U.P. STATE CO-OPERATIVE LAND DEVELOPMENT BANK LTD. A

v.

CHANDRA BHAN DUBEY AND ORS.

DECEMBER 18, 1998

B

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Constitution of India, 1950—Articles 12, 226—Uttar Pradesh Co-operative Land Development Bank constituted under Uttar Pradesh Co-operative Land Development Bank Act, 1964—Writ petition against— Maintainability of—Amenability to Writ jurisdiction of—Employees of the appellant Bank being governed by Statutory rules and regulations— Managing Director and the Chief General Manager of the appellant being officials of the State sent on deputation to the appellant—Held, the affairs of the appellant bank are controlled by the State Govt., though it functions as Co-operative Society and thus an instrumentality of the State or authority as mentioned under Article 12—Uttar Pradesh Co-operative Land Development Bank Act, 1964—U.P. Co-operative Societies Act, 1965—Section 122. C D

Article 226-Public law and Private law—Whether differentiated under— Held, prima facie from the language of Article 226 there does not appear to exist a divide between the Public law and Private Law. E

Articles 367(1); 372—General Clauses Act, 1897—Applicability to interpretation of constution.

Service Law: F

U.P. Co-operative Societies Employees' Service Regulations, 1975-Regulations 2, Clause XI; 5; 102; 103; Chapter VII, Regulations 84; 85—Disciplinary Proceedings—Rules of Natural Justice—Compliance of— Respondents served with Charge sheets charging them with various charges— One of them taking part fully in the proceedings conducted by the Inquiry Officer while the other two respondents not doing so though replying to the Show cause notice—Disciplinary authority accepting the report of the Inquiry Officer and dismissing all the three respondents—Rules of Natural Justice— Whether vitiated—Held, all the requirements for the initiation and conclusion of the disciplinary proceedings have been followed and rules of natural G H

justice observed—Respondents being apprised of the evidence against each of them and given opportunity of being heard in person and also to produce evidence in defence—Finding of the High Court that rules of Natural justice were vitiated set aside—U.P. Rajya Sahakari Bhumi Vikas Bank Employees Service Rules, 1976—Rule 89—U.P. Co-operative Institutional Services Board.

Words and Phrases—Expression "Person" as accruing in Section 2(42) of General Clauses Act, 1897—Meaning of.

The Respondents in CA 514/85; CA 515/85 and 516/85 while working as Branch Accountants and Driver in the Appellant Bank were served with Chargesheets charging them with various charges. The Respondent in CA 514/85 replied to the chargsheet and took part fully in the proceedings conducted by the Inquiry Officer. The Respondents in CA 515/85 and 516/85 though replied to the show cause notice, did not take any part in the proceedings. The disciplinary authority accepted the report of the Inquiry Officer in respect of all the three respondents and dismissed them from service. Against the dismissal orders, three writ petitions were filed in the High Court. The High Court while holding that the appellant was an "authority" or "state" within the meaning of Article 12 of the Constitution was of the view that the dismissal orders were vitiated by non-compliance with the rules of natural justice and also in violation of the statutory rules as applicable to the employees of the appellant and allowed the writ petitions. Hence the present appeals.

On behalf of the appellant Bank it was contended that the appellant was not an "authority" or instrumentality of the State within the meaning of Article 12 of the Constitution and hence not amenable to writ jurisdiction. It was further contended that action against the respondents had been taken in accordance with the Rules as applicable to the employees of the Bank. The orders of dismissal of the respondents were passed with he prior concurrence of the U.P. Co-Operative Institutional Services Board as required under Rule 89 of the U.P. Rajya Sahkari Bhumi Vikas Bank Employees Service Rules.

Allowing the appeal, this Court

HELD: 1. All the requirements for the initiation and conclusion of the disciplinary proceedings have been followed in the present case and rules of natural justice observed. Proceedings against the respondents were initiated on the reports of the officers under whom they were working and these reports formed part of the evidence in the proceedings. An inquiry proceeding is not held as if it a trial in a criminal case or as of it is a civil suit. The

respondents were apprised of the evidence against each of them and given opportunity of being heard in person and also to produce evidence in defence. Nothing more was required on the part of the Inquiry Officer. Procedure after the receipt of the reports of the Inquiry Officer was followed as prescribed. The High Court, therefore; fell in error in returning a finding that rules of natural justice or the Regulations and Service Rules which are statutory in nature have not been followed.

