

(1989) 03 MAD CK 0062
In the Madras High Court

P. Kannan and Another

APPELLANT

Vs

The Director of Sugars and Others

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 197
Tamil Nadu Co-operative Societies Act, 1983 — Section 32

Citation : (1991) 2 LW 409 : (1992) 1 MLJ 54

Hon'ble Judges : Venkataswami, J

Bench : Division Bench

Judgement

Venkataswami, J.—The question that has been referred to the Full Bench by one of us (Mohan, J.) as His Lordship then was) is.

Whether a writ would lie against a Co-operative Society under Article 226 of the Constitution of India?

2. This question seems to loom large for quite | some time not only in this Court but in the other High Court as well, as could be seen from the cases " cited by the counsel on both sides.

3. Mr. M. Ravindran, learned Counsel appearing for the petitioner in W.P.Nos.4124, 4154 and 4167 of 1986 and Mr. Somayaji, learned Counsel appearing for the appellant in W.A.Nos.607 and 608 of 1984, have advanced main arguments inviting this Court to answer the question in the affirmative.

4. On the other hand, Mr. M.R. Narayanasamy, learned Counsel appearing for the respondents, has advanced arguments inviting this Court to answer the question in the negative.

5. Before giving our answer to the question referred to us, it will be fruitful to refer the cases cited on both sides and also point out the principles laid down in those cases.

6. We may also state that the counsel inviting for an affirmative answer have derived support substantially from the following judgments of the Supreme Court and the principles laid down thereunder:

(a) Sukhadev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 1 L.L.J. 399, (b) Ajay Hasia v. Khalid Mujid Sehravardi (1981) 1 L.L.J. 103, (c) Ramana Dayaram Shetty v. The International Airport Authority of India (1979) 2 L.L.J. 217 , (d) P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, .

7. Let us now take the cases cited by the counsel who are advocating the proposition that a writ will lie against a Co-operative Society.

8. In L. Venkatachalam, v. The Registrar of Co-operative Societies, Madras, W.A. No. 7 of 1970, dated 13.11.1973. Veeraswami, C.J., speaking for the Bench has observed as follows:

The Special Officer is one appointed u/s 72 and as such, he is a statutory Officer and, therefore, he should be regarded as a public authority. Apart from that, Article 226 of the Constitution is not confined to issue of writs only to a public authority. The power extends also to issue directions to any person.

In Ramanathan v. President, Perambalur Cooperative Milk Supply Society Ltd., Perambalur, Trichy District, W.A. No. 2811 of 1976. Mohan, J., (as His Lordship then was), in passing has negated an argument that no writ will lie against a Cooperative Society. The learned Judge observed as follows:

It is too late in the date to contend that in a matter like this, no writ will lie.

In S. Varadarajan v. The Special Officer, T.U.C.S. Ltd., Madras 1985 WL.R. 251, one of us (Venkataswami, J.) following the Division Bench ruling in L.Venkatachalam, v. The Registrar of Cooperative Societies, Madras, W.A.No. 7 of 1970, dated 13.11.1973, has taken the view that in cases where the Co-operative Society is under the control of a Special Officer, a writ would lie.

9. In Madan Mohan Sen Gupta and Another Vs. State of West Bengal and Others, , a learned single Judge of that Court has taken the view that a writ will lie against a Co-operative Society by observing thus:

The Managing Committee of the Society is to be constituted u/s 23 of the Act (see Section 2(m) and in accordance with the Rules and also the Bye-laws."Such Managing Committee is therefore, created by the Act and not merely registered. The cases of the Managing committee of the School and of the sponsored colleges referred to above, might be categorised as not being created by the statute or statutory rules. By several provisions of the Act (which I have given copiously in the beginning) and specially by Sections 25, 86 and 129 of the same. I am inclined to hold that the management of the affairs and the activities of such Societies, as in the instant Rule, are entirely controlled by the Registrar of the Co-operative Societies (respondent No. 2) who is undoubtedly a public

authority. Such affairs, therefore, cannot be private affairs. It might be stated that Rules 43 and 44 and specially the opening words thereof in the said Rules specifically provide that the Managing Committee shall observe the provisions of the Act, the Rules and the Bye-laws. The powers and the duties are, therefore, created by the Act and the Rules though it is not incumbent that a body in order to be a public body must always be constituted by a statute.

