

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No.92 OF 2021 (FILING)

1. Mr. Vassudev Madkaikar, H. No. 694, Manaswada, Kundaim, Ponda Goa.
2. Mr. Shekhar G. Naik, Flat. No. B-203, Stars Residency Behind Collectorate Office, Fatorda Bolepand, Margao, Goa.
3. Mr. Umesh Pilgaonkar H. No. C-18-158, Odlem Bhatt, Taleigao Goa-403002.
4. Mr. Naresh Jaideo Parkar, H. No. 67, Thorlemol, Kale, Sanguem Goa 403704.
5. Mrs. Varsha Dhaimodkar, 207-A, 1st floor, Harmony Coop. Housing Sty, Vodlem Bhat, Taleigao, Tiswadi Goa.
6. Mr. Muller Fernandes, D-10, Row Villa, Prabhu Residency, Opp. V.P. Socorro, Porvorim, Bardez-Goa.
7. Mr. Sharad S. Gad, H. 414, Vagalim, P.O. Oxel Siolim, Bardez-Goa 403517.
8. Mr. Premanand Pednekar, H. No.1067, Khawat, Poiginim, Cancona Goa 403702.
9. Mr. Girish N.S. Usgaonkar Mangirish, Shantadurga Housing Board Colony, Opp New Bus Stand, Ponda Goa.
10. Mr. Satish K. Bagve, H. No.127/1, Mini Satelite Township, Housing Board, Colvale, Bardez-Goa.

11. Mr. Pradeep U. Avkhale, H. No.125, Kare Khazan Wada, Viridi Sanquelim Goa.
12. Mr. Uday P. Dessai, H. No.526, Pongir Wal, Pontimol, Curchorem Goa-403706.
13. Mr. Nitant R. Chodankar, H. No.555, Vaikunth Niwas, Opp. PWD Office, Baina, Vasco Da Gama, Goa-403802.
14. Mr. Giri K. Naik, H. No. 469, Undir Bandora, Ponda Goa.
15. Mr. Rajesh K. Dhond, H. No. 33, Nagzorwada, Bhaili Peth, Bicholim Goa 403504.
16. Mr. Prashant V. Gaonkar, Plot No. 3, H. No.169/41, Bethora Road, Curti, Ponda Goa.
17. Mr. Anil R. Parab, H. No. 614/1, Shirolwadi, Mulgao, Post Assonora, Mulgao, Bicholim Goa.403503.
18. Mr. Vishant Mashelkar, H. No.131, Chincholem, P.O. Caranzalem, Taleigao Goa.
19. Mrs. Rohini J.B. Prabhu, Nr. Satyanarayan Temple, Cone, Priol Mardol-Goa.
20. Mrs. Sarita S. Lotlikar, Flat. No. 7, Larose, Mangorhill, Vasco Goa 403803.
21. Mrs. Seema N. Chodankar, H. No. 526, Pongir Wal, Pontimol, Curchorem Goa 403706.

22. Mrs. Sweta Bandodkar, H. No. 611, Fatorda, Margao Goa.
23. Mr. Subodh Sawant H. No. 392, Sawant Wada, Amona P.O. Marcel Goa 403107.
24. Mrs. Hema S. Manerkar, Sundarpeth, Nr. Maruti Temple, Sankhali Goa.
25. Mrs. Leena Salelkar, H. No. 18, Bamansai, Sanguem Goa.
26. Mr. Prashant R. Naik, H. No. 479, Abmekhand Verem Bardez-Goa 403114.
27. Mr. Bhushan P. Salkar, H. No. 193/4, Prabhuwada, Calangute Bardez-Goa.
28. Mr. Rakesh Sinari Gaonkar, H. No. 23/2, Pimplewada, Amona P.O. Marcel, Bicholim Goa.
29. Mr. Ramanand T. Tanksali, Flat No. RD/1, Satt Aadhar Complex, Karaswada Mapusa Goa.
30. Mr. Prashant B. Thakkar, H. No. 378, Shirolwadi, P. O. Assonora, Mulgao Bicholim Goa.
31. Mrs. Shubhangi Kesarkar, Shivkrupa, H. No.117, Narayan Nagar, Honda Sattari Goa.
32. Mr. Shivaji Gad, H. No. 345, Baherinwada, Keri, Sattari Goa.
33. Mr. Sanjay Saraf, H. No. 142, Gaonkarwada, P.O. Assonora, Mulgao Bicholim Goa.

34. Mrs. Anusuya S. Fadte, H. No. 2089,
Opp. Mahamaya Temple, Borde,
Bicholim Goa.
35. Mr. Deepak Malik, H. No. 722,
Malikwada, Morlem, Sattari Goa.
36. Mr. Narayan Komarpant, H. No. 241,
Colomb, Patnem, Canacona Goa
403702.
37. Mr. Shankar M. Naik,
H. No.10, Konadi,
Korgao, Pernem Goa.
38. Mr. Ramchandra L. Naik, H. No. 136,
Cuelim Murdi, P.O. Casaulim Salcete
Goa 403712.
39. Mr. Mahadev S. Shirodkar, H. No. 73,
Orulem, Vasco, Goa 403802.
40. Mr. Sandeep Palkar, H. No. 518, Saideep,
Nr. Sateri Temple, Palem, Shirdao Goa.
41. Mr. Vishwas Naik, H. No. 131,
Maimollem, Vasco Da Gama, Goa
403802.
42. Mr. Sanjay M. Naik, H. No. 479, Desai
Bhat, Adpoi, Durbhat, Ponda, Goa.
43. Mr. Ozario Adolfo Carvalho, H. No. 58,
Consua, Cortalim, P.O. Verna Salcete-
Goa. Petitioners

Versus

1. State of Goa Through it's Chief Secretary,
Secretariat-Govt. of Goa, Alto Porvorim,
Bardez,Goa.

2. The Registrar of Co-operative Societies,
Government of Goa, Sahakar Sankul,
EDC Patto Plaza, Panaji, Goa.
3. The Goa State Co-operative Bank Ltd.
Through it's Managing Director Sahakar
Sankul, EDC Patto Plaza, Panaji, Goa. Respondents

Mr S. D. Lotlikar, Senior Advocate with Mr. Chaitanya Padgaonkar
and Mr. Jayant Karn, Advocates for the Petitioners.

Mr. Devidas J. Pangam, Advocate General with Ms. Sapna
Mordekar, Additional Government Advocate for Respondents No.1
and 2.

Mr. Girish Sardessai with Mr. Prasanna Chawdikar, Ms. S. Bangera
and Ms. N. Gaonkar, Advocates for the Respondent No.3.

Mr. Vivek Rodrigues with Mr. Vithal Naik, Advocate for the
Intervenor.

**Coram :- M. S. SONAK,
DAMA SESHADRI NAIDU,
BHARATI H. DANGRE, JJJ.**

**Reserved on: 08.02.2021
Pronounced on: 05.03.2021**

JUDGMENT: (Per BHARATI H. DANGRE, J.)

1. The cleavage of opinions between the two sets of
perspectives on the issue as to whether a 'Goa State Cooperative

Bank' is a 'State' within the meaning of Article 12 and whether the said Bank is discharging any public function, so as to render it amenable to the writ jurisdiction of this Court under Article 226 is the issue placed for consideration of this Full Bench.

The two division benches of this Court, in *Ganesh Morto Naik v/s. Goa State Co-operative Bank Ltd.*,¹ and in another case of *Surendra J. Kalangutkar v/s. Goa State Cooperative Bank Ltd.*,² ruled that the Goa State Cooperative Bank Ltd. (hereinafter referred to as GSCB) is a 'State' for the purpose of Article 12 and that since it is discharging public functions, it is amenable to writ jurisdiction under Article 226 of the Constitution of India. On the other hand, the judgment delivered at Aurangabad, in case of *Shri Suresh Bhanudas Shinde & Anr v/s. State of Maharashtra & Ors*.³ has taken a contradictory view, when confronted with the issue whether the District Cooperative Bank Ltd. is a 'State', in the backdrop of the grievances raised by one of its employees and held that the said Bank is not a 'State' within the meaning of Article 12 and even the exercise of writ jurisdiction was refused since the contractual terms between the employer and employee were held to be not subjected to any control of the State Government. Relegating the petitioner to avail other remedies available under the

1 (1991) SCC OnLine Bom 211

2 (2016) SCC OnLine Bom 2587

3 Writ Petition No.334 of 2018

law, the writ petition was dismissed. Running parallel to the said view is the decision of the Full Bench of this Court in ***Shamrao Vithal Co-operative Bank Limited v/s. Padubidri Pattabhiram Bhat***⁴, which ruled that Multi State Co-operative Bank registered under the Maharashtra State Cooperative Societies Act, 1984 is not a 'State' within the meaning of Article 12, though it is governed by the Banking Regulations Act, 1949 and it performs public functions.

2. In view of the aforesaid conflicting decisions, the Division Bench(Justice M. S. Sonak and Justice Bharati Dangre, JJ.) of this Court while dealing with **Writ Petition no.92/2021, *Vassudev Madkaikar & Others v/s. State of Goa & Others*** deemed it appropriate to resolve the said contentious issues, as such issues recur in various matters, relating not only to the GSCB but also other Cooperative banks in the State of Goa and referred the matter for a decision by a Larger Bench. In terms of the said reference, the Hon'ble The Chief Justice was pleased to constitute the Larger Bench in terms of Chapter I, Rule 8 of the Bombay High Court Appellate Side Rules.

4 AIR (1993) BOM 91

3. The question for our consideration, in light of the reference order can be precisely and accurately framed as under:

- i) Whether Goa State Cooperative Bank Ltd. is a 'State' or any instrumentality thereof, for the purposes of Article 12 of the Constitution of India.
- ii) In case GSCB is not a 'State' within the meaning of Article 12, whether it performs any public functions, which would warrant issuance of writ in the nature of mandamus in discharge of its performance of the public functions.

