

(2002) 09 AHC CK 0204
In the Allahabad High Court
Case No : Writ Petition No. 1487 of 2000

Vijay Behari Srivastava

APPELLANT

Vs

U.P. Postal Primary Co-operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12, 226

Citation : (2002) 5 AWC 4308

Hon'ble Judges : S.K. Sen, C.J;U.K. Dhaon, J;Sudhir Narain, J;S.R. Alam, J;Khem Karan, J

Bench : Full Bench

Advocate : Vikas Singh, for the Appellant; Amit Bose, for the Respondent

Final Decision : Allowed

Judgement

S. K. Sen, C.J.—The facts, inter alia, before the Division Bench, in short compass, are that Vijay Behari Srivastava, the writ Petitioner was appointed as Secretary in the U.P. Postal Primary Co-operative Bank Limited on 25.6/9.7.1988, in pursuance of resolution passed by the Committee of Management of the U.P. Postal Primary Co-operative Bank Limited. The said decision of the Committee of Management was approved by the Annual General Body Meeting of the said society on 29.6.1990. The Petitioner was confirmed on the post of Secretary in the said Bank on 1.7.1990, but on 3.2.1994, he was directed to hand over the charge of the post of Secretary to another person and was reverted to the post of Accountant. Being aggrieved against the said order, the Petitioner moved the instant writ petition under Article 226 of the Constitution of India seeking the following reliefs:

(i) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the Petitioner to function on the post of Secretary in the Bank.

(ii) issue a writ of mandamus or a writ, order or direction in the nature of

mandamus commanding/restraining the opposite parties not to revert the Petitioner from the post of Secretary of the Bank on which he was substantively appointed without following the procedure laid down in Regulations 84 and 85 of the U.P. Co-operative Societies Employees Service Regulations, 1975.

(iii) issue a writ of certiorari or a writ, order or direction in the nature of certiorari to summon the record of proceedings dated 1.9.2000 of the Committee of Management of the Bank and quash the decision of the Committee of Management for taking over the charge of the Petitioner from the post of Secretary and handing over the charge of the post of Accountant to the Petitioner.

(iv) grant such other order, or direction to which the Petitioner may be held entitled under the law.

(v) award costs of the writ petition in favour of the Petitioner.

2. The Petitioner has arrayed U.P. Postal Primary Co-operative Bank Limited through its Vice-Chairman as Respondent No. 1 in the present petition.

3. The case of the Petitioner is that the Bank is a primary co-operative society, whose area of operation is extended to more than one district. The Head Office of the Bank is at 3, Balmiki Marg, Lucknow with branches at Agra, Kanpur, Saharanpur, Varanasi, Jhansi, Allahabad, Bareilly, Nainital, Dehradun, etc. According to the Petitioner, service conditions of the employees of the primary co-operative society, having its area of operation in more than one district, are to be governed by the U.P. Co-operative Societies Institutional Service Board (hereinafter referred to as "the Board") constituted by the State Government by Notification No. 366-C/12C-3-36-71 dated 4.3.1972 issued u/s 122 of the U.P. Co-operative Societies Act, 1965 (hereinafter referred to as "the Act") and the amendment of the said notification made subsequently on 7.2.1973, published in the Gazette dated 24.4.1973. The notification by means of which the Board has been constituted is contained in Annexure-C.A. 1 to the counter-affidavit to the writ petition, Annexure-A1 to the Petitioner's application for amendment of the writ petition and Annexure-R.A. 1 to the rejoinder-affidavit. The regulations are known as U.P. Co-operative Societies Employees Service Regulations, 1975, made u/s 122 of the Act which reads as under:

122. Authority to control employees of co-operative societies.-

(1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society.

(2) The regulations framed under Sub-section (1) shall be subject to the

approval of the State Government and shall, after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede any regulations made u/s 121.