A Division Bench of the Madhya Pradesh High Court in *Dukhooram v. Co-operative Agricultural Association, Kawardha* (1962) 2 L.L.J. 353, has also taken the view that a writ lies against a Co-operative Society by observing as follows [P.357]:

Shri Choubey states that the terms and conditions of employment are a matter of contract between the society and its servants and reliefs arising out of contracts cannot form the subject matter of prerogative writs. This contention is correct where the relation between the master and servant is a matter of contract alone. The position is, however, different where in addition to the contract, there is a specific bye-law on the point. The bye-law gives a legal right to the servant apart from the contract and both the society and the servant are bound by it. In our opinion, the enforcement of such a legal right forms an appropriate subject matter for the issue of a writ under Article 226 of the Constitution.

In *J. Ganapathy v. M.D. Nellore Co-operative Spinning Mills Ltd.* (1979) 1 L.L.J. 364, a Division Bench of the Andhra Pradesh High Court has taken the view that when a Co-operative Society is taken over as a relief undertaking under the provisions of the Relief Undertakings Act, it is amenable to writ jurisdiction.

10. We would like to point out here itself that though this judgment was cited by the learned Counsel for the petitioner in support of the contention that a writ would lie against a Co-operative Society, the learned Judges have specifically stated in paragraph 10 as follows, which is against the contention advanced by him *J. Ganapathy v. M.D. Nellore Co-operative Spinning Mills Ltd.* (1979) 1 L.L.J. 364.

In a recent decision of ours in W.P. No. 818 of 1975, dated 29.7.1979, after considering a number of decisions of the Supreme Court including the decisions relied on by the respondents referred to at the commencement of this judgment, we observed that the present view of the Supreme Court is that a writ petition does not lie against a Co-operative Society especially as against an order terminating the services of an employee. We are therefore, unable to agree to the extreme contention of Sri Kannabiran that even treating the respondent as an ordinary Co-operative Society the writ petition would be maintainable. But Sri Kannabiran submitted that it is unnecessary for him to go so far as the respondent stands on a special footing, in view of the fact that it has been declared as a relief undertaking, his contention is that it is an agency or an instrumentality of the State and hence falls within the definition of "State" under

Article 12 of the Constitution.

Apart from citing the above decisions, Mr. Ravindran, learned Counsel for the petitioner, took us through the bye-laws of Society and pointed out that among the Board of Directors, Director of Handlooms and Textile is one, that the Government have power to nominate Ex-officio Director, that the Collector acts as Chairman in the Board meeting and all the decisions taken by the Board, can be given effect to only after the Government approves the same. Apart from that, certain special powers are vested with the Government in dealing with the powers of the Society. All these factors will go to show that it is an instrumentality or an agency of the State within the meaning of Article 12 of the Constitution of India.

11. Mr. Somayajee contended that the Co-operative Society is a person and as such amenable to writ jurisdiction. Further, in cases where the Board of Directors is superseded and special officers are appointed, they must be considered to be public authorities as they were appointed under the provisions of Tamil Nadu Act 25 of 1976. A look into the preamble to Act 25 of 1976 and Sections 3 and 4 will support the contention that the Society is amenable to writ jurisdiction.

12. Mr. M.R. Narayanaswamy, learned Counsel appearing for the respondents in reply to the above contentions submitted that there are direct decisions on the point not only of this Court but of other High Courts and also the Supreme Court taking the view that no writ will lie against Co-operative Society.

13. He cited a Division Bench Judgment of this Court in K. Kannappan v. The Sripentmbudur Taluk Co-operative Marketing Society Limited, Nazarathpet, Madras-56 W.P. No. 677 of 1977, dated 27.9.1979. In that case, Ramanujam, J., after referring to various decisions of this Court and also of the Supreme Court, speaking for the Bench has held as follows:

The relationship between the Co-operative Society and its employees is that of a Master and Servant, and that, therefore, even if there is a wrongful dismissal of the employee, the Court cannot issue a writ of mandamus directing reinstatement or a declaration that the termination of service is wrongful....

