





5. The President of Kajalaipalli  
Service Co-operative Society Ltd.  
At/P.O.: Kajalaipalli, P.S.: Sarankul  
District: Nayagarh.
6. The Secretary of  
Kajalaipalli Service Co-operative Society Ltd.  
At/P.O.: Kajalaipalli, P.S.: Sarankul  
District: Nayagarh.
7. Ranjan Kumar Sahoo  
Aged about 29 years  
Son of Giridhari Sahoo  
At: Badakutuni  
P.O.: Kajalaipalli  
P.S.: Sarankul  
District: Nayagarh. ... Opposite parties

***Counsel appeared for the parties:***

- For the Petitioner : M/s. Amit Prasad Bose,  
R.K. Mahanta and S.K. Dwibedy,  
Advocates
- For the Opposite party : Mr. Jayant Kumar Bal,  
Nos.1 to 4 Additional Government Advocate
- For the Opposite party : M/s. Shashi Bhusan Jena and  
Nos.4 and 5 Satyajit Behera, Advocates
- For the Opposite party : M/s. Abhijit Mishra, C.K. Sahoo  
No.7 and C. Das, Advocates

**P R E S E N T:**

**HONOURABLE  
MR. JUSTICE MURAHARI SRI RAMAN**



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**Date of Hearing : 10.03.2025 :: Date of Judgment : 20.03.2025**

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## **JUDGMENT**

Questioning decision taken *vide* Resolution dated 12.05.2017 of the Kajalaipalli Service Co-operative Society Ltd. in the district of Nayagarh, whereby the Appointment Committee/Managing Committee declared the result positioning Ranjan Kumar Sahoo (opposite party No.7) and Sujit Kumar Nayak (petitioner) at 1<sup>st</sup> and 2<sup>nd</sup> respectively, instant writ petition has been filed to invoke extraordinary jurisdiction under the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

*“It is, therefore, most humbly prayed that this Hon’ble Court may graciously be pleased to admit this writ petition, call for the records and after hearing of the opposite parties be pleased to issue writ/writs in the nature of certiorari/mandamus and thereby quash the Resolution of the Appointment Committee and result sheet dated 12.05.2017 under Annexure-6 series and thereby direction may kindly be issued to give appointment to the petitioner for the post of Secretary of Kajalaipalli Service Cooperative Society Ltd. for the greater interest of justice;*

*And for which act of kindness, the petitioner as in duty bound shall ever pray.”*

### **Facts:**

- 2.** The opposite party No.6-Office of Kajalaipalli Service Cooperative Society Ltd. on 13.05.2016 published an



advertisement in Odia daily newspaper “Pragativadi” inviting applications for filling up the post of Contractual Secretary by way of direct recruitment on mark basis.

2.1. In response thereto, there were four applicants (namely, Sanghamitra Rout, Debasish Mohapatra, Sujit Kumar Nayak and Ranjan Kumar Sahoo) for the said post of “Contractual Secretary”. The applications were subject to verification in the Meeting of the Appointment Committee held on 28.06.2016. While rejecting the two of the four candidates (Sanghamitra Rout and Debasish Mohapatra), the candidature of the petitioner and the opposite party No.7 were taken into consideration. The Appointment Committee awarded 24.286 marks in favour of the opposite party No.7; whereas the petitioner was awarded 20.084 marks. Accordingly the opposite party No.7 was selected as Contractual Secretary of Kajalaipalli Service Cooperative Society Ltd. and a Resolution was passed on 28.06.2016 to that effect.

2.2. The comparative marks awarded to the petitioner and the opposite party No.7 would depict the following result (relevant columns of the result sheet are reflected hereunder):

	Total % of marks secured	Knowledge in computer application	MA/MSc/ MCom/ MCA/ MBA/ LLM	Total Marks Secured	Aggregate of marks secured	Position



Petitioner	15.084	5.00	—	5.00	20.084	2 <sup>nd</sup>
Opposite party No.7	14.286	5.00	5.00	10.00	24.286	1 <sup>st</sup>

2.3. Since contrary to requirement under the advertisement, the opposite party No.7 was awarded 5.00 marks under the Heading “Other Qualification” with respect to MA/MSc/MCom/MCA/MBA/LLM, the petitioner raised objection by way of representation dated 05.07.2016 addressed to the Assistant Registrar of Cooperative Societies, Nayagarh. In pursuance thereof, a notice bearing No.1248, dated 20.07.2016 was issued contemplating enquiry into the allegations contained in such representation of the petitioner as also other unsuccessful candidates. Accordingly, fresh Meeting was convened on 12.05.2017, wherein the positions of all the four applicants were re-verified/evaluated. The following is the result *qua* the petitioner and the opposite party No.7, as the other two candidates could not qualify:

	Total % of marks secured	Knowledge in computer application	MA/MSc/MCom/MCA/MBA/LLM	Total Marks Secured	Aggregate of marks secured	Position
Petitioner	15.064	—	—	—	15.064	2 <sup>nd</sup>
Opposite party No.7	14.286	5.00	—	—	19.286	1 <sup>st</sup>

2.4. The case of the petitioner is that, on his objection that the opposite party No.7 should not have been awarded 5



marks having in possession of qualification under the Heading “MA/MSc/MCom/MCA/MBA/LLM”, as the same is not eligibility criteria for consideration of merit of the matter in terms of advertisement, the Appointment Committee in its fresh Resolution dated 12.05.2017, conceded to have wrongly awarded, and, accordingly, deleted such 5 marks; nonetheless, said Committee deleted 5 marks awarded in favour of the petitioner under the heading “Knowledge in Computer Application”. Being dissatisfied with such decision of the Appointment Committee *vide* Resolution dated 12.05.2017 (Annexure-6 series), the petitioner is before this Court in the present writ petition.

***Replies of respective parties:***

3. This Court while issuing notice in the matter on 04.08.2017, appreciated the argument advanced by the counsel for the petitioner and passed the following order:

*“Heard Mr. A.P. Bose, learned counsel for the petitioner.*

*The petitioner has filed this writ petition to quash the Resolution of the Appointment Committee and result sheet dated 12.05.2017 under Annexure-6 series. He further seeks for a direction to give him appointment for the post of Secretary of Kajalaipalli S.C.S. Ltd. Mr. A.P. Bose, learned counsel for the petitioner referring to verification of applications done by the Appointment Committee of Kajalaipali PACS Ltd. under Odagaon Block held on 12.05.2017 states that so far as other qualification is*



concerned, both the petitioner and opposite party No.7 have been awarded 5 marks each in Knowledge in Computer Application. In addition to that opposite party No.7 has got more 5 marks in respect of additional qualification MA./M.Sc/M.Com/MCA/MBA/LL.M. Therefore, the petitioner raised objection stating that opposite party No.7 has no additional qualification of MA/MSc/MCom/MCA/MBA/LLM for which 5 marks given to him is to be deducted. If 5 marks will deduct from the marks awarded to opposite party No.7, then the petitioner will be in the first position in the interview. Considering his objection though additional 5 marks given to opposite party No.7 in respect of additional qualification of MA/MSc/MCom/MCA/MBA/LLM have been deducted, similarly, 5 marks have also been deducted in respect of Knowledge in Computer Application acquired by the petitioner. This attempt has been made just to retain opposite party No.7 and to declare him in the first in the interview. That itself is arbitrary and unreasonable exercise of power of the authority. As such, deduction of marks from the awarded marks of the petitioner is absolutely non-application of mind. In view of the above, the matter requires consideration.

Issue notice.”

- 4.** In obedience thereof, Counter affidavit has been filed by the opposite party No.4 affirming *inter alia* the following:

“4. That in reply to the averments made in para-1 it is submitted that as per the clause No. 5 (i) of the Rules for governing the appointment and other conditions of service of the employees of the PACS prescribed by the Registrar of Cooperative Societies, Odisha, Bhubaneswar under Section 33-A of the Orissa



*Cooperative Societies Act, 1962, the Managing Committee of the PACS is the appointing authority of all its employees and as per clause 5 (ii), there shall be an Appointment Committee consisting of the President of the PACS being the Chairman, Vice-President and one elected member duly authorized by the Committee of Management, representative of the financing Bank as its members and representative of the Circle Assistant Registrar of Cooperative Societies as the member (convener). Moreover, the Registrar of Cooperative Societies, Odisha, Bhubaneswar has prescribed the model application form, the model advertisement for the post of Secretary of PACS to be filled up by way of direct recruitment vide letter No. 3141 dated 12.02.2014, wherein it is specified that the duly filled in application along with required documents and requisite fees shall be sent to the concerned Secretary of PACS making the recruitment. ... The Government of Odisha, Cooperation Department vide letter No. 1074/Coop dated 05.02.2014 has also approved the amendment of the guidelines framed by the Registrar of Cooperative Societies, Odisha regarding the appointment and other conditions of service of the employees of the PACS issued vide memorandum No. 2858 dated 07.02.2011, wherein method of selection for direct recruitment is specified. ...*

*The Secretary of Kajalaipalli SCS Ltd., Opposite Party No. 6 by order of the Management has released an advertisement to fill up the post of a contractual Secretary in Kajalaipalli SCS Ltd. by way of direct recruitment which was published in the local daily "Pragativadi" on 13.05.2016. Within*



*the stipulated period as shown in the advertisement, the Secretary of Kajalaipalli SCS Ltd. had received 4 (four) numbers of application from the intending candidates. As per the clause No. 5 (iii) of the guidelines of the Registrar of Cooperative Societies, Odisha, Bhubaneswar, the Appointment Committee shall recommend the name of the candidate selected for the said post and thereafter, the Managing Committee shall make the appointment. Further, the rule under clause No. 3 (ii) of the guidelines of the Registrar of Cooperative Societies, Odisha says that the Circle Assistant Registrar of Cooperative Societies is only delegated with the power to render approval in support of the selection of the candidate after acceptance of the recommendation of the Appointment Committee by the Committee of Management of the PACS making recruitment and the consent of the financing Bank of the PACS. In the instant case, the Appointment Committee formed by the Kajalaipalli SCS Ltd. has selected the Opposite Party No. 7 for the post of Secretary of Kajalaipalli SCS Ltd. and recommended his name to the Managing Committee for appointment in the said post. So the allegation raised by the petitioner against the Assistant Registrar of Cooperative Societies, Nayagarh Circle, Nayagarh , Opposite Party No. 4 in this point as regard to illegal and arbitrary action in selecting the Opposite Party No. 7 for the post of Secretary of Kajalaipalli SCS Ltd. is not true and thus denied.”*

- 5.** In reply to the counter affidavit of the opposite party No.4, rejoinder affidavit has been filed by the petitioner contending that, the appointment of the opposite party



No.7 for the post of Contractual Secretary of Kajalaipalli Service Ltd. is illegal because the opposite party No.7 do not have all the qualifications as required for the said post. Though the opposite party No.7 does not possess proper Computer Certificate, he got extra 5 marks which should not have been given to him and another 5 marks was granted to the opposite party No.7 for having qualified in Master of Financial Control. Strong objection was raised by the petitioner that the opposite party No.7 was given appointment illegally without following the Guidelines as stated in the advertisement.