Brief submissions:

The brief submissions advanced in favour, and against the reference question by respective parties:

4. In resolving the conflict, we are assisted by the learned Senior Counsel, Shri S. D. Lotlikar alongwith Mr. Chaitanya Padgaonkar representing the petitioner, the learned Advocate General Mr. Devidas J. Pangam with Ms. Sapna Mordekar, Additional Government Advocate and also by Mr. Girish Sardessai for the Respondent No.3-GSCB and Mr. Vivek Rodrigues for the Intervenor. We have also heard the learned Senior Counsel Mrs. Agni in support of the proposition that GSCB is a 'State' and a writ would lie against it.

5. From the erudite submissions advanced by the illustrious counsels, though prolix in nature, the crystallate which emerges from the concentrate of distillate is capitulated and reproduced by us.

The learned Senior Counsel Mr. Lotlikar strongly lean on the judgment of this Court in case of ***Ganesh Morto Naik*** (supra) and ***Surendra J. Kalangutkar*** (supra) in support of his submission that GSCB is a 'State' and it is amenable to the writ jurisdiction of this Court. His submission is, the GSCB is peculiar in its character, being the Apex bank, only one of its kind in the State and all other cooperative societies being its members and shareholders. According to him, the bank is involved in financing the members for undertaking agricultural and rural development activities and to finance the cooperative societies. It subscribe for the share capital of other cooperative societies and this is how it promote, protect and share the economic interest of its members. He would further highlight the uniqueness of the bank by submitting that the said bank is declared as a State Cooperative Bank and State Land Development Bank within the meaning and definition under clause 2(u) and 2(v) of the National Bank for Agriculture and Rural Development Act, 1981 vide notification dated 27.03.2000.

The learned Senior Counsel bank on the bye-laws

framed by the Scheduled Bank as approved by the Registrar of Cooperative Societies on 29.09.2017, which according to him charter out its objectives and the modality of its operation, and it reflect the pervasive control of the State over the Bank in the aspect of administration, management, finances and also reveal its true function which are of public importance. By relying on clause No. IV of the bye-laws captioned as "CAPITAL", which prescribe the Share Capital of the bank, and the bifurcation of the Share Capital into Shares of Class 'A' to be allotted only to cooperative societies registered or deemed to have been registered whereas the 'B' Class Shares to be allotted only to Government of India, Government of Goa, NABARD, NCBC, HUDCO and any other institutions/agencies owned or controlled by the appropriate Government, and 'C' Class Shares being allotted to individuals and corporations owned or controlled by the corporations/associations and on the basis of the said authorised share capital. The submissions advanced is to the effect that the State Government is a major stake holder in the share capital contribution and is a chief funding source. In order to demonstrate the deep and pervasive control of the State over the Bank, Mr. Lotlikar has invited our attention to various clauses in the bye-laws including clause no.22 which empower the Registrar to convene a meeting when there is a failure on part of the bank to call for the same and the bye-law no.

26(xii) which make it imperative for the Bank to take up the subject of directions/directives issued by the Registrar or the Government for consideration in the Annual General Meeting. To establish the control, Mr. Lotlikar rely upon bye-law no.28 relating to composition of the Board of Directors which include 2 Directors being Secretary (Finance) and Registrar of Co-operative Societies or his representative as the nominated Director. This, according to Mr. Lotlikar, pinpoint towards the control of the State Government over the affairs of the Bank coupled with, the co-option of 3 Directors as per the RBI guidelines as functional Directors. He would also rely on the Code of Conduct framed on 21.09.2010 to be adhered to by the Board of Directors of the Bank as per the NABARD circular which ensure adoption of proper HR policies in relation to recruitment, placement, promotion, transfer and training as well as observance of statutory requirements and guidelines issued by Central Government/RBI/NABARD/State Government. To demonstrate the pervasive control of the Government, the learned Counsel submit that another indicia is the recruitment rules for the employees being framed. Approval of the bye-laws by the Registrar according to Mr. Lotlikar reveal the financial as well as administrative control.

Relying upon the parameters laid down by the Apex Court in case of ***Ramana Dayaram Shetty v/s. The International***

*Airport Authority of India & Ors.*⁵ as well as on the judgment of the Apex Court in case of *Ajay Hasia v/s. Khalid Mujib Sehravardi & Ors*⁶, the learned Counsel would urge that the GSCB satisfy the test of all pervasive control and therefore is a "State".

6. By inviting our attention to the directive, principles of State Policy, enshrined in the Constitution in form of Article 43B, which mandate a State to make an endeavour to promote voluntary formation, autonomous functions, democratic control and professional management of Cooperative Societies coupled with Article 48, the submission of Mr. Lotlikar is GSCB is an institution which discharge the function of public importance. Mr. Lotlikar submit that the GSCB undertake all things which are incidental and conducive to the promotion or the advancement of the banking business and since it aim at promoting, protecting and sharing the economic interest, on cooperative principles and since banking business is of great significance in the present era, the functions discharged by GSCB are of public importance. According to him, banking is a predominant sector of great importance in the current scenario and therefore, he submit that the full bench of this Court in *Shamrao Vithal* did not conclusively declare the law. Another

5 (1979) 3 SCC 489

6 (1981) 1 SCC 722

angle of the arguments of Shri Lotlikar is on the issue touching the merits of the matter and he would urge that the duty to act fairly will not depend on whether it is a State and his submission is that even if GSCB is not held to be a State, it will be still amenable to the writ jurisdiction of this Court and whenever the bank as an employer infringes the fundamental right of its employees by acting in utter violation of principle of natural justice, it is permissible for the writ Court to intervene and issue a writ in the nature of mandamus since the Bank itself indulges in commercial business of banking, a function of public importance. He has placed reliance on the following judgments in support of his submissions:

(1) *Smt. Beena @ Meena Sharma v/s. State of Rajasthan*⁷

(2) *Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology*⁸

(3) *M.P. State Co-op. Dairy Fedn. Ltd. & Anr. V/s. Rajnesh Kumar Jamindar & Ors*⁹

(4) *Ramesh Ahluwalia v/s. State of Punjab & Ors.*¹⁰

7. Opposing the aforesaid submissions the learned Advocate General for the State would submit that the test evolved by the Apex Court in case of ***Ramana Dayaram Shetty*** (supra) is

7 (2016) (4) RLW 3037

8 (2002) 5 SCC 5111

9 (2009) 15 SCC 221

10 (2012) 12 SCC 331

not a conclusive test but is indicative in determining whether a particular entity is an instrumentality of the Government. Relying upon the said decision, the learned Advocate General would canvass that the Apex Court has categorically held that while stressing the necessity of a wider meaning being conferred on the expression "other authorities", it cannot be stretched so far as to rope in every autonomous body with some nexus with the Government. Invoking the ratio laid down by the authoritative pronouncements, the learned Advocate General submit that the State of Goa do not hold the entire share capital in the bank which amount to ₹82.45 crore, as on date and the share holding of the State is merely ₹19.66 crores whereas that of the individuals is ₹55.6 crores. His submission is that the share capital held by the State with the bank is in the nature of the loans advanced. By submitting that the Goa State Cooperative Bank (GSCB) do not enjoy monopoly and the State do not exercise deep and pervasive control over its functions and the bye-laws of the bank being framed in conformity with the provisions of the Goa Cooperative Societies Act, 2001 and the rules thereunder like any other Cooperative Societies, the learned Advocate General asseverate that the GSCB is not a 'State' within the meaning of Article 12.

On the issue as to whether it is amenable to the writ jurisdiction, the learned Advocate General would rely upon the

decision of the Apex Court in ***Federal Bank Ltd. V/s. Sagar Thomas & Ors.***¹¹ and attempting to draw a distinction between a function of public importance and a public function and urge that though commercial business of banking is a function of public importance, it is not a public function and the writ of mandamus can be issued against a private body only if the body discharge any public function. He would further urge and submit that merely because an organization is carrying on function of public importance closely related to Government function, this itself is not sufficient to hold it as a instrumentality of the State. The submission advanced therefore is that the respondent no.3 does not perform any public function, so as to bring it within the purview of writ jurisdiction. The learned Advocate General would heavily fall upon the observation of the Division Bench in case of ***Kiran S/O Rangnath Kale v/s. State of Maharashtra***¹². He would also place reliance on the judgments of ***General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P v/s. Satrugan Nishad And Others***¹³ and categorically distinguished the judgments of the Apex Court from which solace is sought, being in case of ***U.P. State Cooperative Land Development Bank Ltd. V/s. Chandra Bhan Dubey And Ors.***¹⁴

11 (2003) 10 SCC 733

12 (2019) SCC OnLine Bom 1176: (2019) 4 Bom CR 834

13 (2003) 8 SCC 639

14 (1999) 1 SCC 741

8. The learned Advocate General is joined in his submission by Advocate Girish Sardesai, representing the Bank. He submit that the quintessence of the test determining whether an authority is 'State' or its instrumentality is by this time well settled in plethora of judgments and applying the test laid down by the seven Judge Bench in ***Pradeep Kumar Biswas***, the GSCB is not 'State'. He submit that merely because a society has been constituted under the Act like any other co-operative society and it is regulated in terms of the provisions of the Act, it do not confer a status of the 'State' on it. In absence of the State exercising any direct or indirect control over the affairs of the society and since the State is not a major shareholder but has a power to nominate one director, is not sufficient to classify GSCB as 'State'. Relying upon the judgment in case of ***S. S . Rana v/s. Registrar, Co-operative Societies & Anr.***¹⁵, he state that, the questions which are required to be answered are namely, 1) How was the society created? 2) Whether it enjoys any monopoly character? 3) Do the functions of the society partake to statutory functions of public functions? And 4) Can it be characterised as public authority. By reflecting upon the answers to the above, according to the learned Counsel the Bank is not a State. He would place reliance on the following judgments:

1) ***Zoroastrian Co-Operative Housing Society Ltd v/s.***

15 (2006) 11 SCC 634

- District Registrar Co-operative Housing Societies (Urban) and Ors.* (2005) 5 SSC 632
- 2) *Zee Telefilms and Union of India (UOI) and others* [(2005) 4 SCC 649]
- 3) *Board of Control for Cricket in India v/s. Cricket Association of Bihar and others* [(2015) 3 SCC 251]
- 4) *Praga Tools Corporation v/s. C.V. Imanuel and other* [AIR 1969 SC 1306] and
- 5) *U.P State Cooperative Land Development Bank Ltd. V/s. Chandra Bhan Dubey & Ors* - (1999) 1 SCC 741

As many as six Full bench of different High Courts have been placed before us which were confronted with an issue about a particular entity being a State or its instrumentality.