The relationship of the respondent society and the petitioner is one of master and servant and there is no public or statutory employment. Nor can the petitioner claim to have any statutory status. The dispute between a master and servant cannot be decided in proceedings under Article 226 of the Constitution. In this view of the matter we are inclined to hold that the decisions cited by the petitioner have no relevance on the question of maintainability of this writ petition. The writ asked for by the petitioner cannot, therefore, be issued in the circumstances. We therefore uphold the preliminary objection raised by the respondents.

14. S. Nainar Sundaram, J., in the case reported in Bhaskaran v. State Bank of India 1984 Writ L.R. 96, after referring to the Division Bench Judgment in

KKannappan v. The Sriperumbudur Taluk Co-operative Society Limited, Nazarathpet, Madras-56 W.P. No. 677 of 1977, dated 27.9.1979, has taken the same view. It is cited at the Bar that this judgment of S. Nainar Sundaram, J., has been subsequently confirmed by a Division Bench of this Court (in W.A. No. 108 of 1985).

15. One of us (K. Venkataswami, J.) in the case reported in Vijay Rajan v. State of Tamil Nadu (1988) 1 L.W. 89, after distinguishing the case reported in S. Varadarajan v. The Special Officer T.U.C.S. Ltd., Madras 1985 W L.R. 251, and following the Division Bench Judgment of Ramanujam, J., (in W.P. No. 677 of 1977) had taken the view that no writ will lie against a Co-operative Society.

16. Coming to the judgments of the Supreme Court cited by the learned Counsel for the respondents, we may refer to them chronologically. The first case is reported in Co-operative Central Bank Ltd v. Additional Industrial Tribunal (1969)2 L.L.J. 698. Though the maintainability of writ petition under Article 226 of the Constitution was not directly involved, the following passage in the judgment will help us to appreciate the points raised before us. [P.707]:

We are unable to accept the submission that the by-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 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 bye-laws 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. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, these conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. 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. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by these Standing Orders, they do not have such force of law as to be binding on Industrial Tribunal adjudicating an industrial dispute.

17. In Sabhajit Tewary Vs. Union of India (UOI) and Others, , while answering

the question that the Council of Scientific and Industrial Research, a Society registered under the Societies Registration Act is not an authority within the meaning of Article 12 of the Constitution of India, the Supreme Court has held as follows [P.375]:

The council is a society registered under the Societies Registration Act. Reliance was placed by counsel for the petitioner on these features of the society. Under Rule 3, the Prime Minister of India is the Ex-Officio President of the Society. The Governing Body under Rule 30 consists of inter alia some persons appointed by the Government of India representing the administrative Ministry under which the Council of Scientific and Industrial Research is included, and the Ministry of Finance and one or more members appointed by the Government of India. The Government of India may terminate the membership of any member or at one and the same time of all members other than the ex-officio members of the Governing Body. Rule 45 states that the Governing Body shall have the management of all the affairs and funds of the Society. Rule 46 states that the Governing Body shall have power with the sanction of the Government of India to frame, amend or repeal bye-law not inconsistent with the rules for the administration and management of the affairs of the Society and in particular to provide for the terms and tenure of appointments emoluments, allowances, rules of discipline and other conditions of service of the officers and staff of the Society. Reference was also made to the Government of India (Allocations of Business) Rules, 1961 and in particular to page 76 where it is stated¹ that all matters relating to the Council of Scientific and Industrial Research are under the Department of Science and Technology.

Extracting the features as aforesaid, it was contended that these would indicate that the Council of Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific research establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.

In *Vaish Degree College v. Lakshmi Narain* AIR 1976 S.C. 888, after referring to an earlier decision of that Court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvamshi* (1975) 1 L.L.J. 399; the Supreme Court has held as follows:

It is therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that 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.

In *Kulchinder Singh v. Hardayal Singh Brar* (1976) 2 L.L.J. 204 , fine distinction between a body with a personality created by and owing its existence solely to a statute and an entity which is recognised by and is registered under a statute has been nicely brought out in the following words [P.207]:

Indeed the distinction between a body with a personality created by and owing its existence solely to a statute and an entity which is recognised by and is registered under a statute is real, dramatic and makes for a world of difference in jural impact.