6. Justifying the decision taken by the Appointment Committee in its Meeting dated 12.05.2017, the counter affidavit of the opposite party No.7 has made the following assertion:

*“5. ... the petitioner has passed B.A. with Computer application and the Committee has provided him mark for B.A. and inadvertently granted 5 marks extra for computer application, for which selection committee has rightly selected opposite party No.7 for securing more marks than the petitioner. It is submitted that as will be revealed from the B.A. Marksheet of the petitioner which has been enclosed under Annexure-2 series that the petitioner has passed B.A. with Computer Application and when he got mark for his B.A. qualification he should not get any mark for computer application as computer application is one of the subject.*



6. *That as regards the averments made in para 7 of the counter it is submitted that as alleged by the petitioner no extra marks has been awarded rather taking into consideration knowledge/certificate in PGDCA the opposite party No.7 has been awarded 5 marks.*
7. *That as regards the averments made in para 8 of the counter it is submitted that the opposite party No.7 has no idea with regards to information, sought for by the petitioner, however Selection Committee has rightly selected opposite party No.7 and by virtue of selection process the opposite party No.7 was appointed as Secretary of Kajalaipalli, SCS Limited since last 4 years.”*
7. The opposite party No.7 filed counter affidavit eliciting that an inquiry report has been submitted to the Appointment Committee/Selection Committee on the basis of allegation of the petitioner and other unsuccessful candidates, consequent upon which a Resolution dated 12.05.2017 was passed after notice being issued to the petitioner and other affected parties.
- 7.1. It is stated that on detection of mistake that some extra marks were given to the candidates inadvertently, the same was taken into consideration. The Selection Committee decided not to count extra marks given for the purpose of selection. As inadvertently 5 marks were given to the petitioner for Computer Application, such extra marks have been deducted as the Computer Application is one of the subjects reflected in the



Certificate of Bachelor in Arts. Similarly 5 marks extra given to the opposite party No.7 for acquiring Master of Financial Control has been deleted as the same has no bearing with the selection of Contractual Secretary of the Co-operative Society.

7.2. The Selection Committee has taken into consideration the case of the petitioner *vis-à-vis* opposite party No.7. The opposite party No.7 was given 24.286 marks, *i.e.*, 14.286 as per his career marks and 5 marks for Computer Application and 5 marks for acquiring Master of Financial Control. Extra 5 marks given to the opposite party No.7 for acquiring qualification of Master of Financial Control has been rectified in the later decision of the Selection Committee. The opposite party No.7 after deducting 5 marks secured 19.286 marks.

Similarly the petitioner secured 15.064 as career marks and extra 5 marks given to him for acquiring knowledge in computer application. It was found that the petitioner has passed B.A. with Computer Application as one of the subjects. Therefore, it could be found that he was not entitled to extra 5 marks towards “Knowledge in Computer Application”. As per Resolution, dated 12.05.2017, marks would not be given for acquiring same qualification twice— one as elective subject in B.A. and the other by a Private Institute. Therefore, the extra 5 marks given to the petitioner on account of knowledge



in Computer Application has been deleted. Thus, the petitioner has secured 15.064.

Since the opposite party No.7 has secured more marks he has been issued with the order of appointment, for which no illegality have been committed.

7.3. Pursuant to direction of this Court *vide* Order dated 19.07.2024 to the President of Kajalaipalli Service Cooperative Society Ltd.-opposite party No.5, Memo and written note of submission have come to be filed on 24.01.2025 enclosing therewith documents relating to the petitioner as well as the opposite party No.7. Subsequently, in order to assert the factual position, on 13.02.2025 the said documents were furnished enclosed to an Affidavit dated 11.02.2025 being sworn to by Sri Prafulla Kumar Patasahani, President of Kajalaipalli Service Cooperative Society Ltd., copy of which is shown to have been served on the counsel for the petitioner on 13.02.2025.

7.4. It is affirmed in the said Affidavit dated 11.02.2025 as follows:

*“2. That, the documents submitted by the petitioner and the opposite party No.7 at the time of selection for the post of Contractual Secretary of Kajalaipalli Service Cooperative Society Limited are Enclosed herewith as Annexures-1 and 2 respectively. The documents submitted by the petitioner at the time of*



*selection is enclosed under Annexure-1 and the documents submitted by the opposite party No.7 at the time of selection is enclosed under Annexure-2 of the present affidavit.*

3. ***That, as will be revealed from Annexure-1 and 2 enclosed in the present affidavit the petitioner has never submitted his PGDCA Certificate whereas the opposite party No.7 has submitted his PGDCA Certificate.***
4. ***That, it is also pertinent to mention here that the PGDCA certificate annexed in the page-19 of the writ petition was never provided at the time of selection.***

*Further, the petitioner passed his 10<sup>th</sup> in the month of February, 2005 and the HSC Certificate was issued in the month of July, 2006 which will be revealed from page-13 of the writ petition but has passed his PGDCA in the month of December, 2006. The petitioner has passed +2 in the year 2007. It is relevant to mention here that PGDCA Course can only be done after 10+2 and not after 10<sup>th</sup>, for which the PGDCA certificate under Page-19 of the writ petition cannot stand.”*

### **Hearing:**

8. Pleadings, being completed and exchanged among the learned counsel for respective parties, on their consent, this matter is taken up for final hearing at the stage of admission.



- 8.1. Accordingly, heard Sri Amit Prasad Bose, learned Advocate appearing for the petitioner and Sri Satyajit Behera, learned Advocate for the opposite party Nos.5 and 6 and Sri Jayant Kumar Bal, learned Additional Government Advocate appearing for opposite party Nos.1 to 4. None appeared for the opposite party No.7 at time of hearing.
- 8.2. On conclusion of hearing, the matter stood reserved for preparation and pronouncement of judgment.

***Analysis, discussions and consideration of rival contentions:***

9. Reiterating the facts as narrated in the writ petition, Sri Amit Prasad Bose, learned Advocate appearing for the petitioner submitted that on the basis of complaint, an enquiry was conducted and in pursuance thereof the marks awarded to the opposite party No.7 in respect of Master of Financial Control under the Heading “M.A./M.Sc./M.Com/M.C.A./M.B.A./LL.M.” was deleted. Thus, while the marks of the petitioner should have been retained at 15.084 (Total % of marks secured) + 5.00 (Knowledge in Computer Application) = 20.084 (Aggregate of Mark Secured), that of the opposite party No.7 should have been assessed at 14.286 (Total % of marks secured) + 5.00 (Knowledge in Computer Application) = 19.286 (Aggregate of Mark Secured). As a result of such re-computation the petitioner should have



been placed at the 1<sup>st</sup> position whereas the opposite party No.7 in the 2<sup>nd</sup> position inasmuch as Sanghamitra Rout was disqualified as “underaged” and Debasish Mohapatra had no residential certificate.

9.1. The relevant portion of the advertisement so far as necessary for the present purpose is extracted hereunder:

*“Eligibility and Educational Qualification:*

1. *The candidate must be a permanent resident of the area of operation of Kajalaipalli Service Cooperative Society Ltd.<sup>1</sup>*
2. *The candidate outside the area of operation of the Society but within the area of the Block/District concerned may apply for the post, but their candidature can only be considered if no eligible*

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<sup>1</sup> The following terms are defined in the Odisha Cooperative Societies Act, 1962:  
“(g-1) ‘Office Bearer’ means a person elected or nominated to the Committee or appointed under this Act, Rules or Bye-laws of a Society to give directions in regard to the policy concerning the affairs or business of the Society, and includes the President and Members of the Preliminary Committee of a Society.  
(h-2) ‘Primary Society’ means a Society, membership of which consists of individuals and may include the State or Central Government or both such Governments, as the case may be, or a person admitted as joint or a nominal member.)  
(k) ‘Society’ means a Co-operative Society registered or deemed to be registered under this Act;  
(l) ‘Society with limited liability’ means a Society, in which the liability of its members, for the debts of the Society in the event of its being wound up is limited by its Bye-Laws:  
(i) to the amount, if any, unpaid on the shares respectively held by them; or  
(ii) to such amount as they may, in accordance with such Be Laws, respectively, undertake to contribute to the assets of the Society;  
(m) ‘Society with unlimited liability’ means a Society, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute any deficit in the assets of the Society;”



*candidate is found from the area of operation of the Society.*

3. *The candidate must be a graduate in any discipline from any recognised university with computer proficiency.*
4. *Preference/additional points shall be given to the candidate having Higher Diploma in Cooperative Management/M.A./M.Sc./M.Com/M.C.A./M.B.A./LL.M./B.B.A./Diploma in Cooperative Management and Computer Application from a recognized University/Institution.”*

9.2. The Corrigendum dated 14.05.2016 reads thus:

*“In connection to this Office advertisement for recruitment to one post of Contractual Secretary of Kajalaipalli Service Cooperative Society Ltd. the upper age limit shall be read as 37 years in respect of persons belonging to SC/ST/OBC including SEBC/Physically handicapped persons and Ex-Servicemen instead of 35 years as published in daily Pragativadi on date 13.05.2016.”*

9.3. One of the criteria enumerating eligibility for the post of Secretary of the Kajalaipalli Service Cooperative Society Ltd. is that “the candidate must be a graduate in any discipline from any recognized university with computer proficiency”. Close scrutiny of documents enclosed to writ petition reveals that the petitioner-Sujit Kumar Nayak was awarded Provisional Certificate by the Utkal University having passed Bachelor of Arts “Three Year Degree Course Exam., 2014 from Sukra Behera Degree



