(2007) 04 MP CK 0046

In the Madhya Pradesh High Court

M.P. State Co-operative Dairy Federation and Others APPELLANT

Vs

Madan Lal Chourasia RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : AIR 2007 MP 214 : (2007) ILR (MP) 859 : (2007) 4 JCR 580 : (2007) 3 JLJ 125 : (2007) 2 MPHT 485 : (2007) 2 MPJR 1 : (2007) 2 MPLJ 594

Hon'ble Judges : A.K. Patnaik, C.J;Shantanu Kemkar, J;S.K. Kulshrestha, J;K.K. Lahoti, J;A.M. Sapre, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.

This is a reference made to this Bench by the Full Bench on the question whether Madhya Pradesh Co-operative Dairy Federation Limited (for short ''the Federation'') is ''State'' under Article 12 of the Constitution of India.

The background facts leading to this reference briefly are that the employees of the Federation are governed by the Service Regulations of the Federation. Regulation 13 of the Service Regulations of the Federation provided for compulsory retirement of an employee of the Federation on attaining the age of 55 years or on completion of 25 years of service. The Registrar of Co-operative Societies in exercise of his powers u/s 55(1) of Madhya Pradesh Co-operative Societies Act, 1960 (for short ''the Act'') amended Regulation 13 w.e.f. 24-12-2001 providing for compulsory retirement of an employee of the Federation on attaining the age of 50 years or completion of 20 years of service. In accordance with the amended Regulation 13 of the Service Regulations of the Federation, several employees of the Federation were compulsory retired. Aggrieved, such employees filed writ petitions under Article 226 of the Constitution and these writ petitions were heard by learned Single Judge of this Court. In some of these writ petitions, the learned Single Judge quashed the orders of compulsory retirement, while in some other writ petitions the learned

Single Judge did not interfere with the order of compulsory retirement. In those writ petitions in which the learned Single Judge quashed the orders and allowed the writ petitions, the Federation filed initially Letters Patent Appeals contending inter alia that the learned Single Judge could not have entertained the writ petition under Article 226 of the Constitution as the Federation was not ''State'' under Article 12 of the Constitution.

L.P.A. No. 268/2004 was one such appeal filed by the Federation. When the LPA was heard by the Division Bench on 25-11 -2004, the decision of Full Bench of this Court in Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahakari Samiti Maryadil 1993 MP 786 was cited by the appellant in which it was held that the Federation is not a ''State'' under Article 12 of the Constitution. The employees, on the other hand, contended before the Division Bench that this decision of the Full Bench in the case of Dinesh Kumar Sharma (supra) no longer holds good in view of the subsequent decisions of the Supreme Court including the decision in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , and the Division Bench took the view that the decision of the Full Bench in Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahakari Samiti Maryadit (supra), may require reconsideration by the Full Bench.

The Full Bench then heard the LP A on 25-1-2007. It was brought to the notice of the Full Bench that in the meanwhile the Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981 has been upheld by the Supreme Court in Jamshed N. Guzdar Vs. State of Maharashtra and Others, and as a result the LPA was no longer maintainable, but the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 has in the meanwhile come into force with retrospective effect from 1st July, 1981, providing for an appeal from a judgment and/order passed by a learned Single Judge of the High Court under Article 226 of the Constitution to a Division Bench and therefore the Full Bench converted the LPA to a Writ Appeal and directed the Registry to renumber the same accordingly. In its order dated 25-1-2007, the Full Bench after considering the development of law and facts subsequent to the Full Bench decision in the case of Dinesh Kumar Sharma (supra), was of the opinion that the decision of the Full Bench in the case of Dinesh Kumar Sharma (supra), needs reconsideration by a larger Bench of five Judges and accordingly the matter has been placed before this Bench for opinion on the question "whether M.P. Co-operative Dairy Federation Ltd." is ''State'' under Article 12 of the Constitution of India.

Mr. Rajendra Tiwari and Mr. Vivek Tankha, learned Senior Counsel appearing for the employees of the Federation, submitted that in the case of Pradeep Kumar Biswas (supra), a seven Judge Bench of the Supreme Court considered all its earlier decisions from Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, to Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers'' Association (2007) 2 SCC 167 and held that the tests formulated in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, for determining whether a body is State within the meaning of Article 12 of the Constitution, are not a set of rigid principles and this question in each case will have to be decided in the light of cumulative facts whether the body is financially, functionally and administratively under the pervasive control of the Government. They further submitted that the law laid down by the majority judgment of the Supreme Court in the case of Pradeep Kumar Biswas (supra), has been applied in determining whether a body is State within the meaning of Article 12 of the Constitution or not in subsequent decisions of the Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others, , Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, , Gurcharan Singh Vs. Registrar, Co-operative Societies, Himachal Pradesh and Others, and S.S. Rana Vs. Registrar, Co-operative Societies and Another, .