9. The learned Senior Counsel Mrs. Agni also advanced submissions in support of the claim of the petitioner against the Bank and on the maintainability of a Writ Petition. She relied upon the judgment of the Apex Court in case of *Kelvin Jute Company Limited Workers Provident Fund And Others v/s. Krishna Kumar Agarwala And Others*¹⁶ whereby applying the parameters culled out from the various authoritative pronouncements, the Milk Federation has been held to be a State. We have also heard Mr. Vivek Rodrigues for the Intervenor who has invited our attention to

¹⁶(2016) 14 SCC 326

the decision of the 7 Judge bench in case of ***Pradeep Kumar Biswas*** (supra) which has distinguished the judgment in case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Others v/s. V. R. Rudani & Others.***¹⁷ He has also drawn our attention to the judgments of the Apex Court in case of ***K.K. Saksena v/s. International Commission on Irrigation And Drainage & Ors.***¹⁸ where the International Commission on Irrigation And Drainage was held to be not a part of 'State' since no control was exercised on it by the Government either financially, functionally or administratively and it is also held that writ cannot go to the said Commission in a issue involving a contract of personal services. Reliance is also placed on the judgment in case of ***Nandkumar Nivrutti Bapтивale vs Automotive Research Association of India***¹⁹ where the Automotive Research Association of India was held neither an authority, instrumentality or agency of the State within the meaning of Article 12 of the Constitution and hence not amenable to the writ jurisdiction.

Consideration of the Issue:

17 (1989) 2 SCC 691

18 (2015) 4 SCC 670

19 (2002) (2) MhLj 191

10. In the compass of the arguments placing reliance on the binding and authoritative pronouncements of the Apex Court the two issues which we are called upon to decide can be distinctly formulated as:

(a) whether the GSCB is a 'State' or an instrumentality thereof under Article 12 of the Constitution of India.

(b) whether the GSCB discharge any public function so as to make it amenable to exercise of writ jurisdiction under Article 226 and in particular for the purpose of issuance of writ in the nature of mandamus.

Part III of the Constitution of India enumerate the fundamental rights, which a State is duty bound to protect. The said Chapter, contain a definition of "State" restricting it to part III, i.e. only for the purpose of application of the provisions contained in the said Chapter and the same is not extended with reference to the term "State" used in other parts of the Constitution. The inclusive definition, enumerate that unless the context otherwise require, "State" includes the Government and the Parliament of India and the Government and Legislature of each of the State of local and all other authorities within the territory of India or under the control of Government of India. The entities which were entitled to be included by the framers of the Constitution are specifically incorporated and leave no ground and scope for its

expansion and the term which call for an interpretation and by authoritative pronouncements has received an extended meaning is "Other Authorities". The entire spectrum of the decisions from the Constitutional Courts has bounded itself and revolved around the said terminology. The divergence of the authoritative pronouncements is dependent on the manner of interpretation of the said term, either restricting itself by applying the rule of *ejusdem generis* or interpreting the same by ignoring the said principle and adopting an expansive approach. The said aspect is however only limited for the purpose of enforcement of the fundamental right of an individual/citizen as against the duty of a State to enforce the said right enlisted under Chapter III. The said development would however not restrict the right of operation of Article 226 which is a power of the High Court constituted under Chapter V of the Constitution for issuance of certain writs for enforcement of the rights contained in part III. The power of the High Court to issue a writ would extend to any person or "authority" for enforcement of not only the rights enshrined in part III but for any other purpose. Thus, even though the entity may not be a 'State' for the purpose of Article 12, a writ under Article 226 may lie against it and in what circumstance the writ would be issued against the entity, is a field governed by plethora of decisions in form of authoritative pronouncements of the Constitutional Court. Similarly, in what

circumstance an authority would answer the definition of 'State' under Article 12 has also been judicially determined in a series of judgments, setting out the test, it being financially, functionally and administratively dominated by or under the pervasive control of the Government.

11. Primo, we would restrict the consideration and confine ourselves to assess whether GSCB is an authority as contemplated under Article 12 for the purpose of Chapter III and the second stride which would follow, is to ascertain whether it is a 'State' with reference to the remedies available against it.

The earliest judgment which we deem apposite to refer to is the decision of the Constitution Bench of the Apex Court in ***Rajasthan State Electricity Board, Jaipur v/s. Mohan Lal & Ors***²⁰ where the issue arose whether the Electricity Board of Rajasthan, a body corporate constituted under a statute, for the purpose of carrying commercial activities would fall within the ambit of "State" under Article 12 of the Constitution.

The facts substantiate that, before the constitution of the Board, the supply of electricity in the State was being controlled directly by Department of the State Government viz. Electrical and Mechanical Department. The respondents were the permanent

20 (AIR) 1967 SC 1857

employees of the State Government in the said Department and were aggrieved by their non-consideration for the purpose of promotion. The submission was advanced to the effect that Board could not be held to be covered by authorities named therein and the expression “Other Authorities”, if read *ejusdem generis* with those named, cannot cover the Board which is a body corporate having separate existence and constituted primarily for carrying out commercial activities. Recording that the High Court has erred in applying the principle of *ejusdem generis* as it had overlooked the basic principle of interpretation being, to invoke the application of the said rule, there must be a distinct genus or category running through the bodies already named and it is difficult to find any common genus running through these named bodies nor can these bodies be placed in one single category on any natural basis, by relying upon the decision of the Privy Council in ***United Towns Electric Co., Ltd. v. Attorney-General for Newfoundland***²¹ the doctrine was held to be not applicable. Paragraph 5 and 6 of the said decision which is relevant is re-produced as under:

'5. The meaning of the word “authority” given in Webster’s Third New International Dictionary, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word

21 (1939) 1 All E.R. 423.

“authority” is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi governmental functions. The expression “other authorities” is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words “other authorities” are used in Article 12 of the Constitution.

6. In Smt Ujjam Bai v. State of Uttar Pradesh, Ayyangar, J., interpreting the words “other authorities” in Article 12, held: “Again, Article 12 winds up the list of authorities falling within the definition by referring to “other authorities” within the territory of India which cannot obviously be read as ejusdem generis with either the Government and the Legislatures or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India. There is no characterisation of the nature of the ‘authority’ in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws”. In K.S. Ramamurthi Reddiar v. Chief Commissioner, Pondicherry, this Court, dealing with Article 12, held: “Further, all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous

authorities which may not be under the control of the Government at all". These decisions of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities.'

Here, the Board was clearly held to be an Authority to which provisions of part III of the Constitution were applicable.

12. Another Constitution Bench in ***Sabhajit Tewary v/s. Union Of India & Ors***,²² was confronted with a question whether the Council of Scientific and Industrial Research (CSIR), is an "authority" within the meaning of Article 12 of the Constitution, in the backdrop of a writ petition instituted by a Jr. Stenographer, an employee, claiming parity in remuneration. It was held that it is not an "Authority" for the purpose of Article 12, since it did not possess any statutory character, but was a Society incorporated in accordance with the provisions of the Societies Registration Act.

13. The said decision, holding the field over a quarter of a century came to be overruled by a 7 Judges Bench of the Apex Court in case of ***Pradeep Kumar Biswas Vs. Indian Institute of***

22 (1975) 1 SCC 485

*Chemical Biology*²³ holding that the decision in *Sabhajit Tewary* was plainly erroneous and the subsequent Constitution Bench recorded that the decision laying the principle that merely because a Society is registered under Societies Registration Act, or Company nominated under the Companies Act, it is excluded from the concept of 'State', has been discredited as the facts were not closely scrutinized from any other perspective and the decision was overruled. The Constitution Bench while dealing with the issue had before it the law in a crystallized form as laid down in *Ramana Dayaram Shetty v/s. The International Airport Authority of India & Ors*²⁴ and in the case of *Ajay Hasia v/s. Khalid Mujib Sehravardi*²⁵ as well as in case of *Sukhdev Singh & Ors v/s. Bagatram Sardar Singh Raghuvanshi And Anr.*²⁶.

14. The Constitution Bench in case of *Sukhdev* (supra) was dealing with the status of regulation framed under the Oil & Natural Gas Commission Act, 1959, Life Insurance Corporation Act, 1956 and Industrial Finance Act, 1948. The majority judgment delivered by the Chief Justice A. N. Ray, as he was then framed the issue as to whether the aforesaid statutory corporations

23 (2002) 5 SCC 5111

24 (1979) 3 SCC 489

25 (1981) 1 SCC 722

26 (1975) 1 SCC 421

are authorities within the meaning of Article 12 as the regulations were made under a statute. Noting that the statutory bodies had no free hand in framing the conditions and terms of service of their employees but were bound to apply the terms and conditions as laid down in the regulations, by relying upon the earlier decision in case of Rajasthan Electricity Board, it was held as under :

'35. The State undertakes commercial functions in combination with governmental functions in a welfare State. Governmental function must be authoritative. It must be able to impose decision by or under law with authority. The element of authority is of a binding character. The rules and regulations are authoritative because these rules and regulations direct and control not only the exercise of powers by the Corporations but also all persons who deal with these corporations.

