

Jose/Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.555 OF 2013

Shri Gajanan M. Naik, major in age
Ex-senior Supervisor (P. & AH)
Goa State Coop. Milk Producers' Union Ltd.
Curti Ponda – Goa.
Residing at KVS – C-2 Dairy Colony,
Curti - Ponda-Goa.

... Petitioner

Versus

1. Goa State Coop. Milk Producers' Union Ltd
With its registered office
at Curti - Ponda – Goa,
Represented by its Chairman
Shri Shrikant Pandurang Naik
and its Managing Director
Dr. Navaso Chandrakant Sawant
both major resident of
Galshire kavale Ponda Goa
and Curti Ponda – Goa respectively

2. State of Goa through Chief Secretary
Secretariat Porvorim Goa. ... Respondents

Ms A.A. Agni, Senior Advocate with Ms Afrin Harihar Khanm and
Mr Junaid Shaikh, Advocates *for the Petitioner*.

Ms S. Bangera with Mr Yash Naik, Advocates *for Respondent No.1.*

Ms Sapna Mordekar, Additional Government Advocate *for Respondent No.2.*

CORAM:

**AVINASH G. GHAROTE &
VALMIKI MENEZES, JJ.**

RESERVED ON: 8th March 2024

PRONOUNCED ON : 6th May 2024

JUDGMENT: (Per Valmiki Menezes, J.)

I. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner claims the following reliefs:-

- A.** For a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order, thereby quashing and setting aside the order dated 20/04/2012 directing that the Petitioner stands retired with effect from 31/5/2012 and for a direction to the respondents to continue Petitioner in service till 31/5/14.
- B.** A declaration that he is governed by the Fundamental and Supplemental Rules and/or by the Goa State Civil Services (Retirement) Rules 2007.
- C.** For a direction to the respondents to pay to the Petitioner the salary for the period of June 2012 till 31/5/2014 and all other salary increments additions to which he would be entitled but for the order dated 20/4/2012.
- D.** For fixation of his pension and other retirement dues taking into consideration the service of the Petitioner till 31/5/2014 and the salary he would earn during the said period.

2. Rule was issued by this Court in this petition on 03.02.2014. The question of maintainability of the petition was kept open when issuing Rule. The Respondent No.1 contends that the petition is not maintainable and the Respondent No.1 is not amenable to writ jurisdiction of this Court for the reasons stated in its affidavit in reply dated 09.12.2013 and additional affidavit dated 20.04.2015. Accordingly, we have called upon

the learned Counsel for the parties to make their submissions on the maintainability of this Writ Petition. Arguments on the maintainability of the petition were heard on 08.03.2024 and judgment on this preliminary point was reserved on the same day.

3. To decide the question of maintainability of this petition under Article 226 of the Constitution of India, and to conclude whether the Respondent No.1 can be considered to be a “State” under Article 12 of the Constitution of India, and therefore, amenable to writ jurisdiction of this Court, we set out below certain facts alleged in the petition:

A. The Petitioner claims that he was appointed as a Veterinary Assistant in the Directorate of Animal Husbandry and Veterinary Services of the Respondent No.2, Government of Goa with effect from 12.01.1978, where he continued to work until he was deputed on Foreign Service Terms to the Respondent No.1 on sanction being accorded by the Government of Goa to his deputation, on 27.05.1982; The Petitioner was deputed to work as Procurement cum Animal Husbandry Input Supervisor with the Respondent No.1 initially for a period of one year which was extended from time to time. On the Petitioner according his consent for absorption into the services of the Respondent No.1 to the same post, sanction was granted by the Government of Goa on 11.10.1985 after which he continued to work with the Respondent Union.

B. On 17.03.1992, an order was passed by the Respondent No.2 revoking the earlier orders of deputation and sanction for

absorption dated 11.10.1985, stating that the Petitioner would be now sanctioned to be absorbed in the services of Respondent No.1 effective from 01.10.1990. The Petitioner claims that it was represented to him that he would be governed by the rules applicable to superannuation of a Government employee till such time that the Respondent No.1 framed its own staff service rules. The Petitioner claims that the Respondent No.1 is a Milk Union registered under the Maharashtra Cooperative Societies Act 1960, as far as was made applicable to the State of Goa and contends that it is fully constituted by, owned and run by the Government of Goa; That the Government of Goa exercises all pervasive control over this Milk Union, both through its administration, funding and ownership of its property, the Union being an instrumentality of the State and subject to the writ jurisdiction of this Court.

- C.** By notification dated 23.03.2007 issued by the Government of Goa under Article 309 of the Constitution of India, the Goa State Civil Services Retirement Rules 2007 (Service Rules) were notified and in terms of Rule 3 thereof, the age of retirement of Goa Government Civil Servants was raised from 58 years to 60 years.

- D.** On 20.04.2011, the Petitioner, who was then working as a Senior Supervisor (P&AH) with the Respondent No.1, received a communication informing him that he shall retire from service on completion of the age of 58 years on 31.05.2012; The Petitioner responded to this communication by claiming before

the Respondent No.1 that the retirement age for the Petitioner was 60 years according to the Service Rules applicable to Government Servants, which he stated were applicable to the staff of the Respondent No.1 Union. His representation was, however, rejected and the Petitioner was retired on close of office hours on 31.05.2012.

