

*Before Harsimran Singh Sethi, J.*

**KULWINDER SINGH—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 8116 of 2016**

November 28, 2019

***Constitution of India - Article 12, 226 – Co-operative Societies Act, 1961 – Maintainability of writ petition against a co-operative society – direction sought to the co-operative society for grant of salary - Held, it is a settled principle of law that writ petition is maintainable only against the government or an instrumentality of the State as envisaged under Article 12 – a co-operative society to be a State instrumentality should be under deep and pervasive control of the government, not only administratively but financially as well – on facts, it could not be pointed out whether finances to the co-operative society had been extended by the government or any officer had been controlling the society – petition not maintainable.***

*Held* that 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. Vs. Satrughan Nishad and others, 2003(8) SCC 639*. In *Satrughan Nishad's case (supra)*, 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.

(Para 6)

*Further held* that in the present case, learned counsel for the petitioner has not been able to point out even one of the factor necessary so as to treat respondent No.3 as the instrumentality of the State. It has not been shown to this Court whether any finances have been extended by the Government of Haryana to respondent No.3-Cooperative Society or any of the officer is controlling the respondent No.3-Cooperative

Society administratively in any manner. None of the conditions laid down by the Hon'ble Supreme Court of India in Satrugan Nishad's case (supra), has been fulfilled in the present case so as to treat the said Cooperative Society as instrumentality of the State so as to amenable to the writ jurisdiction of this Court.

(Para 8)

*Further held* that keeping in view the above, the present writ petitions, which are directed against respondent No.3-Cooperative Society for the grant of salary are held to be not maintainable.

(Para 9)

Sherry K. Singla, Advocate  
*for the petitioners* (in all the writ petitions).

Safia Gupta, Assistant Advocate General, Haryana.  
J.P. Rana, Advocate

for J.S. Jaidka, Advocate  
for respondent No.3 (in CWP No.s 8116 and 7531 of 2016).

Pardeep Solath, Advocate  
for respondent No.3

(in CWP Nos.11915, 20808, 20817 and 21382 of 2016 and 2631 of 2017).

### **HARSIMRAN SINGH SETHI, J.(oral)**

(1) By this common order, seven writ petitions, details of which has been given in the headnote of this order, are being disposed of which involve the same question of law and similar facts. For the sake of convenience, the facts are being extracted from CWP No.8116 of 2016.

(2) The prayer which is being made by the petitioner in the present writ petition is that respondent No.3-Cooperative Society be directed to grant the petitioner the regular pay scale of Rs.950-1500 w.e.f. 01.01.1991. The claim has been made on the ground that similarly situated employees, working in the other cooperative societies, have been granted the said pay scale and therefore, respondent No.3-Cooperative Society be also directed to grant the pay scale of Rs.950-1500 on the analogy of equal pay for equal work.

(3) Learned counsel for the respondents raises a preliminary objection that respondent No.3-Cooperative Society cannot be treated

as instrumentality of the State as envisaged Article 12 of the Constitution of India as the Government has no control over the said Society either financially or administratively.

(4) Learned counsel for the respondents states that once there are no finances provided by the Government of Haryana to respondent No.3- Cooperative Society and the Society is being managed by the persons other than the officers of the Government of Haryana, the writ petition is liable to be dismissed on the ground of maintainability.

(5) I have heard learned counsel for the parties on the ground of maintainability of the writ petition.

(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***,<sup>1</sup>In *Satrughan Nishad's* case (supra), 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 v. 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) 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 v. NCERT* (1991) 4 SCC 578 where, after considering the memorandum of association

---

<sup>1</sup> 2003 (8) SCC 639

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. v. 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. The judgment of ***Rajbir Singh's*** case (supra) is as under:-

1. This order will dispose of CWP No.10234 of 2014, ***Rajbir Singh*** versus ***The Sonapat Central Cooperative Bank Ltd. Sonapat and another & CWP No.11291 of 2015, Sh. Zakir Hussain and another*** versus ***State of Haryana and others*** on the point of maintainability.

2. Neither is the Bajana Khurd Cooperative Cash & Credit Service Society Ltd.-respondent No.2 in CWP-10234-2014 nor the Rawli Primary Agriculture Co-operative Society Limited, Rawli-respondent No.4 in CWP11291-2015 amenable to writ jurisdiction under Article 226 of the Constitution of India. These are Primary Cooperative Societies which are not created under any statute. Neither is any statutory duty cast on these primary societies nor do the petitioners have a corresponding right to relief be enforced in writ jurisdiction.

3. Neither the State nor respondent Banks in both the writ petitions have any substantial financial stake, deep and pervasive control over the functioning etc. over these primary cooperative societies and, therefore, they do not qualify as other authorities in Article 226 or “State” within the meaning of Article 12 of the Constitution.

4. The petitioners have relied on judgments which may be noticed in *CWP No.11147 of 1995, Sh. Balbir Singh and another* versus *The Samaspur Co-operative Credit and Service Society (Mini Bank) Samaspur* decided on November 13, 1995, *CWP No.1590 of 1997, Bani Singh and another* versus *The Kailana Co-operative Credit and Service Society Limited (Mini Bank), Kailana* decided on *May 26, 1997 & CWP No.1591 of 1997, Ram Mehar and another* versus *The Sitawali Co-operative Credit and Service Society Limited (Mini Bank), Kailana* decided on *May 26, 1998*. In none of these cases Rule-9 and Rule 13.1 of the Primary Cooperative Credit and Services Societies Staff, Service Rules, 1992 were considered which rules provide for consolidated pay. Therefore, these cases are distinguishable on law.

5. On the point of jurisdiction, the decision of the Supreme Court in *General Manager, Kisan Sahkari Chini Mills Limited, Sultanpur, U.P. versus Satrughan Nishad and others, JT 2003 (8) SC 235* can be profitably read on the point of maintainability.

6. Accordingly, the writ petitions are dismissed for want of maintainability.”

(8) In the present case, learned counsel for the petitioner has not been able to point out even one of the factor necessary so as to treat respondent No.3 as the instrumentality of the State. It has not been shown to this Court whether any finances have been extended by the Government of Haryana to respondent No.3-Cooperative Society or any of the officer is controlling the respondent No.3-Cooperative Society administratively in any manner. None of the conditions laid down by the Hon'ble Supreme Court of India in *Satrughan Nishad's* case (supra), has been fulfilled in the present case so as to treat the said Cooperative Society as instrumentality of the State so as to amenable to the writ jurisdiction of this Court.

(9) Keeping in view the above, the present writ petitions, which are directed against respondent No.3-Cooperative Society for the grant of salary are held to be not maintainable.

(10) However, petitioner is at liberty to approach the Registrar, Cooperative Society under the Cooperative Societies Act, 1961 for the redressal of his grievance.

(11) Learned counsel for the respondents-State, states that in case, the petitioner approaches the Registrar, Cooperative Society under the provisions of Cooperative Societies Act, 1961 for the redressal of the grievance, appropriate orders will be passed on the prayer made by the petitioner, within a period of three months from the receipt of any such request.

(12) The writ petitions are held to be not maintainable against respondent No.3-Cooperative Society but the liberty, as stated before, is granted.

(13) All the writ petitions are disposed of in the above terms.

---

*Tribhuvan Dahiya*