36. This Court in Rajasthan State Electricity Board, Jaipur v. Mohan Lal said that an "authority" is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. The expression "other authorities" in Article 12 has been held by this Court in the Rajasthan Electricity Board case to be wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India. This Court further said referring to earlier decisions that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. The State itself is envisaged under Article 298 as having the right to carry on trade and business. The State as defined in Article 12 is comprehended to include

bodies created for the purpose of promoting economic interests of the people. The circumstance that the statutory body is required to carry on some activities of the nature of trade or commerce does not indicate that the Board must be excluded from the scope of the word "State". The Electricity Supply Act showed that the Board had power to give directions, the disobedience of which is punishable as a criminal offence. The power to issue directions and to enforce compliance is an important aspect.'

On careful scrutiny of all the three corporations with regard to its functioning, it was held that the rules and regulations framed by ONGC, LIC and the Industrial Finance Corporation had the force of law and the employees of these statutory bodies enjoyed a statutory status and are entitled to declaration of being in employment when their dismissal or removal is in contravention of the statutory provisions. The statutory bodies were held to be "Authorities" within the meaning of Article 12.

Justice Mathew in his concurring judgment, commented that the concept of "State" under Article 12 has undergone drastic changes in the recent years and affirming the decision in case of Rajasthan State Electricity Board (supra) answered that the ONGC, IFC and the LIC, all of them to be corporations set up by statute, were authorities falling within the sweep of 'State' under Article 12. It was held that the Court can compel compliance of statutes, rules and the concept would include a public authority which was held to

be a body, which has public or statutory duty to perform and which performs those duties and carry out its transactions for the benefit of the public and not for private profit and such an authority is not precluded from making profit for the public benefit.

'84. The Supreme Court of the United States in McCullough v. Maryland held that the Congress has power to charter corporations as incidental to or in aid of governmental functions. So far as federal corporations are concerned, they are, by hypothesis, agencies of Government. With this premise it would follow that action of a federally chartered corporation would be governed by the constitutional limitation imposed on an agency of the Federal Government.

86. The public corporation, therefore, became a third arm of the Government. In Great Britain, the conduct of basic industries through giant corporations is now a permanent feature of public life.

87. A public corporation is a legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged with the duty of carrying out specified governmental functions in the national interest, those functions being confined to a comparatively restricted field, and subjected to control by the Executive, while the corporation remains juristically an independent entity not directly responsible to Parliament. A public corporation is not generally a multipurpose authority but a functional organisation created for a specific purpose. It has generally no shares or shareholders. Its responsibility generally is to Government. Its administration is in the hands of a Board appointed by the competent Minister. The employees of

public corporation are not civil servants. It is, in fact, likely that in due course a special type of training for specialized form of public service will be developed and the status of the personnel of public corporation may more and more closely approximate to that of civil service without forming part of it. Insofar as public corporations fulfil public tasks on behalf of Government, they are public authorities and as such subject to control by Government.'

15. Subsequent to the said decision, four indicia came to be recognized for identifying an agency or instrumentality of the State, being:-

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

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

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

(d) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?"

16. The spectrum of the concept of 'State' received further expansion by a 3 Judges Bench in case of ***Ramana Dayaram Shetty v/s. The International Airport Authority of India & Ors***²⁷, following the two earlier decisions of the Constitution Bench. Speaking for the Bench Justice P. N. Bhagwati deliberated upon the functions of the State Government which involved multitasking with the advent of the concept of welfare State, which resulted into evolution of a new instrumentality or administrative device for handling the new situations. It was expressed that in these circumstances and with a view to supplement the administrative need, the public corporation came into being as third arm of the Government. On comparing the scenario in the United States and Great Britain, the corporations acting as instrumentality or agency of the Government were recognized as the wings of the Government but subject to the same limitations in the field of constitutional and administrative law as the Government itself, though in the eye of law they were recognized as distinct and independent legal entities. The question how to determine whether a corporation is acting as instrumentality or agency of the Government came to be highlighted by referring to its creation, either being established by a statute or incorporated by a law such as Companies Act 1956 or Societies Registration Act, 1860. The same was answered in

27 (1979) 3 SCC 489

paragraphs 19 in the following words:

*"19. 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 summarised 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 functions. This particularisation 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 governmental instrumentality or agency." Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. "The dispositive question in any State action case", as pointed out by Douglas, J., in *Jackson v. Metropolitan Edison Company* "is not whether*

any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compels a finding of State responsibility". It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding of that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling."

1- The rule that a constitutional or statutory authority would fall within the meaning of the expression "other authorities", in Article 12 if it has been invested with statutory powers to issue binding directions to third parties, the disobedience of which would entail penal consequences or has sovereign powers to make rules and regulations having the force of law. The broader test was however evolved whether the statutory corporation or other body or authority, claiming to fall within the definition of 'State' is an instrumentality or an agency of the Government, if it is it would fall within the meaning of other authorities and hence would be a 'State'. A word of caution was spelt out; there is no cut and dried formula which would provide the correct definition of corporation in determining whether they are instrumentalities or agencies of the Government and those which are not. Particularisation of the relevant factors highlighted in the said Judgment, was

held to be not exhaustive and by its very nature could not be held so, because on assumption of new task, growing complexities of management and administration, it is not possible to make exhaustive enumeration of the test which would determine and in all cases provide unfailing answer to the question whether the corporation can be said to be instrumentality or agency of the Government

17. Once again in *Ajay Hasia v/s. Khalid Mujib Sehravardi*²⁸, the Constitution Bench was confronted with an issue as to whether the Regional Engineering College, Srinagar running under the administration and management of a Society registered under the Jammu & Kashmir Registration of Societies Act, 1898 was a 'State', since the composition of the Society was dominated by representatives appointed by the Central Government and the Governments of Jammu & Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government and the monies required for running of the college is provided by the Central Government and the Government of Jammu & Kashmir. The Rules made by the Society also required prior approval of the State and the Central Government and the accounts of the Society to be submitted to both the Governments for its scrutiny and

28(1981) 1 SCC 722

satisfaction. Holding that the said Society is an authority within the meaning of Article 12, the test for determination was laid down in paragraphs 9 and 11 as under:-

'9. 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 realised 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 summarise 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.*
- (2) Where 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 Governmental character.*
- (3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected.*
- (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) *‘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.”*

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.

11. We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and that

would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression “authority” in Article 12.'

In the result of the aforesaid discussions the Society was held to be an instrumentality of the Government and even the Memorandum of Association and Rules of the Society predominantly confirmed the same. The Society was held to be an agency of the State and the Central Government and therefore an “authority” within the meaning of Article 12 with the following observations:

'15. It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an “authority” falling within the definition of “State” in Article 12. Is it an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh

with the approval of the Central Government. The monies required for running the College are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full

control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in Sukhdev Singh case the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or the agency of the State and the Central Governments and it is an “authority” within the meaning of Article 12.

18. Referring to the aforesaid decisions, the 7 Judges Bench in ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology***²⁹ holding the CSIR to fall within the range of Article 12 by taking into account its formation, being set up by the department of Commerce, Government of India with the objective of promoting industrial growth. Further, holding that the functions of the CSIR as incorporated in the Memorandum of Association, since it was a body set up in the national interest to further economic welfare of the Society by fostering planned industrial development, a function fundamental to the governance of the country and therefore, it would definitely fall within the meaning of State. Apart from this, on the parameters of the management and control, a dominant role played by the Government of India in the governing body of CSIR

29 (2002) 5 SCC 5111

was held to be evident and ubiquitous. On the financial front, the annual capital funds was made available by the Central Government and as on date at least 70% of the funds of the organisation were available from the grants of Government of India as compared to the non-governmental contribution which was just a pittance. Applying all the aforesaid parameters, it was held that CSIR is a State within the meaning of Article 12. In order to have clarity of law, **Sabhajit Tewary's** decision came to be overruled.

19. In *Federal Bank Ltd. V/s. Sagar Thomas & Ors*³⁰, when the issue arose on the plea by a Bank Manager who was dismissed from services, whether the writ petition against the said Bank is maintainable, it was held that private companies would normally not be amenable to writ jurisdiction under Article 226 of the Constitution but in certain circumstances a writ may be issued to such private bodies or persons as there may be statutes which need to be complied by all concerned including the private companies. By applying the 6 factors enumerated in case of *Ajay Hasia* and approved in the subsequent decision of 7 Judges Bench in case of *Pradeep Kumar*, it was held that assuming that one or other test provided in *Ajay Hasia* may be attracted this itself would not be sufficient to hold that it is an agency of State. The distinction

30 (2003) 10 SCC 733

drawn in paragraphs 29 of the said Law Report is relevant even while we are dealing with the second aspect of the issue referred to us, being even if an entity is not State whether a writ petition would lie.

"29. There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, maybe banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of Ajay Hasia. Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant company. For the sake of argument, even if it may be assumed that one or the other test as provided in the case of Ajay Hasia may be attracted, that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection, observations made in the case of Pradeep Kumar Biswas quoted earlier would also be relevant."

"32. Merely because Reserve Bank of India lays the banking

policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority."

“33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such

obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution.”