4. Regulation 84 (i) (e) of the regulations lays down that reduction in rank or grade held substantively by the employee is one of the penalties to be imposed against an employee for an act of indiscipline. Regulation 84 (iii) lays down that no penalty except censure shall be imposed unless a show cause notice has been given to the employee and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority. Likewise, Regulation 85 of the regulations provides for holding of disciplinary proceedings with due observance of the principles of natural justice which includes service of charge-sheet, submission of explanation, opportunity of defence and hearing if the employee so desires. Admittedly, Regulations 84 and 85 of the regulations have been violated.

5. The contention of the opposite parties to the writ petition is that the service conditions are not regulated by the notifications. When the matter came up before the Division Bench, it raised the questions in the manner as follows:

"Whether a Division Bench can hold that an earlier Full Bench decision is not binding precedent in view of subsequent decision or decisions of the Hon'ble Supreme Court, and as to whether a writ petition in the nature of certiorari will lie against a co-operative society or it comes within the meaning of the words "other authority" occurring in Article 226 of the Constitution of India should be considered by a larger Bench."

The matter accordingly came up before the Chief Justice for constitution of the larger Bench and, thereafter, this Bench was constituted and the matter was heard at length.

6. The question that arises for consideration is if the Division Bench can hold an earlier Full Bench decision as not a binding precedent in view of the subsequent decision or decisions of Hon'ble Supreme Court. Since the matter is now being considered by a larger Bench, the first question, namely, if the Division Bench can hold that an earlier Full Bench decision is not binding, becomes academic and the learned Counsel for the parties before us have not urged for decision/determination of the said question at this stage. We have, however, dealt with the same at the latter part of this judgment.

7. The other question which remains for consideration is whether a writ in the nature of certiorari will lie against a co-operative society or it comes within the meaning of the words "other authority" occurring in Article 226 of the Constitution of India.

8. Mr. Umesh Chandra, learned senior advocate on behalf of the Petitioner initially suggested that the writ petition is maintainable in view of the fact that the Respondent-co-operative society is discharging the public functions. He also

submitted that the Respondent-co-operative society is also governed by the statutory regulations and in the instant case, the statutory regulations have been violated. He also relied upon the Supreme Court decision in *Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another*, , and on its basis, has urged that it has to be held that the present writ petition is maintainable since in the case, on hand, the statutory regulations have been violated. He has pointed out that the Respondent-co-operative society being a public authority, discharges public functions and carries on important and useful financial transactions and as such, the same is amenable to writ jurisdiction.

9. The Division Bench, while referring the matter, took note of the fact that in *Jagveer Singh Vs. Chairman, Co-operative Textile Mills Ltd., Bulandshahr and another*, , in paragraph 13, it was held by the said Division Bench, inter alia, as follows:

"13. There is a Full Bench decision in *Radha Charan Sharma v. U.P. Co-operative Federation 1982 UPLBEC 89*, reliance on which has been placed by the learned single Judge in support of his conclusion that the Respondent-society is not instrumentality of State and that the writ petition is not maintainable against it but the same is no longer quotable as a binding precedent in view of recent Supreme Court decisions referred to hereinabove particularly the latest one in *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey(supra)*."

10. The Division Bench questioned the legality of such finding or observation of the other Division Bench which decided *Jagveer Singhaa's* case (*supra*) that in view of the recent Apex Court decision referred to therein, in paragraph 13, the Full Bench decision in the case of *Radha Charan Sharma v. U.P. Co-operative Federation 1982 UPLBEC 89*, is no longer quotable. Although, it is not necessary for us to go into the first question, namely, if the Division Bench can totally ignore the Full Bench decision in view of another Supreme Court decision on the point and make such observation, we proceed to deal with the said question in the manner stated hereinafter.