Mr. Tiwari and Mr. Tankha submitted that the Federation was formed on the transfer of a department of the State Government and its employees to the Federation. They submitted that the shareholding of the State Government in the Federation is Rs. 1,77,10,000/- which is 90.09% of the share capital of the Federation and the shareholding of the Central Government in the Federation is Rs. 2,90,000/-, which represents 1.74% of the share capital of the Federation. They also submitted that the Board of Directors of the Federation earlier consisted of 7 elected members and 7 Directors nominated by the State Government but by amendment of the bye-laws made in 1996, out of 15 members of the Board of Directors, 7 were elected members whereas 8 were nominated by the Government. They further submitted that earlier, under the bye-laws the elected member had number of votes depending upon their business generated by the concerned union from which they were elected, but under the bye-laws as amended each elected member has one vote. They submitted that after the amendment to the bye-laws made in the year 1996-97, the control of the State Government over the Federation in financial, administrative and functional matters is complete. They submitted that the Managing Director of the Federation is also appointed by the State Government under the bye-laws and thus the State Government also controls the day to day functioning of the Federation through the Managing Director. They argued that all these aspects establish that the Federation is ''State'' within the meaning of Article 12 of the Constitution and that the conclusion of the Full Bench of this Court in the case of Dinesh Kumar Sharma (supra), that the Federation was not ''State'' within the meaning of Article 12 of the Constitution no longer holds good.

Mr. R.N. Singh, learned Advocate General appearing for the State and Mr. Anoop Nair, learned Counsel appearing for the Federation, on the other hand, submitted that the Federation performs purely a technical function relating to production and processing of milk through the Co-operative Societies, which are members of the Federation and that the State Government has no financial, administrative or functional control over the Federation. They submitted that for the success of the co-operative movement in the State, the Co-operative Societies as well as Federation must have autonomy in functioning, and for this reason, the State

Government does not interfere with the day to day administration of the Federation. They submitted that the State Government has put its nominees in the Board of Directors of the Federation only to ensure that the expertise of the nominees is utilized by the Federation in its functioning and the idea of putting such State Government nominees in the Board of Directors of the Federation is not to ensure control of the State Government over the affairs of the Federation. Mr. Nair further submitted that the Managing Director of the Federation who runs its administration has to act as per the instructions of the Chairman of the Federation who is elected by the members of the Federation. He also submitted that Clause 9 of the bye-laws of the Federation would show that every original member has one vote. He further submitted that since the State Government has no financial, administrative or functional control over the Federation, the earlier view taken by the Full Bench in Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahakari Samiti Maryadit (supra), that the Federation is not ''State'' within the meaning of Article 12 of the Constitution still holds good.

We find on reading the opinion of the Full Bench in the case of Dinesh Kumar Sharma (supra), that the Full Bench noted six authoritative tests laid down by the Supreme Court in the cases of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, to decide whether a body would be an instrumentality of the State Government and would be ''State'' within the meaning of Article 12 of the Constitution. The Full Bench also found that in latter decisions of the Supreme Court in the case of Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, and Unni Krishanan, J.P. v. State of A.P. 1993 AIR SCW 863, the Supreme Court had reiterated the aforesaid authoritative tests culled out in the case of Ajay Hasia (supra). These tests were : (i) whether the entire share capital of the Corporation is held by Government, (ii) whether the financial assistance of State is so much as to meet almost entire expenditure of the Corporation, (iii) whether the Corporation enjoys monopoly status, which is State conferred or State protected, (iv) whether the State''s control on the Corporation is deep and pervasive, (v) whether the functions of the Corporation are closely related to Government functions, and (vi) whether the Department of the Government is transferred to a Corporation. The Full Bench thereafter applied these six authoritative tests to the Federation in Paragraphs 14, 15, 16, 17, 18 and 19 of its opinion as reported in 1993 MPLJ 783, at Pages 293, 294 and 295 and found that : (i) the State Government did not hold the entire share capital of the Federation (Para 14), (ii) the financial assistance of the State is not so much as to meet almost the entire expenditure of the Federation (Para 15), (iii) the Federation did not enjoy the monopoly status which was State conferred or State protected (Para 16), (iv) under the bye-laws of the Federation, there was no deep and pervasive control over the federation inasmuch as the State Government did not have total control on the Board of Directors or the general body or the management of the federation (Para 17), (v) functions of the federation are not closely related to Government functions such as health, safety or general affairs of public (Para 18), and (vi) no Government department was transferred to the Federation (Para 19).