College, Kendudhipi, D.N. Pur, Nayagarh” with the following subjects:

*“Compulsory Subject(s):*

*M.I.L. Odia, English, Indian Society and Culture, **Computer Application**, Environmental Studies*

*Elective Subject(s):*

*A: Sanskrit, B: Indian Polity*

*Pass Subject(s):*

*Education”*

9.4. The opposite party No.7-Ranjan Kumar Sahoo was awarded Provisional Certificate by the Utkal University having passed Bachelor of Arts “Three Year Degree Course Exam., 2008 from Nayagarh College, Nayagarh” with the following subjects:

*“Compulsory Subject(s):*

*Eng, MILO, ISC, ES, PS*

*Elective Subject(s):*

*Elective-A : IP, Elective-B : Sans*

*Pass Subject(s):*

*Hons. Subject:*

*Eco”*



- 9.5. Computer Training Certificate issued by Ramakrushna Educational and Charitable Trust in collaboration with IPE, Bhubaneswar (Sponsored by Ministry of HRD, Government of India) in favour of the opposite party No.7 depicts that he has qualified PGDCA.
- 9.6. Explaining the factual aspect, Sri Satyajit Behera, learned Advocate for the opposite party Nos.5 and 6 submitted that since the petitioner was awarded 5 marks with respect to “Knowledge in Computer Application” while evaluating the percentage of marks on the basis of certificates furnished inasmuch as he had one of the subjects as “Computer Applications” at the Degree Level, whereas the opposite party No.7 had certificate showing completion of PGDCA course. Therefore, the mark-sheet which was published by the Appointment Committee on 28.06.2016 has been modified/corrected on (re)verification held on 12.05.2017 pursuant to enquiry conducted on the basis of complaint of the petitioner as well as other two unsuccessful candidates. It has been asserted by the opposite party No.5 at paragraph 3 of the Additional Affidavit dated 11.02.2025 that *“the petitioner has never submitted his PGDCA Certificate whereas the opposite party No.7 has submitted his PGDCA Certificate”*.



9.7. The counsel for the opposite party Nos.5 and 6 has candidly admitted in his written note of submission as follows:

*“The representation of the petitioner was considered with regard to grant of 5 marks where:*

- i. It was found that the opposite party No.7 was inadvertently given more 5 marks in Master of Financial Control (MFC) for acquiring certificate of Master of Financial Control as the MFC is no way connected with the selection of cooperative society, subsequently the marks granted to the opposite party No.7 was deducted.*
- ii. It was found that the petitioner was also given 5 extra marks as Computer Application inadvertently but subsequently the said 5 marks as extra mark was deducted as the petitioner has passed B.A with Computer Application which is one of the subjects and the same will be revealed from 1<sup>st</sup> Para Last Line of Page-29 of the writ petition.”*

9.8. Above discussion would lead to show that factual dispute does arise in the matter whether the Certificate showing PGDCA qualification was furnished by the petitioner to the Appointment Committee and the re-assessment/re-evaluation was correctly made.

9.9. It may deserve to have reference to *Manas Ranjan Rout Vrs. State of Odisha, W.P.(C) No.21779 of 2019, vide Judgment dated 31.05.2021*, where a Division Bench of this Court has observed that:



*“12. The Supreme Court in Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vrs. New J.K.Roadways, Fleet Owners and Transport Contractors 2020 SCC OnLine SC 1035, has held as follows:*

*‘14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. In Afcons Infrastructure Ltd. Vrs. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818, this Court held:*

*‘15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.’  
(page 825)*



15. *In the judgment in Bharat Coking Coal Ltd. Vrs. AMR Dev Prabha 2020 SCC OnLine SC 335, under the heading “Deference to authority’s interpretation”, this Court stated:*

*‘51. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent No. 1 seeks to only enforce terms of the NIT. Inherent in such exercise is interpretation of contractual terms. However, it must be noted that judicial interpretation of contracts in the sphere of commerce stands on a distinct footing than while interpreting statutes.*

*52. In the present facts, it is clear that BCCL and India have laid recourse to Clauses of the NIT, whether it be to justify condonation of delay of Respondent No. 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. **BCCL having authored these documents, is better placed to appreciate their requirements and interpret them.** (Afcons Infrastructure Ltd Vrs. Nagpur Metro Rail Corporation Ltd, (2016) 16 SCC 818)*

*53. The High Court ought to have deferred to this understanding, unless it was patently perverse or mala fide. Given how BCCL’s interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual*



*interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality.'*

16. Further, in the recent judgment in *Silppi Constructions Contractors Vrs. Union of India*, 2019 SCC OnLine SC 1133, this Court held as follows:

**'20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or**



*perversity. With this approach in mind we shall deal with the present case.’ \*\*\*”*

9.10. In *Om Gurusai Construction Company Vrs. V.N. Reddy, 2023 INSC 760* it has been succinctly reiterated as follows:

*“It is well settled by a long line of judgments that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It has also been held that the constitutional courts must defer to this understanding and appreciation of the tender documents by the employer unless there is mala fide or perversity in the understanding or appreciation. [See *Afcons Infrastructure Limited Vrs. Nagpur Metro Rail Corporation Limited and Another, (2016) 16 SCC 818* and *Uflex Limited Vrs. Government of Tamil Nadu and Others, (2022) 1 SCC 165*].”*

9.11. As conspectus of various pronouncements points at that it is the author of the advertisement who is the best judge to interpret the documents and if two interpretations are possible then the interpretation of the author must be accepted, Sri Satyajit Behera, learned Advocate for the opposite party Nos.5 and 6 has set up a stance that the writ petition is not maintainable for the petitioner has approached this Court directly without exhausting remedy available under the Odisha Cooperative Societies Act, 1962.



9.12. Reliance has been placed by the learned counsel for the opposite party Nos.5 and 6 on Section 67B of the Odisha Cooperative Societies Act, 1962, which reads thus:

“67B. Powers of the Tribunal.—

- (1) (i) Notwithstanding anything contained in any law for the time being in force, **any dispute arising in connection with** the election of any office-bearer of a Society, or the disciplinary action taken by a Society or **its Committee against any paid servant of the Society who is not a workman within the meaning of Clause(s) of Section (2) of the Industrial Disputes Act, 1947**, shall be referred to the Tribunal in the manner and within the period prescribed in that behalf.
- (ii) If any question arises as to whether a dispute referred to the Tribunal under Clause (1) is a dispute within the meaning of that clause, the decision of the Tribunal thereon shall be final and shall not be called in question in any Court.
- (iii) All disputes arising in connection with the election of any office-bearer of a Society or the disciplinary action taken by Society or its committee against any paid servant of the Society, with whatever authority under this Act, Rules or any Regulations framed under this Act pending as on the date of commencement of the Odisha Co-operative Societies (Amendment) Act, 1991 shall stand



*transferred to the Tribunal which shall dispose of the same in accordance with law.*

- (2) The Tribunal may, pending the decision of the dispute, make such interlocutory orders as it may deem necessary in the interest of justice.*
- (3) The Tribunal may call for and examine records of proceeding in which appeal lies to it, but appeal has not been filed, for the purpose of satisfying itself as to the legality or propriety of any order passed or decision made therein and if any such case it appears to the Tribunal that any order or decision should be revised, modified or annulled, it may make such order as it thinks fit, after affording to the person likely to be affected adversely by such order an opportunity of being heard.*
- (4) While deciding appeals, the Tribunal may exercise all the powers conferred upon the Appellate Court by Order XLI of the first Schedule of the Code of Civil Procedure, 5 of 1908.”*

9.13. Elaborating his argument, Sri Satyajit Behera, learned Advocate for the opposite party Nos.5 and 6 objecting to exercise of power under Article 226/227 of the Constitution of India *vis-à-vis* such factual dispute which needs to be adjudicated upon taking recourse to provisions of Section 67B of the Odisha Cooperative Societies Act, would rely on *Pramod Kumar Pradhan Vrs. Management of Angul United Central Cooperative Bank Ltd., Angul, W.P.(C) No.15312 of 2011, vide Order dated 16.08.2024*, wherein it has been clarified that:



“5. On perusal of the records and judgment passed in the case of Ch. Ajeet Kumar Das and Ors. Vrs. Registrar, Co-operative Societies, Odisha and Ors., (W.P.(C) No.18641 of 2020 (vide Judgment dated 31.07.2024) it appears that similar issue has already been decided by this Court in the said judgment, which was disposed of on 31.07.2024.. the ordering portion of the said judgment is as follows:

*‘The short question for adjudication in the instant petition is that whether the Opp. Party No.2/bank is amenable to the writ jurisdiction of Court in the instant writ petition which involves a service dispute.*

*Article 12 of the Constitution of India has defined the term ‘State’ as follows:*

*‘12. Definition.—*

*In this Part, unless the context otherwise requires, ‘the State’ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.’*

*The constitutional history reveals that the term ‘other authorities’ as referenced in Article 12 has been the subject of extensive judicial examination. This examination has led to the establishment of a comprehensive body of jurisprudence dedicated to its interpretation. The evolution of this legal framework highlights the significance of “other authorities” in defining the scope of constitutional*



rights and governmental powers. In the case of *Ajay Hasia and others Vrs. Khalid Mujib*, (1981) 1 SCC 722 a Constitution Bench of the Supreme Court, while approving the tests laid down in the case of *Ramana Dayaram Shetty Vrs. International Airport Authority of India & Ors.*, (1979) 3 SCC 489 as to when a Corporation can be said to be an instrumentality or agency of the Government, observed which runs thus:

*‘The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression ‘other authorities’, it must be 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.'*

*Then, in Pradeep Kumar Biswas Vrs. Indian Institute of Chemical Biology and Others, (2002) 5 SCC 111 a seven-judge Bench of the Apex Court, meticulously examined and endorsed the criteria established in the Ramana Dayaram Shetty Vrs. International Airport Authority of India & Ors., (1979) 3 SCC 489 and reaffirmed in the Ajay Hasia and others Vrs.*