Nagendra Nath Bora & Anr. v. *Commissioner of Hills. Division and Appeals, Assam & Ors.*, AIR (1958) SC 398, referred to.

2.1. The affairs of the appellant are controlled by the State Government though it functions as a co-operative society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. The service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them are statutory in nature and thus writ petition was maintainable against the appellant. [671-H; 672-A; 679-A]

2.2. The Managing Director and Chief General Manager of the appellant are officials of the State sent on deputation to the appellant. These two officers are at the helm of the affairs of the appellant. It is difficult to imagine a situation where a Government sends one of its employees on deputation to head a body or institution not controlled by that Government even though the employee may be paid out of the funds of that body or institution unless there is specific provision of law so entitling the Government. Service Rules have been framed under the statute and those Rules have the approval of a statutory body. Exercise of power of dismissal by the appellant has to be in accordance with the statutory regulations and with the approval of the statutory body. [672-B-C]

Sukhdev Singh and Ors. v. *Bhagatram Sardar Singh Raghuvanshi and Anr.,,* [1975]1 SCC 421, referred to.

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

A *Prima facie* from the language of Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for this Court to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. [677-H; 678-A-B]

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2.4. When the language of Article 226 is clear, no shackles can be put on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. [678-E-F]

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3. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, Shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statue. It is a fountain head of all the statutes. [678-D-E]

E

Engineering Mazdoor Sabha, [1963] Suppl. 1 SCR 625,640, affirmed.

F

Rohtas Industries Ltd. and Anr. v. *Rohtas Industries Staff Union and Ors.*, [1976] 2 SCC 82; *Life Insurance Corporation of India* v. *Escorts Ltd. and Ors.*, [1986] 1 SCC 264; *Andi Mukta S.M.V.S.S.J M.S. Trust and Ors.* v. *V.R. Rudali and Ors.*, [1989] 2 SCC 691; *Executive Committee of Vaish Degree College Shamli and Ors.* v. *Lakshmi Narain and Ors.*, [1976] 2 SCC 58; *Deepak Kumar Biswas* v. *Director of Public Instructions*, [1987] 2 SCC 252; *Dwarkanath HUF* v. *ITO, Special Circle Kanpur and Anr.*, [1965] 3 SCR 536; *Praga Tools Corporation* v. *Shri C.A. Imanual*, [1969] 1 SCC 585; *Air India Statutory Corporation and Ors.* v. *United Labour Union and Ors.*, [1997] 9 SCC 377; *Sri Konaseema Co-operative Central Bank Ltd.* and *Amalapuram and Anr.* v. *N. Seetharama Raju*, AIR (1990) AP 171, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 514 of 1985 Etc. A

From the Judgment and Order dated 24.2.84 of the Allahabad High Court in W.P.Nos. 4727 of 1983.

H.S. Gururaja Rao, K.R. Nagaraja and K.K. Tyagi for the Appellant. B

Anil Kumar Gupta and D.K. Gupta for the Respondents.

The Judgment of the Court was delivered by

D.P. WADHWA, J. These three appeals are directed against the common judgment dated February 24, 1984 of the Division Bench of the Allahabad High Court (Lucknow Bench) holding that the appellant is an "authority" and an instrumentality of the State and as such amenable to the writ jurisdiction of the High Court and setting aside the dismissal orders passed against the respondents being violative of the Service Rules as applicable to them. C D

Respondent - Chandra Bhan Dubey (CA 514/85) was working as a Branch Accountant in the Nakur Branch, District Saharanpur of the appellant. It was alleged that he committed various irregularities and a charge-sheet dated June 27, 1980 was served upon him containing various charges. These included that Dubey locked the Bank premisses affecting the very prestige of the Bank as well as of Branch Manager; that he disclosed confidential letter of the Bank to an unauthorized person; that he did not manage properly to keep with him the cash and draft receipt books failure of which facilitated Shri Birendra Kumar Sharma, Assistant Accountant of the Bank (since suspended) to commit embezzlement and in that he conspired with Sharma; and that he derelicted in the discharge of his duties. Dubey was apprised of the evidence proposed to be used in the disciplinary proceedings. E F