The Supreme Court in that very judgment though pointed out the existing controversy regarding the maintainability of a writ against a Co-operative Society, did not directly answer that question, as in the opinion of the Supreme Court, that was not necessary for the reasons given in paragraph 10, which reads as follows:

The reason why we are not inclined to add to the enormous erudition on the point already accumulated in case law is that a close perusal of the writ petition will disclose that essentially the appellant is seeking merely to enforce an agreement entered into between the employees and the co-operative Bank.

Again in *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, , the Supreme Court has observed as follows:

The High Court has dealt with the question whether a writ petition can be maintained against a Co-operative Society but we are 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 Court.

We 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.

The learned Judges, however, observed that the order impugned in that particular case was one passed by the Registrar, acting as a statutory authority and, therefore, the writ petition was maintainable in that case. In *S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others*, , the Supreme Court has observed

as follows [P.235]:

There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. This distinction was brought out by this Court in 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, . It was observed:

A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence is governed in accordance with the provisions of a statute. In *Sabhajit Tewary Vs. Union of India (UOI) and Others*, , the question arose whether the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, was a statutory body was urged that because the Council of Scientific and Industrial Research had government nominees as the President of the body and derived guidance and financial aid from the Government, it was a statutory body. Repelling the contention the Court observed [at p.1330 of A.I.R.]:

The Society does not have a statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Society Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.

Whatever had been said with regard to the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, equally applies to the Co-operative Store Limited which is a society registered under the Bombay Co-operative Societies Act, 1925. It is not a statutory body because it is not created by a (sic). It is a body created by an act of a group of industries in accordance with the provisions of a statute.

(Emphasis supplied)

In that case, the Supreme Court was considering the question whether a member of the Indian Administrative Service, whose services are placed at the disposal of a Co-operative Society is or is not a public servant within the meaning u/s 21(Col. 12) of the I.P.C., for the purposes of Section 197 of the CrI.P.C. The

Supreme Court, while answering the point in the negative, has observed as follows [p.236];

Legally speaking, the Super Bazaars are owned and managed by the Society and not by the Central Government and, therefore, the appellant was not employed in connection with the affairs of the Union within the meaning of Section 107 of C.P.C, 1973.

In *Tekraj Vasandi and K.L. Basandi v. Union of India* (1981)¹ L.L.J. 341, the Supreme Court was considering the question whether the Institute of Constitutional and Parliamentary Studies is a State within the meaning of Article 12 of the Constitution. After considering the judgments of the Supreme Court on this point upto that date, the learned Judges have held as follows [pp.353-354]:

The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislature with the requisite knowledge and experience for better functioning. Many of the objects adopted by the society were not confined to the two Houses of Parliament and were intended to have an impact on society at large.

The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions. There is material to show that the Ford Foundations, a U.S. based Trust, had extended support for some time. Undoubtedly, the annual contribution from the Government has been substantial and it would not be wrong to say that they perhaps constitute the main source of founding yet some money has been coming from other sources. In later years, foreign funding came to be regulated and, therefore, it became necessary to provide that without Government clearance, like any other institution I.C.P.S. was not to receive foreign donations. No material has been placed before us for the stand that the Society was not entitled to receive contributions from any indigenous source within. Since Government money has been coming, the usual conditions attached to Government grants have been applied and enforced. If the Society's affairs were really intended to be carried on as part of the Lok Sabha or Parliament as such the manner or functioning would have been different. The accounts of the Society are separately maintained and subject to audit in the same way as the affairs of the societies receiving Government grants to be audited. Government usually impose certain conditions and restrictions when grants are made. No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspects.

18. Let us now look into the decisions of the other High Courts cited by learned Counsel for the respondents: In *Satish Kumar v. Punjab State Co-operative Bank Ltd* (1981)² LL.J. 256, a learned single Judge of the Punjab and Haryana High Court held that a society registered under the Co-operative Societies Act, 1912,perse cannot be treated as an authority within the meaning of Article 12 of the Constitution. The learned Judge further held that such a Society is neither an instrumentality nor an agency of the Government and therefore not amenable to

the writ jurisdiction under Article 226 of the Constitution. A Full Bench of the same Punjab and Haryana High Court in *Pritam Singh Gill v. State of Punjab* AIR 1982 Punj. and Har. 228, has taken the view that no writ will lie against the Punjab State Co-operative Land Mortgage Bank.

