

(2005) 07 AHC CK 0114

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 869 (SB) of 1998

Radhey Shyam Rai

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2005) 07 AHC CK 0114

Hon'ble Judges : Jagdish Bhalla, J; Bhanwar Singh, J and Pradeep Kant, J

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—In Writ Petition No. 329 (SB) of 1996 and Writ Petition No. 246 (SB) of 1997, a Division Bench of this Court took the view that Ganna Kisan Sansthan is not a 'State' within the meaning of Article 12 of the Constitution and hence writ under Article 226 of the Constitution for issuing writ in the nature of certiorari was not maintainable. When the present writ petition i.e., Writ Petition No. 869 (SB) of 1998 came up for orders before another Bench, it showed its inability to agree with the view expressed in above mentioned writ petitions; in other words, the learned Division Bench was not in agreement with the decision taken by coordinate Division Bench in Writ Petition 329 (SB) of 1996 and as such, has referred the undermentioned questions to the Hon'ble Chief Justice for Constituting a Full Bench for the consideration :

?(1) Whether Uttar Pradesh Ganna Kisan Sansthan (for short 'Sansthan') is 'State' under Article 12 of the Constitution of India?

(2) Whether a writ for certiorari or an order in the nature of writ of certiorari is maintainable against 'Sansthan' under Article 226 of the Constitution of India??

2. Accordingly, we are required to answer the aforesaid two questions framed by the Division Bench.

3. In short, the facts of the case are that prior to establishment of U.P. Ganna Kisan Sansthan, the Cane Department was imparting training to the Government

Officers and the cane growers. The State Government in order to increase the production of Sugar in the State came to the conclusion that to achieve this target it is necessary to impart knowledge/training to the cane growers and connected persons. The Government, therefore, took a policy decision of establishing U.P. Ganna Kisan Sansthan by Government Order dated 17th May, 1975. By another Government Order dated 3rd November, 1976 (SCAIII) addressed to the Cane Commissioner, it was provided that Training Centers (Shahjahanpur Muzaffarnagar and Gorakhpur), which were earlier run by Cane Development Department of Government of U.P. were transferred to the Management of Sansthan with the provision that the expenses were to be met from :

- (a) U.P. Sahkari Ganna Samiti Sangh; and
- (b) Sakkar Vishesh Nidhi.

4. Learned Counsel for the petitioner argued with vehemence that the Ganna Kisan Sansthan comes within the purview of Article 12 of the Constitution of India and, therefore, is amenable to writ jurisdiction under Article 226 of the Constitution of India because the following factors fulfil the requirement to fall within the ambit of Article 12 of the Constitution :

- (1) U.P. Ganna Kisan Sansthan was established on 17th May, 1975 after registration under the Societies Registration Act, 1860.
- (2) Prior to registration of the U.P. Ganna Kisan Sansthan, the Cane Department of the State Government, which was created in the year 1975, was imparting training to the cane growers and Government Officers.
- (3) In order to achieve the goal of economic reforms, and provide training and education to the Cane growers, a society was registered under the provisions of Societies Registration Act, 1860 to achieve the objects, enumerated in Memorandum of Association.

5. In addition to above, the Government also constituted and reconstituted a Committee, consisting of the officers of the Government and other holders of the public offices, with the Cane Commissioner as its head to lay down or streamline curriculum of training courses, to be undertaken by Sansthan (Annexure22). Further, by the Government Order dated 3rd November, 1976, copy whereof has been annexed with the Supplementary Counter Affidavit, the three Training Centers (Shahjahanpur, Muzaffarnagar and Gorakhpur), which were earlier run by Cane Development Department of the Government of U.P. were also transferred to the Management of Sansthan with the provision that the expenses were to be met from :

- (c) U.P. Sahkari Ganna Samiti Sangh; and
- (d) Sakkar Vishesh Nidhi.