11. It is well-settled by several decisions of the Supreme Court including the decisions hereinafter referred to that for the purpose of determination of question under Article 12, namely, if the authority, in question, is an instrumentality of the State, deep and pervasive State control and the composition of management and functions discharged by such society, namely, if they relate to public affairs are required to be considered in order to arrive at a conclusion that a writ lies against such a body. In *Ajay Hasia v. Khalid Mujib AIR 1981 SC 481* , a society registered under the Societies Registration Act, 1860, running an Engineering College, refused to take admission of a student. On a writ petition instituted before the Apex Court, it was held that it was immaterial for determining whether the corporation or an authority is created by statute or under a statute. The test was whether it is an instrumentality or agency of the Government and not as to how it was created. The enquiry is to be not as to how

the juristic person is born but why it is brought into existence. The corporation may be statutory corporation created by statute or it may be a Government company or a company formed under the Companies Act or it may be a society registered under the Societies Registration Act or any other similar nature. After suverying various decisions and summarizing the relevant tests gathered from the decision in the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the following observations were made:

"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 Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, 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..."

The Apex Court summarized six tests gathered from the decision in International Airport Authority's case (supra). These tests are as follows:

- (1) Majority of share capitals of the Corporation/Authority/ establishment must be held by the Government ;
- (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the establishment, it would afford some indication of the establishment being impregnated with Government character ;
- (3) It may also be relevant factor, whether the establishment enjoys monopoly status which is State conferred or State protected ;
- (4) Existence of deep and pervasive State control may afford an indication that the establishment is a State agency or instrumentality of the State ;
- (5) If the functions of the establishment are of public importance and closely related to Government functions, it would be a relevant factor in classifying the establishment as an instrumentality or agency of the Government ; and (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.

12. In Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, , the question was whether the Institute of Constitutional and Parliamentary Studies (I.C.P.S.), registered under the Societies Registration Act, 1860, is "State" or "other authority" within the meaning of Article 12 of the Constitution of India. The Court, in para 3 of the report, observed thus:

"The main question for consideration now, therefore, is whether I.C.P.S. is

"State". For appropriate consideration of this question, it is necessary to look into the Constitution of the body, the purpose for which it has been created, the manner of its functioning including the mode of its funding and the broad features which have been found by this Court in several decisions to be relevant in the matter for determining a dispute of this type."

The Court further referring 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, observed:

"It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarized as under:

Whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance ; whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary ; whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to Governmental function. This particularization of relevant factors is however, not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is Government instrumentality or agency."

13. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Court emphasized that if the rights are purely of a private character, no mandamus can be issued, if the management of the college is purely of a private body with no public duty mandamus will not lie but if it is an obligation to perform public duty, the Court can issue a writ of mandamus against it under Article 226 of the Constitution of India. What is relevant is the nature of duty imposed on the body. It was observed, "... the duty must be judged on the facts of each case." In para 21 of the report, the comments of Prof. De Smith were noted as under:

"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."

14. The said principles have also been laid down by the Supreme Court in several

other cases, few of them are P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, ; 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, ; Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, ; Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], Bakhtawar Singh and Another Vs. Union of India (UOI) and Another, ; Ganapathi National Middle School v. M. Durai Kannan 1996 (6) SCC 46 The Mysore Paper Mills Ltd. Vs. The Mysore Paper Mills Officers' Association and Another, .

15. That apart, all the cases relating to the question in controversy were considered in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , wherein by majority judgment, the decision in Sabhajit Tewary Vs. Union of India (UOI) and Others, , was overruled holding that "Council of Scientific and Industrial Research" registered under the Societies Registration Act, 1860, is State within the meaning of Article 12 of the Constitution of India. On examining the objects and functions, it was found that C.S.I.R. was set up in the national interest to further economic welfare of the society by fostering planned industrial development in the country. It was further found that in the governing body, the President of C.S.I.R. is the Prime Minister and such subjugation of the governing body is subject to the will of the Central Government. The financial aid was given by the Central Government. It was, however, pointed out that when a corporation or society is an instrumentality or agency of Government, are to be considered keeping in view various factors, namely, the body is financially, functionally and administratively dominated by or under the control of the Government and whether such control is deep and pervasive and when the control is merely regulatory, whether under statute or otherwise, do not serve to make a body State. In paragraph 40 of the report, it was observed that:

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.

