(2005) 09 SC CK 0085

Supreme Court of India

Case No: Civil Appeal No. 3499 of 2005

Gurcharan Singh		APPELLANT
	Vs	
Registrar, Co-operative Societies, Himachal Pradesh and Others		RESPONDENT

Date of Decision: Sept. 15, 2005

Acts Referred:

- Constitution of India, 1950 - Article 12

Citation: (2005) 4 AWC 3536 Supp : (2005) 8 JT 423 : (2005) 7 SCC 565 : (2005) 3 SCR 230 Supp

Hon'ble Judges: C. K. Thakker, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Shyamlha Pappu, R. Krishnaamorthi and Mohan Pandey, for the Appellant; Naresh K. Sharma and Javed Mahmud Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The present appeal is directed against the judgment of the High Court of Himachal Pradesh at Shimla in Civil Review No. 9 of 1998. By the impugned order, the earlier order passed in Civil Writ Petition No. 1844 of 1995 was recalled and it was held that the High Court had no jurisdiction to entertain the writ petition. This view was taken primarily on the ground that the respondent was a Cooperative Society and was, therefore, not covered within the meaning of Article 12 of the Constitution of India, 1950 (in short "the Constitution"). Reliance for this purpose was placed on two Division Bench judgments of the High Court holding that the High Court had no jurisdiction to entertain the writ petition. As noted above, the review was allowed and the writ petition was dismissed as being not maintainable. No view was expressed on the merits of the case.

2. Learned counsel for the appellant submitted with reference to a seven Judges Bench judgment of this Court in 273902 that the writ petition is maintainable. By the said judgment, the decision of the Constitution Bench in the case of 283171 was overruled. The Constitution Bench judgment in the case of 270189 was explained and multiple tests for determining whether a particular Corporation or Body can be held to be included within the definition of "State" under Article 12 of the Constitution, were laid down. It was inter-alia held as follows:

"The picture that ultimately emerges is that the tests formulated in Ajay Hasia"s case (supra) 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."

3. It appears that the basic factual aspects were not placed before the High Court to determine the question whether the respondent-Society was "State" within the meaning of Article 12 of the Constitution. In view of the aforesaid, we feel it would be appropriate for the High Court to examine the question regarding the maintainability in the background of what has been stated in Pradeep Kumar"s case (supra). The parties shall be permitted to place materials in support of their respective stands in this regard. As the matter is pending since 1995 and involves the question of legality or otherwise of termination of services of the appellant, it would be in the interest of the parties if the writ petition is disposed of as early as practicable preferably within four months from the date of receipt of our order.

4. In the ultimate result, Civil Writ Petition No. 1844 of 1995 is restored to file.

5. We make it clear that we have not expressed any opinion on the merits of the case. The High Court shall decide the question of maintainability of the writ petition as well as the merits. In case, it holds that it has jurisdiction, then it shall consider the merits by taking into account the materials to be placed before it by the parties in respect of their respective stand.

6. The appeal is disposed of accordingly without any order as to costs.