In the cases of Kanta Prasad Sharma (CA No. 515/85) and Bhaskara Chandra Uppadhyaya (CA No. 516/85), Driver and Branch Accountant of the Bank respectively charges were that they being the full time employees of the bank participated in the strike which was banned in the Bank by the State Government and thus declared illegal which disrupted the normal working of the Bank; that both of them created an atmosphere of terror along with others and also obstructed other employees of the Bank from working; and thus they instigated them to strike; and that they created indiscipline in the Bank by participating and organising a meeting illegally in the premises of the Bank G H

during office hours without prior permission of the competent authority in which meeting slogans were raised, exciting speeches delivered and abusive words used against the Bank management and they were thus guilty of misconduct; that they caused dis-reputation of the Bank by issuing pamphlets containing baseless allegations against the higher officials of the Bank; that with the object of organising an unlawful strike they established a "Sangharsh Kosh" and demanded Rs. 10 from every employee of the Bank for the purpose; and that they organised Employee Joint Action Committee of the Bank without proper registration under the Rules and without prior approval of the competent authority and associated an outsider as convener in that Committee and thus created disorder and disturbed the peace in the premises of the Bank. Against Kanta Prasad Sharma it was also a charge that he was suspended by order dated June 19, 1981 but he did not hand over the charge formally and by absenting himself in an unauthorised way and further that after his suspension he was attached to Regional Office, Bareilly but he did not join there so far. Similarly, Bhaskara Chandra Uppadhyaya was further charged that when he was suspended on June 19, 1981 and attached with Regional Officer, Gorakhpur, he did not join there. The evidence on which the charges were framed and which were to be proposed to be used during the course of disciplinary proceedings were stated in the charge-sheets.

Respondent - Dubey replied to the charges denying the same. He said he would like to appear in person before the Inquiry Officer and put up his version. He wanted certain documents which he said were not made available to him along with the charges and on that account he said he was not in a position to examine and cross-examine the witnesses. Dubey was granted opportunity to inspect the documents which he did. He again submitted his reply and ended up by stating as under :-

> "Respected Sir, Regarding all the above reports of embezzlement I wish to state that I have done my duty to the best of my ability and in the best interest of Bank and the customers. I am absolutely innocent. Therefore, I may kindly be exempted from the charges framed. If any error is committed in letter, I may be excused. In future on the occasion of personal hearing I will clear my position after accepting preliminary and detailed reports."

Dubey was then informed by the Inquiry Officer to present himself before him for hearing and he was asked to give in writing or orally whatever he wanted to say in his defence. He did appear before the Inquiry Officer on the date and time fixed. Thereafter he sent further reply and stated that he

had nothing to say more in his defence. The Inquiry Officer sent his report holding charges 2 to 5 proved against him. A show cause notice was issued to Dubey as to why he be not dismissed from the service of the Bank. He gave reply to the show cause notice. After receipt of his answer to the show cause notice the disciplinary authority held the charges established against Dubey and by order dated July 22, 1983 dismissed him from Bank's service.

Respondent - Sharma replied to the show cause notice. He did not ask for any personal hearing. The Inquiry Officer submitted his report holding the charges proved against Sharma. He was served with a show cause notice as to why he be not dismissed from the service of the Bank. He gave no reply. The disciplinary authority held the charges proved and ordered dismissal of Sharma by order dated July 20/22, 1983.

Respondent Uppadhyaya submitted his reply to the charge-sheet served upon him. He did not desire any personal hearing and only wanted that his explanation as given in his reply be considered sympathetically. The Inquiry Officer found the charges proved against Uppadhyaya and submitted his report to the disciplinary authority. Uppadhyaya was served with a show cause notice as to why he be not dismissed from service in view of the charges proved against him. He did not send any reply to that. The disciplinary authority accepted the report of the Inquiry Officer and by order dated July 20/22, 1983 dismissed Uppadhyaya from service of the Bank.

Against the dismissal orders three writ petitions were filed in the High Court which, as noted above, were allowed by the impugned judgment. The High Court negatived the plea of the appellant that it was not amenable to writ jurisdiction being not an "authority" or "State" within the meaning of Article 12 of the Constitution. On merit the High Court was of the view that relevant Rules regarding holding of inquiry against the delinquent employees were not followed and that the orders of dismissal did not contain any reason. High Court help that it was not necessary for the appellant to give any show cause notice to the respondents proposing order of dismissal but held that if it was not necessary for the bank to send copy of the report of the inquiry officer then the punishing authority should have either given reasons for coming to the conclusion of the guilt of the respondents or enclosed the report which it had accepted. High Court was thus of the view that the dismissal order were vitiated by non-compliance with the rules of natural justice and also in violation of the statutory rules as applicable to the employees of the appellant. High Court, however, left it open to the appellant,

A if it so chose, to proceed with the inquiry afresh from the stage after the receipt of the replies from the respondents to the charge-sheets served upon them.