(Emphasis supplied)

16. A society registered under the Societies Registration Act, 1860, to a great extent, is controlled by the Registrar to the Societies. A society after it is

registered has to submit every year to list of the names, addresses and occupation of the governing council, directors, committee or other governing body interested with the management of the affairs of the society. The Registrar has a power u/s 22 of the Act to require any society to furnish in writing such information and documents within such time being ordinarily not less than two weeks from the date of receipt of order by the society, he may specify in the order in connection with the affairs of the society or any documents filed by the society under the Act. u/s 23 of the Act where the Registrar is of the opinion that it is necessary or expedient so to do, he may, by written order require any society to furnish its accounts or a copy of the statement of receipts of expenditure for any particular year duly audited by Chartered Accountant. He can also investigate the affairs of the societies u/s 24 of the Act. u/s 25, if there is a dispute in respect of election or continuance in office of office bearers of the society, he may refer it to the Prescribed Authority or decide it himself summarily on the conditions mentioned therein. Similarly, under the U.P. Co-operative Societies Act, 1965, the Registrar exercises the powers in regard to management and also decision of the Committee of Management of the co-operative societies. The Registrar can suspend a Committee of Management u/s 35 of the U.P. Co-operative Societies Act, 1965, seize the record u/s 37, remove an officer of the co-operative society u/s 38, decide the dispute as provided u/s 70, determine the terms of employment of a person in a society u/s 121, disciplinary control the employees of co-operative societies and annul resolution of co-operative society in certain cases u/s 128 of the Act.

17. The mere fact that the Registrar has a power to control the affairs of the society itself will not make a society a "State" unless other factors as enumerated in the decisions, referred to above, are existing. The supervision of these societies, as held in Pradeep Kumar Biswas's case (supra), shall be treated as regulatory and shall not be taken as a control by a State Authority. A society to be an "authority" is to be financially, functionally and administratively dominated by or under the control of Government. If such factors are missing, the mere fact that the control is regulatory of a society created or recognized under an Act will not itself make the society a "State" or "other authority" as contemplated under Article 12 of the Constitution of India.

18. In this connection, the finding recorded by a Division Bench in paragraph 6 of the judgment in Jagveer Singhaa's case (supra), at page 1109 of the report may be extracted below:

"6. However, even if co-operative societies registered under the provisions of the Act and the rules made thereunder are not held to be "State" within the meaning of Article 12 of the Constitution of India, regarding being had to the public nature of their functions we have no hesitation in holding that co-operative societies registered under the provisions of the U.P. Co-operative Societies Act, 1965 and the rules framed thereunder do satisfy the requirement of being "authority" within the meaning of Article 226 of the Constitution of India. It cannot be

gainsaid that the term "authority" has been used in Article 226 of the Constitution of India in a liberal sense unlike the term used in Article 12 of the Constitution of India. By virtue of various provisions contained in U.P. Co-operative Societies Act, 1965, including those relating to audit, enquiry and surcharge contained in Chapter VIII and the power to annul any resolution passed by the co-operative society as visualized by Section 128 of the Act, the Registrar exercises control over co-operative societies and as stated herein above the Registrar is also vested with the power to determine terms and conditions of employment including disciplinary control of employees in a co-operative society or a class of co-operative societies and, therefore, co-operative societies registered under the provisions of the U.P. Co-operative Societies Act, 1965, cannot claim immunity from judicial superintendence and control of the High Court under Article 226 of the Constitution. The Registrar, it may be noted, is appointed as such by the State Government as provided in Section 3 of the said Act. The co-operative society, therefore, cannot be equated with an individual and being engaged in various activities of public interest, the co-operative societies cannot claim immunity in respect of their actions, vis-a-vis, their employees from judicial superintendence and control of the High Court under Article 226 of the Constitution of India. In our opinion, co-operative societies registered under the Act are as such bound as State to follow the fundamental principles of reasonableness, fairness and transparency which, under the scheme of our Constitution are fundamental to governance of any democratic institution. Accordingly, we are of considered view that co-operative societies are amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India in respect of an adverse order passed against their employees irrespective of whether the action has been taken in exercise of any statutory power or in exercise of any power under any contract of service and the learned single Judge fell into error in dismissing the writ petition as not maintainable."