*Khalid Mujib, (1981) 1 SCC 722 for determining when a corporation can be classified as an 'instrumentality' or 'agency' of the Government, thereby falling within the scope of the term 'authority' as defined in Article 12 of the Constitution. The Bench referenced the case of Chander Mohan Khanna Vrs. NCERT, (1991) 4 SCC 578 wherein the Apex Court, after evaluating the memorandum of association and operational rules, concluded that the NCERT was primarily an autonomous entity. It was determined that its functions were not exclusively governmental, and Government oversight was limited to ensuring proper utilization of grants. Since its funding was not entirely derived from Government sources, it did not meet the criteria of a State instrumentality under Article 12. Additionally, the Bench cited the decision in Mysore Paper Mills Ltd. Vrs. Mysore Paper Mills Officers' Association, (2002) 2 SCC 167 where it was established that the company qualified as an authority under Article 12. This conclusion was based on the fact that the company was substantially funded and financially controlled by the Government, operated under a Board of Directors appointed and removable by the Government, and undertook functions of significant public interest under governmental oversight.*

*The evolving landscape of State control and the increasing involvement of private entities in what is termed as 'public functions' have prompted the Supreme Court to address the issue of liability for such private actors. A 'public function' refers to a role traditionally reserved for governmental authorities. Private sector individuals or entities are*



*deemed to be executing a public function when they undertake responsibilities historically associated with Government entities. In Anadi Mukta & Others Vrs. V.R. Rudani & Others, (1989) 2 SCC 691 the Supreme Court clarified that the phrase ‘any person or authority’ under Article 226 of the Constitution is not confined to statutory bodies and government instrumentalities. Instead, it extends to any individual or entity engaged in performing a public function. Then, in Zee Telefilms Ltd. & Others Vrs. Union of India, (2005) 4 SCC 649 the Supreme Court delineated the scope of ‘other authorities’ under Article 12 of the Constitution. This category includes state-created corporations and societies engaged in trading, bodies involved in research and development related to Government functions, and private entities performing public duties or undertaking activities similar to those of Government entities. Additionally, in Janet Jeyapaul Vrs. SRM University & Others, (2015) 16 SCC 530 the Court found that SRM University was engaged in a public function through its educational activities.*

*The aforementioned decisions clarify that the precise type of entity—be it a society, cooperative society, or company—does not solely determine its status. What is essential is the degree of governmental control over the entity and its operationality in a manner similar to a ‘public function’.”*

*The tests described must be collectively applied and assessed. There is no fixed formula for this determination; instead, various factors may become significant in different factual scenarios to establish whether the entity*



*qualifies as an authority under Article 12 of the Constitution.*

*It is a settled position of law that for any “other authority” to fall within the domain of the writ jurisdiction it should be discharging a “public duty” and the dispute between the parties shall persist regarding the non- performing of such public duty or function. It is pertinent to note that the Supreme Court has time and again reiterated that when the dispute pertains to the service matters and there is no element of public duty involved in it, then the dispute falls within the domain of private dispute and is not amenable to the jurisdiction of the writ Court.*

*It is not in dispute that the Society has not been constituted under an Act. It functions like any other Co-operative Society but mainly regulated in terms of the provisions of the Orissa Cooperative Societies 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 Co-operative Society, indisputably, are governed by the Rules.*

*It has not been shown before this Court that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society.*

*In S.S. Rana Vrs. Registrar, Co-Operative Societies, (2006) 11 SCC 634 the Supreme Court dealt with the question of amenability of non-statutory cooperative societies under Art. 226 of the Constitution. The relevant excerpt is produced hereinbelow:*



*‘The respondent No.1-Society does not answer any of the afore-mentioned 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 Vrs. Khalid Mujib Sehravardi, (1981) 1 SCC 722. [See Zoroastrian Coop. Housing Society Ltd. Vrs. District Registrar, Coop. Societies (Urban) & Ors. reported in (2005) 5 SCC632]. It is well settled that general regulations under an Act, like Companies Act or the Co-operative 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.’*

*In Krishna Mohan Vrs. State of U.P., 2019 SCC OnLine All 4009 the Allahabad High Court has held that supervisory or general regulation under the statute or by any state authority over cooperative societies, which are body corporates, does not make their activities subject to such control by the State that they would be considered an extension or instrumentality of the State. The relevant portion is produced hereinbelow:*

*‘17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the ‘State’ or*



*instrumentality of the State. Above principle has been approved by this Court in S.S. Rana Vrs. Registrar, Co-operative Societies and another (2006) 11 SCC 634. In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Co-operative Societies Act this Court held as follows:*

- ‘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. 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 characterized 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 Vrs. Khalid MujibSehravardi*. [See *Zoroastrian Coop. Housing Society Ltd. Vrs. 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.’ \*\*\*”*

*The fact that cooperative societies are subject to the control of statutory authorities such as the Registrar, Joint Registrar, and the Government does not imply that the State exercises direct or indirect control over the society's affairs in a manner that is deep and all-pervasive. Then, in Anand Prakash Vrs. The Delhi State Co-Operative Bank Ltd. & Anr., 2011 SCC OnLine Del 1841 the Delhi High Court held that the writ petition against cooperative bank may not be maintainable just because it is performing a banking function. The relevant excerpt is produced hereinbelow:*

- ‘10. I have put to the counsel for the petitioner whether, if a private company instead of framing its own rules adopts the rules aforesaid applicable to the Government servants to its employees, a writ petition would lie against the private company also. The counsel for the petitioner has fairly stated that it would not be. Similarly, merely because a Society adopts the rules applicable to Government servants to its own employees would not convert the said Co-operative Society into Government. The said contention of the petitioner is thus rejected.*
- 11. Similarly, merely because the respondent is performing banking function would also not make the writ petition maintainable. It is not shown that the function so performed by the respondent is monopolistic. According to the document handed over by the petitioner himself there are as many as 32 Co-operative Societies in Delhi performing the banking functions. This is besides the other banks*



*operating in Delhi. Thus the said ground for maintainability of the writ petition is also rejected.'*

*Based on the aforementioned, it is now well established that a cooperative society or its associated bank does not fall within the purview of Article 12 of the Constitution solely by virtue of being under the supervisory jurisdiction of the Registrar of Cooperative Societies or due to its engagement in banking functions. Nonetheless, I shall now deal with the amenability of service matters of the Cooperative Societies to the jurisdiction of Article 226.*

*In Kulchhinder Singh Vrs. Hardayal Singh Brar, AIR 1976 SC 2216 the Supreme Court adjudicated upon the fact whether a writ pertaining to service matters can be entertained against the cooperative society. The relevant portion of the judgment is reproduced herein below:*

- '8. The question as to whether a cooperative society is a public authority has fallen for judicial notice and Amir Jamia, ILR 1969 Del 202 contains an elaborate discussion of the controversial topic covering decisions, English and Indian. It is also true that at least Madhya Pradesh [Dukhooram Gupta Vrs. Cooperative Agricultural Association Ltd., AIR 1961 MP 289] and Calcutta [Madan Mohan Sen Gupta Vrs. State of W.B., AIR 1966 Cal 23] have considered whether a writ will issue against a cooperative society, simpliciter. Kumkum Khanna, ILR (1976) 1 Del 31 deals with a private college governed by a university ordinance.*
- 9. Many other rulings have also been brought to our notice, but we do not think it necessary elaborately to investigate these issues notwithstanding the fact that Shri Gupta, appearing for the contesting*



*respondent, challenged each one of the grounds stabilising his submission on rulings of this Court, of the High Courts and the English courts.*

10. *The reason why we are not inclined to add to the enormous erudition on the point already accumulated in case law is that a close perusal of the writ petition will disclose that essentially the appellant is seeking merely to enforce an agreement entered into between the employees and the cooperative bank.*
  
11. *There is no doubt that some of the legal problems argued by Sri Ramamurthy deserve in an appropriate case jurisprudential study in depth, although much of it is covered by authority. But assuming, for argument's sake, that what he urges has validity, the present case meets with its instant funeral from one fatal circumstance. The writ petition, stripped of embroidery and legalistics, stands naked as a simple contract between the staff and the society agreeing upon a certain percentage of promotions to various posts or an omnibus, all-embracing promise to give a quota to the existing employees. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellent is that the remedy of Article 226 is unavailable to enforce a contract qua contract. We fail to see how a supplier of chalk to a Government school or cheese to a Government hospital can ask for a constitutional remedy under Article 226 in the event of a breach of a contract, bypassing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or*



*statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction.*

12. *The controversy before us in substance will turn on the construction and scope of the agreement when the claim to a quota as founded cannot be decided in writ jurisdiction without going back on well-settled guidelines and even subverting the normal processual law— except perhaps in extreme cases which shock the conscience of the Court or other extraordinary situation, an aspect we are not called upon to explore here. We are aware of the wide amplitude of Article 226 and its potent use to correct manifest injustice but cannot agree that contractual obligations in the ordinary course, without even statutory complexion, can be enforced by his short, though, wrong cut.'*

*The Delhi High Court in Satyapal Singh Vrs. The Delhi State Cooperative Bank (Sunita Sharma Vrs. The Delhi State Cooperative Bank Ltd., 2024 SCC OnLine Del 1270) relied on Kulchhinder Singh (supra) and held that the service matters of the cooperative society are not amenable to the writ jurisdiction since, there is no element of public duty involved. Such kinds of disputes are of private nature and do not fall within the ambit of the writ jurisdiction.*

*In Konaseema Co-operative Central Bank Ltd. Vrs. N. Seetharama Raju, AIR 1990 Andhra Pradesh 171 the*



*Andhra Pradesh High Court contributed to the narrative and held that bye-laws made by co-operative societies do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its employees, or between the Society and its members. The relevant excerpt is produced hereinbelow:*

*‘The bye-laws made by a co-operative society registered under the A.P. Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the Society and its employees, or between the Society and its members, as the case may be. Hence, where a Society cannot be characterized as a ‘State’, the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition. However, in the matter of termination of service of the employees of a co-operative society, Section 47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Article 226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishment Act; but, in an appropriate case, this Court will interfere under Article 226, if the violation of a statutory public duty is established. It is immaterial which Act of Rule casts such a statutory public duty.*

*Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a ‘State’ within the meaning of Article 12, does not necessarily belong to public law field. A society, which is a ‘State’, may have its private law rights just like a Government. A contractual obligations, which is not statutory, cannot be*



*enforced by way of a writ petition under Article 226 of the Constitution. Prior to entering into contract, however, Article 14 operates, as explained by the Supreme Court in E.E. & C. Ltd. Vrs. State of West Bengal, AIR 1975 SC 226 and Ramana Dayaram Shetty, (1979) 3 SCC 489 = AIR 1979 SC 1628.'*