- E.** On further representations made by the Petitioner, he received a communication dated 12.07.2012 from Respondent No.1 stating that it followed the Central Civil Service Rules in all respects, however, in respect of the age of retirement was concerned, the Union follows its own age of retirement at 60 years which is uniformly followed. Since the Respondent Union failed to recall its order dated 20.04.2012, retiring the Petitioner on completion of the age of 58 years with effect from 31.05.2012, this petition was instituted for reliefs referred to above mainly on the following grounds:
- I.** That the Respondent Union being a “State” within the meaning of Article 12 of the Constitution of India and having adopted and followed the Central Civil Service Rules which were applicable to its employees, the age of retirement of the Petitioner ought to have been 60 years, hence, the order impugned under relief clause (a), retiring him from service on 31.05.2012 was illegal;
- II.** That the age of retirement of the Petitioner was governed by fundamental and supplemental rules, as also the Goa State Civil Services (Retirement) Rules 2007, wherein the age of

retirement for persons such as the Petitioner was prescribed as 60 years, and such rules being applicable to the service conditions of employees of the Respondent Union, the Petitioner was entitled to be retired on 31.05.2014 instead of 31.05.2012.

4. We have heard the learned Counsel for the parties on the question of maintainability of this petition; We have perused the record of the petition.

It was the contention of learned Senior Advocate Ms Anarkali Agni for the Petitioner that the Respondent Union was a Cooperative Society set up and registered under the provisions of the Maharashtra Cooperative Societies Act 1960, as made applicable to the State of Goa, with the sole object of setting up a milk processing unit and distribution of milk to consumers all over the State of Goa. It is the Petitioner's further contention that the Respondent Union was constituted, owned and run by the Government of Goa from 1965 to 1984 and has all pervasive control in matters of policy, recruitment of staff, fixation of rate of milk and other administrative matters. The Petitioner contends that the Government of Goa has leased an area of 81,485 sq. mts. of land at Curti and Usgao, in Ponda Taluka of Goa for an almost non-existent rent of Rs.1/- per year, which act itself points to the absolute control that the Government of Goa has over this Milk Union.

5. It was further argued by the Petitioners that a perusal of the bye-laws of the Union would bear out that the Board of Directors includes a nominee of the Registrar of Cooperative Societies and one nominee of the

Financing Agency and the Union is a specified Society in terms of Section 73A of the Cooperative Societies Act. It was further submitted that the bye-laws would disclose that in all policy decisions such as constitution of posts, filling up of vacancies, purchase of assets, variation of milk prices and other policy matters of the Society, the approval of the Government is mandatory, demonstrating pervasive control by the Government over the affairs of the Union.

It was further argued that the salaries of the employees of the Union are paid through funds released by the Department of Agriculture of the Government of Goa or through grants and subsidies given by the Government of Goa to enhance milk production; Thus, the functional and administrative control, as also the financial control over the Respondent Union is with the Government of Goa, thereby subjecting the Respondent Union to the jurisdiction of this Court under Article 226 of the Constitution of India as a “State” under Article 12.

6. It was further submitted by the Petitioner that the functions exercised by the Union are Public Governmental functions under the Directive Principles of State Policy enshrined in Part IV of the Constitution of India, making the Respondent No.1 an instrumentality of the State, discharging public functions of supply of an essential commodity such as milk and other milk products. It was further contended that the Respondent Milk Union being a Cooperative Society now covered by the 97th Constitutional Amendment contained in Part IX B of the Constitution of India and more particularly under Article 243 ZT, would be amenable to writ jurisdiction of this Court since a constitutional status has been accorded by these provisions to Cooperative Societies.

7. To buttress the afore-stated contentions, the Petitioner has relied upon the following case law to contend that the various tests set down in these judgments for examining whether a party would be amenable to the writ jurisdiction under Article 226, would be applicable to the case of the Respondent Union:

- A. Anadi Mukta Sadguru Shree Muktajee Vandasiwami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors.** reported in **AIR 1989 SC 1607**,
- B. Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors.** reported in **(2002) 5 SCC 111**,
- C. Madhya Pradesh State Cooperative Dairy Federation Limited vs. Rajnesh Kumar Jamindar & Ors.** reported in **(2009) 15 SCC 221**,
- D. Akalakunnam Village Service Cooperative Bank Limited vs. Binu N. & Ors.** reported in **(2014) 9 SCC 294**,
- E. Vipulbhai M. Chaudhary vs. Gujarat Cooperative Milk Marketing Federation Ltd. & Ors.** reported in **(2015) 8 SCC 1**,
- F. Kelvin Jute Company Limited Workers Provident Fund & Ors. vs. Krishna Kumar Agarwala** reported in **(2016) 14 SCC 326**,
- G. Dr Ajit T. Kossambe vs. Goa State Co-operative Milk Producers Union Ltd. [WP 106 of 2008]** **Bombay High Court dated 24.03.2008**, and
- H. Vassudev Madkaikar and ors. Vs. State of Goa [WP 92 of 2021 (Filing)]** **Bombay High Court dated 05.03.2021**.

