

(2012) 09 GAU CK 0020
In the Gauhati High Court
Case No : Writ Petition (C) No. 833 of 2010

Salam Shangai Singh

APPELLANT

Vs

Manipur State Cooperative Bank Ltd. and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2013) 2 GLT 339

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : Kh. Tarunkumar and Mr. P. Jacob, for the Appellant; R.K. Nokulsana, Mr. Y. Sanajaoba, R.K. Milan and Mr. S. Napoleon, GA, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—By this writ petition, the petitioners, who are the employees of the Manipur State Co-operative Bank Limited (hereinafter called, "the Bank") have challenged the order, dated 01.12.2010, issued by the Managing Director of the Bank, whereby the respondent Nos. 5 to 19 were promoted to the post of Manager/Chief Officer (Scale II).

The petitioners' case is that, though the petitioners have been working as Deputy Manager/Deputy Chief Officer (Scale 1) with effect from 19.12.2009, the Bank respondent, arbitrarily and in a malafide way, without considering the cases of the writ petitioners promoted the respondent Nos. 5 to 19, including some others, who were juniors to the petitioners and thereby committed violation of the principles of natural justice, in issuing the promotion orders aforesaid. The writ petitioners have prayed for quashing the impugned promotion order, dated 01.12.2010 and also to issue direction to the respondent Nos. 1 to 4 to hold fresh Departmental Promotion Committee (in short, "DPC") and consider the cases of the petitioners for promotion.

The respondent No. 1, i.e. the Bank, apart from filing an affidavit-in-opposition,

filed an additional affidavit, while the respondent Nos. 5, 6 and 7 to 19 have also filed affidavit-in-opposition. The petitioners also filed affidavit-in-reply to the respondent No. 1's affidavit-in-opposition.

At the time of taking up this matter for hearing, in presence of the learned counsel, appearing for both the parties, Mr. R.K. Nokulsana, learned senior counsel, assisted by Mr. Y. Sanajaoa, appearing for the respondent Nos. 1, 2 and 5 to 19 raised the question of maintainability of the present writ petition, on the ground that the Manipur State Co-operative Bank Limited, not being a State instrumentality, the present writ petition, filed by the petitioners, challenging the act of the Bank, is not amenable to writ jurisdiction and as such the same is not maintainable in the eye of law. The learned senior counsel, appearing for the respondent Nos. 1, 2 and 5 to 19 urged upon this court to decide the question of maintainability, before entering into the merit of the case.

2. Mr. S. Nepoleaon, learned Government Advocate, appearing on behalf of respondent Nos. 3 and 4 has also adopted the said contention raised by the learned senior counsel.

3. Mr. Kh. Tarunkumar, learned counsel, appearing for the petitioners has also agreed to the proposition that the question of maintainability of the writ petition may be decided before entering into the merit of this writ petition.

4. Therefore, as agreed to by the learned counsel, appearing for both the parties and for the sake of convenience, the question of maintainability of the writ petition is to be taken up, as follows.

5. Mr. R.K. Nokulsana, learned senior counsel, appearing for the Bank contended that the Bank has been created by the Bye-Law of the Manipur State Co-operative Bank Limited, Imphal and that the said Bye-Law nowhere provides the provision for control of the Bank by the State Government in respect of the affairs of the Bank, inasmuch as, under the provisions of Chapter X of the Bye-Law, the Bank's functioning is managed and control by (a) General Body of the Bank; (b) the Board of Management; (c) the Executive Committee as decided by the Board; (d) the President of the Bank as decided by the Board and (e) the Managing Director/General Manager, as decided by the Board.

Referring to Clause 38 of the Bye-Law, the learned senior counsel has submitted that in the Board of Management of the Bank, the Government has only one nominee and as such the Government has no control over the Bank.

6. Regarding financial control over the Bank, the learned senior counsel, referring to the Fourth Amendment of the Manipur Co-operative Societies (Fourth Amendment) Act, 2010 (Manipur Act No. 10 of 2010) [in short, "the Amendment Act"], published on 28th October, 2010 in the Extra Ordinary Gazette, has submitted that as per clause 13 of the Amendment Act, Section 50 of the Manipur Co-operative Societies Act, 1976 has been amended, renumbering the Section 50 as 50(i) thereby prescribing that the State Government's subscription

to the share capital of the Bank shall not exceed 25% of the total paid tax share capital of such society. Therefore, it is submitted that as the State share cannot exceed more than 25%, the State has no effective financial control over the Bank.