- 1. From the aforementioned discussion, it has been established that, for an organization to be deemed as performing a public function, such function must be inherently associated with those performed by the State in its sovereign capacity.*
- 2. Taking a cue from the preceding discussion, there is no evidence on record to suggest that the Respondent/Bank undertakes functions comparable to those exclusively carried out by State authorities. The Respondent/Bank is a non-statutory entity that does not perform any public function, as banking services are provided by both private and State entities. Moreover, the Respondent/Bank does not hold any monopoly status conferred or mandated by law. Although the State may promote such entities as part of its social policy or economic development initiatives, this encouragement does not equate to the performance of a "public function".*
- 3. In the present case, the lack of State control over the management of the Respondent/Bank significantly influences the conclusion that the Respondent/Bank does not fall within the definition of a public authority. The deputation of employees from another bank and their subsequent absorption by the Respondent/Bank does not imply that it has undertaken a public function. The Respondent/Bank operates under democratic control, and the ultimate*



*authority regarding the service conditions of its employees lies with the management of the Respondent/Bank.*

4. *Therefore, in this petition, the Respondent/Bank does not qualify as a “State” or “instrumentality of the State” within the meaning of Article 12 of the Constitution and is thus not subject to the jurisdiction of Article 226.”*

9.14. Referring to *Pramod Kumar Pradhan (supra)* this Court in *Prasanta Kumar Senapati Vrs. State of Odisha, W.P.(C) No.624 of 2020*, disposed of *vide Judgment dated 22.11.2024* answered the question whether grievance of Dadhibamanpur Primary Agriculture Cooperative Society, which issued an advertisement on 16.11.2019 to directly recruit “Chief Executive” without obtaining approval from the financing bank or the Managing Committee as required by the 2011 Guideline can be amenable to writ jurisdiction under Article 226/ 227 of the Constitution of India in the negative by holding thus:

*“13. Applying the abovementioned jurisprudence to the case at hand, it is evident that the petitioner’s grievances primarily pertain to the terms of his employment and administrative decisions taken by a cooperative society. Cooperative societies, while functioning under statutory frameworks, are fundamentally private entities unless performing a public duty of significant magnitude.*

14. *In the instant matter, the dispute revolves around the abolition of the petitioner’s post/his subsequent*



*transfer/and the validity of an advertisement issued by the society. These issues are inherently contractual and administrative in nature and do not involve any violation of fundamental rights or statutory obligations warranting the invocation of Article 226.*

15. *It is pertinent to note that the guidelines dated 07.02.2011, though issued by the Registrar of Cooperative Societies, primarily serve as directives to aid the internal administration of PACS. They do not have the force of law akin to statutory rules or regulations. Thus, the alleged non-compliance with these guidelines, while significant within the cooperative framework, does not elevate the dispute to the level of a public law element.*
16. *In light of the foregoing analysis, this Court finds that the present matter does not fall within the ambit of writ jurisdiction under Article 226 of the Constitution of India. The petitioner’s remedy, if any, lies in approaching the cooperative tribunal or other competent forums as prescribed under the relevant cooperative laws.”*

9.15. This Court may refer to provisions of Section 68 of the Odisha Co-operative Societies Act, 1962, which are extracted hereunder:

*“68. Disputes which may be referred to arbitration.—*

- (1) *Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or the business of a Society, other than a dispute required to be referred to the Tribunal and a dispute required to be*



*adjudicated under the Industrial Disputes Act, 1947 (14 of 1947), and a dispute relating to non-payment of contribution to the Co-operative Education Fund referred to in sub-section (3) of Section 56 shall be referred to the Registrar if the parties thereto are among the following, namely:*

- (a) the Society, its Committee, past Committee, any past or present Officer or office bearer, any past or present agent, any past or present servant, or the nominee, legal heir or representative of any deceased officer, office-bearer, deceased agent or deceased agent or deceased servant of the Society; or*
- (b) a member, past member, or a person claiming through a member, past member or deceased member of the Society, or of a Society which is a member of the Society; or*
- (c) a surety of a member, past member or a deceased member, whether such surety is or is not a member of the Society; or*
- (d) any other Society.*

*Explanation-I.—*

*A claim in respect of any sum payable to or by a Society by or to a person or Society mentioned in clauses (a) to (d), shall be a dispute touching the business of the Society within the meaning of this Section, even in case such claim is admitted and the only points at issue are the ability to pay and the manner of enforcement of payment.*

*Explanation-II.—*



*A claim by a Financing Bank against a member of a Society which is a member of the Financing Bank and indebted to it for the recovery of dues payable by such member to the Society shall be a dispute touching the business of the of the Financing Bank within the meaning of this Section.*

*Explanation-III.—*

*The question whether a person is or was a member of a Society or not shall be a dispute within the meaning of this Section.*

*Explanation-IV.—*

*A claim by a surety for any sum or payment due to him from the principal borrower in respect of a loan advanced by a Society shall be a dispute within the meaning of this Section.*

*Explanation-V.—*

*The question whether a person or any one of his family members is carrying on any business prejudicial to the business or interests of the Society, or whether such family member has common economic interest with such person shall be a dispute within the meaning of this Section.*

- (2) Any person, Society, or Financing Bank referring a dispute to the Registrar under sub-section (1) shall deposit in advance such fees as may be prescribed.*
- (3) No dispute referred to in this Section shall be entertained in any Civil Court and decision of the Registrar in this respect shall, subject to the provisions of Section 70, be final.*



- (4) *If any question arises whether a dispute referred to the Registrar under this Section is a dispute touching the constitution, management or the business of a Society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.*
- (5) *Nothing in this Section shall, where the dispute relates to the recovery of the dues of any Society from any of its members be construed to debar any Financing Bank of such Society from referring such dispute to the Registrar.”*

9.16. With the aforesaid unambiguous statutory provision, regard may be had to decision of a co-ordinate Bench of this Court rendered in *Natha Kharsel Vrs. Registrar, Cooperative Societies and Others, W.P.(C) No.15129 of 2010, disposed of vide Judgment dated 12.08.2024*, wherein Full Bench decision rendered in the case of *Banabihari Tripathy Vrs. Registrar of Cooperative Societies, Odisha and Another, 1988 (II) OLR 375*, has been followed to decide the issue whether co-operative society is amenable to writ jurisdiction under Article 226/227 of the Constitution of India. It is held that “The Bhawanipatna Central Cooperative Bank Ltd.”, by merely getting registered under the Odisha Cooperative Societies Act, does not acquire the status of an “authority” as contemplated in Article 12 of the Constitution of India. After threadbare analysis of constitution of the Co-operative Bank, this Court in Full



Bench in the case of *Banabihari Tripathy (supra)* has set forth as follows:

‘\*\*\* When this writ application was placed before a Division Bench of this Court, it referred the matter to a larger Bench to consider the following two questions:

- 1 Whether the cooperative societies registered under a Cooperative Societies Act as such will come within the fold of Article 12 of the Constitution of India and are amenable to the writ jurisdiction of the High Court? (In case the answer is in the negative),
- 2 Whether the cooperative society is born under any statute or is discharging any such functions which may make it an ‘instrumentality of the State’? (Second question is recasted)

15. \*\*\*

*Answer to question No.1.—*

*A cooperative society on merely getting registered under the Cooperative Societies Act does not acquire any status of becoming an authority to render it amenable to the writ jurisdiction of the High Court. The supervisory powers given to the Registrar is with the objects of better working of the societies and to give them guidance of well-trained or expert officers.*

*Answer to question No.1.—*

*If a Cooperative Bank is born under or created by statute, then it may acquire the status of an*



*‘authority’ within the meaning of Article 12 of the Constitution. **Otherwise, it has to satisfy the essential tests formulated by the various decisions of the Supreme Court for which, however, there cannot be a straitjacket formula.** However, it may not be necessary that the society must satisfy all the tests for qualifying to be an ‘authority’ and in a given case, only some of the prominent features may give it that status. **But that must be so predominant that on tearing the veil, it may appear that the society is merely a projection of the State, the voice being that of a State and the hands also of the State.***

16. *As a result of the above discussion, I unhesitatingly come to the irresistible conclusion that this application is not maintainable and is accordingly dismissed. The petitioner, however, will be at liberty to seek his remedy, if any, available under the general law.’*

9.17. *Natha Kharsel (supra)* was a case where challenge was against termination of service of Cadre Secretary of the Bhawanipatna Central Cooperative Bank Ltd. which got confirmed by an appellate order. Writ petition being filed against such decision, this Court, while dismissing said petition, observed in *Natha Kharsel (supra)* as follows:

*“Moreover, Section 67B of the OCS Act provides for an alternative forum with regard to the dispute arising in connection with the disciplinary action taken by a Society or its Committee against any paid servant of the Society. Similarly Section 113 of the OCS Act also provides for an alternative forum in the State Government to exercise the*



*power of revision, wherein the grievance of the petitioner could have been looked into, but the petitioner has neither approached the Tribunal nor the State to invoke/exercise original or revisional power to redress this grievance.”*

9.18. This Court wishes to have regard to a decision rendered in the case of *Radhakrishna Vrs. Aditya Birla Finance Ltd.*, 2020 SCC OnLine Ori 189, wherein it has been observed as follows:

“9. *In this context, it would be profitable to refer to the decision of the Supreme Court as rendered in the case of Federal Bank Ltd. Vrs. Sagar Thomas, reported in AIR 2003 SC 4325. Though the said judgment is rendered in the context of a private company carrying on banking business, the ratio of the said decision can apply with equal force to non-banking financial company like opposite party No.1 which stands more or less on the same footing. There the Supreme Court has made it clear that a writ petition under Article 226 of the Constitution of India may be maintainable against*

- (i) the State (Govt.);*
- (ii) Authority;*
- (iii) a statutory body;*
- (iv) an instrumentality or agency of the State;*
- (v) a company which is financed and owned by the State;*
- (vi) a private body run substantially on State funding;*



- (vii) a private body discharging public duty or positive obligation of public nature;
- (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

***In such background, on the private banking company, the Supreme Court observed that the banking is a kind of profession and a commercial activity and the primary motive behind it is to earn returns and profits. It works like any other private company in the banking business having no monopoly status. These companies have been voluntarily established for their own purpose and interest but their activities are kept under check so that their activities may not go way ward and harm the economy in general. After discussing the provisions of the Reserve Bank of India Act and Banking Regulation Act, the Supreme Court held that the guidelines provided therein are to maintain proper fiscal discipline and if need arises, the management of the company can be taken over. Therefore, the above noted Acts as discussed earlier mainly contain regulatory provisions to keep a check on their functioning and provide guidelines and do not reflect participatory dominance or control over the affairs of such company. In such back ground, these private companies would normally not be amenable to the writ jurisdiction. But in certain circumstances, a writ may issue against such private bodies where these violate statutory provisions. When there is no violation of any statutory provisions, a writ may not be***



**issued at all.** It also made clear that there is nothing on the basis of which it can be said that carrying on the profession of banking as akin to carrying on Governmental functions. Rather banking 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 may be banking or others no doubt have impact on the economy of the country in general, but such activities cannot be classified as one falling in the category of discharging of duties/functions of public nature. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability, it does not mean that private companies carrying on the business of banking, discharge any public function or public duty. Thus, ultimately, the Supreme Court held that the writ petition against Federal Bank is not maintainable.