8. Countering these submissions, Ms S. Bangera for the Respondent No.1 has taken us to the two affidavits in reply placed on record to submit

that the Government of Goa has no shareholding in the Respondent No.1 Cooperative Society. It was submitted that the Respondent No.1 is a Cooperative Society registered earlier under the Maharashtra Cooperative Societies Act as was applicable to the State of Goa, set up for engaging business of procurement, processing and distribution of milk and milk products. That the Government of Goa has no pervasive control over the Respondent No.1 in matters of policy or recruitment of its staff or fixation of the rate of milk or other administrative matters. It was further submitted that a perusal of its bye-laws would disclose that the Respondent No.1 has various shareholders, other than the Government of Goa and its members are all required to hold at least one share of the Cooperative Society to continue their membership. The bye-laws permit for transfer of shares, the manner in which membership ceases, the manner in which the General Body of members elects the Board of Directors and powers vested in the various posts held in the Board of Directors.

9. It was further submitted by the Respondent No.1 that the age of retirement of employees of the Respondent No.1 has always been 58 years, which fact was reiterated by resolution of the Board of this Respondent on 30.01.2008, eliminating all doubts as to whether the increase in retirement age of civil servants in employment of the Government of Goa pursuant to Government Notification dated 23.03.2007, increasing the age of superannuation to 60 years was applicable to the employees of the Society. It was further submitted that at least 39 employees of the Society have retired between 1991 and 2014 on attaining the age of 58 years, in consonance with the Society's

retirement policy, and that in line with the retirement age of 58 years, the Petitioner retired on 31.05.2012 as per the Service Rules applicable to him.

The learned Counsel for the Respondent No.1 took us through the affidavits filed by this Respondent wherein it contended that this Respondent had no monopoly of marketing and distributing milk and milk products in the State of Goa but was required to compete with other brands marketing and distributing similar products such as Amul, Govan, Igloo Cold Storage and Samarth Dairy besides other competitors selling similar products in the State of Goa from neighbouring States such as Nandini, Warna, Gokul, Govind amongst others. It was therefore contended that the Respondent No.1 was a standalone Cooperative Society, with no control from the Government of Goa and had to survive on its own in the business of supply and distribution of milk and other dairy products. It was further submitted that the Respondent Society was paying its salaries based on its paying capacity and from resources generated by itself, without any financial help from the Government of Goa. It was argued that subsidies received from the Government of Goa are transferred to the dairy farmers and dairy societies to promote the dairy business within the State and such funds are not utilised for the business of the Union.

10. To appreciate the rival contentions on the question of whether the Respondent No.1 is a “State” within the meaning of Article 12 of the Constitution of India, it would be advantageous for us to consider the various decisions, setting out the tests which would enable us to come to

a conclusion, whether the Respondent No.1 falls within or outside the sweep of the definition of “State”.

11. In *Pradeep Kumar Biswas* (supra), the Supreme Court has laid down various tests which would act as a guide at concluding whether an entity could be considered a “State” under Article 12, and make it amenable to this Court’s jurisdiction under Article 226 of the Constitution of India. Amongst these tests, the following have been broadly laid down:

A. Formation of the Body.

B. The objects and functions of the Body.

C. Whether management and control is exercised over the Body by the Government, and the manner in which such control is exercised.

D. To what extent financial aid is given by the Government to the Body, how the financial aid is utilised and how financial control is exercised by the Government over this Body.

12. Elaborating further on these tests, the Supreme Court has emphasized that the objects, functions, management and control of an entity needs to be examined to ascertain the dominant role played by the Government in exercising control over the running of the entity, how it recruits its employees and controls their service conditions, how it obtains or generates its capital and applies this capital, how it controls expenditure; Further, it sets down functional tests whereby it would be necessary to examine whether the functions which are otherwise a State

activity are entrusted to such an entity which acts as an instrumentality of the State.

The minority view in *Pradeep Kumar Biswas* (supra) has concluded that to be an “Authority” referred to in Article 12, the entity should be created by a statute or under a statute and functioning with liability and obligations to the public, and further the entity created by such statute should be vested with the power to make law or issue binding directions amounting to law within the meaning of Article 13(2) governing its relationship with other people; This view further holds that before an entity is held to be a State, the person alleging it to be so must satisfy the Court of brooding presence of the Government, of deep and pervasive control of the Government so as to hold it to be an instrumentality or agency of the State.

13. *Pradeep Kumar Biswas* (supra) was followed in *Madhya Pradesh State Cooperative Dairy Federation Limited* (supra) wherein, in addition to the various tests laid down, the Supreme Court has applied additional tests to determine whether an entity is a “State”, and amongst these, has held, where a federation was part of a department of a Government and seeks to achieve the principle laid down in Article 47 of the Constitution of India viz. nutritional value and health and undertakes training and research and follows guidelines issued by the Government, is an apex body whose regulations are amended in conformity with Government circulars, must be held to be a “State” under Article 12 of the Constitution of India.

In *Kelvin Jute Company Limited Workers Provident Fund* (supra), whilst examining the tests to consider whether a Trust could be termed to

be an “instrumentality” of the State to bring it within the definition of Article 12, being an “other authority”, it held that where the functioning of the Board of a Trust is strictly guided by the Rules and Regulations of the Act (in that case if Employees Provident Fund Act) there could be no rational justification for ignoring the fact that such a trust was required to be operated within specific guidelines indicated in the statute itself. Thus, it held, that where an entity is created under, and for the purpose of carrying out a function prescribed by a statute, and such entity acts as an instrumentality or agency of the authority under the statute, it is amenable to writ jurisdiction.