7. The learned senior counsel has also submitted that as per the provision prescribed by Bye-Law 49, the entire administration and management of the Bank has been vested with the Board and not on the Government.

Referring to Clause 27 (ii) of the Bye-Law, the learned senior counsel has submitted that all regulation or service rule affecting the condition of the service of the staff and employee of the Bank is to be made by the Board and not by the Government.

The learned senior counsel has submitted that, as per clause 55(a) of the Bye-Law, the Managing Director/General Manager is to be appointed by the Board in accordance with the rules as may be framed in this behalf by the Board and approved by the Government of Manipur, RBI and NABARD and that the Board has the power to suspend or dismiss the General Manager with the approval of the Registrar of Co-operative Societies, Manipur, RBI and NABARD. Therefore, it is submitted that as the power to appoint or dismiss the Managing Director/General Manager has been vested with the Board, the State Government does not exercise any control over the Bank through the Managing Director/General Manager.

8. The learned senior counsel has submitted as the State has no "deep and pervasive control" over the Bank, and as such the Bank is not an instrumentality of the State. Therefore, it is contended that the acts done by the Bank cannot be questioned under the writ jurisdiction. In support of his contention, Mr. Nokulsana, learned senior counsel, has relied on the decisions held in the cases of-

(1) General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, ,

(2) Khaja Industries Vs. State of Maharashtra and Another, and

(3) R.K. Mani Singh Vs. Imphal Urban Co-Op. Bank Ltd. and Others, .

9. Adopting the said argument, advanced by the learned senior counsel, Mr. S. Napoleon, learned Government Advocate, Manipur, appearing for the State respondent Nos. 3 and 4 has submitted that the definition provided by Section 2(e) of the Bye-Law indicates that the Registrar means the Registrar of Co-operative Societies, Manipur and as such the functions discharged by the Registrar of Co-operative Societies, Manipur, cannot be treated as the function of the State Government. Referring to the object provided in clause 4(xiii) of the Bye-Laws, the learned Government Advocate has submitted that the Bank can frame rules and regulations and if necessary borrow such regulation from the Government and other institution in the matter of the staff and employees of the Bank. Therefore, it is submitted that the adoption of any service rules or

regulation, framed by the State Government does not determine the control over the Bank, inasmuch as the Bank can borrow such rules and regulation from the Government or other institution(s).

10. Referring to Annexure-A/2 i.e. the order dated 16.01.2010, passed by the Managing Director of the Bank, which has been annexed to the writ petition, the learned Government Advocate, Manipur has submitted that the copy of said order, issued by the Bank, was sent to the Registrar of the Co-operative Society, Manipur and not to the Government or its Secretaries. Therefore, it is submitted that as the action taken by the Bank is not communicated to the Government, it can't be deemed that the Bank functions under the control of the State. Referring to the order dated 30th November, 2010 Annexure-B/1 to the reply affidavit of the petitioner No. 2, the learned Government Advocate has submitted that, while extending the age of superannuation of the employees of the Bank from 59 years to 60 years, the Bank adopted the decision of the State Government in this regard. It is submitted that the fact that the said decision of the State Government was adopted indicates that the bank has the option either to adopt or not to adopt and as such said the adoption does not indicate that the service condition of the employees of the Bank was controlled by the State action.

11. Referring to the order dated 16th April, 2011, Annexure-B/2 of the affidavit in reply of the Petitioner No. 2, the learned Government Advocate has submitted that the Board of Administrators of the Bank decided to revise the pay scale of the Bank's employees, as per recommendation of the Pay Revision Sub-Committee and that the pay was fixed with effect from 01.01.2006 in conformity with the notification dated 5th May, 2010 of the State Government regarding payment of arrear. Therefore, it is submitted that the pay scale of the employee of the Bank was revised by the Board of Administrators and not by the State Government and that the pay was fixed only in conformity with the Government Notification and not as per direction or decision of the Government. Therefore, it is contended that the service matter of the staff and employees of the Bank is controlled, independently, by the Bank.