6. As regards the availability of funds to the Sansthan, learned Counsel has

invited our attention towards Annexure Nos. 26, 27, 28, 29, 30, 31, 32 and 33 and submitted that in the financial year 198586, 198687, 198788, 198889, 198990, 199091, 1991 92, 199293 and 199394 more than 80% to 90% of the expenditure of Sansthan was met out of the funds, made available to it by the Government or under the orders of the Government. Further, the letter dated 27th March, 1996 (Annexure50) of the Director of Sansthan written to the Editor Dainik Jagran indicates that Sansthan is a training agency of the Government as entire expenses are being met from the funds made available by the Government.

7. In order to establish that the State Government has deep and pervasive control over the Sansthan, learned Counsel for the petitioner, Sri Akhilesh Kalra submitted that the control and Management of the Sansthan is dominated by the council and the Minister of Cane Development and Sugar Industries happens to be the Exofficio Chairman of the Society. Further, the control of the Government is not only limited to the policy matters but also it extends event to every function of the Sansthan as would be evident from the perusal of Rule 25 of the Memorandum of Association. The control of the State Government over the U.P. Ganna Kisan Sansthan is further evident from the order dated 20th May, 2004, issued by the State Government to the Director, U.P. Ganna Kisan Sansthan, wherein the Government took a decision for providing revised pay scales to the employees of the Sansthan. In this Government Order it has also been laid down that no post would be created without the prior approval of the State Government.

8. Relying upon the decision in *Ramana Dayaram Shetty v. International Airport Authority of India & Ors.* (1979) 3 SCC 489, *Mysore Paper Mills v. Mysore Paper Mills Officers Association & Anr.* (2002) 2 SCC 167, *Virendra Kumar Srivastava v. U.P. Rajya Karmchari Kalyan Nigam & Anr.* (2005) 1 SCC 149 : (2005) 1 UPLBEC 503 (SC); *Pradeep Kumar Biswas v. Indian Institute of Chemical, Biology* (2002) 5 SCC 111, learned Counsel has submitted that the tests which have been laid down in the aforesaid cases for determining whether a body is a State or not, are fulfilled by the U.P. Ganna Kisan Sansthan and as such the Sansthan is amenable to writ jurisdiction. Learned Counsel has further invited our attention towards the peculiar reasons due to which Federal Bank was not declared as an instrumentality or agency of the State. Further summed up the reasons as under :

(i) It was a private company and stood at a different footing than a nationalized bank.

(ii) The purpose of the private company also included banking business.

(iii) The share capital was not contributed by the State or from State fund whereby establishing more/dominant participants of the State in the Management of the affairs of the company.

(iv) Because the Board of Directors of the Company were elected shareholders and worked like a private company in banking business with a monopoly at all.

(v) Because, it carries on banking business with regulatory checks over the company only for the interest of the company and its shareholders.

(vi) Because the banking company was not set up for building the economy of the State but the private company was established for its own interest.

(vii) Because guidelines of the Reserve Bank of India were only regulatory and followed by the company for fiscal discipline and for its own interest.

9. Taking into account the aforesaid factors and the fact that the Reserve Bank of India only acts as a regulatory body and does not control the Management of the company and thus on these scores the Hon"ble Supreme Court held the Federal Bank as not amenable to writ jurisdiction. Whereas in the present case, the U.P. Ganna Kisan Sansthan is a society registered under the Societies Registration Act, which comprises of more than 90% members/office bearers, who happened to be Government Officers. The society is carrying on the work of imparting cane education to cane growers, which was earlier being done by the State of U.P. Cane Department, and has a monopolistic status in respect of imparting education to Cane growers, employees etc. which is reflected from the following factors :

(i) Because the governing council comprises of over 90% of members of State Government.

(ii) Because the share capital of the Society/expenses of the society is done more than 90% from the State budget and Shakkar Vishesh Nidhi and lately the entire expenses of the society are being met from State Exchequer.

(iii) Because the society has been set up for better and planned growth of the agriculture segment of the economy.