14. In *Anadi Mukta Sadguru* (supra), the question whether a Public Trust running a private educational institution was amenable to writ jurisdiction, the Supreme Court held that if the rights claimed are purely of a private character, no mandamus can issue, but if the Trust managing an educational institution to which public money is paid as Government aid, which aid plays a major role in the control, maintenance and working of the institution, and further, like Government institutions, such a private institution discharges a public function by imparting education to students, its actions would be open to judicial scrutiny under Article 226 of the Constitution of India.

15. In ***Zee Telefilms vs. Union of India;*** reported in **(2005) 4 SCC 649**, a Five-Judge Bench applied the tests laid down in *Pradeep Kumar Biswas* to ascertain whether Board of Control for Cricket in India (BCCI) is a “State” and held that it was not financially or administratively or functionally under the control of the Government and such control was only regulatory in nature. It however held:

“24. To these facts if we apply the principles laid down by seven Judge Bench in *Pradeep Kumar Biswas* (*supra*), it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

25. Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the parameters laid down by this Court in *Pradeep Kumar Biswas*’s case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board’s functions even then as per the judgment of this Court in *Pradeep Kumar Biswas* (*supra*) that by itself would not suffice for bringing the Board within the net of “other authorities” for the purpose of Article 12.”

Discussing whether the BCCI discharges public duties in the nature of State functions, it was observed:-

“29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform

these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it and that the Board is discharging these functions on its own as an autonomous body."

16. In **S.S. Rana vs. Registrar, Cooperative Societies & Anr.** reported in **(2006) 11 SCC 634**, the Supreme Court considered the tests to be applied by a Court, examining the internal functions of the Cooperative Society, to determine whether the State has a deep and pervasive control over the Society by exercising functional control over the affairs of the Society. We quote the relevant paragraphs which lay down these tests:

"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 v. Khalid Mujib Sehravardi. [See Zoroastrian Coop. Housing Society Ltd. v. 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.”

17. In *Shamrao Vithal Cooperative Bank Ltd. vs. Padubidri Pattabhiram Bhat*, reported in AIR 1993 Bom 91, a Full Bench of this Court, whilst ruling that a multistate Cooperative Bank registered under the Maharashtra State Cooperative Societies Act, 1984, was not a “State”

within the meaning of Article 12, held that Societies are run on cooperative principles and their final authority vests with the members of the Society. It has further held that the members of the Society, who by resolution in a General Body Meeting would exercise control over the Society, such societies cannot be considered to be a “State” within the meaning of Article 12 of the Constitution of India.

18. This Court, considering and applying the various tests referred to in the above decisions in its Full Bench judgment in **Writ Petition No.92/2021(Filing)** dated 05.03.2021 in *Vasudev Madkaikar and Ors. vs. The Goa State Cooperative Bank Limited* has held that commercial business of banking though is a function of public importance, is not a “public function” merely because it has to follow certain regulations. It has further held that merely because an organization carries on the function of public importance which is akin to or closely related to Government functions, it would be no reason to hold that it discharges public functions. This Court holds:

“40. It is trite position of law that the power of the High Court conferred under Article 226 of the Constitution to issue writs, for enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose can be directed to any person or authority. But it is well understood that a mandamus would lie to secure the performance of a public or statutory duty in the performance of which, the person who seek such a writ has a sufficient legal interest. The writ, in form of a command directing particular act to be done would lie against a nature of public duty, though the person or authority on whom the statutory duty is imposed need not be a public official or an official body. A writ in the nature of mandamus would also lie against a private body, but only when such body performs any public function. The commercial business of banking, though is a function of public importance is not a public function and this position, succinctly flow from the decision of the Apex Court in

case of Federal Bank Ltd. (supra). Merely because the Reserved Bank of India prescribe the banking policy for the sound economic growth and any particular bank function under the Banking Regulation Act, a private company carrying on business or commercial activity of banking do not conclusively establish that it discharge any public function or public duty. The Regulations are to be ranked not more than regulatory measures and if there is a failure to adhere to the said regulations, certain consequences are visited, is also not an indication to categorize the functioning as public duty. Similarly, merely because an organisation carries on function of public importance which are akin to or closely related to government functions, it would be no reason to hold that it discharge public functions.

Another important aspect which has to be borne in mind is that a writ can be issued for the discharge of only that public function if at all a body performs a public function and not any other function performed by it in the course of its business. Even if a body is performing public duty and amenable to writ jurisdiction, as a necessary sequel, all its decisions are not subject to judicial review but only those decisions which have public element therein can be judicially reviewed in exercise of writ jurisdiction. A fine line needs to be drawn between the contract of service by bearing its connection to the nature of contract and a contract of personnel service cannot be enforced with the exception when the employee is a public servant working under the Union of India or State, or an employee who is employed by any authority which is recognised as 'State' within the meaning of Article 12 and when such an employee fall within the ambit of "workman" within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. There cannot be any dispute that writ is maintainable under Article 226 of Constitution of India even against a private management for enforcing the 'public duty' cast upon them, but it cannot be said that the same is available also for enforcing the terms and conditions of service in every situation. With the said observations, the Accountant who had knocked the doors of the Court who was aggrieved by issuance of a chargesheet by the Socio-Economic Unique Foundation, a private Society without any government control, and which was held to be not

answering the description of a State, an agency or instrumentality of State or that of any other authority, it was held that though acting as a accredited agent to the Government it discharges duties of public nature, mere service dispute in terms of non-statutory service rules does not permit the petitioner to take recourse to Article 226 of the Constitution of India. In light of the aforesaid discussion on the two issues formulated by us in the primorial part of this judgment, we answer the same as under:

- 1) *The Goa State Cooperative Bank Ltd is not a 'State' or an instrumentality thereof nor does it fall within the ambit of 'Any other authority' for the purposes of Article 12 of Constitution of India.*
- 2) *The GSCB does not discharge any public functions, which would warrant issuance of writ in the nature of mandamus in discharge of its performance of public functions.*

19. In the light of the law as enunciated in the above judgments and the principles contained therein, we proceed to decide the issue before us i.e. whether the Goa State Cooperative Milk Producers Union Limited is a “State” within the meaning of Article 12 and whether it discharges any public function, so as to render it amenable to writ jurisdiction under Article 226 of the Constitution of India.

20. Keeping the rival submissions in mind, we have examined the pleadings and the documents before us in relation to the formation of the Union, its objects and functions, whether management and control over it is exercised by the Government of Goa, and if so exercised, in what manner.

A. OBJECTS, BYE-LAWS AND MANAGEMENT OF THE UNION (WHETHER THERE IS DEEP AND

**PERVASIVE CONTROL OF THE STATE OVER
THE UNION):**

- I.** The Union is registered under the Goa Cooperative Societies Act, 2001 and was formally registered and governed by the provisions of the Maharashtra Cooperative Societies Act, 1961 as applicable to the State of Goa. The objectives as stated in Clause 3 of its bye-laws are mainly to carry out activities conducive to the economic and socio-economic development of milk producers by organizing effective milk production, processing and marketing of commodities. These objectives are further expanded in the form of undertaking and encouraging production of milk, growing fodder, agricultural produce, cattle feed and providing veterinary and other technical services and inputs for milk production enhancement, to organize and encourage saving scheme, purchase, pool, process, manufacture, distribute and market milk and milk products, commodities of members and of others. To achieve these objectives, the Union may own or hold movable and immovable properties on lease or otherwise, to purchase buildings, plant, machinery, equipment, etc.
- II.** The Union may mobilize funds in accordance with Clause 4 of the bye-laws in the form of entrance fees, Shares, Debentures, deposits from members, loans, donations, grant in aid, subsidies. Bye-law 4 also provides that the Union may accept funds from financial institutions in the form of

loans with prescribed conditions. Its authorized share capital is Rs.1,50,00,000/- divided into 1,50,000 shares of Rs.100/- each.

- III.** The membership of the Union is of two categories, one of ordinary members and the other of registered primary milk producers cooperative societies whose bye-laws are in conformity with the model bye-laws recommended by the Union. Ordinary members are required to hold at least one share of Rs.100/-.
- IV.** The bye-laws provide for the procedure for removal of members and the manner in which membership ceases in bye-law 12, and for transfer of shares in bye-law 11. The rules governing the meetings of General Body are specified in bye-law 14 and bye-law 19 provides for constitution of the Board of Directors. The Board of Directors consists of 15 members of which 12 are required to be inducted by election from amongst ordinary members. The remaining three members are nominee of the Registrar of Cooperative Societies, nominee of a financing agency, if a loan is to be repaid and a Chief Executive/Managing Director of the Union who is the Ex-Officio Director and Member Secretary of the Board. Decisions of the Board are required to be taken by majority, so also the voting rights of ordinary members are specified in bye-law 17.
- V.** Amongst the powers, functions and responsibilities of the Board which are stated in bye-law 21, it can approve the

administrative setup and form panels for recruiting officers and staff of the Union.

The powers of the Managing Director/Chief Executive are stated in bye-law 22 and these include various executive powers of appointing staff, officers as per selection made by panels formed for that purpose and disciplinary powers of suspension and imposing punishment. Profits of the Union are to be distributed in accordance with bye-law 23 based upon net surplus after making adequate provisions towards guarantee given to any Government Authority, towards depreciation and redemption of share capital and making adequate provisions for a reserve fund.

- VI.** From the scheme of the bye-laws, the Board of 15 Directors of which 12 are required to be inducted by election from amongst ordinary members. The remaining three members are a nominee of the Registrar of Cooperative Societies (as required by the Cooperative Societies Act), a nominee of a financing agency, if a loan is to be repaid by the Union and the third is a Chief Executive/Managing Director of the Union who is the Ex-Officio Director and Member Secretary of the Board. The Managing Director is appointed by the Board on being selected by an expert panel and his qualifications are prescribed in terms of bye-law 21.2.13; He may be suspended or removed from his post by resolution of the Board.

Only if the Government subscribes to more than one half of

the share capital of the Union, is the approval of the Government required for the appointment of the Managing Director. The powers and functions of the Board, as specified in bye-law 21 allows the Board of Directors to acquire or dispose of property of the Union, raise loans, debentures, and engage staff/employees. There is a complete control of the affairs of the Society, which, by the scheme of the bye-laws is to be exercised democratically and by majority of the Board of Directors, who are elected in terms of bye-law 19 for a term of five years. The voting right is specified in clause 17 where each ordinary member has one vote whilst the nominee of the Registrar or financial institution and the Managing Director shall have no vote for an election or a no-confidence motion. The entire financial control of the Union is with the Board of Directors and the mode of distribution of profits is to be carried out in terms of bye-law 23 after making provisions for reserves, to be decided in its General Body.