10. Hence as indicated earlier on an analysis of different provision of the Reserve Bank of India Act, 1934, it is clear that the non-banking financial companies only indulge in ordinary business or commercial activities which cannot be described as akin to Governmental function. Therefore, following the ratio of the above noted judgment, these activities cannot be classified as one falling under the category of discharging of public function or public duty. Thus the opposite party No.1 cannot be covered either under parameter (vii) or (viii) as delineated in Federal Bank case (supra). Admittedly other six parameters are not attracted to the present case. The above ratio has also been referred to in the



*decision of the Supreme Court in the case of Ramakrishna Mission Vrs. Kago Kunya, reported in (2019) 5 Scale 559 = (2019) 5 SCR 452.”*

9.19. It may also be worthy to note the decision of the Hon'ble Supreme Court of India in *State of Assam Vrs. Barak Upatyaka D.U. Karmachari Sanstha*, (2009) 4 SCR 467, wherein following observations find place:

“2. CAMUL is a society registered under the Assam Co-operative Societies Act, 1949 ('Act' for short). Respondent, a Trade Union representing the workers of CAMUL, filed the said writ petition (Civil Rule No.2996 of 1995) contending that the State Government formed and registered CAMUL as a co-operative society to run its cattle development project; that its Board of Directors including the Managing Director (always a Government servant, on deputation) were appointed by the State Government; that the post of the Managing Director of CAMUL was declared to be a post equivalent to a Head of Department under the State Government; that initially the entire staff of CAMUL were drawn on deputation from the Veterinary, Agriculture & Co-operative Departments of the State Government; that in a phased manner, those employees were reverted back to their Parent Departments and replaced by the staff appointed by CAMUL, through a Selection Board set up by the State Government with representatives from the Central Government and National Dairy Development Board; that State Government sanctioned the staffing pattern of CAMUL; that from the year 1982-83 onwards the Government was extending financial assistance by



way of grants to CAMUL to meet the expenditure (including the expenditure relating to its employees); and that for the years 1994-95 though the State Government had sanctioned financial assistance in a sum of Rs. 7 lakhs as grant-in-aid, it was not disbursed and consequently CAMUL did not pay the monthly salaries to its employees from December 1994 onwards. It is contended that State Government had all pervasive control over the affairs and management of CAMUL and therefore it should be treated as a department of Government of Assam, though registered as a co-operative society by lifting the corporate veil. It was further contended that State Government was responsible and liable to pay the salaries and emoluments of the employees of CAMUL and it was not justified in withholding the grant amount. The respondent union therefore sought a direction to the State Government to release the arrears of pay and allowances of employees of CAMUL with effect from December 1994 and for a direction to continue to pay the salary and allowances to the employees of CAMUL, every month in future. In addition to the State Government (respondent No.1) and its officers (respondents 2 to 4), the Union of India (respondent No.5) and CAMUL and its Managing Director (respondents 6 and 7) were impleaded as parties to the writ petition.

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5. The various averments of the respondent in the writ petition, about the all pervasive financial, administrative and functional control of CAMUL by the State Government, even if assumed to be true, may at best result in CAMUL being treated as 'State'



*within the meaning of that expression under Article 12 of the Constitution of India. If it is a 'State', in case of violation of any of the fundamental rights of its employees, by CAMUL as employer, the employees were entitled to claim relief against CAMUL, by taking recourse to a writ petition under Article 226 of the Constitution of India. But the fact that a corporate body or co-operative society answers the definition of 'State' does not make it the 'State Government', nor will the employees of such a body, become holders of civil posts or employees of the State Government. Therefore the fact that the CAMUL may answer the definition of 'State' does not mean that the State Government is liable to bear and pay the salaries of its employees. CAMUL indisputably is a co-operative society registered under the provisions of the Assam Cooperative Societies Act, 1949. Section 85 of the said Act provides that every registered society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Therefore, CAMUL, even if it was 'State' for purposes of Article 12, was an independent juristic entity and could not have been identified with or treated as the State Government. \*\*\*"*

9.20.A writ, therefore, lies only against a person if it is a statutory body or performs a public function or discharges a public or a statutory duty, or a 'State' within the meaning of Article 12 of the Constitution.



(Vide, *Anadi Mukta Sadguru Trust Vrs. V.R. Rudani*, AIR 1989 SC 1607; *VST Industries Ltd. Vrs. VST Industries Workers' Union & Anr.*, (2001) 1 SCC 298; and *State of Assam Vrs. Barak Upatyaka U.D. Karamchari Sanstha* AIR 2009 SC 2249).

9.21. In *Anadi Mukta Sadguru Trust Vrs. V.R. Rudani*, AIR 1989 SC 1607 it has been succinctly stated that the phrase “any person or authority” employed in Article 226 of the Constitution of India is not confined to statutory bodies and Government instrumentalities. Instead, it extends to any individual or entity engaged in performing a public function.

9.22. Decision in *K.K. Saksena Vrs. International Commission on Irrigation and Drainage*, (2014) 14 SCR 892, laid down the principles to determine whether an institution can be said to be comprehended in the connotation of “State” so as to fall within the ken of Article 12 of the Constitution of India:

“15. The Court also took into consideration and referred to the following passage from the judgment in *Pradeep Kumar Biswas & Ors. Vrs. Indian Institute of Chemical Biology & Ors.*, (2002) 5 SCC 111:

‘40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia Vrs. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*,



*be considered to be a State within the meaning of Article 12. The question in each case would be— whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.’*

16. *The aforesaid judgment was relied upon by another Constitution Bench in M/s. Zee Telefilms Ltd. & Anr. Vrs. Union of India & Ors., (2005) 4 SCC 649. In that case, the Court was concerned with the issue as to whether Board of Control for Cricket in India (BCCI) is a ‘State’ within the meaning of Article 12 of the Constitution. After detailed discussion on the functioning of the BCCI, the Constitution Bench concluded that it was not a ‘State’ under Article 12 and made the following observations in this behalf:*

*‘30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas case, (2002) 5 SCC 111 is not a factor*



indicating a pervasive State control of the Board.'

17. Before arriving at the aforesaid conclusion, the Court had summarized the legal position, on the basis of earlier judgments, in para 22, which reads as under:

'22. Above is the ratio decidendi laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in Pradeep Kumar Biswas case, (2002) 5 SCC 111. Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas case, (2002) 5 SCC 111 for a body to be a State under Article 12. They are:

- '(1) Principles laid down in Ajay Hasia, (1981) 1 SCC 722 are not a rigid set of principles so that if a body falls within any one of them it must *ex hypothesi*, be considered to be a State within the meaning of Article 12.
- (2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.
- (3) Such control must be particular to the body in question and must be pervasive.



(4) *Mere regulatory control whether under statute or otherwise would not serve to make a body a State.”*

9.23. In the case of *Thalappalam Service Cooperative Bank Ltd. Vrs. State of Kerala*, (2013) 14 SCR 475, it has been observed by the Hon'ble Supreme Court of India as follows:

“17. *Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the ‘State’ or instrumentality of the State. Above principle has been approved by this Court in S.S. Rana Registrar, Co-operative Societies and Another*, (2006) 11 SCC 634. *In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Cooperative Societies Act this Court held as follows:*

‘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. 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 Vrs. Khalid Mujib Sehravardi, (1981) 1 SCC 722. [See Zoroastrian Coop. Housing Society Ltd. Vrs. 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.'*
18. *We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression 'State' or 'instrumentalities of the State' within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution."*

9.24. In *Kulwinder Singh Vrs. State of Haryana, 2019 (2) ILR-Punjab and Haryana 1036* it has been stated as follows:

*"(6) It is a settled principle of law that the writ petition is only maintainable against the Government or instrumentality of the State as envisaged under*



*Article 12 of the Constitution of India. The Hon'ble Supreme Court of India has laid down guidelines as to when the Cooperative Society can be treated as an instrumentality of the State so that the writ petition is maintainable. In General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. versus Satrughan Nishad and others, (2003) 8 SCC 639, the Hon'ble Supreme Court of India has held that there should be a deep and persuasive control of the Government over the Cooperative Society not only administratively but financially as well, so as to treat the said Cooperative Society as an instrumentality of the State. In Satrughan Nishad's case (supra), where the Government had 50% of the share, was treated as non-amenable to the writ jurisdiction. The relevant paragraph of the said judgment is as under:*

*'7. In the case of Pradeep Kumar Biswas Vrs. Indian Institute of Chemical Biology and others (2002) 5 SCC 111, a Bench of seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case (supra) [Ramana Dayaram Shetty Vrs. International Airport Authority of India, (1979) 3 SCC 489] and approved in the case of Ajay Hasia (supra) for determining as to when a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning of the expression 'authority' in Article 12 of the Constitution. There the Bench referred to the case of Chander Mohan Khanna Vrs. NCERT (1991) 4 SCC 578 where, after considering the*



*memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from Government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this Court in Mysore Paper Mills Ltd. Vrs. Mysore Paper Mills Officers' Association and another, (2002) 2 SCC 167, where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government.'*

- (7) *Further, this Court while deciding CWP No.10234 of 2014 titled as Rajbir Singh versus The Sonapat Central Cooperative Bank Ltd., Sonapat and another, decided on 15.09.2018, has held that even the Sonapat Central Cooperative Bank has been held to be not amenable to the writ jurisdiction of this Court. This Court relied upon Satrughan Nishad's case (supra) to hold that the Cooperative Societies are not amenable to the writ jurisdiction of this Court. \*\*\*"*