(v) Because the interference and control of the State of U.P. is deep and pervasive over daytoday affairs of the Society including creation of posts, payment of salary, budget allocation etc.

10. According to learned Counsel for the petitioner, the reasons aforesaid clearly established that the control of the State Government is not only regulatory but also deep and pervasive and the U.P. Ganna Kisan Sansthan is ?State? within the meaning of Article 12 of the Constitution.

11. In contrast, Sri Kapil Dev appearing for the U.P. Ganna Kisan Sansthan has drawn our attention towards the judgment rendered in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 446, in which the Hon"ble Supreme Court has laid down the guidelines for identifying a Corporation or Agency to be an ?State? within the meaning of Article 12. These guidelines are:

(1) A finding of the State financial support plus an unusual degree of control over the Management and policies might lead one to characterize an operation as State action.

(2) Another factor, which might be considered, is whether the operation is an important public function.

(3) The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State Agency. If a given function is of such public importance and so closely related to Government functions as to be classified as a Governmental Agency, then, even the presence or absence of State Financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion.

(4) The ultimate question, which is relevant for our purpose is whether such a corporation is an Agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is for whose benefit was the Corporation carrying on the business.

12. According to Sri Kapil Dev, if the objects incorporated in the Memorandum of Association of the Uttar Pradesh Ganna Kisan Sansthan, are viewed keeping the aforesaid guidelines, it would be evident that the Sansthan was setup for establishing, running and maintaining a training institute, including facilities of boarding and lodging for the benefit of Cane Growers and the personnel in Cane Development by giving them upto date practical knowledge about scientific ways of sugarcane cultivation and Management, and for that purpose, several other steps are to be taken. So, basically, it was for the interest of the Cane Growers and Development of Sugarcane.

13. Elaborating further, learned Counsel for the Sansthan submitted that as far as the Management and control of the U.P. Ganna Kisan Sansthan is concerned, as per Memorandum of Association, the following were the signatories of the Memorandum of Association :

- (1) Cane Commissioner, Uttar Pradesh, Lucknow.
- (2) President, U.P. Cooperative, Sugar Factories Federation Limited, Lucknow.
- (3) Chairman, U.P. State Sugar Corporation Limited, Lucknow.
- (4) VicePresident, U.P. Cooperative Cane Union Federation Limited, Lucknow.
- (5) Nominee of U.P. Sugar Mills Association, Lucknow.
- (6) Director, Indian Institute of Sugarcane Research, Lucknow.
- (7) Director, National Sugar Institute, Kanpur.
- (8) Director, Uttar Pradesh Ganna Kisan Sansthan, Lucknow.

14. As per the provisions of the Memorandum of Association, the Governing Council has all the powers to carry out and manage the affairs of the U.P. Ganna Kisan Sansthan, which may pay all the expenditures, incurred in promoting and

registering the U.P. Ganna Kisan Sansthan as a society. It has got the power to lay out principles and policies, on which the funds and affairs of the Sansthan, including staffing pattern and conditions of services, should be managed.

15. Inviting our attention to Rules 29 and 33, learned Counsel for the Society said that (a) Ganna Sansthan maintains proper accounts and other supporting relevant records to enable it to prepare the annual income and expenditure of accounts and balance sheet in such form, as may be prescribed by the Governing Council, (b) the investment and the funds of the Sansthan or the interest or income thereof or any part thereof, are kept in the name of the Sansthan in one or more of the Scheduled Banks or a Cooperative Bank. Thus, the U.P. Ganna Kisan Sansthan, itself is a Master of maintenance of all the accounts. In view of Rule 34, the books of accounts of the Sansthan and the Annual statement of accounts is audited and examined by a Chartered Accountant appointed from time to time by the Governing Council. From perusal of Rule 41 (b), it is clear that regarding returns, accounts and other information, the Governor of Uttar Pradesh has authority to call for information, but no further provision has been made as to whether he can also give direction for performing the duties in such a manner or to make expenditure in such a manner, which may be categorized as the control on the financial expenditure also.

