

(2018) 05 CAL CK 0187
In the Calcutta High Court
Case No : Writ Petition31397(W) of 2017

Ramprasad Dasgupta

APPELLANT

Vs

Nadia District Central Cooperative Bank Ltd. & Ors.

RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

West Bengal Cooperative Societies Act 2006 — Section 32(6)(a)
Right to Information Act, 2005 — Section 2(h)
Constitution Of India, 1950 — Article 12

Citation : (2018) 05 CAL CK 0187

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Utpal Majumder, Abhishek Banerjee, Sagnik Majumder, Soumyadeep Biswas

Final Decision : Disposed Of

Judgement

1. Affidavit of service filed in Court be kept with the records.
2. The writ petitioner was a Director elected to the Board of the Nadia District Central Cooperative Bank Ltd (Bank). He was also a Chairman and member of one Shaktinagar Samabay Krishi Unnayan Samity Ltd a Cooperative Agricultural Society (Society) and availed loans there from. He had defaulted in repayment of such loans.
3. An inspection was conducted at the instance of the Assistant Registrar Cooperative Societies, under the provisions of the West Bengal Cooperative Societies Act 2006. Apart from the petitioner's default in repayment of loans it was also found that there were gross irregularities in sanction of a Cash Credit and Service Loans to the petitioner. It was also found that the petitioner and the Secretary of the Society were enjoying a 3rd consecutive

term as office bearers of the Society contrary to Section 32 (6)(a) of the 2006 Act.

4. Based on the said report the Assistant Registrar recommended removal of the Petitioner and Secretary from the Board of the said Society. The

petitioner was also directed to be removed from the Directorship of the Bank.

5. The writ petitioner contends that he has repaid such loans. He also says that he was not heard personally before passing of such order.

6. On the earlier occasion, this Court directed the bank to produce records relating to the alleged repayment of loans by the writ petitioner.

7. The Bank submits that the particulars of repayment are with the respondent no.4 concerned and not with them.

8. However, a preliminary point of maintainability is urged by learned Counsel appearing for the bank. He submits that the Respondent No.1 is not

â??Stateâ? within the meaning of Article 12 of the Constitution of India. He submits that there is no pervasive State Control over the actual

functioning of the Bank. The Board of Directors is the highest authority and takes all its decisions. The Board itself is an elected body. The Statutory

Control of the Deposit Insurance and Credit Guarantee Corporation and the Reserve Bank of India is supervisory. The Authorities under the West

Bengal Cooperative Societies Act 2006, like the Registrar and others are only Appellate Authorities in some cases.

9. Learned Counsel for the bank relies upon a decision of the Honâ??ble Supreme Court in the case of S.S.Rana vs. Registrar, Coop. Societies &

Anr., reported in (2006) 11 Supreme Court Cases 634. In the said judgment, it was held that the first respondent therein being Kangra Central

Cooperative Bank Ltd. was not â??Stateâ? within the meaning of Article 12 of the Constitution of India. Paragraph 13 and 14 of the said judgment

are set out herein below:-

â??13. The decision of the seven-Judge Bench of this Court in Pradeep Kumar Biswas whereupon strong reliance has been placed, has no

application in the instant case. In that case, the Bench was deciding a question as to whether in view of the subsequent decisions of this Court, the law

was correctly laid down in Sabhajit Tewary v. Union of India and if not whether the same deserved to be overruled. The majority opined that the

Council of Scientific and Industrial Research (CSIR) was â??Stateâ? within the

meaning of Article 12 of the Constitution of India. This Court noticed the history of the formation thereof, its objects and functions, its management and control as also the extent of financial aid received by it. Apart from the said fact it was noticed by reason of an appropriate notification issued by the Central Government that CSIR was amenable to the jurisdiction of the Central Administrative Tribunal in terms of Section 14 (2) of the Administrative Tribunals Act, 1985. It was on the aforementioned premises, this Court opined that Sabhajit Tewary did not lay down the correct law. This Court reiterated the following six tests laid down in *Ajay Hasia v. Khalid*

Mujib Sehravardi: (Pradeep Kumar Biswas case. SCC pp.149-50, para 85)

â?? (1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor â?| whether the corporation enjoys monopoly status which is State conferred or State-protected.

Â (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5)..If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6)â??Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inferenceâ?? of the corporation being an instrumentality or agency of Government.â??

This Court further held : (Pradeep Kumar Biswas case, SCC p.134, para 40)

â??40. 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.â??

14. As Respondent 1 does not satisfy any of the tests laid down in Pradeep Kumar Biswas we are of the opinion that the High Court cannot be said to

have committed any error in arriving at a finding that the respondent Bank is not State within the meaning of Article 12 of the Constitution of India.

10. Learned Counsel for the bank also relies upon the judgment of the Honâ??ble Supreme Court in Thalappalam Service Cooperative Bank Ltd. vs.

State of Kerala, reported in (2013) 16 Supreme Court Cases 82. At Paragraph 69 of the said judgment, the Honâ??ble Supreme Court stated as

follows:-

â??69. We, therefore, hold that the Cooperative Societies registered under the Kerala Cooperative Societies Act will not fall within the definition of

â??public authorityâ? as defined under Section 2(h) of the RTI Act and the State Government Letter dated 5-5-2006 and the Circular dated 1-6-2006

issued by the Registrar of Cooperative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Cooperative Societies

Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government.