12. The learned Government Advocate has also submitted that there is nothing in the Bye-Law to show that the Managing Director should be a member of the Manipur Civil Service or a Government Officer, to be deputed by the Government. It is also submitted that as the Managing Director is appointed by the Board and he is required to act under the control of the Board, even if he belongs to the Civil Service, his appointment as Managing Director of the Bank, does not indicate that the State exercises its control over the functioning of the Bank, through the Managing Director.

13. Refuting the said argument, advanced by the learned senior counsel, appearing for the respondent nos. 1, 2 and 5 to 19 and also the argument put forward by the learned Government Advocate, appearing for the State respondent Nos. 3 and 4, Mr. Kh. Tarunkumar, learned counsel appearing for the petitioners, has strenuously submitted that the managing Director of the Bank,

being a senior Officer of the Manipur Civil Service and his appointment being made with the approval of the State Government, the functioning of the Bank is under the control of the State Government inasmuch as the Managing Director or the General Manager is responsible for general administration of the Bank.

The learned counsel for the petitioners, has also submitted that the Manipur State Co-operative Bank Ltd., being created by the Bye-Law, framed under the provisions of Manipur Co-operative Societies Act, the Bank aforesaid is a society constituted under the statutory provision of law and as such the Bank is an instrumentality of the State.

Referring to Bye-Law 27(ii) of the Bank, it is also submitted that as the service rule and the condition of service of the staff and employee of the Bank is framed u/s 144 of the Act, the act done by the Bank with regard to the condition and service of its employee can be examined in exercise of jurisdiction under Article 226 of the Constitution of India.

14. The learned counsel, appearing for the petitioners, referring to Annexure B/3 i.e. the proceeding of the Departmental Promotion Committee, as annexed to this writ petition, has also submitted that out of four members of the DPC, three members were Government officers and as such the Government exercised its control in respect of the service matter of the employees of the Bank. Referring to the orders dated 30th November, 2010 and 16th April, 2011 (Annexure-B/1 and B/2) respectively of the reply affidavit, filed by the petitioners on 28.08.2012, the learned counsel has submitted that, in view of the increase of the age of retirement of the employees of the State Government, the Bank also adopted the retirement age, as fixed by the State Government, in respect of its employees and that the fixation of pay, with effect from 01.01.2006, was done in conformity with the State Government Notification dated 5th May, 2010. Therefore, it is contended that, as the decision made by the State Government with regard to the age of retirement, fixation of pay scale etc. were made applicable to the employees of the Bank also, the terms and condition of the service of the employees depended on the decisions, taken by the Government. It is also contended that, apart from giving loan to its members, various co-operative societies and other bodies for their economic development the Bank implements various beneficial schemes of the State Government and as such the Bank used to function as an agent or organization of the State Government.

15. In support of his contention, the learned counsel, appearing for the petitioners has relied on the decisions held in the cases of-

(1) Shri Surendra Nath Kalita Vs. Assam Cooperative Apex Bank Limited & Ors., reported in (1989) 1 GLR 424,

(2) U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, and

(3) C. Lalliana Vs. Managing Director, Co-operative Apex Bank Ltd. and Another, .

16. Having heard the learned counsel, appearing for both the parties and perusing the pleadings as well as the materials available on record, I find that the crux of the dispute is whether the Manipur State Co-operative Bank Limited is a State instrumentality within the meaning of Article 12 of the Constitution of India. The question whether the Imphal Urban Co-operative Bank Limited is a State instrumentality came up for consideration in the case of R.K. Moni Singh (supra). The said matter was decided by a Division Bench of this Court holding that the respondent Bank was not an "other authority", within the meaning of Article 12 of the constitution of India and therefore, the said Bank not being an instrumentality of the State, the writ petition, filed against the respondents, by the petitioner, was not maintainable.

Admittedly, the respondent Bank was registered under the Co-operative Societies Act. In the above referred case, their Lordship of the Division Bench of this court referred to the case of Som Prakash Rekhi Vs. Union of India (UOI) and Another, , wherein the Apex Court referred to the following observations made in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

1. One thing is clear that if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
2. Existence of "deep and pervasive State control" may afford an indication that the corporation is a State agency or instrumentality.
3. It may also be relevant factor.....whether the corporation enjoys monopoly which is State conferred or State protected.
4. If the functions of the corporation are of public importance and, closely related to governmental functions, it would be relevant factor in classifying the corporation as an instrumentality or agency of Government.
5. Specifically, if a department of Government is transferred to a corporation it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government.