But we find that the six authoritative tests culled out in the case of Ajay Hasia (supra), were reconsidered in the case of Pradeep Kumar Biswas (supra), by a seven Judge Bench of the Supreme Court and Ruma Pal, J., speaking for the majority of the Judges held in Paragraph 40 of the judgment as reported in SCC:

The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be --whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

In the opinion of the majority Judges in the case of Pradeep Kumar Biswas (supra), therefore, for determining whether a body is to be considered to be ''State'' within the meaning of Article 12 of the Constitution, the Court in the light of facts established has to find out whether the body is financially, functionally and administratively dominated by or under control of the Government and whether such control is pervasive ?

In the case of Pradeep Kumar Biswas (supra), the facts were that the Council of Scientific and Industrial Research (for short ''CSIR''), a body registered under the Registration of Societies Act, 1860, formed by initial capital of rupees ten lakhs provided by the Central Government and at least 70% of its funds were from grants made by the Government of India. The Prime Minister of India was the ex-officio President of the CSIR, the Minister in-charge of the ministry or department was the ex-officio Vice President of the CSIR and the Minister in-charge of Finance and Industry was also member of the CSIR. The Governing Body of the CSIR consisted of the Director General, Member Finance, Directors of two national laboratories, two eminent Scientists/ Technologies, and heads of two scientific departments/agencies of the Government of India. The Governing Body was required to administer, direct and control the affairs and funds of the CSIR and to exercise all the powers of the CSIR subject nevertheless in respect of expenditure to such limitation as the Government of India may, from time to time, impose. The Governing Body had also the power to frame, amend or repeal the bye-laws of CSIR but only with the sanction of the Government of India. The Central Civil Services (Classification, Control and Appeal) Rules and the Central Civil Services (Conduct) Rules were applicable to the employees of the CSIR and the scales of pay applicable to all the employees of CSIR were those prescribed by the Government of India for similar personnel, and in regard to all matters concerning service conditions of employees of CSIR, the Fundamental and Supplementary Rules framed by the Government of India and such other rules and/orders issued by the Government of India from time to time, were also applicable. Further, the budget estimates of the CSIR were to be prepared by the Governing Body, keeping in view the instructions issued by the Government of India, from time to time and the accounts of the CSIR were required to be audited by the Comptroller and Auditor General and placed before the table of both Houses of Parliament. On these and other facts, the majority judgment held that the dominant role played in the CSIR was evident and that CSIR is ''State'' within the meaning of Article 12 of the Constitution.

After the aforesaid decision of the Supreme Court in the case of Pradeep Kumar Biswas (supra), the Supreme Court had the occasion to consider in the case of General Manager, Kisan Sahakari Chini Mills Ltd., Sultanpur, U.P. (supra), whether Kisan Sahakari Chini Mills Ltd. (for short ''the Mill''), a Co-operative Society registered under the Uttar Pradesh Co-operative Societies Act, 1965, was a ''State'' within the meaning of Article 12 of the Constitution of India. The facts were that the Government of Uttar Pradesh held only 50% shares in the Mill. Under the bye-laws of the Mill, membership was open to the cane-growers, other societies, Gram Sabha, State Government etc. and under the bye-law 52, a Committee of Management consisting of fifteen members was constituted, out of whom, five members were required to be elected by the representatives of individual members, three out of the Co-operative Society and other institutions and two representatives of financial institutions and five members were required to be nominated by the State Government. The ratio of the nominees of the State Government in the Committee of the Mill was only 1/3rd and the management of the Committee was dominated by 2/3rd non-Government members. Under the bye-laws, the State Government could neither issue any direction to the Mill nor determine its policy and the Mill was an autonomous body. On these facts, the Supreme Court held that the State Government had no control at all in the functioning of the Mill much less a deep and pervasive one. The Supreme Court, thus, held that the Mill was not an instrumentality nor an agency of the Government and was not State within the meaning of Article 12 of the Constitution.