The impugned judgment is assailed before us. It is submitted that orders of dismissal of the respondents were passed with the prior concurrence B of the U.P. Co-operative Institutional Services Board (for short, 'the Service Board') as required under Rule 89 of the U.P. Rajya Sahkari Bhumi Vikas Bank Employees Service Rule (for short, 'Service Rules'). It is stated that appellant is not an "authority" or instrumentality of the State and no writ could be issued against it and further that the action against the respondents had been C taken in accordance with the Rules as applicable to the employees of the Bank.

Before we consider the rival contentions it may be appropriate at this stage to set out the relevant provisions of law as applicable in these appeals.

D The appellant though a co-operative society registered under the U.P. Co-operative Societies Act, 1965 (for short, "Societies Act') is constituted under the Utter Pradesh Co-operative Land Development Bank Act, 1964 (for short, the 'Bank Act'). It is, therefore, governed by the provisions of both these Acts and the Rules framed thereunder. Section 122 of the Societies Act prescribes constitution of an authority to control employees of co-operative E societies. This Section we may reproduce as under :

> "122. Authority to control employees of co-operative societies:- (1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a F class of co-operative societies, and may require such authority or authorities to frame Regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society G and the society.
>
> (2) The Regulations framed under sub-section (1) shall be subject to the approval of the State Government and shall, after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede any Regulations made under H Section 121."

The State Government constituted Uttar Pradesh Co-operative Institutional Service Board (the Service Board). This Service Board with the approval of the Governor of the State of Uttar Pradesh promulgated Regulations called U.P. Co-operative Societies Employees' Service Regulations, 1975 (for short, the 'Regulations') which were published in the U.P. Gazette dated 6th January 1976. The Regulations were applicable with effect from the date of their publication in the U.P. Gazette. Clause (xi) of Regulation 2 defines 'employee' which means a person in whole-time service of a co-operative society, but does not include a casual worker employed on daily wages or a person in part-time service of a society. Under Regulation 5 recruitment for all appointments in a co-operative society shall be made through the Board which means the U.P. Co-operative Institutional Service Board.

Under Regulation 102 a co-operative society is empowered to frame service rules for its employees which however, are to be subject to the provisions of the Regulations. Under Regulations 103, the Regulations shall be deemed to be inoperative to the extent they are inconsistent with any of the provision of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhisthan Adhiniyam, 1962. Workmen's Compensation Act, 1923 and any other labour laws for the time being in force. Regulations 102 and 103 may be set out as under:

> "102. (1) Subject to the provisions of these regulations, a co-operative society shall within three months from the date of coming into force of these regulations (unless an extension of time is allowed by the Board in writing frame service rules for its employees.
>
> (ii) The service rules framed under sub-section (i) shall be submitted to the Board for approval and shall be operative only after the approval.
>
> (iii) Notwithstanding anything contained in these Regulations the existing employees shall have an option to continue to be governed by the existing service rules, if any, in the society only in respect of their emoluments and benefits or to opt the new service rules on these matters.
>
> Explanations :- (1) Provisions relating to pay, increments and allowances (other than travelling allowance), probation, confirmation, retirement, provident fund and gratuity shall be deemed as included in the term "emoluments and benefits".
>
> (2) In case of any doubt or dispute in interpretation in respect of the

matter mentioned in (1) above, reference shall be made to the Board whose decision shall be final.

(3) Existing service rules means authentic service rules framed by and with the approval of the competent authority.

103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947. U.P. Dookan Aur Vanijya Adhisthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to be inoperative.

Chapter VII of the Regulations contains provisions for penalties, disciplinary proceedings and appeals. Under Regulation 84, an employee can be removed from service and he is to be provided with the copy of the order of punishment. The penalty of removal from service cannot be imposed without recourse to disciplinary proceedings. An employee cannot be removed or dismissed by an authority other than by which he was appointed unless the appointing authority has made prior delegation of such authority to such other person or authority in writing. Regulation 85 provides in detail as to how disciplinary proceedings are to be conducted. Any order of removal or dismissal from the service or reduction in rank or grade held substantively by the employee cannot be passed except with the prior concurrence of the Service Board as required under Regulation 87.