16. Furthermore, the expenditure incurred in connection with the audit of the accounts of the Sansthan is paid by the Sansthan. Thus, it is clear that the U.P. Ganna Kisan Sansthan is fully independent in the matter of accounts, and financial control also.

17. As far as the employees of the Sansthan are concerned, they are governed by the provisions of U.P. Ganna Kisan Sansthan Service Rules, which came into force from 141979. Rule 15 of the Service Rules provides that in case of any dispute pertaining to the Service Rules, the decision of the Chairman would be final. As per Rule 16, necessary alterations or relaxation in the Rules can be made by the Governing Council. Moreover, the Management of the Sansthan is competent to fix pay structure of employees and officers of the Sansthan without seeking any approval of the State Government. This all reflects that the ? Sansthan? is an independent body having its own rules and regulations.

18. Sri N.C. Mehrotra, Addl. Chief Standing Counsel appearing for the State informed that after establishment of U.P. Ganna Kisan Sansthan, Rules and Regulations were framed by which all the powers have been vested in the Governing Body/Council but Rule 41 lays down that the Governor of Uttar Pradesh may from time to time, issue directives to the Society as to the exercise and performance of its functions in matters involving the security of the State or substantial public interest and the Society/Sansthan shall give immediate effect to the directives so issued. Further, Governor may call for such returns, account, activities and information as may be required by him.

19. In an attempt to establish that the State Government is not interfering in the

day today working of the Ganna Kisan Sansthan either in administrative matter or in functional matter, Sri N.C. Mehrotra, very candidly submitted that when the Sansthan drafted the Service Rules and referred it to the State Government for approval, the State Government refused to interfere. Similarly, the State Government refused to interfere in the matter of pay scale of the employees of the Ganna Kisan Sansthan. As regard to the financial assistance, learned State Counsel informed that on creation of the U.P. Ganna Kisan Sansthan, the State Government sanctioned a grant of 50% of the total expenditure. The State Government continued to give grant from 1975 to 1995 (Annexure7) and from 1995 till date the financial assistance is given to the Sansthan from the Sugar Fund committee (Annexure8).

20. The word "the State" as per Article 12 of the Constitution would include Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The expression "instrumentality of State" would include not only the Executive and Legislative organs of the Union and State but also Local Bodies and ?other authorities?, What is an ?other authority? came up for interpretation in the case of R.D. Shetty, v. International Airport Authority of India, AIR 1979 SC 1682, the Apex Court therein laid down the parameters and principles to ascertain whether the body or the authority is "the State". These parameters or tests can be summed up thus; (i) When the authority is fully financed by Government and its share capital is held by Government; (ii) All pervasive control of the State; (iii) Monopoly status of a Corporation; (iv) If it was Department of the Government and even after registering as Society or Corporation it remains attached to the Government or adjunct of the Government. In Ajay Hasia, v. Khalid Mujib Sehrwardi, AIR 1981 SC 487, the Supreme Court observed that Government may act through natural or judicial person to carry out its function and it is not necessary that it is a creation of a statute. The observation made in Ajay Hasia's case (supra) were Apex Court in the case of M.C. Mehta, v. Union of India, AIR 1987 SC 1086, wherein it has been held that :

?The Corporation may be a statutory Corporation creation by a statute or it may be a Government Company or a Company former under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar State. What is really to be determined for whether a body is or not ?other authority? is who created the body and why. What are its aims and objects, how is it running, the extent of Government financial aid or grant to it and its dependency on the Government and the latter's control over it.?

In Pradeep Kumar Biswas, v. Indian Institute of Chemical, Biology (2002) 5 SCC 111, Supreme Court, after considering the above referred cases observed as under :

?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 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.?