- VII.** Thus, we see that the bye-laws do not indicate any restraint or control or a check by the Government of Goa over the running of the affairs of the Union, either over its Board of Directors or its General Body, in matters of finance, acquiring or disposing off its properties or recruiting or terminating its staff and employees. There is thus no power vested in the Government of Goa under the bye-laws to regulate any of the activities of the Union. The matter of statutory audit of the accounts is a control vested in the

Registrar of Cooperative Societies under this statute and the same is applied equally, in terms of the statute to oversee the accounts of all societies, as a safeguard and to preserve the investment of shareholders or of creditors to the Society, and cannot be termed or partake of Government control over the Union.

VIII. As held in *Shamrao* (*supra*), as in the case before us, the entire control of the Respondent Union lies with the members of the Cooperative Society, according to its bye-laws, who elect a Board of Directors to act on its behalf in terms of the powers vested in that Board. There is thus no functional control asserted by the Government over the Cooperative Society, either in terms of its bye-laws or by virtue of any shareholding. In that view of the matter, we are of the opinion that the Government of Goa neither exercises functional control over the Society nor has the Petitioner established from the material before us any deep or pervasive control by the State over the Union.

B. WHETHER GOVERNMENT OF GOA EXERCISES FINANCIAL CONTROL OVER THE UNION BY HOLDING SHARE CAPITAL, OR BY ANY OTHER FINANCIAL MEANS:

I. The Petitioner has first pleaded in para 2 of the petition that the Union was constituted by the Government of Goa and

was owned and run by the Government of Goa from 1965 to 1984. In para 9 of the petition, he pleads that the Government of Goa owns the Shares of the Respondent Union and in para 28A states that the Union is being administered by a one-man committee of an administrator, who, in terms of Section 71 of the Goa Cooperative Societies Act can be appointed by the Registrar only when 50% of the Shares of the Society are held by the Government.

In response, these averments are specifically denied in the affidavit of the Managing Director who has stated that the Government of Goa holds no Shares of the Respondent Society/Union. On a mere assertion by the Petitioner that the Government of Goa holds any Shares of the Union, where the Respondent No.2 Government of Goa, who is party to this petition, does not claim to have been allotted any such Shares, would lead us to conclude that the Petitioner has been unable to demonstrate before us that there is any participation of the Government in the shareholding of the Respondent Union, and even if there were, then through this share capital, the State exercises financial control over the Union.

- II.** Further, a reading of the bye-laws would reveal that there is no indication that if the State were a major financer or holding majority capital in the Society, would provide it exclusive financial or budgetary control, so as to conclude that its financial control was all pervasive. The bye-laws also

do not contain any provision which allows the State to have greater administrative say in decisions of financial nature or in recruitment of staff, merely because it held a larger shareholding. That being the factual situation, we can conclude that the State has no special advantage in the financial and administrative affairs of the Society merely by virtue of its shareholding.

- III.** The Petitioner alleged that the Union receives subsidy grants from the Government of Goa which is released and disbursed through the Department of Agriculture. The Petitioner has also alleged that the Government of Goa fixes the rate at which milk could be sold by the Union and has leased a large piece of land admeasuring 81,485 square metres to the Society at a non-existent rent of Rs.1/- per year. The petition also alleges that the salaries of the employees are paid from funds released by the Department of Agriculture and it is through these various means that the State exercises financial and administrative control over the Union. By way of an affidavit, the Union has contested this position on facts denying that the salaries of the employees are paid through Government funds and specifically stating at para 10 of the affidavit in reply that the salaries are paid based on the paying capacity of the Union from the resources generated without any financial help from the Government of Goa. The Union also states that the subsidies received from the Government of Goa or Central Government or National Dairy Development Board are

transferred to the dairy farmers and dairy societies to promote dairy business in the State, and no such funds are utilised for the business of the Union.

Bye-law 4 specifies how funds may be mobilised, and amongst these, donations, grant in aid, and subsidies are also permissible. However, the bye-laws do not provide for any specific advantage to the State or financial institution which provides grants or subsidies. There is nothing on record to demonstrate that the Union receives grants or subsidies, with a condition attached thereto allowing for administrative or financial control to be exercised by such grantor/financer over the Union.

- IV.** The Petitioner heavily relies upon a copy of a lease deed dated 04.10.1985 executed by the Government of Goa in favour of the Union to contend that the State exercises a direct control over the Union, since the entire milk processing plant and operations of the Union are undertaken from this lease land which admeasures 81,485 sq.mtrs at Curti, Usgao; it is the Petitioner's contention that in terms of clause 1 of the Deed of Lease, if the Union is unable to manage, efficiently ensure, and regularly supply milk within the State of Goa, the State would be entitled to determine the lease. It was submitted, that through this device, the State exercises direct control over the Union.

On considering the various clauses in the Lease Deed, we would enumerate broadly the covenants between the

State and the Union;

- (i) The lease transfers land to the Union for ninety years and stands determined on the date the lessee Union ceases to use the assets described in the three Schedules, these being certain machinery, in addition to land.
- (ii) In case of non-payment of the annual rent, the lessor is entitled to terminate the lease and forfeit the possession of the assets (machinery and land).
- (iii) Clause 9, which is the termination clause allows either party to terminate the lease giving prior notice of one year to the other party; Clause 12 absolves the Government from any liability for loss of profit, goodwill arising from leasing out the assets or to pay compensation with respect to the assets.
- (iv) Clause 13 is an arbitration clause whereby disputes arising between the parties to the lease could be referred to a sole arbitrator to be appointed by the Government of Goa.