20. In case of ***Virendra Kumar Srivastava v/s U.P. Rajya Karmachari Kalyan Nigam***³¹, it was held that the multiple test which is to be applied to ascertain a character of a body falling within Article 12 or outside as laid down by the majority view in ***Biswas*** case, is to ascertain the nature of financial, functional and administrative control of the State over it and whether it is dominated by the State Government and the control can be said to be so deep and pervasive as described in the minority view in ***Pradeep Kumar*** case so as to satisfy the Court “of brooding presence of the Government” on the activities of the corporation. Dealing with the respondent, which was not a creation of statute but merely a Society registered under the Societies Registration Act, it was concluded that the said Society was an instrumentality and agency of the State as the control of the State was not merely 'regulatory' but it was 'deep and pervasive' in the sense that it was formed with the object of catering to the needs of the Government employees as a supplement to their salaries and perks. Even day-to-day functioning of the corporation was watched, supervised and controlled by various departmental authorities of the State,

31 (2005) 1 SCC 149

particularly the Department of Food & Civil Supplies. Holding that the multiple test indicated to be applied in **Pradeep Kumar** is fully satisfied, the corporation was held amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. In paragraph 28 the following clarification is issued:

'28. Before parting with the case, it is necessary for us to clarify that even though a body, entity or corporation is held to be a "State" within the definition of Article 12 of the Constitution, what relief to the aggrieved person or employee of such a body or entity is to be granted is a subject-matter in each case for the court to determine on the basis of the structure of that society and also its financial capability and viability. The subject of denial or grant of relief partially or fully has to be decided in each particular case by the court dealing with the grievances brought by an aggrieved person against the bodies covered by the definition of "State" under Article 12 of the Constitution.'

In the case of **Balmer Laurie & Co. Ltd. V/s. Partha Sarthi Sen Roy**³², on a detailed examination of several factors like formation of the appellant company, its objectives, functions, management and control, financial assistance, functional and administrative control, extent of its domination by Government, and recording that the control of the Government was not merely regulatory but was deep and pervasive and therefore the company

32 (2013 8 SCC 345)

was held amenable to writ jurisdiction being an 'authority' under Article 12. The confusion in respect of the functions of sovereign functions which is normally extended to all welfare activities was clarified in the following words:

'18. Often, there is confusion when the concept of sovereign functions is extended to include all welfare activities. However, the court must be very conscious whilst taking a decision as regards the said issue, and must take into consideration the nature of the body's powers and the manner in which they are exercised. What functions have been approved to be sovereign are the defence of the country, the raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory, etc. and the same are not amenable to the jurisdiction of ordinary civil courts. (Vide N. Nagendra Rao & Co. v. State of A.P. and Chief Conservator of Forests v. Jagannath Maruti Kondhare.)

19. In Bangalore Water Supply & Sewerage Board v. A. Rajappa this Court dealt with the terms "regal" and "sovereign" functions, and held that such terms are used to define the term "governmental" functions, despite the fact that there are difficulties that arise while giving such a meaning to the said terms, for the reason that the Government has now entered largely the field of industry. Therefore, only those services, which are governed by separate rules and constitutional provisions such as Articles 310 and 311, should strictly speaking, be excluded from the sphere of industry by necessary implication.

20. Every governmental function need not be sovereign.

*State activities are multifarious. Therefore, a scheme or a project, sponsoring trading activities may well be among the State's essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, corporates and companies. Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon, etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would not render an enterprise sovereign in nature. (Vide *Agricultural Produce Market Committee v. Ashok Harikuni, State of U.P. v. Jai Bir Singh, Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals and Haryana State Industrial Development Corpn. v. Hari Om Enterprises.*)*

21. *A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the Government and the legislature alone, and it includes within its ambit, various other instrumentalities of State action. The law may bestow upon such organisation the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The "State" being an abstract entity, can*

only act through an instrumentality or an agency of natural or judicial persons.'

Recording that it is difficult to provide an exhaustive definition of the term “authorities”, which would fall within the ambit of Article 12, it was expressed that this is the reason why only an inclusive definition is possible, in order to keep pace with the broad approach adopted with respect to the doctrine of equality enshrined in the Constitution, so that whenever possible Courts have tried to curb the arbitrary exercise of power against individuals by centres of power, and therefore there has been a corresponding expansion of the judicial definition of the term 'State' as mentioned in Article 12 of the Constitution.

21. In *Zee Telefilms v/s. Union of India*³³, a 5 Judges Bench applied the test laid down in *Pradeep Kumar Biswas* to ascertain whether the Board of Control for Cricket in India BCCI is 'State', holding that it is not financially, functionally or administratively dominated by or under the control of the Govt and the control exercise being merely regulatory in nature, the status of it being State was declined. The conclusions recorded in paragraphs 24 and 25 are relevant for our purpose and hence reproduced under:

33 (2005) 4 SCC 649

'24. To these facts if we apply the principles laid down by the seven-Judge Bench in Pradeep Kumar Biswas it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

25. Assuming for argument's sake that some of the functions do partake the nature of public duties or State actions, they being in a very limited area of the activities of the Board, would not fall within the parameters laid down by this Court in Pradeep Kumar Biswas case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions, even then, as per the judgment of this Court in Pradeep Kumar Biswas, that by itself would not suffice for bringing the Board within the net of "other authorities" for the purpose of Article 12.'

On the issue as to whether the Board discharges public duties, in the nature of State functions, the following observations of the Constitution Bench are relevant for our purpose:

'29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the

petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12? While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it, but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it, and that the Board is discharging these functions on its own as an autonomous body.'

22. Another decision which we deem it appropriate to refer to is in case of ***Lt. Governor of Delhi & Ors. V/s. V. K. Sodhi & Ors***³⁴ where reversing the judgment of the High Court holding that the State Council of Educational Research and Training(SCERT) was a 'State' or 'other authority' within the meaning of Article 12 of the Constitution, the following observations are relevant:-

'16. The two elements, one, of a function of the State, namely, the coordinating of education and the other, of the Council being dependant on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that SCERT is a State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council. These were the aspects taken note of in Chander Mohan Khanna (supra) to come to the conclusion that NCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. No doubt, in Chander Mohan Khanna (supra), the Bench noted that the fact that education was a State function could not make any difference. This part of the reasoning in Chander Mohan Khanna (supra) case has been specifically disapproved by the majority in Pradeep Kumar Biswas (supra). The majority noted that the objects of forming Indian Institute of Chemical Biology was with the view of entrusting it with a function that is fundamental to the governance of the country and quoted

34 (2007) 15 SCC 136

with approval (Pradeep Kumar Biswas case, SCC P.135, para 45) the passage in Rajasthan SEB Vs. Mohan Lal.

'23. It appears to us that in the case of bodies like SCERT, the court cannot ignore the financial implications of implementing the directions that it is called upon to issue. The object of SCERT is laudable and it has to coordinate and promote education in the State. Its resources are limited and the main income is by way of grant from the State Government. When SCERT pleads that it cannot spend the whole of the grant or a major portion of the grant in paying salaries and emoluments to its employees and if it does so, that may tend to frustrate the very object with which the society was formed, it is an argument that has to be considered weighty by a court called upon to exercise jurisdiction under Article 226 of the Constitution of India.

Recording that though the object of SCERT was laudable, being to coordinate and promote education in the State, and though it satisfy the two tests laid down being discharging the functions of the State and depending the funding by the State that it was not held to be sufficient to clothe it with the nomenclature since it was found that in the matter of administration, Council was supreme and there was no governmental interference or control either, financial, functional or administrative in the working of Council.

23. Several decisions from the Apex Court have been cited before us for determining, various bodies/entities with distinct nomenclature, either in form of a corporation, a Society or in whatever form being subjected to the test laid down in the aforesaid decisions and on specifying the parameters, either holding it to be a State, or an instrumentality and agency of State or not. In order to avoid our verdict being unwieldy and clumsy reproducing the plethora of decisions available on the said point and since it would be merely multiplying the number of pages, in the last rung of the authoritative pronouncements we refer to one decision, comparatively latest one, which we feel is also relevant from the point of view of the second issue which we are called upon to determine as to whether the writ would lie against an entity though it is held that it is not a State. A decision of the Apex Court in case of ***K.K. Saksena v/s. International Commission on Irrigation And Drainage & Ors.***, reiterate the position of law and held that the International Commission on Irrigation And Drainage is not a part of the 'State' since no control is exercised by the Government, financially, functionally or administratively and since it is not found to be dominated by any action of the Government. Merely because some Government officers are deputed or initial grant comes from the State or at times some aid is extended by the State it is held that this itself will not clothe the entity with status and character of

either authority within the meaning of Article 12. On a closer analysis of the working of the International Commission on Irrigation And Drainage which is covered by the bye-laws framed by it and after taking note of the Constitution Bench decision in case of *Ajay Hasia* (supra) as well as in case of *Ramana Dayaram Shetty* (supra) has also after referring to the passage from the judgment of *Pradeep Kumar Biswas* (supra), their Lordships recorded the conclusion on the said point in paragraphs 18 and 19:

'18. It is in the context of the aforesaid legal position and the Constitution of ICID, its bye-laws were examined by the High Court and conclusion arrived at (as already extracted above) that ICID does not qualify to be "State" under Article 12 of the Constitution.

19. It would be necessary to keep in mind the aforesaid legal position qua Article 12, which has been accepted by the learned Senior Counsel for the appellant, while dealing with the issue as to whether ICID performs public functions or discharges public duty which makes it amenable to writ jurisdiction under Article 226 of the Constitution of India. Thus, we have to proceed on the premise that there is no pervasive governmental control over the functioning of ICID and merely because some government officers come on deputation, it has no consequence.'

24. In view of the punctilious exposition of the factors determining whether an authority is "State" or whether it is an instrumentality of State, we proceed to deliberate on whether the

Goa State Cooperative Bank would satisfy the test laid as above and the discussion is captioned under distinct heads.

Whether the GSCB enjoy monopoly status, which is State conferred or State Protected:

The GSCB is registered as a Society under the Societies Registration Act and is a Cooperative Society engaged in banking business on cooperative principles. It is also registered as Cooperative Society under the Maharashtra Cooperative Society Act, 1960 as applicable to the Union Territory of Goa, Daman & Diu. It became a Multi State Cooperative Society within the meaning of Section 2 with the amendment of Multi Cooperative Societies Act, 1984 which came into force from 16.09.1985. However, since Goa attained its Statehood on 30.05.1987, it was deemed to be a Multi State Cooperative Society by a deemed provision under Section 95 of the Act and therefore, it can be rightly inferred that from 30.05.1987 it functioned as a Multi State Cooperative Bank. By notification dated 28.07.2017, it was denuded of this status and it ceased its operations under Multi State Cooperative Bank Act, 2002 w.e.f. the said date. The bank is also classified as State Cooperative Bank (Apex Bank) and the State Land Development Bank within the meaning of clause 'u' and 'v' of sub-section 2 of the National Bank for Agriculture and Rural

Development Act, 1981 (NABARD). It is this distinctive and unique character bestowed on the Bank which is accentuated and the argument is that it necessarily has to be conferred with the status of 'State' within the meaning of Article 12.