21. Nature of duty imposed on the body is a relevant factor to determine whether a writ under Article 226 of the Constitution can be issued or not? No doubt if the rights are purely of a private character, no mandamus can be issued but at the same time to determine whether a Society is an authority within the meaning of Article 12, the basic requirement is to know how it was created, then the composition of Management and control of the State including the functions which are discharged by such society. In order to determine as to whether the U.P. Ganna Kisan Sansthan comes within the ambit of the words "other Authority" occurring in Article 226 of the Constitution, it is to be tested keeping in the mind the guidelines formulated by the Apex Court in *Ajay Hasia*, (1981) 4 SCC 722; *M.C. Mehta*, AIR 1987 SC 1086; *B.S. Minhas v. Indian Statistical Institute* (1983) 4 SCC 582; *Pradeep Kumar Biswas* (2002) 5 SCC 111 and by the Full Bench of this Court in *Vijay Bihari Srivastawa, v. U.P. Postal Primary Cooperative Bank Ltd. Etc.* (2003) 1 UPLBEC 1 (FB).

22. At this juncture it would be apt to refer the Full Bench of this Court in the case of *Vijay Behari Srivastava, v. U.P. Postal Primary Cooperative Limited*, (2003) 1 UPLBEC 1 (FB). In this case, petitioner was working as Secretary in U.P. Postal Primary Cooperative Bank Ltd., a society which is a Primary Cooperative Society. When the petitioner was reverted, he filed a writ petition seeking for quashing of the decision taken by the Committee of Management of the Bank and also sought a writ in the nature of mandamus. The opposite party to the said writ petition, raised a preliminary objection regarding maintainability of writ petition as the service condition are not regulated by the notification. This matter was ultimately referred to a Full Bench of this Court. The learned Full Bench while answering the question laid down following guidelines and made observations as under :

?The writ petition in the nature of certiorari will lie against a Cooperative Society only when such Society has ingredient of an `authority" within the meaning of Article 226 of the Constitution and not otherwise. The following guidelines are called out from the various decisions of the Supreme Court, referred to above :

(1) The Constitution of the Managing Body/committee constitutes the functionaries of the Government.

(2) There is an existence of deep and pervasive control of the Management and policies of the Cooperative Society by the Government.

(3) The function of the Cooperative Society is of public importance and closely

related to the Governmental functions.

(4) The financial control is by the Government or it provides financial aid controlling its affairs.

(5) The violation of statutory rules applicable to the Society in regard to the service matters of its employees, and Statutory violations or noncompliance of it by an authority under the Act.?

23. At this place, we may add that in B.S. Minhas (supra), the Apex Court held that the Indian Statistical Institute, a registered society is an instrumentality of the Central Government and as such is an 'authority' within the meaning of Article 12 of the Constitution. The basis was that the representatives appointed by the Central Government dominate the composition of Respondent No. 1. The money required for running the Institute is provided entirely by the Central Government and even if any other money are to be received by the Institute, it can be done only with the approval of the Central Government and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction. The Society has to comply with all such directions as may be issued by the Central Government. It was held that the control of the Central Government is deep and pervasive.

24. Recently the question arose before the Supreme Court in Virendra Kumar Srivastava, v. U.P. Rajya Karmachari Kalyan Nigam & Anr. (2005) 1 SCC 149 : (2005) 1 UPLBEC 503 (SC), as to whether U.P. Rajya Karmachari Kalyan Nigam is covered by the definition of 'State' under Article 12 of the Constitution and is amenable to the writ jurisdiction under Article 226 of the Constitution as this Court dismissed the writ petition as not being maintainable. In short the facts of the case were that the Cooperation was created and registered as a society under the Societies Registration Act. The object of the Cooperation is to cater the needs of the Government employees as a supplement to their salaries and other perks. The Supreme Court after taking into account the composition, administrative and financial corporation of the Nigam held that the Rajya Karmachari Nigam is an 'agency of the State' and observed as under:

'On detailed examination of the administrative, financial and functional control of the Corporation, we have no manner of doubt that it is nothing but an 'instrumentality and agency of the 'State' and the control of the State is not only 'regulatory' but it is "'deep and pervasive' in the sense that it is formed with the object of catering to the needs of the Government employees as a supplement to their salaries and other perks. The top executives of the Government department ex officio are members and office bearers of the Corporation. The Corporation is fully supported financially and administratively by the State and its authorities. Even daytoday functioning of the Corporation I watched, supervised and controlled by the various departmental authorities of the state particularly the Department of Food and Civil Supplies. The multiple test indicated to be applied both by the majority and minority view in Pradeep

Kumar Biswas is fully satisfied in the present case for recording a conclusion by us that the Corporation is covered as an 'agency and instrumentality of the State' in the definition of 'State' under Article 12 of the Constitution. It is, therefore, amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

25. In the case at hand, perusal of Rule 41 (a), clearly indicates that the Governor of Uttar Pradesh has been empowered to issue, from time to time, directives to the society as to the exercise and performance of its functions in matters involving the security of the State or substantial public interest and such other directives as it may consider necessary in regard to the finances and conduct of business and affairs of the society. Not only the Society shall give immediate effect to the directive so issued, the Governor of Uttar Pradesh may call for such returns, accounts and other information with respect to the properties and activities of the society as may be required by him from time to time.

26. Surprisingly, learned State Counsel has made much emphasis on the fact that after 1995/96, the Government is not providing any major financial assistance to the Ganna Kisan Sansthan and the Sansthan is free to spend the amount according to its own requirements. In other words, the Government has no regulatory control over the expenditure made by the Sansthan. This submission of learned Counsel for the State is belied from perusal of Government Orders, dated 28/10/2002, 22/10/2003, 14/12/2004 and 18/7/2004. By these Government Orders, the State Government has sanctioned substantial amount of money to the U.P. Ganna Kisan Sansthan towards expenditure and research. Further, perusal of Section 3 of the Uttar Pradesh Sugar Cane (Purchase Tax) Act, 1961, would reveal that 50% of the tax amount is to be appropriated from the Consolidated Fund of the State and credited to and vested in 'Sakkar Vishesh Nidhi' which is administered by the Committee headed by the Secretary of the Sugar Industry Department in the State Government. As indicated above, around 80-90% of the expenditure of the Sansthan in past was met from the funds made available to it by the Government or under the orders of the Government.

27. Not only this, the State Government is providing financial assistance from U.P. Sugar Special Fund Committee and under the provisions of the U.P. Sugar Cane (Purchase Tax) Act, 1961, the tax is being imposed on purchase of sugar cane by factories including Gur, Rab, Khandsari and Sugar manufacturing units. The provisions of Clause (10) of Section 3 of the Act reads as under :

“(10) At the beginning of each financial year, after due appropriation has been made by law, the State Government shall withdraw from and out of the Consolidated Fund of the State an amount equivalent to fifty percent of the proceeds of the tax levied under Clause (a) of subsection (1) recovered by it during the preceding financial year and place the amount so withdrawn to the credit of four separate funds named below in the following proportions namely :

(a) Thirtysix percent to the Uttar Pradesh Sugarcane Research and Development Fund;

(b) Twentyfour percent to the Uttar Pradesh Sugar Factories Rehabilitation; Modernization and Establishment Fund;

(c) Thirty percent to the Uttar Pradesh Loan Assistance for payment of Sugarcane price fund;

Provided that the aggregate amount to be placed at the credit of this fund shall not exceed rupees fifteen crores and any amount beyond that available shall instead be credited to the funds mentioned in Clauses (a) and (b) in the proportion of sixty percent and forty percent respectively;

(d) ten percent to the Kalyan Nidhi.?

