

Before Manjari Nehru Kaul, J.

HARJEET SINGH AND OTHERS—Petitioners

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.7308 of 2020

July 23, 2020

Constitution of India, 1950—Arts. 12, 226 and 227—Punjab Cooperative Societies Act, 1961—Punjab Cooperative Societies Rules, 1962—Rl. 9— Maintainability of writ petition in respect of functions and affairs of Cooperative Society—Held, Respondent Society was neither created under any statute nor the State had any financial stake or control over its affairs—Further, no public function was being performed by society so as to bring it within ambit of Article 226 of Constitution—Petition dismissed.

Held, that a bare reading of the afore-mentioned provisions of the bye laws leaves no manner of doubt that respondent No.3-Society, which admittedly is registered under the Punjab Cooperative Societies Act, 1961, is not State within the meaning of Article 12 of the Constitution of India. Nothing has been brought on record by the petitioners to even remotely show or suggest that the State was a stakeholder in the said respondent No.3-Cooperative Society.

(Para 12)

Further held, that coming to the case in hand, respondent No.3-Society is admittedly governed by its own bye laws and the State did not have any financial stake in the ‘Society’ nor had any control over its affairs. Last but not the least, the objectives as already reproduced above leave no manner of doubt that no public function was being performed by respondent No.3-Society so as to bring it within the ambit of Article 226 of the Constitution of India.

(Para 15)

Further held that, for the reasons recorded above, this Court is of the view that the present writ petition is not maintainable as the order, which has been impugned has been passed by an entity, which is not State as contemplated under Article 12 of the Constitution of India.

(Para 17)

Amit Jhanji, Advocate, *for the petitioners.*

Harish Nain, A.A.G., Haryana.

B.S. Rana, Sr. Advocate with Gagandeep Rana, Advocate, for respondent No.3.

Raman Sharma, Advocate, for respondent No.8.

MANJARI NEHRU KAUL, J.

(1) The instant writ petition has been preferred under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of Certiorari for quashing the impugned order dated 30.04.2020 (Annexure P-14) passed by respondents No.4 – Manager, HMT Employees Cooperative Consumer Society Ltd. (hereinafter referred as ‘Society’) and respondent No.5- Inspector, Cooperative Societies, Pinjore acting on behalf of respondent No.3-Society whereby the services of the petitioners were terminated.

(2) The facts in brief are that the petitioners were regular employees of respondent No.3- Society, which is a cooperative society registered as such under the Punjab Cooperative Societies Act, 1961 (for short ‘the Act, 1961’). The petitioners were employed as Junior Salesmen at the petrol pump of respondent No.3-Society. On 1.07.2019, the management of HMT closed the petrol pump, which was being run by respondent No.3-Society due to huge losses incurred on account of fraud and embezzlement of the Society’s funds to the tune of Rs.3 crores (approximately). Resultantly, case FIR bearing No.197 dated 06.06.2019 was also registered against the officials of respondent No.3-Society. Thereafter on 30.04.2020, the Board of Administrators, appointed by State of Haryana- respondent No.1, in exercise of powers conferred under Section 122 read with Section 33 of Haryana Cooperative Societies Act, handed over the petrol pump to Hindustan Petroleum Corporation Ltd. (for short ‘HPCL’) -respondent No.8 for a period of two years under a Holiday Scheme and on the same day i.e. 30.04.2020 (Annexure P-14), impugned order terminating the services of the petitioners was passed.

(3) Learned counsel for the petitioners has averred that the action of the respondents in terminating the services of the petitioners was violative of the provisions of the Haryana Cooperative Societies Act, 1984 and of the Haryana Cooperative Societies Rules, 1989 (hereinafter referred as “Rules”) framed thereunder coupled with the fact that there had been non-compliance of the principal of natural justice as neither were they issued any prior notice nor afforded any opportunity of being heard. Learned counsel further

averred that since the petitioners were employees of respondent No.3-Society, the sanction of the Registrar, Cooperative Societies – respondent No.2 was not taken prior to the termination of their services, which was a mandatory requirement. In support of his averments, learned counsel placed reliance on *U.P. State Coop. Land Development Bank Ltd. versus Chandra Bhan Dubey*¹ and *Board of Control for Cricket versus Cricket Assn. of Bihar*².

(4) The petition was contested by respondents No.1, 2, 3, 5 and 8 by filing their respective replies.

(5) Coming first to the written statement filed by HPCL - respondent No.8, it has been stated that the alleged termination of the services of the petitioners by the Board of Administrators was a matter between respondent No.3-Society and its employees i.e. the petitioners, and they had no concern with it. It has been further stated that the relationship between respondent No.3-Society and respondent No.8-HPCL was contractual in nature as the retail outlet dealership was in the nature of grant of license by way of dealership agreement.