The Punjab State Co-operative Land Mortgage Bank is not an instrumentality or agency of the State. Consequently it cannot be deemed to be an "authority" within the meaning of Article 12 and as such is not amenable to a writ of certiorari under Article 226. In this connection it cannot be urged that it is such an instrumentality on the ground that the 4th test of deep and pervasive State control laid down in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , for determining whether a Co-operative Society is an instrumentality of the State is satisfied in view of the provisions of Punjab Co-operative Societies Act read with Punjab Co-operative Land Mortgage Banks Act.

The above said Full Bench Judgment of the Punjab and Haryana High Court was delivered by S.S. Sandhawalia, C.J. The same learned Chief Justice as Chief Justice of Patna High Court had occasion to consider the very same question, and the same is reported in *Harender Narain Bakner v. State of Bihar* 1985 L.I.C. 1807. Speaking for the Bench the learned Chief Justice again reiterated the same conclusion. In this Division Bench Judgment, the learned Chief Justice, after referring to the six tests laid down by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , held that none of the tests laid down in that case is satisfied to hold the Bihar State Co-operative Marketing Union Limited is an authority or at least an agency or instrumentality of the State for the purposes of Article 12 of the Constitution. It may be noted that factually, it was found in that case that the State Government had 99 per cent shares in the State Co-operative Marketing Union Limited and the Fourth Pay Revision Committee was also made applicable to its employees. The Managing Director of the State Co-operative Marketing Union Limited was appointed by the State Government. Nevertheless, the Division Bench held that those factors were not sufficient to hold that this Bihar State Co-operative Marketing Union Limited is amenable to writ jurisdiction. After elaborately discussing the matter the Court concluded as follows:

To finally conclude, it is manifest that not one of the six authoritative tests spelt out in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , stands biscomaun The judgments relied upon by the learned Counsel for the petitioner as discussed are wholly distinguishable. Consequently, it must be held that the Bihar State Co-operative Marketing Union Ltd. is in no way an instrumentality or agency of the State. Admittedly, biscomaun is a Co-operative Society registered under the Bihar and Orissa co-operative Societies Act, 1935. Inevitably, it follows it is not therefore, amenable to the writ jurisdiction under Article 226. The answer to the threshold question posed at the very outset is, therefore, rendered in the negative.

19. *P. Bhaskaran v. Additional Secretary, Agricultural (Co-operation) Department*

(1988)2 L.L.J. 307, a Full Bench of the Kerala High Court has taken the same view and observed as follows [p.316]:

The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. More over, the Government have no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the Societies does not rest in the Government or in the representatives of the Government Bank. The management is under the effective control of a committee elected by the members of the Societies. The statutory regulation or restriction in the functioning of the Societies is not "an imprint of State under Article 12". Hence no writ will lie against a Co-operative Society governed by the Kerala Co-operative Societies Act.

20. Recently, a Full Bench of the Orissa High Court in Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another, , has taken the identical view after referring to the case law on the subject by observing as follows:

The matter, therefore, has to be examined in the light of the tests indicated by the Supreme Court in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , which shall hold the field.

Out of the several tests, the main tests on the anvil of which the case of the opposite party Bank rests is to examine the formation of the share capital and the functions of the Bank. In this connection, I have already referred to the relevant provisions of the bye-laws of the Bank to show how the capital of the Bank is to be raised and the functions and activities. The petitioner has singularly failed to establish that these tests were satisfied in this case. Then again there is no existence of any deep and pervasive State Control over the affairs of the opposite party-Bank. In any case, no material except the statutory and formal regulatory supervision was placed before us even in the course of the submissions made by Dr.Dash on which any finding on this incendent can be recorded in favour of the petitioner. The relevant tests therefore *stricto sensu* are not satisfied here so as to bring the case of the opposite party Bank within the ambit of Article 12 of the Constitution and that make it amenable to the writ jurisdiction.