Reading these covenants between the parties, it is but obvious that no specific control is exercised over the administration or finances of the Union, by the State, by virtue of the lease deed. On the contrary, the State has specifically insulated itself from any loss that the Cooperative Society may suffer, and has gone a step further to include an alternate dispute redressal forum of arbitration.

The lease may be terminated equally by either party specifying a notice period and no part of the lease sets down conditions by which the State could exercise financial or administrative control over the Union or its affairs through the lease deed. Thus, we conclude that no control, financial or administrative is exercised over the Union through this lease deed, merely for the fact that a minuscule rent has been reserved by the lessor for demise of its land.

- V.** It is further contended by the Petitioner that the Government of Goa fixes the price of the milk sold by the Union in the open market and through this method it controls the affairs of the Union. It is further averred in paragraph 6 of the Petition that in all policy decisions of the Society, including the decision of variation of the rate of milk price at which the Union sells milk to consumers requires the approval of the Government as part of the mandatory procedure.

This assertion is specifically denied by the Respondent Union who further states that the Union has to compete in the open market with several other milk producers/distributors who sell their milk and other products similar to the ones manufactured and marketed by the Union at competitive rates. Other than a mere statement in the Petition, there is no material produced with the Petition to substantiate the assertion that the price of milk sold by the Union in the market is controlled by the State.

VII. (i) The Petitioner then contends that since 06.09.2018 till 30.05.2020, the Union is directly administered by the One Man Administrator/Committee appointed in terms of Section 67A of the Goa Cooperative Societies Act; it is further contended that further orders in terms of the same provision of the Act were issued by the Registrar of Cooperative Societies on 01.10.2019 which was in force till 30.05.2020 after which a Three Member Administrative Committee was appointed under Order of 29.05.2020. It is also contended that by virtue of Section 71 of the Act, where the shares of the Cooperative Society are held by the Government to the extent of more than 50%, the Registrar may supersede the management and appoint an Administrator.

Section 67A of the Goa Co-operative Societies Act, reads as under :

“67A. Appointment of Directors, New Board of Directors or Administrator.—

(1) Where the Registrar is satisfied that,—

(a) at the first constitution of the Board of Directors of any society there is a failure to elect all or any of the members of the Board of Directors;

(b) the term of the Board of Directors of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the Directors required

to fill the vacancies;

(c) any Director is prevented from entering upon his office;

(d) new Directors have failed to enter upon office on the date on which the term of office of the existing Board of Directors expired; or

(e) a new Board of Directors cannot, for any reason, be constituted before the expiry of the term of Office of the existing Board of Directors, he may, either suo motu or on an application of any officer of the society, by order, appoint,—

(i) any member or members of the society to be the member or members of the Board of Directors to fill the vacancy/vacancies; or

(ii) a committee, consisting of not more than three members of the society, or one or more administrators, other than the member/s of the society, to manage the affairs of the society till the new Board of Directors enters upon office:

Provided that before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the

notice and consider all objections and suggestions received by him within that period:

Provided further that it shall not be necessary to publish such notice in case where the Registrar is satisfied that immediate action is required to be taken or that it is not reasonably practicable to publish such notice.

(f) any member of board attracts disqualification under the Act;

(g) majority of the members of the board resigns.

(2) The Board of Directors or administrator so appointed shall be subject to the control of the Registrar and obey such instructions as the Registrar may, from time to time give, and shall have power to discharge all or any of the functions of the Board of Directors or of a director, as the case may be, and take all such actions as may be required to be taken in the interest of the society.

(3) The Board of Directors or administrator so appointed shall make necessary arrangements to constitute a new Board of Directors for enabling the new Board of Directors to enter upon office or to fill the vacancy/vacancies of the Directors, as the case may be, within such period or extended period as the Registrar may specify.

(4) The Registrar may fix the remuneration payable to the Administrator which shall be paid from the funds of the Society.”

Clearly, Section 67A contemplates the passing of a quasi-judicial order which is subject to an appeal to the Co-operative Tribunal. The circumstances under which the Registrar of Co-operative Societies is empowered to appoint a member or members of the society, or a committee of members of the society to manage the affairs of the society till a new board of directors enters upon office are enumerated in clauses (a) to (g) of that provision. The provision also requires consideration of objections and suggestions put forth by members of the society; the persons appointed in terms of an order under Section 68A is required to report to the Registrar from time to time and discharge all the functions of the board of directors in terms of the byelaws taking into consideration the best of the society. Thus, such an order is only an interim measure to administer the affairs of the society through members of the society, but in conformity with the byelaws of the society.

(ii) Section 71 of the Act reads as under :

“71. Supersession and suspension of board and interim management.—(1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months :

Provided that, the board may be superseded or kept

under suspension in case, –

- (a) of it's persistent default ; or
- (b) of it's negligence in the performance of duties; or
- (c) the board has committed any act prejudicial to the interests of the Co-operative society or it's members; or
- (d) there is stalemate in the constitution or functioning of the board; or
- (e) the Registrar or authority or body as referred to in sub-section (5) of section 66 of the Act failed to conduct elections in accordance with this Act:

Provided further that the board of any such society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided further that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (Central Act 10 of 1949) shall also apply:

Provided also that in case of a co-operative society, other than a multi-State Co-operative society,

carrying on the business of banking, the provisions of this section shall have the effect as if for the words “six months”, the words “one year” had been substituted.