28. Apart from above, the record shows that the State Government had issued directions to the Sansthan to follow the directions as contained in the office Memorandum No. A1238/1015/83, dated 1711979, issued by the Finance Department. It has also been clarified that in case of any deviation, the Finance Controller or any officers looking after the work of accounts would be held responsible. Not only this, the State Government in strict language has also directed that total details of expenditure shall be sent together with the utilization certificate to the Finance Department and shall follow the directions issued by the State Government from time to time regarding expenditure of the money. The perusal of Government Order dated 1872004, clearly reveals that the State Government has sanctioned Rupees 187 lacs for the Sansthan in current financial year 200405 and in this Government Order also, the Government has directed to ensure compliance of the various orders issued by the Finance Department. Not only this, the Ganna Kisan Sansthan has been required to submit details of expenditure in Form BM13 together with utilization certificate to the State Government/Chief Accounts Officer. In paragraph 6 of the aforesaid G.O. dated 18 72004, the Account Head (Lekha Sheersak) has also been prescribed.

29. It would also be important to point out that learned Counsel appearing for the respondents have also drawn our attention towards the correspondence made by the Ganna Kisan Sansthan seeking approval of the State Government in respect to the Service Rules framed for the employees of the Sansthan and submitted that the State Government has refused to intervene but the perusal of the document annexed in this regard does not make it clear that the State Government has refused to accord approval. It only indicates that when the rules were sent to the Rule Cell of Appointment Department, an endorsement was made that the Rule Cell has been made for the Government servants and the Rule Cell is not authorized to examine any rules other than the Government Servants. The State Counsel has failed to place any document before us to establish that the State Government has refused to interfere in matter relating to framing of Service Rules.

30. Surprisingly, the learned State Counsel as also the Counsel for the Sansthan have argued that the Governing Council of the Sansthan is free to abolish or create any posts and it has also power to increase or decrease number of posts in a cadre and the State Government has no role to play in this connection. On the contrary, the perusal of the G.O. dated 2452004, establishes that the State Government after considering the recommendation of the Governing Council has revised the pay scale of the employees of the Ganna Kisan Sansthan with effect from 1142001. The said G.O. also mentions that from 142001 to 3182002, the arrears of pay of the employees of the Sansthan will be paid in the form of National Saving Certificate and from September, 2002 onwards, the benefits will be given in cash. In paragraph 6, the Government has laid down that the post, which were lying vacant since one year, shall stand abolished automatically. Further, no post shall be created without prior approval of the State Government. Thus it is clearly established that the State Government plays vital supervisory role in functioning of the Sansthan and has deep and pervasive control over the affairs of the Sansthan.

31. The deep and pervasive control of the State Government is also apparent from the fact that earlier the Cane Commissioner happened to be the Exofficio Chairman of the Government Council but at present the Minister Incharge of the Cane Development of the Government of U.P. is the Chairman. The Principal Secretary, Sugar Industry and Cane Development is the ViceChairman whereas the Director of the Sansthan is an officer of the State sent on deputation, he is also the Member Secretary of the Governing council. Similarly, the Accounts Officer/Finance Controller is an officer of the State Government and is sent on deputation. Further, the majority of the members Governing council are by virtue of their respective offices under the State Government. Therefore, it is apparent that the Director and the Account Officer, who play vital role in carrying the affairs of the Sansthan are the Government Officers and the ?Sansthan? has no power to appoint anybody of his choice on those posts. Another important aspect is that the ?Sansthan? has no discretion not to obey the directives issued by the State Government from time to time. The U.P. Ganna Kisan Sansthan thus fulfills all the test prescribed and can be called a public body and discharge duties, which are in the nature of public duties or obligations and is an `instrumentality" of the State. Its functions are also akin to Governmental functions. The Division Bench deciding the Writ Petition No. 329 (SB) of 1996, had rightly expressed that the U.P. Ganna Kisan Sansthan is discharging public duties or obligations and is an State, within the meaning of Article 12 of the Constitution.

32. Having held that U.P. Ganna Kisan Sansthan is an instrumentality of the State, the question arises whether it is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution? Article 226 provides :

?226. Power of High Court to issue certain writs. (1) Notwithstanding anything in Article 32, every High Court shall have powers, 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 (writ 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.?