The tests laid down in the case of Pradeep Kumar Biswas (supra), were applied in Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, for determining whether U.P. Raj Karmachari Kalyan Nigam (for short ''the Corporation''), a Society formed and registered under the Societies Registration Act, 1860, was ''State'' within the meaning of Article 12 of the Constitution. The facts were that the Corporation was an agent or stockist on behalf of the Government and the members and office bearers of the Corporation were all executive officers of the State representing different departments concerned with civil supplies and were in the management of the Corporation in the capacity as officers of the State Government. The financial control of the Corporation was to a large extent with the State Government inasmuch as 100% grant was made for payment of the salary of the employees of the headquarters of the Corporation and 75% grant was given for employees working in the canteens of the

Corporation and the working capital to the Corporation was made available by the Food Department to the extent of 10 crores. On these facts, the Supreme Court held that there is complete functional control of the Corporation by the State and this was evident from the fact that the officers of the State were ex-officio members and office bearers of the Corporation and that even day to day functioning of the Corporation was watched, supervised and controlled by the various departmental authorities of the State particular the Department of Food and Civil Supplies. On these facts, the Supreme Court held that the multiple tests stated in Pradeep Kumar Biswas (supra), were fully satisfied for concluding that the Corporation was an agency and instrumentality of the State and is covered under the definition of ''State'' in Article 12 of the Constitution.

The law as laid down by the Supreme Court in Paragraph 40 of the judgment in the case of Pradeep Kumar Biswas (supra), quoted above was quoted by two Judges Bench of the Supreme Court in Gurucharan Singh v. Registrar, Co-operative Societies, H.P. and Ors. (supra), in which the question to be decided was whether the respondent Co-operative Society was ''State'' within the meaning of Article 12 of the Constitution. After having found that the basic factual aspects were not placed, the Supreme Court held that it would be appropriate for the High Court to examine the question in the background of what has been stated in the case of Pradeep Kumar Biswas (supra).

The tests laid down in the case of Pradeep Kumar Biswas (supra), were again applied by the two Judges Bench of the Supreme Court in the case of S.S. Rana v. Registrar, Co- operative Societies and Anr. (supra), in which the question to be decided was whether Kangra Central Co-operative Bank Ltd. (for short ''Co-operative Bank'') registered under the Himachal Pradesh Co-operative Societies Act, 1968, (for short ''the Act of 1968'') was ''State'' within the meaning of Article 12 of the Constitution. The Supreme Court found that the functions of the Co-operative Bank were only regulated in terms of the provisions of the Act of 1968 and the State had no say in the functions of the Co-operative Society. That the State did not exercise any direct or indirect control over the affairs of the Co-operative Bank under the bye-laws made under the Act of 1968 and the State had the power only to nominate one director and not the majority of directors and, therefore, the State did not exercise any control over the affairs of the Co-operative Bank. The Supreme Court also found that the State is not a majority shareholder of the Co-operative Bank. Accordingly, the Supreme Court held that the Co-operative Bank did not satisfy any of the tests laid down in the case of Pradeep Kumar Biswas (supra), and is not ''State'' within the meaning of Article 12 of the Constitution.

Keeping in mind the tests laid down by the majority judgment in the case of Pradeep Kumar Biswas (supra), and the manner in which the said tests have been applied in the subsequent decisions of the Supreme Court discussed above, we may now examine whether the Federation is a body which can be held to be State under Article 12 of the Constitution. The Federation was registered as a Co-operative Society under the M.P. Co-operative Societies Act, 1960 on or about 13-5-1980. Bye-law 3.1 of the Bye-laws of the Federation states that the main object of the Federation comprised of conducting various programmes of manufacture, collection, processing, distribution and sale of milk and milk products for the economic development of the farmers and for developing and safeguarding the milk business, milk producing animals and for the economic development of the groups engaged in milk production and spreading and developing other joint activities. Bye-law 3.2 states that for accomplishing the object indicated in bye-law 3.1, the Federation will perform various other functions mentioned therein. It is not necessary to refer the functions of the Federation stated in bye-law 3.2 of the bye-laws of the Federation as the main object of the Federation discussed above clearly show that the work of the Federation relates to economic development of farmers, who are engaged in production and sale of milk in the State of Madhya Pradesh and this work has been taken up by the State Government through the agency of the Federation because development of milk and milk products and economic development of farmers carrying the business of sale of milk and milk products are part of the functions of a welfare State.