21. Mr. M.R. Narayanaswamy also placed reliance on the provisions of the Act viz., Section 32 of the Tamil Nadu Co-operative Societies Act, 1983, corresponding to Section 26 of the Tamil Nadu Cooperative Societies Act, 1961 and submitted that the ultimate decision relating to the affairs of the Society vests with the general body. On the basis of the rulings cited above and the contentions Mr. M.R. Narayanaswamy submitted that no writ will lie against co-operative societies in the light of the above decisions of various High Courts and of the Supreme Court. Let us now examine the issue.

22. As pointed out at the outset, the counsel who argued for an affirmative

answer relied on passages from the judgments of the Supreme Court referred to in paragraph 9 (supra). In this background let us consider the question.

23. The main and important factor that has to be borne in mind in dealing with the issue on hand is the fine distinction that has been pointed out by the Supreme Court on more than one occasion between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the Statute (Vide: 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, and Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others, . We are clearly of the view that a Co-operative Society is a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, a Co-operative Society does not owe its very existence to any statute which would be the fountain-head of its powers. Still further, it can be held that even if there is no statute a Co-operative Society can have a legal existence. If this is the position, applying the tests laid down by the Supreme Court in the above said two cases, a Co-operative Society is an institution merely governed by the statutory provisions and it cannot be said to be a statutory body. In this connection, the observations of the Full Bench Judgment of the Kerala High Court, at the risk of repetition, can again be extracted:

The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. Moreover the Government have no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the Societies does not rest in the Government or in the representatives of the Government Bank. The management is under the effective control of a committee elected by the members of the Societies. The statutory regulation or restriction in the functioning of the Societies is not "an imprint of State under Article 12". Hence no writ will lie against a Co-operative Society governed by the Kerala Co-operative Societies Act.

24. The issue can be looked from another angle. The Supreme Court in Co-operative Central Bank Ltd v. Additional Industrial Tribunal (1968) 2 L.L.J. 698, has held that the bye-laws of a Co-operative Society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. This also supports the view that a Co-operative Society is not a statutory functionary. Whether the fact that whenever the governing body is superseded and in its place a Special Officer or other Government official is appointed to administer the affairs of the society makes any difference has to be considered now. We are of the view that having regard to the decision of the Supreme Court in S.S. Dhanoa v. Municipal Corporation Delhi (1981) 2 L.L.J. 231, the position is that it does not make any difference. 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. In the case referred to above the Supreme Court has clearly held that when the services of an Indian Administrative Officer are placed at the disposal of a Co-operative Society, he was not discharging the functions as a public servant. In that case the Supreme Court has positively held as follows:

Whatever has been said with regard to the Council of Scientific and Industrial Research which was a society registered under the Societies Act, equally applies to the Co-operative Store Limited, which is a society registered under the Bombay Co-operative Societies Act, 1925. It is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals in accordance with the provisions of a statute.[Side line passage]

The above passage places beyond doubt that a Co-operative Society is not a statutory body.

25. Viewed from any angle and in the light of the pronouncements of the Supreme Court and of the other High Courts, particularly the two Full Bench judgments of different High Courts referred to above, it appears to us that a Co-operative Society is not an authority nor an instrumentality or agency of the Government to attract Article 32 of the Constitution and therefore not amenable to writ jurisdiction under Article 226 of the Constitution. As observed by the Division of the Patna High Court in *Harendra Narain Banker v. State of Bihar* 1985 L.I.C. 1807 and also the Full Bench decision of Orissa High Court in *Banabihari Tripathy Vs. Registrar of Co-operative Societies and Another*, we are also of the view that the tests laid by the Supreme Court in various cases on which heavy reliance was placed by the counsel, who invited the Court to answer the issue in the affirmative are not satisfied by the Co-operative Societies in question to come under Article 12 of the Constitution as an authority or agency or instrumentality of Government. It is not necessary to set out the various tests laid down by the Supreme Court once over to find out whether the Co-operative Society will satisfy any or some of the tests so laid down by the Supreme Court in view of the fact that we are in agreement with the views expressed by the Division Bench Judgment of the Patna High Court and the two Full Bench judgments of Kerala and Orissa High Courts. 26. Accordingly, we answer the question referred to us in the negative.