Under Regulation 85 disciplinary proceedings against an employee shall be conducted by the Inquiry Officer with due observance of the principles of natural justice for which it shall be necessary that -

"(a) the employee shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days;

(b) such an employee shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires;

(c) if no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory the competent authority may award him appropriate punishment considered necessary." A

Under Regulation 102 of the Regulations appellant has framed Service Rules for its employees called the U.P. Rajya Sahakari Bhumi Vikas Bank Employees Service Rules 1976. These Rules have been duly approved by the B authority under Section 122 of the U.P. Co-operative Societies Act, 1965. For the purpose of any disciplinary proceeding against the employee of the appellant these Service Rules are to be in conformity with the Regulations. The requirement for disciplinary proceedings in case where penalty of dismissal is imposed are that (1) disciplinary proceedings shall be taken against the C employee on a report made to this effect by the inspecting authority or an officer of the Bank under whose control the employee is working. (2) the disciplinary proceedings shall be conducted by Inquiry Officer appointed by the appointing authority, (3) the Inquiry Officer shall observe the principles of natural justice for which it shall be necessary that the employee shall be served with a charge sheet containing specific charges, the evidence in D support of each charge and the employee shall be required to submit explanation in respect of the charge within a reasonable time which shall be not less than 15 days. The employee shall also be given an opportunity to cross examine or to produce witnesses in his defence at his own cost and shall also be given an opportunity of being heard in person, if he so desires. If no explanation E in respect of charge sheet is received or the explanation submitted is unsatisfactory the competent authority may award him punishment considered necessary. Order imposing penalty or dismissal from service shall not be passed against the employee except with the prior concurrence of the Service Board. A copy of the order of punishment shall be given to the employee concerned. No penalty or dismissal from service shall be imposed unless a F show cause notice has been given to the employee and he has either failed to reply within the specified time or his reply found to be unsatisfactory by the competent authority.

It will be seen that all the requirements for the initiation and conclusion G of the disciplinary proceedings have been followed in the present case and rules of natural justice observed. Proceedings against the respondents were initiated on the reports of the officers under whom they were working and these reports formed part of the evidence in the proceedings. An inquiry proceedings is not held as if it is a trial in a criminal case or as if it is a civil suit. Rules of natural justice require that a party against whom an allegation H

A is being inquired into should be given a hearing and not condemned unheard. As to what are the rules of natural justice to be followed in a particular case would depend upon the circumstances in each case and must also depend on the provisions of law under which the charges are being inquired into in the disciplinary proceedings. In *Nagendra Nath Bora & Anr.* v. *Commissioner of Hills Division and Appeals, Assam & Ors.*, AIR (1958) SC 398 at p.409) this
B Court held that "the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions, but in the light of the statutory rules and provisions." The respondents were
C apprised of the evidence against each of them and given opportunity of being heard in person and also to produce evidence in defence. Nothing more was required on the part of the Inquiry Officer. Procedure after the receipt of the reports of the Inquiry Officer was followed as prescribed. In our view, the High Court, therefore, fell in error in returning a finding that rules of natural justice or the Regulations and Service Rules which are statutory in nature
D have not been followed.

We now consider the question if the appellant is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

E Article 226, in relevant part, is as under :

> "226. Power of High Courts to issue certain writs. - (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any
F Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

We have seen above that the appellant is functioning as a co-operative
G society under the Societies Act but it has been constituted under the provision of the Bank Act. In exercise of power conferred on the State Government by Section 30 of the Bank Act, Rules have been framed called "the U.P. Cooperative Land Development Banks Rules, 1971". For the service condition of the employees of the appellant, we have to refer to the Societies Act and the Regulations framed by the U.P. Cooperative Institutional Service Board
H constituted under Section 122 of the Societies Act as well as to the Service