To ponder over this imposing submission we make reference to the categorisation of GSCB as the State Cooperative Bank and the State Land Development Bank under the NABARD Act, 1981, and the two terms are defined in Section 2 of the Act as under:-

'(u) "State co-operative bank" means the principal co-operative society in a State, the primary object of which is the financing of other co-operative societies in the State:

Provided that in addition to such principal society in a State, or where there is no such principal society in a State, the State Government may declare any one or more co-operative societies carrying on business in that State to be also or to be a State cooperative bank or State co-operative banks within the meaning of this definition;'

(v) "State land development bank" means the co-operative society which is the principal land development bank (by whatever name called) in a State and which has as its primary object the providing of long-term finance for agricultural development :

Provided that, in addition to such principal land development bank in a State, or where there is no such bank in a State, the State Government may declare any co-operativesociety carrying on business in that State and authorised by the bye-laws of such cooperative society to provide long-term finance for agricultural development to be also or to be a State land

development bank within the meaning of this definition;'

25. In order to deal with the submission, we deem it expedient to decipher the scheme of the enactment, which clothed the GSCB with the status of the State Cooperative Bank and the Land Development Bank.

A need was felt for establishment of a national level institution for providing credit for the promotion of agriculture, small scale industries, cottage and village industries, handicrafts and other allied economic activities in rural areas with a view to promote integrated rural development and securing its prosperity, which gave birth to establishment of a development bank to be known as NABARD. It was established as an apex organization with respect to all matters in the field of credit in rural areas and aimed to serve as a re-financing institution for extending credit for promotion of activities in the said field. The Bank was endowed with a function to provide re-finance to various banks for their term lending operations for the purposes of agriculture and rural development.

Perusal of the scheme underlying the statute would reveal that a particular Cooperative Society in a State with an object of financing of other cooperative societies is entitled to be categorised as State Cooperative Bank and also the State Land

Development Bank if a Cooperative Society has its primary object of providing long term finance for agricultural development. The proviso appended to both the clauses, i.e. Section 2(u) and (v) lead to an inference that where such principal society or particular land development bank is not in existence in a State, the State Government may declare any State Cooperative Society carrying on business in that State to function as a State Land Development Bank to provide long terms loans for declare it as a State Cooperative Bank. Another contingency when such exercise can be undertaken is when the State feels that in addition to such particular society in a State, it is expedient to declare one or more Cooperative Society to be State Cooperative Bank within the meaning of Section 2(u) or to be the State Land Development Bank within the meaning of Section 2(v). Merely because GSCB has received recognition under the Act, it cannot be said that it enjoy complete monopoly in the field.

Being declared as a State Cooperative Bank certain benefits are conferred on it by virtue of Chapter 6 of the Act, in particular as conferred under Section 21 and 25. The State Cooperative Banks alongwith the regional rural banks or any other financial institutions approved by the RBI are entitled for re-finance, loans and advances from the National Bank, but by virtue of sub-section 3 of section 21, the National Bank may in its discretion grant a loan or advance to a State Cooperative Bank if the loan or

advance is fully guaranteed for repayment of principal and interest by the Government and also in case of a State Cooperative Bank which is a scheduled bank, if the loan or advance is secured either by a bill of exchange or promissory note executed by the Central Cooperative bank and assigned in favour of the State Cooperative Bank instead of the loan being advanced against security of stocks, funds as contemplated under sub-section 2. Further, in respect of other investment credit for promoting agriculture and rural development, the National Bank may provide financial assistance to a State Land Development Bank or a State Cooperative Bank or a Scheduled Bank or any other financial institution and reschedule the payment of such loans and advances. The scheme incorporated under the NABARD Act, 1981 itself would divulge that barring section 21, the State Land Development Bank or State Cooperative Bank is entitled for financial assistance alongwith other schedule bank or financial institutions approved by RBI and therefore it loses its unique character as far as the NABARD Act is concerned barring the provision mentioned above. The peculiar character of the Bank as has been attempted to be projected on a higher pedestal than any other society registered under the Cooperative Societies Act thus fail to impress us and has to be brushed aside as a hollow claim, since the GSCB is neither established under a State legislation nor its entire Share Capital is held by the State. Thus, the mere status

conferred on it under the NABARD Act and that it is empowered to provide long term finance for agricultural development, which will ultimately benefit the farmer of the State in our considered opinion, is not sufficient and it do not satisfy the test of it being a functionality of the State attracting the expression "Other Authorities" within the meaning of Article 12 nor does this feature enable it to be an instrumentality or agency of the State Government.

The State focus paper of NABARD on which attempt is made to bank upon is not of much relevance as it merely reflect the bank working in the State of Goa and as to how security schemes have landed support to banking and it also speak of the inspection of the bank by NABARD by virtue of Section 35 of section 6 of Banking Regulations Act, 1949, pursuant to which the GSCB is inspected by NABARD every year.

26. Emphasis on the bye-laws of the GSCB also do not render any support urging us to take a view that GSCB is a State, for more than one reason. The Bank has framed its bye-laws by invoking the power conferred on it as a Cooperative Society under Section 10A of the Goa Cooperative Societies Act, 2001. Pertinent to note that the GSCB is recognized as an Apex Cooperative Bank

within the meaning of Section 2a of the Act, making it the Federal Cooperative Bank having jurisdiction over whole of the State of Goa and recognized as such by the State Government for the said purpose.

Being registered as a Cooperative Society, it is empowered to frame bye-laws in accordance with the provisions of the Goa State Cooperative Act, 2001 and the Rules made thereunder. Sub-section 2 of Section 10A enumerate the matters on which the bye-laws can be made. Section 12 of the Act empower the Registrar to call upon the Society to amend the bye-laws if it is necessary or desirable in interest of the Society and if there is a failure to effect such an amendment of the bye-laws, he is empowered to register such amendment himself and the bye-law shall stand deemed to be amended.

Whether the share capital of the State in the Bank and the financial assistance can lead to an inference of financial control of the State over the GSCB:

27. In order to bring home the point that the Government exercises financial control over the GSCB, reliance was placed on certain provisions of the Act and the bye-laws. Our attention was invited to the clause pertaining to capital, which disclose the authorised share capital of the bank which is divided into 3 distinct

categories, A, B and C, being allotted to distinct category of individual and Government or its agencies. The bank is authorised to issue long term deposit to the members or non-members with the prior permission of the Registrar and with the permission of RBI issue Innovative Perpetual Debt Instruments (IPDI) in form of bonds or debentures. Corresponding provision is contained in clause 9 of the bye-law, in form of "Shares" where the Government or the NABARD/NCBC and others mentioned in bye-law, may hold 'B' Class Shares to the extent mentioned in bye-law no.4. The learned Advocate General has stated before us that the total share capital of the Goa State Cooperative Bank is around ₹8.44 crores and the share holding of the Government is ₹19.66crores. The test of financial control as determined in *Ramana Dayaram*, contemplate the entire share capital is to be held by the Government and it is then, it would go a long way towards indicating that it is an instrumentality or agency of the government or where 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 governmental character. The bye-laws and in specific the clauses to which we have made a reference in the paragraphs above do not indicate the State being a major financier or that it provides exclusive financial or budgetary support to the GSCB. The State has only nominal contribution to

the share capital of the bank and therefore it fail to answer the test of financial control as laid down in *Ramana Shetty* and *Ajay Hasia*.

28. The different provisions in the bye-laws which are relied upon in an attempt to establish the pervasive control according to us is also based on slippery ground. Control of Registrar of Cooperative Societies or the Cooperative Departments of the State is a mode of ensuring that the Society do not create a situation which will entail interference by the State and in order to ensure that the cooperative banks conduct their affairs properly and are subjected to audit from the departments. The Goa State Cooperative Act, 2001 enumerate several contingencies where such control is apparent. Section 68 of the Act adumbrate the power of the Government to give directions in the interest of cooperative moments; Section 69 empower the Director to issue directions or directives to cooperative Society or class of cooperative society for successful conduct of business and on all matters incidental thereto and all such directions are binding. Section 68A introduced by the "Amendment of 2009" recognise the power of the Registrar to seize the records of a Society, on being satisfied that the books of records are likely to be suppressed, tampered with or destroyed or funds and

property of the Society is likely to be misappropriated or misapplied by making an application to the Executive Magistrate. The provision contained in Section 12, where the Registrar can direct the bye-laws of the Society to be amended as well as the power to conduct a Special General Meeting, when there is failure on part of the Officer or member of the Society to call such a meeting would also fall within the same category i.e., to ensure that the cooperative banks conduct their affairs properly and also achieve the guidelines incorporated in its Memorandum of Association. In order to establish pervasive control, the above provisions cannot be said to be indicative of the administrative control of the State.

Whether there is deep and pervasive State control of the State over the GSCB:

Even the composition of Board of Directors stipulated in clause 11 of the bye-laws, disclose that out of 17 Directors, 13 shall be elected Directors, 2 Directors namely, Secretary (Finance) and Registrar of Cooperative Societies or his representative are the nominees of the Government. One Director is nominated by NABARD, 3 Directors shall be co-opted as per the RBI guidelines as functional Directors.

29. In light of the said composition of the Board of

Directors it do not lie in the mouth of those who claim that GSCB is a State since it failed to establish pervasive control, the term 'control' being indicative of check, restraint or influence and intended to regulate and to hold in check or to restrain from action. In ***Balmer Laurie & Co. Ltd.*** (supra), the Apex Court approving its earlier decisions has interpreted the term 'control' in paragraph 25 , we re-produce the same.