(6) Respondent No.3-Society, at the very outset, has questioned the maintainability of the instant petition on the ground that since respondent No.3 was a Cooperative Society, registered under the Punjab Cooperative Societies Act, 1961 and the bye laws, which were framed under Rule 9 of the Punjab Cooperative Societies Rules, 1962, it was neither State nor any instrumentality nor an agency of the State as envisaged under Article 12 of the Constitution of India. Hence, it was not amenable to the writ jurisdiction of this Court. The petroleum outlet where the petitioners were working had been allotted to the 'Society' by ESSO Standard Eastern Inc. in January, 1965 on the land provided by HMT Ltd. Pinjore on lease basis. A fresh dealership agreement was thereafter entered into by respondent No.3-Society with HPCL-respondent No.8. Learned Senior counsel for respondent No.3 has submitted that respondent No.3-Society was being run as per the provisions contained in the bye laws annexed as Annexure P-1 with the paper book. Neither was the Society – respondent No.3 taking any grant from the State Government nor did the State officials have any role much less any control over its day-to-day activities, functions and management. It has been further submitted that respondent No.3-Society was to run its affairs with the finances generated by its own

¹ 1999 (1) SCC 741

² 2016 (8) SCC 535

resources.

(7) Respondents No.1, 2 and 5 in their short reply too have questioned the maintainability of the instant writ petition. It has been urged by the learned counsel appearing on their behalf that the provisions contained in Bye law 15.2 make it abundantly clear that Respondent No.3-Society has been vested with absolute powers to appoint/suspend/punish or dismiss all the salaried employees of the 'Society'. It has also been submitted that the employees were appointed by the Board of Directors of respondent No.3-Society. There is no manner of doubt that the 'Society' is not State, nor an instrumentality of the State nor an authority as envisaged under Article 12 of the Constitution of India, making it amenable to the writ jurisdiction of this Court.

(8) Further, a perusal of the reply filed by respondents No.1, 2 and 5 dated 02.06.2020 also reveals that pursuant to the termination of the services of the petitioners, action was initiated by the Registrar, Cooperative Societies, Haryana – respondent No.2, and Addl. Registrar, Cooperative Societies (Store) had been appointed as an Enquiry Officer, who had been directed to submit his report within three months.

(9) Heard learned counsel for the parties and perused the material available on record.

(10) It is clear that respondent No.3- 'Society' was not created under any statute. The fact that respondent No.3-Society was incorporated under the provisions of Punjab Cooperative Societies Act, 1961 will not clothe it with the attributes of State within the meaning of Article 12 of the Constitution of India.

(11) It would be apposite to refer to the provisions of bye laws, which are as follows:

BYE LAWS OF

HINDUSTAN MACHINE TOOLS EMPLOYEE COOPERATIVE CONSUMER'S SOCIETY LTD., PINJORE, TEHSIL-KHARAR

INTRODUCTION

The Hindustan Machine Tools Ltd., Pinjore is setting up a 3rd Machine Tools Factory under the Public Sector at Pinjore with a large Industrial Residential Colony and whereas there do not exist adequate arrangements for

distribution of consumers' goods and services at fair prices to the employees of Hindustan Machine Tools Ltd., Pinjore, it is decided to run a Society on Cooperative basis for the benefit of its members.

The Cooperative Society's working will be governed by the following byelaws which have been framed in accordance with the provisions of Rule 9 of the Punjab Cooperative Societies Rules, 1962 and these byelaws came into force on 20.08.1963 having been registered under Section 8(1) of the Punjab Cooperative Societies Act, 1961 (Punjab Act XXV of 1961). No amendment of these byelaws shall be valid unless such amendment is registered under Section 10(2) of the Act.

2. **OBJECT AND ACTIVITIES**

The objects of the society shall be to ensure equitable distribution of consumer goods and services at fair prices to ultimate consumers.

3. **MEMBERSHIP, CLASSES, QUALIFICATION AND PROCEDURE FOR ADMISSION**

The membership of the Society may consist of the following classes of person:

- a. Individual consumers, who are employees of Hindustan Machine Tools Ltd., Pinjore
- b. The employers (the term employers here mean the Hindustan Machine Tools Ltd., Pinjore whose employees comprise the membership of the Society).
- c. Corporate bodies or associations of consumers e.g. schools, colleges, hostels, clubs, canteens etc., on the Estate of Hindustan Machine Tools Ltd., (Page 41-60)

4 to 6 xxxx xxxx xxxxx

7. **RAISING OF FUNDS**

The Society may raise funds by:-

- i. Issuing shares;
- ii. Accepting deposits from members and non- members including trade or purchase deposits;

iii. Accepting grants, subsidies or other financial assistance from the Government, Hindustan Machine Tools Ltd., Pinjore or any other institutions or individuals;

iv. Raising loans from Hindustan Machine Tools Ltd., Cooperative Banks, State Bank of India, any scheduled bank or Govt. or from any other source approved by the Registrar.