19. The view of the Division Bench in Jagveer Singhaa's case (supra) that every co-operative society can be treated as an "authority" within the meaning of Article 226 of the Constitution of India because of its control by the Registrar under the provisions of the Act, in our view, is incorrect. In Jagveer Singhaa's case (supra), the Division Bench further held that the view taken by the Full Bench in Radha Charan Sharma's case (supra) was inconsistent with the view taken by the Apex Court in U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey (supra). In U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey (supra), the facts were that the U.P. Co-operative Federation Ltd., employed the Petitioner therein as Sales Representative in its Co-operative Drugs Factory at Ranikhet. He was transferred as an Accountant-cum-Godownkeeper in the Branch Office of the Federation at Ghaziabad. A report of theft of fertilizers and misappropriation of money and materials was received by the Federation and the employee was suspended. He instituted a writ petition under Article 226 of the Constitution. The Division Bench referred three questions. The first question was whether co-operative society

which is an apex or State level co-operative society governed by the provisions of U.P. Co-operative Societies Act is statutory body or is "State" within the meaning of Article 12 of the Constitution. Referring the decision in Ajay Hasia's (supra), the Full Bench recorded finding that the Petitioner failed to prove that the Government controls the activities or decision making power of the managing body of the Federation. Paragraph 16 of the report in U.P. State Co-operative Land Development Bank Ltd.'s case (supra) reads thus:

"It is obvious that a juristic personality like a co-operative society which is registered under the Act but is otherwise free of Governmental control will not be an authority within meaning of Article 12. In the present case, it has been stressed that 40 to 60 per cent of the share-holding of the Federation is owned by the State Government. The President of the Federation is the Registrar of Co-operative Society, a Government servant, and the Secretary of the Federation is the Deputy Registrar, another Government servant. The Petitioner has not indicated what is the Constitution of the Federation in which organ or body of the Federation is the power of management and taking decisions resides. It has not been shown how far the Government controls the activities or decision making power of the managing authority of the Federation. In these circumstances, it is difficult to hold that the Federation was an authority within meaning of Article 12."

20. The decision in Radha Charan Sharma's case (supra), holding-on the peculiar facts and circumstances of that case-that the co-operative society was not "State" was based on the guidelines laid down in the case of Ajay Hasia's (supra) for determining whether a co-operative society is a "State" or not.

21. In U.P. State Co-operative Land Development Bank Ltd.'s case (supra), the facts were that Chandra Bhan Dubey, the Respondent therein, was working as Branch Accountant in Nakur Branch, district Saharanpur of U.P. State Co-operative Land Development Bank Ltd. He was charge-sheeted and dismissed from service on the ground that he committed embezzlement. He challenged the order before the High Court under Article 226 of the Constitution. The writ petition was allowed and when the matter was taken to the Supreme Court, one of the grounds raised was that the writ petition was not maintainable under Article 226 of the Constitution against the Bank. It was found that the society was registered under the U.P. Co-operative Societies Act and was also governed by the provisions of U.P. Co-operative Land Development Bank Act, 1964. The service conditions of the employees were governed by the U.P. Co-operative Societies Employees Service Regulations, 1975. In paragraph 21 of the report, the Apex Court recorded the following finding:

"21. We also find from the service rules that the Managing Director and Chief General Manager of the Appellant are officials of the State sent on deputation to the Appellant. These two officers are at the helm of the affairs of the Appellant. It is difficult to imagine a situation where a Government sends one of its employees on deputation to head a body or institution not controlled by that

Government even though the employee may be paid out of the funds of that body or institution unless there is a specific provision of law so entitling the Government. We also find that service rules have been framed under the statute and those rules have the approval of a statutory body. Exercise of power of dismissal by the Appellant has to be in accordance with the statutory regulations and with the approval of the statutory body. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, a Constitution Bench of this Court held that regulations being framed under statutory provisions would have the force of law."