17. A Full Bench of this court in the case of Sahabuddin Choudhury Vs. State of Assam and Others , while deciding the question as to whether a Co-operative Society, registered under the Assam Co-operative society Act, 1949, was an "other authority" within the meaning of Article 12 of the Constitution of India, observed that the case of Nihar Sengupta Vs. Union Territory of Arunachal Pradesh and Others, did not lay down good law. As decided by the Full Bench, in the case of Sahabuddin Choudhury (supra), while examining the question of applicability of the writ jurisdiction on a Co-operative Society, it is not necessary to examine as to whether the Co-operative Society is an organization, over which the State has "deep and pervasive control" i.e. whether the Society is funded by the State Government or whether the society normally discharge the functions of

the State.

18. The Division Bench of this court noticed that in respect of the Imphal Urban Co-operative Bank, total 15 directors of the Board of Directors, two were nominated by the State Government and one by the Registrar of Cooperative Society. In view of the above, the court observed that, the management of the Co-operative Bank was not under the control of the State Government. Referring to Clause 37 (vi) of the Bye-Laws, the court observed that though the appointment of the Chief Executive officer (General Manager) and any major action against him can be taken only after obtaining prior written approval of the Registrar, the said provision alone does not lead to the conclusion that the control and the management of the affairs of the Co-operative Bank was vested in the Registrar of the Cooperative Society, Manipur.

19. The Division Bench also refused to accept the contention that the control vested in the Registrar of the Co-operative Society indicates that the State exercises control over the registered society. Rule 15 of the Staff Regulation provides that for any exigency or matters not specifically provided in the Staff Regulations, reference was required to be made to the relevant service rule of the Government. In this regard, their Lordship of the Division Bench observed that:

In our considered opinion the provision in rule 15 of the Staff Regulations does not in any way indicate that the Government has got deep and pervasive control over the Cooperative Bank.

The learned counsel, appearing for the petitioners has submitted that the decision rendered in R.K. Moni Singh (supra) related to the Imphal Cooperative Bank, but the present case relates to the Manipur State Co-operative Bank, which is Apex Bank of the State. Admittedly, both the Banks are different banks but both the banks are Cooperative Bank. The principles laid down in the case of R.K. Moni Singh (supra) with regard to the determination of the status of the Banks, is applicable to the case at hand.

In view of the above observation, made in the case of R.K. Moni Singh (supra), the appointment of the Managing Director (even if he is a member of the Manipur Civil Service) by the Board, in accordance with such rules as may be framed in this behalf by the Board and approved by the Government of Manipur, RBI and NABARD, does not, per say indicate that the State has control over the management of the Board of the Bank. A close reading of the Clause 55(a) of the Bye-Law will reveal that the Managing Director/General Manager is to be appointed by the Board, in accordance with such rules, as may be framed in this behalf and approved by the Government of Manipur, RBI and NABARD. The requirement of the approval relates to framing of the rules and not for appointment of the Managing Director. Once the rule is framed the Managing Director can be appointed without any approval from the Government.

20. Further as provided by Clause 55 (a), the Board has the power to suspend or

dismiss the Managing Director with the approval of the Registrar of Co-operative Society, Manipur and RBI and NABARD. For taking such action, no approval is required to be taken from the Government of Manipur. The approval is required to be taken from the Registrar of Co-operative Society, who acts as the functionary under the Co-operative Societies Act. Therefore, I find no force in the contention of the learned counsel, appearing for the petitioners, that the mood of appointment of the Managing Director and the provision prescribed for his suspension or dismissal indicates that the State has "deep and pervasive control" over the Bank.

21. Further, under clause 27 (ii) of the Bye-Law, the previous sanction of the Government is necessary in respect of making regulation consistent with the provision of the Act or Rules framed thereunder for any of the matters enumerated u/s 144 of the Manipur Cooperative Societies Act, 1976. Section 144 of the Cooperative Societies Act provides the power to the Board of the Land Development Bank to supervise the Land Development Bank and make regulations. Therefore, in order to make any regulation in respect of any matter as mentioned in Section 144 of the Act, the Board is to obtain sanction from the State. Such framing of regulation is subject to the approval of the trustee. This requirement of obtaining sanction is necessary only for framing regulation, that too, in respect of the matters mentioned u/s 144 of the Act. No such regulation can be made without the approval of the trustee. The use of the word "may" does not make the said requirement a mandatory one. Therefore, the requirement of sanction aforesaid does not indicate that the State has control over the function of the Bank.