9.25. In absence of material as to consideration that the Urban Co-operative Bank Limited is under the pervasive control of the State Government, it may be beneficial to have regard to decision of this Court in the case of *Pradeep Kumar Dhal Vrs. State of Odisha, 2023 (II) ILR-CUT 569* rendered in connection with issue of writ with respect to matter relating to service condition. The following observations are quoted from the said decision:

*“This Court finds that the very same question as posed above came up for consideration before the Apex Court recently in the case of St. Mary’s Education Society and Another Vrs. Rajendra Prasad Bhargava and others, reported in 2022 SCC OnLine SC 1091 = (2023) 4 SCC 498. In the said case the following issues were framed for determination:*

- (a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?*
- (b) Whether a service dispute in the private realm involving a private educational Institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution?***

*In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?*



(c) *Analyzing the law on the subject, the Apex Court held that the School discharges a public duty by imparting education, which is a fundamental right of the citizen. However, judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. It was further clarified that a contract of personnel service includes all matters relating to the service of employee— confirmation, suspension, transfer and termination etc. It was therefore held that a writ of mandamus can be issued against a private body, which is not a ‘State’ within the meaning of Article 12 of the Constitution of India, but there must be a public law element involved and it cannot be exercised to enforce purely private contracts entered into by the parties. It was also held that in case of retirement and in case of termination, no public law element is involved. It also referred to the decision of the Apex Court in the case of Trigun Chand Thakur.*

*‘45. In the case of Trigun Chand Thakur Vrs. State of Bihar, reported in (2019) 7 SCC 513, this Court upheld the view of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.’ \*\*\*”*

9.26. The Hon’ble Supreme Court while deciding maintainability of the writ petition to exercise the power of judicial review in the context of service conditions *vis-à-vis* involvement of public element in the case of *St.*



*Mary's Education Society Vrs. Rajendra Prasad Bhargava, 2022 SCC OnLine SC 1091 = (2023) 4 SCC 498 = (2022) 8 SCR 301 observed as follows (paragraph 28 of SCR):*

*“We may at the outset state that the CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body. The distinction between a body created by the statute and a body governed in accordance with a statute has been explained by this Court in the Executive Committee of Vaish Degree College Vrs. Lakshimi Narain, (1976) 2 SCC 58, as follows:*

*‘It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountain-head of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.’ \*\*\*”*

9.27. It is observed in *Kiran Vrs. State of Maharashtra, 2019 SCC OnLine Bom 1176* as follows:



“We hold that, while dealing with the management of taking action against the employee indulging in misconduct, respondent No. 3 was not performing any public function. **The service conditions of the petitioner were governed by standing orders framed under section 35(2) of the Maharashtra Industrial Relations Act. Those are contractual terms between the employer and the employee. The Government does not hold any control over the appointments, service conditions or holding of any DE or any action to be taken against the employee in case of misconduct, the forum for redressal of grievances for the aggrieved employee, the Government is not concerned with the employment, continuous management, control over the employee, service conditions and removal of the employee.** In the light of these facts, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution in the present case.”

9.28. Reference can be had to Full Bench (5-Judge) of Madras High Court in the case of *K. Marappan Vrs. Deputy Registrar of Cooperative Societies*, 2006 (4) *The Law Weekly* 495 = 2006 SCC OnLine Mad 886 wherein the Court had the occasion to deal with the question

“Whether the decision of the five-Judge Bench of this Court in *M. Thanikkachalam Vrs. Madhuranthakam Agricultural Cooperative Society*, 2000 (4) CTC 556 = 2001 Writ LR 1 = 2001 (1) LW 38, holding that no writ will lie against a cooperative society is correct in law?”

The observation of the said Court runs as follows:



“5. Thus, the question which falls for our consideration is as to **whether a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983** (hereinafter for the sake of brevity referred to as the ‘Act’) **is a private body or falls within the definition of the ‘State’ or ‘local’ or ‘other authorities’ under the control of the Government.** A body or organisation which is an instrumentality or agency of the State or a company owned and controlled by the State are all included in the expression the ‘State’. **If it is found that the co-operative society falls within the latter category, there cannot be any hurdle in holding that such a body or organisation would undoubtedly be amenable to the writ jurisdiction under Article 226 of the Constitution. On the other hand, if it is found that the co-operative society is a private body, in that event it may have to be examined whether a Writ Petition would be maintainable or not and the extent to which such powers can be exercised.**

21. From the above discussion, the following propositions emerge:

- (i) If a particular co-operative society can be characterised as a ‘State’ within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be ‘an authority’ within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the



*bye-laws can be corrected by way of Writ Petition;*

- (ii) Applying the tests in Ajay Hasia it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;*
- (iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.*
- (iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.*



- (v) *Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.*
- (vi) *The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a Writ Petition.*
- (vii) *In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.*
- (viii) *The decision in M. Thanikkachalam Vrs. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556, is no longer good law, in view of the decision of the Seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before."*

9.29. In *Rajbir Surajbhan Singh Vrs. Institute of Banking Personnel Selection*, (2019) 14 SCC 189 it is observed that:

*"20. There is no manner of doubt that a writ petition under Article 226 is maintainable even against a private body provided it discharges public functions. While deciding the question as to whether Icrisat is*



*amenable to the writ jurisdiction under Article 226, this Court held [K.K. Saksena Vrs. International Commission on Irrigation & Drainage, (2015) 4 SCC 670] that it is not easy to define what a public function or public duty is. It can reasonably be said that such functions as are similar to or closely related to those performable by the State in its sovereign capacity, are public functions. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture, purely on a voluntary basis which according to this Court, is not a public duty [G. Bassi Reddy Vrs. International Crops Research Institute, (2003) 4 SCC 225]. A private company carrying on banking business as a scheduled commercial bank cannot be termed as an institution or a company carrying on any statutory or public duty [Federal Bank Ltd. Vrs. Sagar Thomas, (2003) 10 SCC 733].*

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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.***



9.30. Present nature of case can be perceived in the light of the decision rendered by the Hon'ble Supreme Court of India in the case of *Army Welfare Education Society Vrs. Sunil Kumar Sharma*, 2024 SCC OnLine SC 1683, wherein it has been observed that:

*“26. In Tekraj Vrs. Union of India, (1988) 1 SCC 236, the question was whether the Institute of Constitutional and Parliamentary studies registered under the Societies Registration Act, 1860 was a “State” within the meaning of Article 12 of the Constitution of India. After tracing the case law on the subject the Court observed as follows:*

*‘Democracy pre-supposes certain conditions or its successful working. It is necessary that there must be a deep sense of understanding, mutual confidence and tolerance and regard and acceptance of the views of others. In the early years of freedom, the spirit of sacrifice and a sense of obligation to the leadership that had helped the dream of freedom to materialise had been accepted. The emergence of a new generation within less than two decades of independency gave rise to a feeling that the people's representatives in the legislatures required the acquisition of the appropriate democratic ideas and spirit. ICPS was born as a voluntary organisation to fulfil this requirement. At the inception it was certainly not a governmental organisation and it has not been the case of the parties in their pleadings nor have we been told at the bar during the long arguments that had been advanced that the objects of ICPS are those which are a State obligation to fulfil. The Society was thus born out of a feeling that*



*there should be a voluntary association mostly consisting of members of the two Houses of Parliament with some external support to fulfil the objects which were adopted by the Society. The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislatures with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large.*

*The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions. There is material to show that the Ford Foundation, a US based Trust, had extended support for sometime. Undoubtedly, the annual contribution from the Government has been substantial and it would not be wrong to say that they perhaps constitute the main source of funding, yet some money has been coming from other sources. In later years, foreign funding came to be regulated and, therefore it became necessary to provide that without Government clearance, like any other institution, ICPS was not to receive foreign donation. No material has been placed before us for the stand that the Society was not entitled to receive contributions from any indigenous source without Government sanction. Since Government moneys has been coming, the usual conditions attached to Government grants have been applied and enforced. If the Society's affairs were really intended to be carried on as part of the Lok Sabha or Parliament as such, the manner of functioning would have been*



*different. The accounts of the Society are separately maintained and subject to audit in the same way as the affairs of societies receiving Government grants are to be audited. Government usually impose certain conditions and restrictions when grants are made. No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspect.*

*Considerable attempt has been made by Mr. Rao, learned Counsel for the appellant, to show that in the functioning of the Society there is deep and pervasive control of Government. We have examined meticulously the correspondence and the instances where control was attempted to be exercised or has, as a fact, been exercised but these again are features which appear to have been explained away.'*

- 27. In spite of the above facts and circumstances, this Court held that the institute was not a "State" or State instrumentality or other authority.**
28. *If the Authority/Body can be treated as a "State" within the meaning of Article 12 of the Constitution of India, then in such circumstances, it goes without saying that a writ petition under Article 226 would be maintainable against such an Authority/Body for the purpose of enforcement of fundamental and other legal rights. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of the High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue*



*directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

29. *So far as Article 12 of the Constitution is concerned, the “State” includes “all local and other Authorities within the territory of India or under the control of the Government of India”. **The debate on the question as to which body would qualify as “other authority” & the test/principles applicable for ascertaining as to whether a particular body can be treated as “other authority” has been never ending.** If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. **However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be “State” under Article 12.** Power is extended to issue directions, orders or writs “to any person or authority”. Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also “for any other purpose”. Thus, power of the High Court takes within its sweep more “authorities” than stipulated in Article 12 and the subject-matter which can be dealt with under this Article is also wider in scope.*

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33. *In para 14 [Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust Vrs. V.R. Rudani, (1989) 2 SCC 691, the Court spelled out two exceptions to the writ of mandamus viz.*

- (i) if the rights are purely of a private character, no mandamus can issue; and*
- (ii) if the management of the college is purely a private body “with no public duty”, mandamus will not lie.*

*The Court clarified that since the Trust in the said case was an aided institution, because of this reason, it discharges public function, like government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating university are applicable to such an institution, being an aided institution. In such a situation, the Court held that the service conditions of academic staff were not purely of a private character as the staff had super-added protection by university's decision creating a legal right and duty relationship between the staff and the management. Further, the Court explained in para 19 that the term “authority” used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 32, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term “authority” appearing in Article 226 of the Constitution would*



cover any other person or body performing public duty. **The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.**