In paragraph 27 of the report, the Apex Court further recorded the finding that:

"27. In view of the fact that control of the State Government on the Appellant is all-pervasive and the employees had statutory protection and, therefore, the Appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law."

In *Jagveer Singhaa's* case (*supra*), the Division Bench did not consider the finding recorded in *Chandra Bhan Dubey's* case (*supra*).

22. The management and control is one of the basic tests to be applied to determine whether any corporation, society or body is "State" or not. If the management is controlled by the Government and such control is deep pervasive, such person, body, society, or company shall be treated as a "State" within the meaning of Articles 12 and 226 of the Constitution. In *All India Sainik Schools Employees' Association v. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and Ors.* 1989 Supp (1) SCC 205, the Sainik School Society registered under the Societies Registration Act, 1860, was running schools. It was urged before the Court that it was not "State" as it is a society running schools and functioning under its own bye laws, rules, regulations and Memorandum of Association. The Court, on examining found that overall control vests in governmental authority. The main object of the society was to run schools and prepare students for the purpose of feeding the National Defence Academy. It was held that it was "State" within the meaning of Article 12 of the Constitution of India.

23. As enumerated in the decisions, referred to above, one of the tests was if the governing body is controlled by the Government either by having officers or authorities as member of the governing body or Government effectively controls it, it will be taken as "other State" or "authority" within the meaning of Article 12 of the Constitution of India.

24. Another test for determining as to whether a society or corporation is "State" or an "authority" within the meaning of Article 12 of the Constitution is as to who is controlling the finance of such society. In *B.S. Minhas Vs. Indian Statistical Institute and Others*, , the Petitioner filed a petition challenging the appointment of Respondent No. 1 as Director of Indian Statistical Institute. The question arose

whether the Statistical Institute, a society, registered under the Societies Registration Act is "State". It was held that as the institute receives grants from the Central Government to meet almost the entire expenditure of its plan and development activities, even all functions of the institute are controlled by the Government of India, and, therefore, it is an instrumentality of the Central Government within the meaning of Article 12 of the Constitution.

25. In Central Inland Water Transport Corporation (supra), the Central Inland Water Transport Corporation Limited, registered as a Government company as defined u/s 617 of the Companies Act, 1956, was held as "State" as it was financed by the Government and carrying out Governmental functions. Similar view was expressed in Mysore Paper Mills Ltd.'s case (supra), wherein the Mysore Paper Mills Ltd., the Government company as envisaged u/s 617 of the Companies Act having more than 97% of the share capital contributed by the State Government and the financial institutions controlled and belonging to the Government of India was held "State" within the meaning of Article 12 of the Constitution. It was further found that the State Government has deep and pervasive control of the Appellant company and its day-to-day administration, and, consequently the Appellant company was nothing but an instrumentality and agency of the State Government and the physical form of the company was merely a cloak or cover for the Government.

26. The control of a society by providing any financial aid was also emphasized in Pradeep Kumar Biswas's case (supra) in paragraphs 55 and 56 of the report, it was found that Council of Scientific and Industrial Research (C.S.I.R.) was getting 75% of the funds from grants made by the Government of India. Funds were also available generated by it from charges for rendering research and development works by it from various projects taken by it. In Chander Mohan Khanna's case (supra), it was, however, emphasized that the mere financial assistance itself will not make a society an instrumentality of the Government unless the functions of the institution are of public importance and related to Governmental functions. It was observed as under:

"Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the Government, it would afford some indication of the body being impregnated with Government character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State control may afford an indication. If the functions of the institution are of public importance and related to Governmental functions, it would also be a relevant factor. There are merely indicative indicia and are by no means conclusive or clinching in any case. (See (i) Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (ii) R. D. Shetty v. International Airport Authority of India, (iii) Ajay Hasia v. Khalid Mujib Sehravardi and (iv) Som Prakash Rekhi v. Union of India.)"