22. In the Case of U.P. State Co-operative Land Development Bank Ltd. (supra), the question raised was as to whether the U.P. State Co-operative Land Development Bank was a State functionary. The Supreme Court noticed that as per service rules of the said Bank, the Managing Director and the Chief General Manager of the Bank were officials of the State and sent on deputation to the appellant Bank and that those officers were at the helm of the affairs of the Bank. Therefore, the Supreme Court observed that as the function of the Bank was control by the said two officials, on deputation, the State Government used to control the function of the said Bank. In the said case it was also noticed that service rules were framed under the statute and approved by the Statutory Body. In the said case, the Supreme Court referred to the case of 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, , wherein the Constitution Bench of the Supreme Court held that:

Regulation being framed under statutory provisions would have the force of law.

23. In the present case, the service rule is to be framed by the Board under Clause 27(ii) of the Bye-Law and not under any statute and no approval of any statutory body is necessary in respect of the Service Rules or Regulation framed

by the Board.

In the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur (supra), the question, which came up for consideration was as to whether the concerned Co-operative Sugar Mill was an instrumentality of the State or agency of the Government. The Supreme Court in the above referred case observed as follows:

6. The point raised is no longer res integra as the same is concluded by decisions of this Court. In the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , a Constitution Bench of this Court, while approving the test laid down in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , as to when a Corporation can be said to be an instrumentality or agency of the Government, observed at page 736 which runs thus:-

The tests for determining as to when a Corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression, "other authorities", it must be realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summaries the relevant tests gathered from the decision in the International Airport authority case as follows:

- (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. (SCC p. 507, para 14) (AIR at page 1639).
- (2) Whether the financial assistance of the State is so much as to meet almost entire expenditure of the Corporation, it would afford some indication of the Corporation being impregnated with Government character. (SCC p. 508, para 15) (AIR at page 1650).
- (3) It may also be relevant factor..... whether the Corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15) (AIR at page 1640).
- (4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. (SCC p. 508, para 15) (AIR at page 1640).
- (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. (SCC p. 509, para 16) (AIR at page 1640).

(6) "Specifically, if a department of Government is transferred to a Corporation, it would be a strong factor supportive of this inference" of the Corporation being an instrumentality or agency of Government. (SCC p. 510, para 18) (AIR at page 1641).

If on a consideration of these relevant factors it is found that the Corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, State, within the meaning of the expression in Article 12.

24. In the said case, the Supreme Court also referred to the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, wherein a Bench of seven Judges of the Supreme Court approved the principles laid down in the case of International Airport Authority (supra) in determining as to whether a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning and expression of "authority" under Article 12 of the Constitution of India. In the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur (supra), the Supreme Court observed that the real status of the Body in respect of the control of the Government is required to be looked into. In the said case, the Supreme Court observed that as the Government had only 50% share in the Sugar Mill, it did not exercise financial control over the Mill. It was also noticed that the ratio of the State nominee, in the management Committee of the Mill, was only one-third of the total membership and as such the management of the Committee was dominated by two-third members. In view of the above, it has been observed that, as the Government under the Bye-Law, had no power either to issue any direction to the Mill or determine its policy, the Mill was an autonomous body and that the State had no control in the functioning of the Mill much less deep and pervasive.

25. In the present case, the share of the State in respect of the capital of the Bank is only up to 25%. That apart, as provided by Section 38 of the Bye-Law, the Government has only one nominee against 20 members including the Managing Director/General Manager. Therefore, in view of the ratio laid down in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur (supra), the State having only 25% share of the total capital and one nominee in the Board has no deep and pervasive control over the Bank.

26. A perusal of the Bye-Law reveals that the membership of the Bank is open to State of Manipur, other Co-operative Societies, individuals above the age of 18 years, Joint Stock Companies, Firms, local Bodies, Corporation and Educational Institution etc. Under the provisions of the Bye-Laws, all decisions regarding functioning of the Bank is taken by the Board and the Managing Director/General Manager has no voting right. (NB:- Clause 38 of the Bye-Law). Under the Bye-Law, the Government has no power either to appoint the Managing Director or issue any direction to the Bank, much less controlling the function of the Bank.