'25. In K. Ramanathan v. State of T.N. this Court held as under: (SCC pp. 130-31, para 19)

“19. ... the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. ... It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation....”

30. The bye-laws containing a provision to the effect that during the course of audit or inquiry or inspection certain discrepancies are found in the working of a Society which are irregular, illegal, immature and detrimental to the interest of the Society, the Registrar is empowered to take cognizance of the same

and is also empowered to disqualify a member of the Board. Further, the power of the Registrar for appointing any member of members of the Society to be a member or members of the Board of Directors to fill the vacancy/vacancies when there is a failure to elect all or any of the members of the Board of Directors by virtue of Section 67A is also not indicative of direct or indirect control of the Government over the affairs of the Society and would not fall within the category deep and pervasive control. The State is not a majority shareholder as per the bye-laws and it has power to nominate 2 of its Directors. Resultantly, it can be safely assumed that the State do not exercise any functional control over the affairs of the Society in the sense that the majority of the Directors are nominated by State. In order to find out whether control is deep and pervasive, the Apex Court in case of ***S. S. Rana v/s. Registrar, Cooperative Societies & Anr***³⁵ held as under:-

'9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr

35 (2006) 11 SCC 634

Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

*11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi*. [See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)*.]*

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions.

31. In term of the bye-laws, the supreme authority of the bank vest with the general body consisting of the representatives from affiliated societies and individual members. The management of the affairs of the bank vest in the Board which is duty bound to exercise such powers and perform such duties as are imposed by the Act, Rules and the Bye-laws. The nominees of the Government being minimum, two in number, the State do not exercise pervasive control over the functioning of the bank.

In *Shamrao Vithal* (supra) a full bench of this Court categorically held that in terms of the Maharashtra Co-operative Societies Act, the final authority of every Society registered under the said Act shall vest in general body of members in general meeting, summoned in such a manner as may be specified by the bye-laws. Under the general legislation dealing with cooperative societies there are clear provisions, which make it imperative for the Societies to be run on cooperative principles and therefore final authority vest with the members of the society, and such societies cannot be considered as instrumentalities of the State. The full bench, did not permit comparison of the Multi State Cooperative Bank with that of State Bank of India as in the latter, which is a nationalised bank, having a controlling hand by the Central Government and also taking into account the nature of functions performed by it. Recognizing that banking undoubtedly is an

activity vital to the life of the community and a business of great importance, the division bench in its earlier judgment in case of ***State Bank of India v/s Kalpaka Transport Co. Pvt. Ltd***³⁶ had conferred the status of 'State' or 'Other Authority' upon the State Bank of India on account of the control exercised by Central Government over the Nationalised Bank. In absence of all pervasive control, merely because banking function is of public importance, the full bench did not consider this factor to be of sufficient assistance to make Shamrao Vithal Bank as a 'State' or 'authority' under Article 12. The third test laid down in ***Ramana Dayaram*** being existence of deep and persuasive control is also not answered by the GPCS to recognise as a State agency or instrumentality.

Whether the functions of the GSCB are of public importance and closely related to the governmental functions:

32. Pertaining to the fifth test, as to whether the functions of a corporation are of public importance and closely related to Government functions, it is noted that the GSCB is an Apex Bank registered with an objective to finance its members for undertaking the agricultural and rural development activities or to finance individual members. It also subscribe its share capital to other cooperative societies. But the crux of the entire functioning of the

36 AIR 1979 Bom. 250

Goa State Cooperative Bank is banking.

33. A strong reliance on the judgment of the Apex Court in case of *U.P State Cooperative Land Development Bank Ltd. V/s. Chandra Bhan Dubey & Ors*³⁷ is also not of any succour to the petitioners, since the facts clearly distinguish the said decision. In the said case the Bank came to be constituted under a statute, U.P. Cooperative Societies Act as well as under the U.P. Cooperative Land Development Bank Act. Section 122 of the Act gave the State authority for recruitment, training and disciplinary control of the employees of the Cooperative Societies and also an authority to frame regulations regarding recruitment, terms of conditions of service, pay etc. The State Government thus constituted the U.P. Cooperative Institutional Service Board with the approval of the Government it published certain regulations which govern the service conditions of the employees. It was the only State Land Development Bank in the whole State of U.P and the Registrar of the Cooperative Societies of the State was entrusted with the functions of securing fulfillment of obligations of the Bank to the holders of the debentures. Further, the State Government has constituted guarantee fund under the Act for meeting likely losses and the Finance Department maintains the said fund. The

³⁷ (1999) 1 SCC 741

Government officers were sent on deputation by the State to the bank on the post of Managing Director and Chief General Manager. Holding that the State exercised all pervasive control over the Bank, the U.P. Cooperative Land Development Bank was held to be 'State'. This is not the situation before us when we deal with GSCB. Ltd. Applying the aforesaid parameters to determine whether the bank is an instrumentality or agency of the State, it has failed to make up to any of the characteristics which would clothe it with a status of 'authority' so as to fall within the meaning of expression "other authorities" under Article 12. It has no statutory flavour, i.e. it is neither a creation of a statute nor clothed with any statutory power, enabling it to take the shape of an authority. It does not discharge such functions as are governmental or closely associated or being fundamental to the life of people and discharge public function. The bank do not have deep and pervasive control or the brooding presence of the State Government so as to satisfy the test of instrumentality or agency of the State. This leaves the bank with an independent legal existence flowing from its status as a registered society and a cooperative society under the GSCB Society Act. However, it fails to cross the impediments of the aforesaid parameters laid down by the apex court before it attained the status of a State or instrumentality of the State under Article 12 of the Constitution.

34. On answering the issue (1) in the negative, we now turn to the second question under reference, when GSCB is not a State or an instrumentality of a State under Article 12 of the Constitution, whether a writ would lie against it, in discharge of performance of any public functions.

The fulcrum of the arguments, staking the claim that a writ would lie, is based on the judgment of the Apex Court being *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Others v/s. V. R. Rudani & Others*.³⁸ and *U.P State Cooperative Land Development Bank Ltd. V/s. Chandra Bhan Dubey & Ors*³⁹. The decision in *Andi Mukta* was delivered on peculiar facts, being a writ petition filed by teachers of a Trust whose services were terminated by the institution which was affiliated to the University and governed by ordinance, casting certain obligations which it owed to the petitioner. The ratio flowing from the said judgment could be culled out to indicate that no writ would lie against the private body except where it has some obligation to discharge duty which is statutory or of public character. The said decision delivered in the light of the facts where the management of the college was a Trust registered under the Bombay Public Trust Act and the issue was whether the writ petition is maintainable under 226 of the Constitution and whether the

38 (1989) 2 SCC 691

39 (1999) 1 SCC 741

Court would issue writ of mandamus to the management, compelling it to pay the terminal benefits and arrears of salaries. Taking note, that the Trust was managing the affiliated college, which is admissible to grant-in-aid and that is how the Government played a major role in the control, management and working of educational institutions, it was held that the aided institution like the Government institution was discharging public functions, by imparting education to the students. The activities being closely supervised by the University authorities, employment in such institutions being not devoid of any public character and the service conditions of the academic staff was held to be not purely of a private character. On noting the existence of the relationship between the staff and the management resulting into a right/duty relationship,, the Apex Court held that a mandamus cannot be refused to the aggrieved party. However, it was clarified that if the rights are purely of private character or if the management of the college is purely a private body, with no public duty endowed, no mandamus will lie. These two exceptions carved out for issuance of a writ in the nature of mandamus being a private character and no public duty being discharged.

35. The decision in *Andi Mukta* has been clarified by a subsequent Judgment of the Apex Court in case of *K. K. Saksena*

(supra) where it is held that though a person or authority may not come within the sweep of the Article 12, but if the authority is performing a public duty, writ petition can lie and writ in the nature of mandamus or any other appropriate writ can be issued. While testing the correctness of the judgment of Delhi High Court, whether a writ against the International Commission for Irrigation & Drainage (ICRD) under Article 226 is maintainable as it is not a State, the Apex Court deliberated as to when a body is performing public duty and it went a little ahead by holding that even if a body is performing public duty, all its decisions are not subject to judicial review and only those decisions which has public element, can be judicially reviewed in exercise of writ jurisdiction. The following observations in the said Law Report render assistance to us and are quoted as under:

'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. Imanual, 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.

50. We have also pointed out above that in Saka Venkata Rao this Court had observed that administrative law in India has been shaped on the lines of English law. There are a catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In R. (Hopley) v. Liverpool Health Authority (unreported)(30-7-2002), Justice Pitchford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are: (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

51. Even in Andi Mukta Sadguru, which took a revolutionary turn and departure from the earlier views, this Court held that “any other authority” mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasised that if the rights are purely of a private character, no mandamus could issue.'

36. Clarifying the position of law laid down in **Andi Mukta**, that the power under 226 of the Constitution is not limited to government or authority which qualify to be 'State' under Article 12 but it also extend to persons or authority which perform public

functions/public duty and in paragraphs 52 and 53 read as under:-

'52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

- (i) when the employee is a public servant working under the Union of India or State;*
- (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and*
- (ii) when such an employee is "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.*

In the first two cases, the employment ceases to have private law character and "status" to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal.

*53. In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public law element and no "public law rights" have accrued in favour of the appellant which are infringed. The service conditions of the appellant are not governed in the same manner as was the position in *Andi Mukta Sadguru.*'*

Conclusively holding that the impugned action do not involve any public element and no public rights have accrued in favour of the appellant, the finding rendered by the High Court was upheld and the appeal by the employee came to be dismissed.