Bye-law 4.0 of the Bye-laws of the Federation is titled ''fund and securities'' and bye-law 4.9 states that the authorized share capital of the Federation is Rupees Ten crores and bye-law 4.9.1 states that the Board of Directors will, from time to time, issue shares to Milk Unions and will take the amount from them in prescribed time. From the statement of details of share capital from 1991-92 to 2005-06 filed by the learned Counsel for Federation, we find that from 2001-2002, out of total subscribed share capital of Rs. 1,96,60,000/- (Rupees One crore ninety six lakhs sixty thousand), Rs. 1,77,10,000/- (Rupees One crore seventy seven lakhs ten thousand) has been subscribed by the Government of Madhya Pradesh, Rs. 2,90,000/- (Rupees Two lakhs ninety thousand) has been subscribed by the Government of India and Rs. 16,60,000/- (Rupees Sixteen lakhs sixty thousand) has been subscribed by the different Milk Unions. Thus, more than 90% of the share capital of the Federation since the year 2001-2002 is held by the Government. Moreover, the balance-sheets of the Federation as on 31-3-2001, 31-3-2002 and 31-3-2003 show that the grants in-aid to the Federation given by the Government were Rs. 7,08,72,211/- (Rupees Seven crore eight lakhs seventy two thousand two hundred eleven), Rs. 5,90,80,211/- (Rupees Five crore ninety lakhs eighty thousand two hundred eleven) and Rs. 9,96,50,024/- (Rupees Nine crore ninety six lakhs fifty thousand twenty four). As we have seen in the case of Pradeep Kumar Biswas (supra), the Supreme Court found that the initial capital of CSIR of Rs. Ten lakhs was provided by the Central Government and at least 70% of its fund was from the grant made by the Government of India and held that CSIR was financially dominated by the Government. Thereafter, in the case of General Manager, Kisan Sahakari Chini Mills Ltd., Sultanpur, U.P. v. Satrughan Nishad and Ors. (supra), the Supreme Court found that the Government of Uttar Pradesh held only 50% share in the

Mill and accordingly, took a view that the Mill was not financially dominated by the State Government. In the case of Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam and Ors. (supra), the Supreme Court found that 100% grant was made for payment of the salary of the employees of the headquarters of the Corporation and 75% grant was given for employees working in the canteens of the Corporation and the working capital to the Corporation was made available by the Food Department to the extent of 10 crores. On these facts, the Supreme Court held that the financial control of the Corporation is to a large extent that of the State Government. In the case of 5.5. Rana v. Registrar, Co-operative Societies and Anr. (supra), the Supreme Court found that the State was not a majority shareholder of the Co-operative Bank and, therefore, the Co-operative Bank did not satisfy the tests of the financial dominance of the State Government. In respect of the financial control, the case of the Federation is similar to the case of the "CSIR" in Pradeep Kumar Biswas (supra) and "the Corporation" in Virendra Kumar Srivastava (supra), in which the Supreme Court has held that the CSIR and the Corporation are financially dominated by the Government. Accordingly, we hold that the Federation is financially dominated by the Government.

Bye-law 2.2 of the bye-laws of the Federation defines the Board of Directors of the Federation to mean the Board constituted, elected and nominated under the bye-laws. Bye-law 22 provides for composition of the Board of Directors and the Council for Federation. As submitted, the present composition of Board of Directors of the Federation in accordance with bye-law 22 is as follows:

Board of Directors of Federation

(1) Elected Member of Ujjain Milk Union, Maksi Road, Ujjain.

(2) Elected Member of Indore Milk Union.

(3) Elected Member of Jabalpur Dugdh Sangh Maryadit, Adhartal, Jabalpur.

(4) Principal Secretary, Government of M.P., Animal Husbandary Department, Bhopal.

(5) Secretary, Government of M.P., Panchayat & Rural Development Department, Bhopal.

(6) Registrar, Co-operative Societies, Vindyachal Bhavan, Bhopal.

(7) Regional Director (Western Region) National Dairy Development Board, Western Express Highway, Goregaon, Mumbai - 400 063.

(8) Managing Director, MPCDF, Bhopal Milk Union, Habibganj, Bhopal.

(9) Elected Member of Gwalior Milk Union, Gola Ka Mandir, Gwalior.

(10) Joint Secretary, Government of India, Dairy Development Agricultural Department Krishi Bhavan, R. No. 297-D-l, New Delhi.

(11) Secretary, Government of Madhya Pradesh Finance Department, Bhopal.

(12) Director, Veterinary Services, Government of Madhya Pradesh, Bhopal.

(13) Managing Director, M.P. State Co-operative Dairy Federation Ltd., Bhopal.

It will be clear from the aforesaid composition of the Board of Directors of the Federation that out of 13 members of the Board of Directors as many as 8 members are the nominees of the State Government, Central Government and their agencies.