The appeals are, therefore, allowed as above, however, with no order as to costs.â??

11. It is, however, relevant to note that while the Honâ??ble Supreme Court was dealing with a case of a Cooperative Bank, it was held that the said

Cooperative bank therein was not â??Stateâ? within the meaning of Article 12 in the context of the expression â??Public Authorityâ? under

Section 2 (h) of the Right to Information Act, 2005. The above cited paragraph in the said judgment indicates that its ratio is not that No Cooperative

bank is â??Stateâ? under Article 12 of the Constitution of India. It was left for being decided in each case based on the materials to be furnished as

to whether a such Coop Society is State within the meaning of Article 12. Further the Honâ??ble Supreme Court has not applied in the said case the

public element test as laid down in the Ajay Hasia Case (Supra)

12. Per contra, learned Counsel for the writ petitioner relies upon the decision of the Honâ??ble Supreme Court in the case of Akalakunnam Village

Service Cooperative Bank Limited & Anr. vs. Binu N. & Ors reported in (2014) 9 SCC Pg 294. At Paragraph 6 of the said judgment, the Honâ??ble

Supreme Court has held as follows:

â??6. It has been contended on behalf of the writ petitioners that a writ would lie against a cooperative society when the duty owned by it is of a

public nature or when there is infringement of any statutory rules by a cooperative society. Their contention is that under Rule 182(5) of the Kerala

Cooperative Societies Rules, in respect of societies and posts not covered by Section 80(3-A) and Section 80-B of the Act, the appointments shall be

made by the committee after conducting the written examination and interview as per the guideline issued by the Registrar. The Government and the

Registrar have issued Exts. P-3 to P-6 guidelines under Rule 182(5) regarding the conduct of examination and interview to the post of Attender/Peon.

Ext. P-1 notification issued by the Bank is clearly in violation of the guidelines issued as per the circulars relied upon and there being statutory

violation, the writ petition would certainly lie against the Bank. It has also been submitted on behalf of the writ petitioners that the written test must

have been conducted by an outside agency, whereas, in the present case, the committee authorised the President to find out a suitable person to

conduct the written test. With regard to alternative remedy, it has been contended that the writ petitioners do not have any alternative remedy

available insofar as Section 69 is not applicable to them. It has been further contended by them that the writ petition was filed even before the conduct

of the written test and immediately after publication of the notification.â??

13. It was held that the Cooperative Bank therein was â??Stateâ?? within the meaning of Article 12 of the Constitution of India as it was discharging

public duties.

14. Learned Counsel for the writ petitioner also relies upon the decision of K.K. Saksena vs. International Commission on Irrigation and Drainage &

Ors., reported in (2015) 4 Supreme Court Cases 670.

15. At Paragraph 49 of the said judgment, the Honâ??ble Supreme Court has held as follows:

â??49. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable

to writ jurisdiction, all its decisions are not subject to judicial review, as already

pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In *Praga Tools Corpn. V. C.A. Imanuel*, as already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the employee concerned was seeking reinstatement to an office.â??

16. Applying the aforesaid decisions let us therefore examine the facts of the instant case and the extent of State Control on the Bank.

17. The Bank discharges public functions in the nature of banking and lending to small and medium and rural borrowers. The bank provides agricultural loans and credits to farmers. The Employees of a Cooperative Society are governed by the West Bengal Cooperative Societies Rules of

2011. These are primarily functions of the State. These in themselves qualify as a strong public element in the functioning of the bank.

18. I am inclined to follow the *Akalakunnam Village Service Cooperative Bank Limited & Anr. Decision* (supra) for the following reasons. The *Ajay*

Hasia (supra) public element test has not been applied in the *Thalappalam Case* (Supra). The *Ajay Hasia* test has been followed and reiterated in the

S.S.Rana Case (Supra). The *Thalappalam decision* (supra) is rendered by a two-Judge Bench. So, are the *Akalakunnam decision* (Supra) and *K.K.*

Saksena (Supra) decisions. The *Akalakunnam* (Supra) and *KK Saksena* (Supra) decisions are later than the *Thallappalam* (Supra) decisions.

19. It is settled law that a subsequent decision of a Bench of coordinate strength would prevail in precedent value as opposed to an earlier Bench of the similar strength.

20. In those circumstances in application of the ratio and dicta laid down in the *Akalakunnam decision* (Supra) and the test laid down in the *Ajay Hasia*

(Supra) test as reiterated in the *SS Rana Case* (supra), the writ petition is entertained and the preliminary objection of the Bank is rejected.

21. There is yet another way of addressing the issue. The basis of the removal of the writ petitioner was an Inquiry and order of the Registrar of Cooperative Societies. The said order is definitely amenable to the writ jurisdiction of this Court.

22. In the instant case, I find it just and proper that the writ petitioner should make a representation to the Registrar of Cooperative Society with

complete facts and raise his grievances before such Registrar.

23. If the writ petitioner makes a representation within a period of ten days from date, the Registrar shall proceed to take a decision thereon within a period of thirty days thereafter.

24. The Registrar shall pass a reasoned order and the same shall be communicated to the writ petitioner as expeditiously as possible and not later than

seven days from the date of such decision being taken.

25. With the aforesaid observations, W.P.31397(W) of 2017 is hereby disposed of. There shall be no order as to costs.

26. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.