On the facts, the N.C.E.R.T. was not held "State" within the meaning of Article

12 of the Constitution.

27. Now we will deal with the topic "obligation to follow the statutory rules". If a society, corporation or company is an authority within the meaning of Article 12 of the Constitution, it is obliged to follow the statutory rules in regard to its function or regulation in regard to service matters of its employees. In *Administrator, Konch Sahakari Kraya Vikraya Samiti Ltd. Vs. Sarnam Singh and Others*, , the Respondent therein was removed from service from the co-operative society from the post of Secretary u/s 38 of the U.P. Co-operative Societies Act, 1965. The Court held that the writ petition is maintainable under Article 226 of the Constitution. The Court observed thus:

"The scheme of the enactment clearly shows that the order of removal from service of Secretary of a Co-operative Society made under Sub-section (1) of Section 38 of the society or that under Sub-section (2) of Section 38 by the Registrar is, therefore, statutory in nature. For this reason alone, it must be held that such an order is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. The view taken by the High Court that the writ petition was maintainable in the present case does not, therefore, call for any interference."

28. In *Chandra Bhan Dubey's* case (supra), it was held that U.P. State Co-operative Land Development Bank Ltd.-an authority controlled by the State Government and the service conditions of its employees particularly with regard to disciplinary proceedings against them are statutory in nature and thus, the writ petition is maintainable. It was found that the employees were governed by the U.P. Co-operative Societies Employees' Service Regulations, 1975 and if there was any violation of the rules, the High Court can exercise its power under Article 226 of the Constitution. In *Pradeep Kumar Biswas's* case (supra), where the Junior Stenographers with the Council of Scientific and Industrial Research (C.S.I.R.) filed a writ petition under Article 226 of the Constitution, claiming parity of remuneration with Stenographers, who were recruited to C.S.I.R., was held that writ petition under Article 226 of the Constitution was maintainable.

29. The Division Bench in *Jagveer Singhaa's* case (supra), on finding that the writ petition was maintainable against the society, remitted back the matter to the learned single Judge for deciding it on merits. While remanding the matter, in paragraph 13 of the report, commented on the Full Bench decision that:

"There is a Full Bench decision in *Radha Charan Sharma v. U.P. Co-operative Federation* 1982 UPLBEC 89, reliance on which has been placed by the learned single Judge in support of his conclusion that the Respondent society is not instrumentality of State and that the writ petition is not maintainable against it but the same is no longer quotable as a binding precedent in view of recent Supreme Court decisions referred to hereinabove, particularly, the latest one in *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey* (supra)."

The Court did not consider that in the Full Bench decision in Radha Charan Sharma's case (*supra*), the Court had recorded a finding on facts that U.P. Co-operative Federation was not a society and secondly, even if it was a society, there was no statutory rule which was violated by such society. Paragraph 11 of the said judgment, which is relevant for the purposes of the instant case, is being extracted below:

"Learned Counsel for the Petitioner invited our attention to the U.P. Co-operative Societies Employees Service Regulations, 1975. They came into force on July 3, 1975. There is nothing in these regulations indicating that they shall have retrospective effect so as to cover the order of suspension passed in 1969. Clause (a) of Sub-rule (vii) of Regulation 85 provides that an employee, who is under suspension on the date of coming into force of these regulations shall continue to draw such portion of pay and such allowances as he was allowed to draw for the period of suspension. This only shows that the pre-existing rules will continue to operate and apply to an employee under suspension. In the present case, Rule 20 of the 1956 rules provide that a suspended employee shall be entitled to 1/4 of his emoluments as subsistence allowance. Under Regulation 85 of 1975 Regulations, the subsistence allowance is to be equal to 1/3 of the emoluments. In spite of it, for employees who were under suspension on the date of coming into force of these regulations, the pre-existing rules have been made to apply. This does not show that the regulations of 1975 have any retrospective operation. Further, learned Counsel for Petitioner was unable to point out any particular regulation which may be said to have been violated by the Respondents in passing the impugned order of suspension. In the view, it seems unnecessary to decide whether the Respondent-Federation is a "State" within meaning of that expression in Article 12 of the Constitution so as to amenable to a writ petition."

30. In the light of foregoing discussions, we answer question as to whether a writ petition in the nature of certiorari will lie against a co-operative society or it comes within the meaning of the words "other authority" occurring in Article 226 of the Constitution, as follows:

The writ petition in the nature of certiorari will lie against a co-operative 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 culled 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 co-operative society by the Government.
- (3) The function of the co-operative 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 (6) Statutory violations or non-compliance of it by an authority under the Act.

31. It is made clear that there is no straightjacket formula to point out as to when a co-operative society is an "authority" but it has to be considered in the light of various factors enumerated in the decisions of the Supreme Court.

32. It is also not necessary that all tests enumerated above, be existing to determine that a society is an "authority" within the meaning of Article 226 of the Constitution. It is also clarified that mere regulatory provision in the co-operative society by the Registrar or other authorities, shall not make the Managing Body/Committee as an authority as observed in paragraph 40 of the report in Pradeep Kumar Biswas's case (supra). The Court may, however, decline to entertain the writ petition if it finds that the Petitioner has alternative remedy to ventilate his grievances.

33. Now coming to the question as to whether a Division Bench can hold that an earlier Full Bench decision is not binding precedent in view of subsequent decision or decisions of the Supreme Court, as already stated in the body of this judgment, this question need not be answered by us in view of the finding we have already recorded and also in view of the fact that the parties have also suggested to us that the question has become redundant in view of the matter taken up by the Supreme Court.

34. Although the decision of the Supreme Court is binding, the propriety, however, demands that if there is a Division Bench decision, the single Judge shall refer to a larger Bench, if the Division Bench decision is contrary. Similarly, judicial discipline demands that the Division Bench should not examine de novo an issue that is concluded by the decision of a Full Bench of that Court. In this connection, judgment and decision in the State of U.P. and another Vs. C.L. Agrawal and another, etc., , may be taken note of. In paragraph 19, at page 10 of the report, the Supreme Court held and observed as follows:

"19. We are dismayed that the Division Bench hearing the said writ petition should have proposed to examine the issue "notwithstanding the aforesaid pronouncement of the Full Bench judgment...." If the judgments in the cases of Supreme Court Employees' Welfare Association and H. C. Puttaswamy were cited and the Respondents to the said writ petition submitted that the Full Bench judgment was erroneous by reason thereof, the proper course for the Division Bench to follow, if it found any merit in the submission, was to refer the said writ petition to Full Bench. Judicial discipline requires that a Division Bench should not examine de novo an issue that is concluded by the decision of a Full Bench of that High Court."

We feel that the proper course for the Division Bench was to send the matter to Chief Justice for reference to a larger Bench. So, this question is answered accordingly.

35. In view of the finding, we have recorded that in respect of each co-operative society, the matter has to be gone into in details and on the basis of the material that may be available, it has to be found out if the particular society comes under the purview of Article 12 of the Constitution of India and also for the purpose of determination if the said authority is amenable to the writ jurisdiction of the High Court.

36. Accordingly, the questions, quoted at pages 4 and 5 of this judgment, are answered and we refer the matter to the appropriate Division Bench to decide the matter in the light of the observations made by us.