Rules framed by the appellant under Regulation 102 of the Service Regulations. Service Rules framed by the appellant shall be operative only after their approval by the Institutional Service Board. Any order of dismissal by the appellant can be issued only after its approval by the aforesaid Board. If we refer to the Bank Act, it will be seen that under Section 3 there shall not be more than one State Land Development Bank for the whole of the State of Uttar Pradesh and that sole Bank is the appellant. It has thus exclusive jurisdiction for whole of the State of Uttar Pradesh. It can admit as members Land Development Banks whose number can be as many as may be deemed necessary by the Registrar of the Cooperative Society for the State of Uttar Pradesh. Appellant is also vested with various powers under the Bank Act which powers are not available to a cooperative society registered merely under the Societies Act. If we refer to some of the provisions of the Bank Act it will be seen that the Registrar of the cooperative societies for the State of Uttar Pradesh shall be the Trustee for the purpose of securing the fulfillment of the obligations of the State Land Development Bank to the holders of debentures issued by the Board of Directors. The powers and functions of the Trustee shall be governed by the provisions of the Bank Act and by the instrument of Trust executed between the appellant and the Trustee as modified or substituted from time to time by their mutual agreement and with the approval of the State Government. Trustee is to be a corporation sole. The Board of Directors of the appellant may from time to time issue debentures of various denominations with the previous sanction of the State Government and the Trustee and subject to such terms and conditions as the State Government may impose against the unconditional guarantee by the State Government for repayment in full of the principal and payment of interest thereon or on the security of mortgages, charges or hypothecations etc. Under Section 9 of the Bank Act, the State Governm . constitutes a Guarantee Fund on such terms and conditions as it may deem fir, for the purpose of meeting losses that might arise on account of loans advanced by the Land Development Banks on the security of mortgages not being fully recovered due to such circumstances as may be prescribed. The appellant and the Land Development Banks shall contribute to such fund at such rates as may be prescribed. Under Rule 6 of the Bank Rules the Guarantee Fund shall be maintained by the Finance Department of State Government in the Public Accounts Section of the State Accounts and all contributions to the Fund and interest earned on investment made from the fund shall be credited direct to the Fund. It is not necessary for us to quote various other sections and rules by all these provisions unmistakably show that the affairs of the appellant are controlled by the State Government though it functions as a cooperative

A society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution.

We also find from the Service Rules that the Managing Director and Chief General Manager of the appellant are officials of the State sent on B deputation to the appellant. These two officers are at the helm of the affairs of the appellant. It is difficult to imagine a situation where a Government sends one of its employees on deputation to head a body or institution not controlled by that Government even though the employee may be paid out of the funds of that body or institutions unless there is specific provision of C law so entitling the Government. We also find that Service Rules have been framed under the statute and those Rules have the approval of a statutory body. Exercise of power of dismissal by the appellant has to be in accordance with the statutory regulations and with the approval of the statutory body. In *Sukhdev Singh and Others* v. *Bhagatram Sardar Singh Reghuvanshi and Another*, [1975] 1 SCC 421, a Constitution Bench of this Court held that D Regulations being framed under statutory provisions would have the force of law.

The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views it has been E held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In *Rohtas Industries Ltd., & Anr.* v. *Rohtas Industries Staff Union & Ors.*, [1976] 2 SCC 82, it was submitted before the Constitution Bench that an award under F Section 10A of the Industrial Disputes Act, 1947 savours of a privates arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under :

> "The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person even a private individual - and be G available for any (other) purpose - even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to "the residence of such person". But it is one thing to affirm the jurisdiction, another to authorise its free H exercise like a bull in a china shop". This Court has spelt out wise and

clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

Many rulings of the High Courts, pro and con, were cited before us to show that an award under Section 10A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar, J. (as he then was) in *Engineering Mazdoor Sabha,* [1963] Supp. 1 SCR 625, 640 which nail the argument against the existence of jurisdiction. The learned Judge clarified at p.640 :

> "Article 226 under which a writ of certiorari can be used in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of courts or tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed under Section 10A is not a tribunal under Article 136 in a proper cases.' a writ may lie against his award' under Article 226".

In *Life Insurance Corporation of India* v. *Escorts Ltd. and Ors.*, [1986] 1 SCC 264 another Constitution Bench had to say as under :

> "It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary. The learned

A counsel relied on the decisions of this Court in *Sukhdev Singh, Maneka Gandhi, International Airport Authority and Ajay Hasia.* The learned Attorney General, on the other hand, contended that actions of the State or an instrumentality of the State which do not properly belong to the field of public law but belong to the field of private law are not liable to be subjected to judicial review. He relied on *O'Reilly* v. *Mackman, Davy V. Spelthone,* I congress del Partido, *R.V. East, Berkshire Health Authority and Redhakrishna Aggarwal* v. *State of Bihar.* While we do find considerable force in the contention of the learned Attorney General it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see. We also desire to warn ourselves against readily referring to English cases on questions of Constitutional Law, Administrative Law and Public Law as the law in India in these branches has forged ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the technical rules which have hampered the development of the English law".