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37. Thus, the dictum as laid in *Satimbla Sharma Vs. St. Paul's Senior Secondary School*, reported in (2011) 13 SCC 760 is clear. **In the absence of any statutory provisions requiring a private unaided school to pay to its teachers the same salary and allowances as payable to the teachers of the Government schools, a mandamus cannot be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as payable to the teachers of Government institutions.** In the case at hand, the respondents are being paid the same salary and allowances as being paid to the teachers and non-teaching staff appointed by the appellants.
38. In one of the recent pronouncements of this Court in the case of *St. Mary's Education Society Vs. Rajendra Prasad Bhargava* reported in (2023) 4 SCC 498, to which one of us (J.B. Pardiwala, J.) was a member, the entire law on the subject has been discussed threadbare. In the said case, this Court held that while a private unaided minority institution might be touching the spheres of public function by performing a public duty, its employees have no right of invoking the writ jurisdiction of the High Court under Article 226 of the Constitution in respect



*of matters relating to service where they are not governed or controlled by the statutory provision.*

39. *In the said case, the following two questions fell for the consideration of the Court:*

- (a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?*
- (b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution?*

*In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?*

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41. *The final conclusion drawn in the said decision is reproduced herein:*

*“75. We may sum up our final conclusions as under:*

*75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the*



*body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.*

*75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.*

*75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various*



*facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.*

*75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of*



*breach of law and not on the basis of interference in discharge of public duty.*

75.5. *From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. **In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.***

76. *In view of the aforesaid discussion, we hold that the learned Single Judge of the High Court was justified in taking the view that the original writ application filed by Respondent 1 herein under Article 226 of the Constitution is not maintainable. The appeal court could be said to have committed an error in taking a contrary view.'*

42. *In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant society is a "State" within Article 12 of the Constitution. Undoubtedly, the school run by the Appellant Society imparts education. **Imparting education involves public duty and therefore public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element.***



*The school cannot be said to be discharging any public duty in connection with the employment of the respondents.”*

9.31. With such gamut of proposition of law as propounded by the Courts, when the instant matter is examined this Court finds no material particulars on record being furnished nor did the learned Advocate for the petitioner argue to demonstrate that contrary view could be taken than that is taken by the Courts. Nothing tangible has been placed to demonstrate that in the process of recruitment/appointment of Contractual Secretary of the Service Cooperative Society public element is involved.

9.32. Nonetheless, it could not be successfully argued that the State exercises any direct or indirect control over the affairs of the Kajalaipalli Service Cooperative Society Ltd. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society. No pleadings whatsoever could be shown that the Kajalaipalli Service Cooperative Society Ltd. falls within the meaning of Article 12 of the Constitution or is under an obligation to discharge any statutory function *vis-a-vis* the grievance raised by the petitioner. Thus, for the reasons ascribed herein above, the writ petition is not maintainable.

**Conclusion:**



**10.** As a prelude to exercise of power of judicial review it may be worthwhile to have regard to the following dicta found in *Lalit Popli Vrs. Canara Bank*, reported in (2003) 3 SCC 583:

*“While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.”*

**11.** The case of the petitioner in the instant case is that on account of improper evaluation, the award of marks in course of process of appointment of Contractual Secretary of Kajalaipalli Service Cooperative Society Ltd. has suffered infirmity. The dispute arose when by way of affidavit it has been affirmed by the opposite party Nos.5 and 6 that Certificate of Knowledge in Computer Applications was never furnished to the Appointment Committee. Such an aspect being factual, this Court has little scope to exercise power under Article 226/227 of the Constitution of India to correct the factual inconsistencies put forth in the case at hand.

**12.** For yet another reason the writ petition does not deserve consideration that Kajalaipalli Service Cooperative Society Ltd. is not shown to have discharged any public duty in selecting/appointing Contractual Secretary of



said Society. It is also not placed on record that the action challenged involves public duty so that public law element could also be said to be involved. However, had the petitioner been successful, the relationship between the petitioner and the Society could be said to have been that of an employee and a private employer arising out of a private contract as the post advertised is “Contractual Secretary”. If there is a breach of a covenant of a private contract, the same does not touch any public law element.

12.1. Guidelines issued from the Office of Registrar, Cooperative Societies, Odisha, Bhubaneswar, *vide* Memo No. XX-3/03 (Pt.)-2858/Bank-10, dated 07.02.2011 reveals that the same is applicable to employees of all the Primary Agricultural Cooperative Societies including Service Cooperative Societies/FSCS other than LAMPCS in the State of Odisha. Clause (d) thereof defines “employee” to mean “a person appointed by the Managing Committee of the Society after following the procedure” and Clause (g) defines “Managing Committee” to mean “the Committee of Management of the Society constituted under the provisions of the Odisha Cooperative Societies Act, 1962 and the Rules framed thereunder and the Bye-laws of the concerned Society”. Clause 3 of Chapter-III of said Guidelines specifies “Strength of the establishment”, wherein it has been



described that “Secretary”— “A Class”— one of the staff strength of the Society<sup>2</sup>. Clause 5 *ibid.* deals with “Appointment” whereunder it has been clearly laid down that “The Managing Committee shall be the Appointing Authority of all employees”. Clause 6 of such Guidelines specifies mode of appointment in the following terms:

“(1) (a) *Grade-1 post:*

*The Grade-I post shall be filled up by direct recruitment or deputation or promotion as the Managing Committee may decide in consultation with the Financing Bank.*

(b) *In case of direct recruitment the candidates having the minimum qualification of graduation from a recognized University shall be eligible for consideration, and*

(c) *In case of promotion, the Grade-II employees of the Society with minimum qualification of intermediate or +2 Arts, Science or Commerce and with minimum of 5 years experiences in the Grade-II posts having clean service records would be eligible for consideration.*

*Provided that the minimum educational qualification prescribed under this clause shall not apply to the employees holding the Grade-II post prior to issue of these guidelines, for promotion to the Grade-1 post.*

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<sup>2</sup> “Society” is defined in Clause (j) of the Guidelines as:  
“SOCIETY means the Service Cooperative Society by whatever name called which shall include the Primary Agricultural Cooperative Society/Service Cooperative Society Farmers’ Cooperative Society registered under the Odisha Cooperative Societies Act, 1962 and the Rules framed thereunder.”



(ii) (a) *Grade-II posts:*

*The post of Grade-II shall be filled up by direct recruitment or promotion as the Managing Committee may decide.*

(b) *In case of direct recruitment the candidates having the minimum qualification of Intermediate or +2 Arts, Science, or Commerce shall be eligible for consideration, and*

(c) *In case of promotion, the Grade-III employees of the Society with minimum qualification of Matriculation and with minimum five years of experience in Grade-III post having clean service records shall be eligible for consideration.*

*Provided that the minimum educational qualification prescribed under this clause shall not apply to the employees holding the Grade-III posts prior to issue of these guidelines for promotion to the Grade-II posts.*

(iii) *Grade-III posts:*

*The post of Grade-III shall be filled up by direct recruitment. The minimum qualification shall be 8th Class pass.”*

12.2. Annexure-D/4 is the document showing conduct of enquiry into complaints made by Sujit Kumar Nayak-petitioner and Sanghamitra Rout and Debasis Mohapatra (applicants for the post of Secretary in response to the advertisement).



12.3. The aforesaid material on record would go to indicate that the author of the advertisement being the Managing Committee/Appointment Committee, it is competent to interpret the clauses of said advertisement. Having considered such enquiry report and re-evaluated the marks awarded on the basis of complaint of the petitioner as also the unsuccessful candidates at the first instance, there is no scope to go into the merit of the matter on facts.

12.4. This Court takes note of fact contained in affidavit dated 30.12.2021 of the opposite party No.7 whereby it is asserted that "Selection Committee has rightly selected opposite party No.7 and by virtue of selection process the opposite party No.7 was appointed as Secretary of Kajalaipalli Service Cooperative Society Limited since last 4 years". Such factual aspect remained uncontroverted.

12.5. Furthermore, nothing is cited by the counsel for the petitioner that there was in existence deep and pervasive State control so as to afford an indication that the subject-Society is a State agency or instrumentality.

12.6. A serious disputed question of fact has cropped up, as asserted by the opposite party No.5 *vide* Additional Affidavit dated 11.02.2025 wherein it has been categorically posed that "the petitioner never submitted



his PGDCA Certificate whereas the opposite party No.7 has submitted his PGDCA Certificate”.

12.7. At this juncture the ratio of decision rendered by the Hon'ble Supreme Court of India in *State of U.P. Vrs. Ehsan, (2023) 13 SCR 905* is reproduced hereunder for considering maintainability of the present writ petition:

*“28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. **One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.***

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29. *Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up*



*the said issue even though it had arisen between the parties.*

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30. *No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of U.P. Vrs. Hari Ram, (2013) 4 SCC 280 = (2013) 2 SCR 301]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam Vrs. Bhaskar Jyoti Sarma, (2015) 5 SCC 321 = [2014] 14 SCR 1451]. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in the procedure adopted for taking possession from the land holder. **And if the writ court finds it difficult to determine such question, either for insufficient/ inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.***



12.8. Applying the same principle as propounded by the Hon'ble Supreme Court of India to the present fact-situation, the contents of affidavit dated 11.02.2025 (copy of which was served on the counsel for the petitioner on 13.02.2025, much ahead of hearing) being questioned orally in course of hearing by the counsel for the petitioner, serious disputed question does arise. Therefore, as suggested by the opposite parties that the petitioner is not remediless to set up factual dispute before competent forum, as such the writ petition is not maintainable. Hence, this Court declines to entertain this writ petition for adjudication on merit.

**13.** For all these reasons with the given legal position as discussed above applied to the present facts and circumstances, there is no escape but to conclude that the writ petition, being not maintainable, is liable to be dismissed.

**14.** In the wake of above, the writ petition is dismissed, but in the circumstances there shall be no order as to costs.

**(MURAHARI SRI RAMAN)  
JUDGE**

Signature Not Verified

Digitally Signed  
Signed by: LAXMIKANT MOHAPATRA  
Designation: Senior Stenographer  
Reason: Authentication  
Location: High Court of Orissa, Cuttack  
Date: 20-Mar-2025 16:59:47

High Court of Orissa, Cuttack  
The 20<sup>th</sup> March, 2025//MRS/Laxmikant/Suchitra