Under bye-law 27 of the bye-laws of the Federation, vast powers have been vested in the Board of Directors of the Federation including the power to appoint, dismiss, suspend and regularize the services of the employees of the Federation such as Managers, Secretaries, Officers, Clerks and to fix their powers, duties, wages and allowances. The Board of Directors of the Federation appear to have under the bye-laws of the Federation over all administrative powers and since the majority of the Board of Directors are nominees of the State Government and the Central Government as representatives of their respective departments and not as experts as contended by Mr. Singh, we hold that the administrative control of the Federation is with the Government.

Bye law 30 of the bye-laws of the Federation is titled ''Managing Director'' and bye-law 30.1 states that for managing the business of the Federation, Managing Director shall be appointed by the State Government. Bye law 30.2 states that the Managing Director of the Federation shall be a Chief Executive and will work under the control, direction and guidance of the Board of Directors. Bye law 30.3 of the bye-laws states that the Managing Director shall execute the business and work as per powers given to him, from time to time, by the Board of Directors and he can delegate his powers given by the Board of Directors to his subordinate officers and he will place the information of delegation of his powers to subordinate officers in the next meeting of the Board of Directors. It will thus be clear that the Managing Director is not only appointed by the State Government but is also under the control, direction and guidance of the Board of Directors, which is dominated by the Government nominee. Hence, day to day functioning of the Federation is also controlled by the Government though the Managing Director and the Board of Directors of the Federation. Bye-law 2.4 on which Mr. Nair relied defines the expression ''Managing Director'' as used in the bye-laws of the Federation to be a person appointed u/s 49-D of the Act, who is subject to the superintendence, control and direction of the Chairman of the Federation has been entrusted with working of the Federation by the Board of Directors and therefore, the elected Chairman of the Federation will have some control on the Managing Director of the Federation. In our considered opinion this control of the Chairman will not reduce the control of the State to whom he owes his appointment and/or the Board of Directors from whom he derives his powers to carry on administration of the Federation.

Bye law 17 of the bye-laws is titled ''General Assembly'' and bye law 17.1 states that the General Assembly of the Federation will have the supremacy under the Act, Rules and Bye-laws. Bye law 17.2 deals with the composition of the General Assembly and says that it will comprise of elected members of the Milk Union and all the nominated members of Board of Directors. Bye law 17.3 states that the Federation will call a General Assembly every year, which will be before three months of the end of financial year and bye law 17.4 states that the Federation can at any time call a General Assembly to discuss emergency work. Bye law 18 states that the General Assembly will consider the subjects mentioned therein and these are mainly the budget and programme presented by the Board of Directors, the annual financial report placed by the Board of Directors of the Federation, the distribution of profits and decision on the audit application and audit removal report of the Board of Directors. These provisions relating to the General Assembly of the Federation show that the General Assembly was also dominated by the Board of Directors. As the Board of Directors is dominated by the nominees of the Government, the General Assembly will also take decisions in its meeting in the manner as desired by the Government. Hence, the Federation is also dominated and controlled by the Government administratively and functionally as in the cases of Pradeep Kumar Biswas and Virendra Kumar Srivastava (supra).

On a reconsideration of the facts as placed before us, we hold that since the year 2001 when the Federation took the impugned decisions to compulsory retire its employees, the Federation was financially, administratively and functionally dominated or controlled by the Government and that such domination or control is pervasive and, therefore, the Federation is State within the meaning of Article 12 of the Constitution of India as per the law laid down in the majority judgment of the Supreme Court in the case of Pradeep Kumar Biswas (supra). The opinion of the Full Bench in the case of Dinesh Kumar Sharma (supra), based on the six authoritative tests laid down in the case of Ajay Hasia (supra), as applied to the facts then found by the Full Bench that the Federation is not State within the meaning of Article 12 of the Constitution, no longer holds good. Our opinion in this judgment that the Federation is ''State'' within the meaning of Article 12 of the Constitution will apply to all cases pending before the High Court and other Courts and which may arise in future, and will not apply to those cases which have been finally disposed of.

The consequence of our opinion that the Federation is ''State'' within the meaning of Article 12 of the Constitution of India is that a writ petition will be maintainable against the Federation for violation of fundamental rights. But this is not to say that in every case, the Court will have to entertain a writ petition against the Federation irrespective of whether an alternative efficacious remedy is or is not available to the petitioner. The Court will or will not entertain a writ petition depending upon the facts of the each case and on the nature of right violated.

The matter be now listed before the Division Bench for disposal of the appeal in accordance with law.