33. The Division Bench, while referring the matter, took note of the proposition laid down in *Rohtas Industries Ltd. v. Rohtas Industries Staff Union*, 1976 (2) SCC 82 and also reproduced the observations made in *Dwarika Nath, v. I.T.O.*, AIR 1966 SC 81 and *Praga Tools Corporation v. C.A. Imanul* (1989) 1 SCC 385 and showed disagreement by observing that no limitation can be placed like one placed by the Bench in its order dated 30/9/1996, that writ of certiorari will not lie against the Sansthan.

34. In *Dwarika Nath v. I.T.O.*, AIR 1966 SC 81, the apex Court observed in the context of Article 226 as under :

‘This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England, but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.’

35. The observations of the Apex Court in *Praga Tools Corporation v. C.A. Imanul* (1989) 1 SCC 385, are reproduced hereinafter :

‘The term authority used in Article 226 in the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Court to issue writ for enforcement of the fundamental rights as well as nonfundamental rights. The words any person or authority used in Article 226, are, therefore, not be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No

matter by what means the duty is imposed if a positive obligation exists mandamus cannot be denied.

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states :

?To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract?. We share this view. The judicial control over the fastexpanding maze of bodies affecting the rights of the people should not be put into watertight 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. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.?

36. Admittedly, the language of Article 226 does not admit any limitation on the power of the High Court. The language of Article 226 shows that power can be exercised by the High Court when a body or authorities exercises its power in the discharge of its public duty and the person is aggrieved by the same.

37. In the case of U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey (1999) 1 SCC 741, the Apex Court while considering the scope of Article 226 of the Constitution of India with regard to judicial review as to whether it is limited to the field of public law and not private law observed that :

?Prima facie from the language of Article 226 there does not appear to exist such a divide between public law and private law. Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public function and private functions. Article 226 speak of direction and orders which can be issued to any person or authority including, in appropriate cases, any Government.?

The "Person" as defined under Section 2 (42) of the General Clauses Act shall include any company or association or body of individuals whether incorporated or not. When wrong is done to any person or citizen, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a society or association or body of individuals, whether incorporated or not or even an individual. Right that is infringed may be under Part III of the Constitution or any other right, which the law validly made, might confer upon him. This is subject to the condition that the High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party, however, may not be allowed to bypass the normal channel of civil litigation.

38. Once it is established/found that the body or person falls in the category of a

"person" or "authority" occurring in Article 226 of the Constitution as it performs functions of a public nature then it cannot be limited to one prerogative writs since every byelaw of a society falling under Article 12 is comprehended by the inclusive definition of "law under Article 13 (3) (a) of the Constitution, it being void to the extent of its inconsistency with the provisions of Part III of the Constitution this Court cannot decline to grant judicial review by a writ of certiorari against such a society on the ground that the relief claimed is found on breach of byelaws".

39. For the reasons aforesaid, the society like U.P. Ganna Kisan Sansthan can be characterized as a 'State' within the meaning of Article 12 of the Constitution (applying the test enumerated hereinabove), 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 byelaws or rules, can be corrected by way of a writ petition. This is not because the byelaws or the rules have the force of law, but on the ground that having framed the bye laws/rules prescribing the service condition 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 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 byelaws, (2) even if a Society cannot be characterized as a 'State' within the meaning of Article 12 (because of not fulfilling the tests enumerated hereinabove) even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a 'person' or an 'authority', within the meaning of Article 226 of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court will enforce such statutory public duty.

40. In the premise we hold, as stated above, that Ganna Kisan Sansthan is State within the meaning of Article 12 of the Constitution and a Writ in the nature of certiorari is maintainable against the Sansthan under Article 226 of the Constitution.

41. The questions referred by the Division Bench are answered accordingly.

42. Let the matter be listed before the appropriate Bench at the earliest for decision on merits.

Decided accordingly.