

(2005) 11 CAL CK 0026
In the Calcutta High Court
Case No : T. No. 392 of 2005

P.G. Foils Ltd. and Another

APPELLANT

Vs

National Agricultural Co-operative Marketing Federation and
Others

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 2 CHN 308

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Samit Talukdar and Anirban Sen, for the Appellant; Subroto Bose, Subir Banerjee, Gobindo Chowdhury, Jayanta Banerjee, Sandipto Bose and Ruxmini Basu Roy for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The first respondent has raised a preliminary objection regarding maintainability of this writ petition.

2. It is argued that the first respondent being a co-operative society within the meaning of provisions of the Multi-State Co-operative Societies Act, 1984, is not a State or authority against whom a writ petition can be moved under Article 226 of the Constitution of India. In support of the contention a Division Bench decision of the Delhi High Court in National Agricultural Co-operative Marketing Federation of India Ltd. Vs. Nafed Processed Food Cooperative Marketing Federation of India Employees Union and Others, , has been cited.

3. The case of the first petitioner is this. It obtained orders for export of rice to Bangladesh. Rice to be exported was to be collected from FCI. For execution of the work it entered into an agreement with the first respondent. In terms of the agreement the first respondent was to act on its behalf. According to existing terms and conditions freight borne by the exporter was to be refunded by FCI. The refund was to be made to the first respondent. In connection with some of

the contracts the collected amounts were paid to the first petitioner, but in connection with the contract in question a sum of around rupees twenty-three lakh, supposed to have been collected by the first respondent, was not paid. Making allegations to such effect, the first petitioner wrote a letter to which the first respondent did not respond. These are the facts which led to the filing of the present writ petition.

4. Advocate for the petitioners submits that the writ petition is maintainable. As to the relevant statements in support of their case that the first respondent is a State within the meaning of Article 12 of the Constitution of India, the petitioners have made the averments in para 34 of the writ petition. Regarding the decision cited to me by Advocate for the first respondent, Advocate for the petitioners says that the Division Bench of the Delhi High Court gave the decision without considering provisions in Sections 4 30 35 40 41 47 and 48 of the Multi-State Co-operative Societies Act, 1984. He says that as was held by the Apex Court in *Gurcharan Singh Vs. Registrar, Co-operative Societies, Himachal Pradesh and Others*, , simply because the first respondent is a co-operative society, it cannot be said that it is not a State within the meaning of Article 12 of the Constitution of India. He says that the question has to be decided on the basis of the case made out in the writ petition and after considering the provisions of the Act. By referring me to the above-noted sections of the Act, Advocate argues that it is apparent that the Central Government has deep and pervasive control over the functioning and administration of the first respondent, and hence in view of the Apex Court decision in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, , the first respondent is amenable to writ jurisdiction.

5. In my considered view, Advocate for the first respondent is right in his submission that being a pure and simple co-operative society created by the members concerned at their own volition, the first respondent cannot be treated as a State within the meaning of Article 12 of the Constitution of India, and hence it is not amenable to writ jurisdiction.

6. I do not see how provisions in the abovenoted sections of the Act indicate that the Central Government has deep and pervasive control over the functioning of the first respondent. True it is that the Central Government has only one share (this fact has been stated by Advocate for the first respondent in course of his submission) in the first respondent and as such it has right to put its nominee in the Board, but for these reasons alone (read with provisions in Section 41 of the Act) it cannot be said that the Central Government has deep and pervasive financial, administrative and functional control over the first respondent. Provisions of the Act clearly indicate that functioning of the first respondent is fully controlled by its Board of Directors, and for that matter by its general body. The administrative, financial and functional control is vested fully in the general body of the society.

7. The provisions to which Advocate for the petitioners has referred me only

indicate how the Central Government and other authorities appointed or to be appointed under provisions of the Act are to regulate the proper functioning of the first respondent. The Central Government and other authorities have no role to play in the constitution, management or business of the first respondent; and these things are to be governed by provisions of the Act. It is only when the first respondent contravenes any provisions or fails to take steps according to provisions of the Act, that the authorities would be empowered to take the remedial steps and measures.

8. I fully agree with the view taken by the Division Bench of the Delhi High Court (that decision was given also regarding the first respondent) that the first respondent is not a State within the meaning of Article 12 of the Constitution of India. It is to be noted that in the writ petition except a one sentence bald statement, the petitioners have not indicated anything else in support of their case that the first respondent is a State within the meaning of Article 12 of the Constitution of India. I think, it would not be out of context to mention that provisions in Section 74 of the Act provide for settlement of disputes of the present nature.

9. For the abovenoted reasons I accept the preliminary objection and hold that the writ petition is not maintainable against the first respondent. Needless to say that relief has been sought chiefly against the first respondent. Accordingly, I dismiss the writ petition. There shall be no order for costs.

10. All parties shall act on a signed xerox copy of this dictated order on the usual undertaking. Urgent certified xerox copy shall also be supplied to the parties, if applied for.