8. xxx xxx xxx

9. GENERAL BODY CONSTITUTION AND PROCEDURE FOR ITS MEETING

Read with para 3.1 of these byelaws, the General Body shall consist of:

i. Individual share holders

ii. The General manager or an officer acting as General Manager of Hindustan Machine Tools Ltd., Pinjore or his nominee.

iii. The Treasurer of the Society as nominated by the General Manager or an Officer acting as General Manager of Hindustan Machine Tools Ltd., Pinjore.

iv. The Manager of the Society who will be an employee of the Hindustan Machine Tools Ltd.

10 to 14 xxxx xxxx xxxx xxxx

15 POWERS, FUNCTIONS & OBLIGATIONS OF THE MANAGING COMMITTEE

The Managing Committee shall exercise all the powers perform all the duties except such power and duties as have been reserved under the byelaw for the General Body.

In particular and without detriment to the generality of the foregoing procedure, the Managing Committee shall have the following powers, functions and obligations:

i to vii xxxx xxxx xxxx

viii to appoint, suspend, punish or dismiss all salaried servants of the Society subject to provisions contained in byelaws 15.4 and 15.5

ix to xxv xxxxxxxx xxxx

XXXX XXXX XXXX XXXX

There shall be a Staff Selection Committee appointed by the Managing Committee consisting of not less than 3 members of which Manager shall be the Member-Secretary. This Committee shall be competent to select and appoint all employees of the society.

An appeal shall be from the decision of the Managing Committee to General Meeting only in cases where such power has been specifically reserved to itself by the General Meeting.

16 to 30 XXXX XXXX XXXX XXXX

(12) A bare reading of the afore-mentioned provisions of the bye laws leaves no manner of doubt that respondent No.3-Society, which admittedly is registered under the Punjab Cooperative Societies Act, 1961, is not State within the meaning of Article 12 of the Constitution of India. Nothing has been brought on record by the petitioners to even remotely show or suggest that the State was a stakeholder in the said respondent No.3-Cooperative Society.

(13) The Supreme Court in *S.S. Rana versus Registrar Cooperative Societies & anr.*³ while dealing with the question of maintainability of a writ petition in respect of functions and affairs of a Cooperative Society observed as under:

“It is not in dispute that the Society has not been constituted under an Act. Its functions like any other Co-operative 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 Co-operative 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.

It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society

³ 2006 (11) SCC 634

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 the Society was 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?

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.

The Society has not been created under any statute. It has not been shown before that in terminating the services of the appellant, the Respondent has violated any mandatory provisions of the Act or the rules framed thereunder. In fact, in the writ petition no such case was made out.”

(14) In *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. versus Satrughan Nishad & others*⁴, the Supreme Court held that a Society, which had not been constituted under an Act and where the State had no deep and pervasive control over the affairs and functioning of the Society, it would not render the activities of the Society as subject to the control of the State and therefore, such a society will not be State within the meaning of Article 12 of the Constitution of India.

(15) Coming to the case in hand, respondent No.3- Society is admittedly governed by its own bye laws and the State did not have any financial stake in the ‘Society’ nor had any control over its affairs. Last but not the least, the objectives as already reproduced above leave no manner of doubt that no public function was being performed by

⁴ 2003(8) SCC 639

respondent No.3-Society so as to bring it within the ambit of Article 226 of the Constitution of India.

(16) In the circumstances the reliance placed by the learned counsel for the petitioners on *U.P. State Coop. Land Development Bank Ltd.*'s case (supra) would be of no avail to them. In *U.P. State Coop. Land Development Bank Ltd.*'s case (supra), the Supreme Court found as a point of fact that the affairs of the Corporation were controlled by the State Government, bringing the Corporation within the ambit of Article 12 of the Constitution of India. The case of the petitioners is clearly distinguishable from *Board of Control for Cricket's case* (supra) as well, wherein it was held that the functions and activities performed by the Board were akin to public duties and state functions making it amenable to writ jurisdiction under Article 226 of the Constitution of India. Learned counsel for the petitioners could not show that the functions and activities of respondent No.3-Society were akin to public duties.

(17) For the reasons recorded above, this Court is of the view that the present writ petition is not maintainable as the order, which has been impugned has been passed by an entity, which is not State as contemplated under Article 12 of the Constitution of India.

(18) Accordingly, the present petition stands dismissed. However, liberty is granted to the petitioners to pursue any legal remedy that may be available to them under law.

Sumati Jund