27. Though the meeting of the DPC, held on 2nd November, 2010 (Annexure B/3 to the Writ Petition) was formed with three Government officials out of its four members, the said constitution was made only for a particular purpose i.e. for Departmental Promotion. The fact that the DPC included 3 Government Officers does not determine the status of the Bank. There is nothing in the Bye-Law to show that the DPC is to be constituted with Government officers. Therefore, such constitution does not indicate that the Government exercises control over the functioning of the Bank.

28. In the case of *C. Lalliana Vs. Managing Director, Co-operative Apex Bank Limited* (supra), a learned Single Judge of this Court observed that in the case of the Mizoram Co-operative Apex Bank Limited the State has the power in controlling the Board by appointing the members of the Board of Directors and Executive Committee. As the Govt. had the power to constitute the Board and the Executive Committee, the court held that the State exercised its control over the Bank. It has also been observed, in the said case, that the Government of Mizoram is committed to augment the Reserve Fund of the Bank by contributing the dividends received by it in excess of 3%. The learned Single Judge observed as follows:

This supreme authority of the Government of Mizoram may also be exercised in the absence of any loan or service if they deem their intervention to be necessary in the interest of the Members of the Bank or the Cooperative Movement in general. The Government or the duly authorized person may fix the salary of any such officer and declare it to be on a charge on the Bank....

29. In the case at hand, no such power to appoint the Board of Directors has been vested with the State of Manipur. In the above cited case, the learned single Judge, referring to the case of *Surendra Nath Kalita Vs. Assam Co-operative Bank Limited & Ors.*, reported in 1989 GLJ 54 (supra) quoted the following observations made, in *Surendra Nath Kalita* (supra) at paragraph 11.

11. Situated thus, from the record of this case, relevant Act, annual reports, Memorandum of association and bye laws, staff rules and the above notification of the Government of Assam dated 22.4.1986, we can safely hold that

(1) the State Government is the chief funding source for financial resources of the Bank;

(2) composition of the Administrative Council and the Board of Directors of the Bank is dominated by representatives appointed by the State Government;

(3) important rules and regulations for management of Bank and also regulation of the conditions of services of the members of the staff require approval of the State;

(4) the Bank has to comply with direction of the State Government on important matters;

(5) the Chief Executive of the Bank, namely, the Managing Directors is appointed by the State;

(6) the State Government has got power to reconstitute the Board of Directors as has been done in the year 1986.

Thus there is existence of deep and pervasive State control over the respondent-Bank. We have also noted that the respondent-Bank gets subsidies on various accounts from the State Government and also undertakes some activities on instructions of the Government including part of the government activities such as financing of Cooperative Societies and Cooperative Banks extending cash credit for distribution of essential commodities by co-operative sector and making available loans for agricultural purpose. Applying the tests as indicated above we hold that the respondent-Bank namely, the Assam Cooperative Apex Bank Ltd. is an instrumentality of the State and as such amenable to the writ jurisdiction of this Court.

30. In view of the above discussed status of the Mizoram Co-operative Apex Bank Limited and the Assam Co-operative Apex Bank Limited, it is found that the Manipur State Co-operative Bank Limited does not stand on the same footing and as such the decisions rendered in the above cited two cases will not help the petitioners. Rather, considering the manner of control exercised by the respective State Governments in respect of the Mizoram Co-operative Apex Bank and the Assam Co-operative Apex Bank, and absence of such control over the Manipur State Co-operative Bank Ltd., it can be concluded that the State Government of Manipur has no financial or administrative control over the Bank.

31. In view of what has been discussed above, I am of the considered opinion that the provisions prescribed by the Bye-Laws do not indicate that the State has "deep and pervasive control" over the Manipur State Cooperative Bank Ltd., Imphal. Therefore, it is held that the Manipur State Co-operative Bank Limited, Imphal is not a "state instrumentally" or "other authority", within the meaning of Article 12 of the Constitution of India and as such the writ petition, filed by the petitioners, is not maintainable. Accordingly, this writ petition stands dismissed. No costs.