37. In a comparatively latest judgment, though it cannot be said to be the last word on the issue, we are guided by the decision of the Apex Court in case of **Rajbir Surajbhan Singh v/s Institute of Banking Personnel Selection**⁴⁰ dealing with disqualification of a candidate in the selection process for the post of Clerk, initiated by respondent i.e., Institute of Banking Personnel Selection, the question that fell for consideration was whether the said institute is a State. The High Court had taken a view that it is not a State within the meaning of Article 12 and no public function was discharged by the respondent and hence it was not amenable to its writ jurisdiction under Article 226 of the Constitution. After referring to series of precedents on the said point, and by making reference to the decision in case of **K. K. Saksena** and on closely scrutinising the Memorandum Of Association of the Institute, the Apex Court held as under:-

'22. The relevant questions, according to this Court in K.K. Saksena, to be answered for the purpose of deciding whether a writ petition is maintainable under Article 226 are:

- (a) Whether a private body which is a non-governmental organisation partakes the nature of public duty or State action?*
- (b) Whether there is any public element in the discharge of its functions?*
- (c) Whether there is any positive obligation of a*

public nature in the discharge of its functions?

(d) Whether the activities undertaken by the body are voluntary, which many a non-governmental organisation perform?

23. The respondent Institute has been set up for the purpose of conducting recruitment for appointment to various posts in public sector banks and other financial institutions. Applying the tests mentioned above, we are of the opinion that the High Court is right in holding that the writ petition is not maintainable against the respondent. Conducting recruitment tests for appointment in banking and other financial institutions, is not a public duty. The respondent is not a creature of a statute and there are no statutory duties or obligations imposed on the respondent.

24. This Court in Federal Bank case held that a writ petition under Article 226 of the Constitution is not maintainable against a scheduled bank on the ground that the business of banking does not fall within the expression "public duty". As the activity of the respondent of conducting the selection process for appointment to the banks is voluntary in nature, it cannot be said that there is any public function discharged by the respondent. There is no positive obligation, either statutory or otherwise on the respondent to conduct the recruitment tests. For the reasons above, we are of the considered opinion that the respondent is not amenable to the writ jurisdiction under Article 32 or Article 226 of the Constitution of India.'

38. The issue formulated as above, thus is no longer res

integra and stands settled by the authorities to which we had extensively made reference.

In the case of *Binny Ltd. & Anr. V/s. V. Sadasivan & Ors*⁴¹ an SLP filed by the management, assailing the judgment of the High Court which entertained the writ petition and issued a writ in the nature of mandamus declaring that the agreements entered between the company and its employees were void and unenforceable and in another SLP where the services of the appellant were terminated and the stand taken by the respondent Company was that the writ petition is not maintainable, as the company was private employer and the employees were working under private contract of employment. The writ petition was referred to the larger bench, which elaborately considered the question and held that the writ petition was not maintainable. It was also held that by terminating the services of the appellant, the Company was not discharging any public functions and therefore the action sought to be challenged was not amenable to the jurisdiction of judicial review. Relying on the earlier decision in case of *Praga Tools Corporation v/s. Shri C. A. Imanual & Ors*,⁴² holding that a mandamus would lie against a company constituted by a statute for the purposes of fulfilling public responsibilities, and

41 (2005)6 SCC 657

42 (1969) 1 SCC 585

by relying upon the judgment in case of Federal Bank as well as Shri Andi Mukta, the following observations are made:

'29. *Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative action. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty case on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such actions. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Law of England, 3rd Edn. Vol. 30, p. 682*

“1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.”

There cannot be any general definition of public authority or public action. The facts of each case decide the point.'

Conclusively, in paragraph 32, the principle of law has been culled out to the effect that a writ of mandamus can be issued against a private body, which is not 'State' within the meaning of Article 12 but there is a caveat, that there must be public law element and it cannot be exercised to enforce purely private contracts..

Unable to perceive any public element in termination of the employees before the Court, the declaration ordered by the High Court was set aside. The connected Civil Appeal was dismissed leaving open the right of the appellant to seek redressal of his grievance before appropriate forum.

39. In our determination of the aforesaid issue we are also guided by the view taken by one of us (Mr. Justice Dama Seshadri Naidu), as a Judge of the High Court of Kerala at Ernakulum in the case of ***Bindu K. B v/s. State of Kerala and Others delivered on 09.10.2014***⁴³. An employee of the Socio Economic Unit Foundation, Thiruvananthapuram -respondent no.2 on being placed under suspension and called upon to submit explanation to the charges framed against him invoked the writ jurisdiction of the High Court. The writ petition was opposed on the ground of maintainability and that is how the issue of maintainability was

43 Writ Petition (C) No.22233 of 2014 dated 09.10.2014.

exhaustively examined. After a detailed analysis of the scheme flowing through the 2 important agencies, the submission of the petitioner that the 2nd respondent, his employer is an accredited agency and a unit of a local self government it is mandatory to approach it in the matter of conservation and sanitation though not subjected to any statutory or supervisory control of governmental agency nor was it in receipt of any aid from the Government was specifically noted. After making reference to the several decisions holding the field and expressively quoting paragraphs 36 and 37 of ***Binny Ltd*** (supra) and also on examination of the decisions of the coordinated benches and adopting the principle of stare decisis, the 2nd respondent Society registered under the Travancore-Cochin, Literary Scientific & Charitable Societies Registration Act of 1955 was held to be not a 'State'. Further, dealing with the relationship between the employer and the petitioner-the employee, it is held as under:-

'58. Though, the submission of the learned counsel for the petitioner, in the first blush, appears attractive, I am afraid it cannot stand the legal scrutiny. In Roshan Lal Tandon v. Union of India, AIR 1967 SC 1889, a Constitution Bench of the Supreme Court has observed that the origin of Government service is contractual; there is an offer and acceptance in every case, but once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent

of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. It is further observed that the hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. In fact, under these circumstances, the recourse to public law remedy comes into picture. It is, by any reckoning, fallacious to contend that there is no element of contract in public service.

59. In the present instance, whatever the nomenclature given to the service conditions governing the employees of the 2nd respondent, they are not statutory in nature. In other words Ext. P6 service rules have not been framed under any statute, to say the least. Thus the dichotomy sought to be introduced by the learned counsel for the petitioner that the service rules framed and applied, without actually entering into individual contracts with the employees, are of public nature cannot be sustained.'

The conclusive indication is in the ultimate paragraph;

'In the facts and circumstances, this Court holds that the 2nd respondent does not answer the description of a State, an agency or any instrumentality of State or that of any other authority. Despite the fact that as an accredited agent to the Government it discharges duties of public nature, a mere service dispute in terms of Ext.P6 non-statutory service rules does not give the necessary wherewithal to the petitioner to take recourse to Article 226 of Constitution of India. Accordingly,

the writ petition is dismissed at the threshold as not maintainable, but leaving it open for the petitioner to explore other legally permissible methods of grievance redressal.'

40. It is trite position of law that the power of the High Court conferred under Article 226 of the Constitution to issue writs, for enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose can be directed to any person or authority. But it is well understood that a mandamus would lie to secure the performance of a public or statutory duty in the performance of which, the person who seek such a writ has a sufficient legal interest. The writ, in form of a command directing particular act to be done would lie against a nature of public duty, though the person or authority on whom the statutory duty is imposed need not be a public official or an official body. A writ in the nature of mandamus would also lie against a private body, but only when such body performs any public function. The commercial business of banking, though is a function of public importance is not a public function and this position, succinctly flow from the decision of the Apex Court in case of ***Federal Bank Ltd.*** (supra). Merely because the Reserved Bank of India prescribe the banking policy for the sound economic growth and any particular bank function under the Banking Regulation Act, a

private company carrying on business or commercial activity of banking do not conclusively establish that it discharge any public function or public duty. The Regulations are to be ranked not more than regulatory measures and if there is a failure to adhere to the said regulations, certain consequences are visited, is also not an indication to categorize the functioning as public duty. Similarly, merely because an organisation carries on function of public importance which are akin to or closely related to government functions, it would be no reason to hold that it discharge public functions.

Another important aspect which has to be borne in mind is that a writ can be issued for the discharge of only that public function if at all a body performs a public function and not any other function performed by it in the course of its business. Even if a body is performing public duty and amenable to writ jurisdiction, as a necessary sequel, all its decisions are not subject to judicial review but only those decisions which have public element therein can be judicially reviewed in exercise of writ jurisdiction. A fine line needs to be drawn between the contract of service by bearing its connection to the nature of contract and a contract of personnel service cannot be enforced with the exception when the employee is a public servant working under the Union of India or State, or an employee who is employed by any authority which is recognised as

'State' within the meaning of Article 12 and when such an employee fall within the ambit of "workman" within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. There cannot be any dispute that writ is maintainable under Article 226 of Constitution of India even against a private management for enforcing the 'public duty' cast upon them, but it cannot be said that the same is available also for enforcing the terms and conditions of service in every situation. With the said observations, the Accountant who had knocked the doors of the Court who was aggrieved by issuance of a chargesheet by the Socio-Economic Unique Foundation, a private Society without any government control, and which was held to be not answering the description of a State, an agency or instrumentality of State or that of any other authority, it was held that though acting as a accredited agent to the Government it discharges duties of public nature, mere service dispute in terms of non-statutory service rules does not permit the petitioner to take recourse to Article 226 of the Constitution of India. In light of the aforesaid discussion on the two issues formulated by us in the primorial part of this judgment, we answer the same as under:

- 1) The Goa State Cooperative Bank Ltd is not a 'State' or an instrumentality thereof nor does it fall within the ambit of 'Any other authority' for the purposes of Article 12 of Constitution of India.

2) The GSCB does not discharge any public functions, which would warrant issuance of writ in the nature of mandamus in discharge of its performance of public functions.

The questions being decided as aforesaid, we direct the Writ Petition to be placed before the appropriate Bench for its consideration.

(M. S. Sonak, J)

(Dama Seshadri Naidu, J)

(Bharati H. Dangre, J)

msr.