In *Andi Mukta S.M.V.S.S.J.M.S. Trust & Ors.* v. *V.R. Rudani & Ors.,* [1989] 2 SCC 691 a two Judge Bench of this Court was considering the question of "issue of a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the appellant trust and its trustees to pay to the respondents their due salary and allowances etc. in accordance with the Rules framed by the University and to pay them compensation under certain Ordinance of the University". The High Court before which the issue was raised held in favour of the respondents. This Court noted that the essence of the attack on the maintainability of the writ petition under Article 226 by the appellant was that it being a trust registered under the Bombay Public Trust Act was managing the college where the respondents were employed was not amenable to writ jurisdiction of the High Court. In other words, the contention was that trust being a private institution against which no writ of mandamus could be issued. In support of the contention, the appellant referred two decisions of this Court : *Executive Committee of Vaish Degree College Shamli and Ors.* v. *Lakshmi Narain and Ors.,* [1976] 2 SCC 58 and *Deepak Kumar Biswas* v. *Director of Public Instructions,* [1987] 2 SCC 252. This Court, however distinguished those two decisions and said that the facts before it were different and that there was no plea for specific performance of contractual service by the respondents now in the case before it. Respondents were not seeking a declaration that they be continued in service and they were not asking for mandamus to put

them back into the college. But they were claiming only the terminal benefits and arrears of salary payable to them. The question thus was whether the trust could be compelled to pay by writ of mandamus? The Court noted the observations of *Subba Rao, J. in Dwarkanath and H.U.F.* v. *ITO, Special Circle Kappur and Anr.*, [1965] 3 SCR 536 as under :

> "This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

The Court also noted the observations of this Court in *Praga Tools Corporation* v. *Sh. C.A. Imanual,* [1969] 1 SCC 585 as under :

> "It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statutes under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II, p. 52 and onwards).

The Court then said :

A "The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, B therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body.

C The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

D And finally it said as under :

"Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforce is not imposed by the statute. Commenting on the development of this law, Professor De Smith states : "To be enforceable by mandamus a public duty does not E necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus F is a very wide remedy which must be easily available 'to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

G In *Air India Statutory Corporation and others* v. *United Labour Union and Ors.*, [1997] 9 SCC 377, this Court Speaking through a Bench of three Judges said :

"The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any H order or direction to enforce any of the fundamental rights and "for

any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *LIC* v. *Escorts Ltd.*, [1986] 1SCC 264 at 344, this Court in paragraph 102 had pointed out that the difficulty will lie in demarcating the frontier between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the state engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M.C. Mehta and Ors.* v. *Union of India and Ors.*, [1987] 1 SCC 395".

A Full Bench of the Andhra Pradesh High Court in Sri Konaseema Co-operative *Central Bank Ltd., Amalapuram and Anr.* v. *N. Seetharama Raju,* AIR (1990) A.P. 171, was considering the question whether a writ petition lay against a cooperative society and if it does, in what circumstance. After examining various decisions and treatises on the subject it was stated that even if a society could not be characterised as a 'State' within the meaning of Article 12 even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against 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. What is material is the nature of the statutory duty placed upon it, and the Court is to enforce such statutory public duty.

In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State would be

A amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. *Prima facie* from the language of the Article 226 there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the B earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas C corpus, mandamus, prohibition, *quo warranto and certiorari.* They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made D therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution in not a statute. It is a fountain head of all E the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether F incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there G subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its H jurisdiction under Article 226.

We, therefore, hold that appellant is an authority controlled by the State Government and the service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them are statutory in nature and thus writ petition was maintainable against the appellant. To this extent, we agree with the High Court. However, disciplinary proceedings were held against the respondents in accordance with law with due observance of the rules of natural justice. The judgment of the High Court is, therefore, not correct to that extent.

The appeals are, therefore, allowed impugned judgment of the High Court holding that the dismissal of the respondents was not legal is set aside and the writ petitions filed by the respondents are dismissed.

M.P. Appeals allowed.