thus, for the reasons given above, the writ petition cannot be considered maintainable under Article 226 of the Constitution against such action of respondents 1 & 2 as neither respondent No. 1 nor respondent No.2 have been given any public duty by any statute so that they could be amenable to the writ jurisdiction conferred on this Court under Article 226 of the Constitution. The principles enunciated in the case of Sri Konaseema Co-op. Central Bank Ltd. (supra) clearly bring out the correct position of law with regard to maintainability or not maintainability of the writ jurisdiction vis-a-vis the cooperative societies and I entirely agree with the said principles.

(30) I, hence, dismiss the writ petition and discharge the rule but leave the parties to bear their own costs.