(2) Before making such order the Registrar shall give an opportunity to the board of being heard in the matter, within fifteen days, from the date of issue of notice and by order supersede the board and appoint one or more administrator, who may or may not be the member of the society, to manage the affairs of the society for the period specified in sub-section (1).

(3) In case of supersession of board, the administrator appointed to manage the affairs of such society shall arrange for conduct of elections within the period specified in sub-section (1) and handover the management to the elected board.

(4) The administrator so appointed shall have power to execute all or any of the functions of the board and to take all such actions as may be required in the interest of the society except admission of members.

(5) The Registrar may fix the remuneration payable to the administrator which shall be paid from the funds of the society.”

In contrast to Section 67A, Section 71 empowers the

Registrar to supersede or keep in suspension the board of directors for their persistent default, negligence in performance of duties, committing acts prejudicial to the interest of the society or where there is a crisis in the constitution or functioning of the board. The orders contemplated under Section 71 are required to be passed after giving members of the board an opportunity of being heard, and on supersession of the board, the Registrar, by quasi-judicial order is required to appoint an administrator to manage the affairs of the society, in line with its byelaws. Such administrator would manage the affairs of the society until the elections are conducted within the periods specified, after which the administration would be handed over back to the elected board of members. Here again, the order is a measure of intervention of the Registrar for the smooth management of a society in crisis and is an interim arrangement.

(iii) We are afraid we cannot accept the submissions of the Petitioners as canvassed. If the Respondent Society is presently administered by virtue of an order of appointment of an Administrator either under Section 67A or in terms of Section 71 of the Act, both situations would be attracted when there is a crisis between the management of the Board of Directors due to irregular functioning or because new Board of Directors has not been validly elected in terms of the procedure set under the Act and such orders are passed by the Registrar only to provide for an administration which is interim until fresh elections are held as held in **S.S. Rana** (supra), regulatory control over an

entity exercised by an authority (such as the Registrar) under a statute are meant to ensure its proper functioning, and such orders by the statutory authority would not be considered a control over the day-to-day functioning of such entity. Obviously, the orders appointing an administrator during a crisis have their validity under Section 67A or under Section 71 and at some point of time the elections for a new Board of Directors would have to take place by democratic process in terms of the bye-laws and the Union would function in terms of its bye-laws. On this count too, we are unable to convince ourselves with the submission that merely because an administrator has been appointed by the Registrar of Cooperative Societies to temporarily administer to affairs of the Union, that State control is being exercised over its functioning.

C. WHETHER THE UNION ENJOYS A MONOPOLY/APEX STATUS CONFERRED BY THE STATE OR IS STATE PROTECTED OR WHETHER IT DISCHARGES PUBLIC FUNCTIONS AS PERFORMED BY A STATE :

- I. It was submitted that the Union enjoys a total monopoly in the area of producing/processing and distribution of milk in the State of Goa, and being the only player in the market, the State has raised the Union to the status of an Apex Milk Producer/Distributor. This pleading has been specifically denied by the Respondent Union stating in its written that

there is no monopoly enjoyed by the Respondent in the market as there are atleast two other milk producers and distributors named Amul and Govan who process and market milk and milk products in the State of Goa. The reply also states that similar business is also carried out by M/s Igloo Cold Storage and Samarth Dairy, both of which have their units at IDC-Kundaim, at Goa. The reply further states that there are other entities within the State of Goa who receive and sell milk and milk products from neighbouring States under the brand names Nandini, Warna, Gokul, Govind, Shree Krishna, Mahanand, Arogya and Aditya. In the affidavit-in-rejoinder, apart from a bald denial, there does not appear to be positive traverse or assertion to these specific facts pleaded by the Respondent. There is no reason to disbelieve the statements made in the affidavit of the Respondent on this count and in any event these would be highly disputed questions of fact on which we would place no reliance. We therefore hold that the Petitioner, apart from the statement made in the Petition, which is denied has not placed uncontroverted material before us to demonstrate that the Respondent Union has complete monopoly at the behest of the State, in the area of production and distribution of milk and milk products within the State of Goa.

- II.** It was further contended that the Respondent Union has the status of an Apex Milk Distribution Society having complete monopoly in the area of supply/distribution of milk within the State of Goa. Under sub-section (3) of Section of the Goa

Co-operative Societies Act, and “Apex Society” means a society, the area of operation of which extends to the whole of the State of Goa, and the main objects of which is to promote the principal object of the societies affiliated to it as members and to provide for the facilities and services to them and which has been classified as an Apex Society by the Registrar. Thus, by a definition, an Apex Society operates for implementing objects of its constitutional society members and provides facilities and services to its members; such a society is required to be declared as an Apex Society by the Registrar. No such a declaration has been produced by the Petitioner before us to claim that Respondent No.1 is an “Apex Society” under the Act.

The classification and sub-classification of societies under the Act is done under Rule 8 of the Goa Co-operative Societies Rules, 2003, under which Apex Societies are one such classification, besides other classifications such as co-operative farming societies, of which Dairy Societies are a sub-classification. On going through the scheme of the Co-operative Societies Act, we do not find any special status conferred upon an Apex Society, even if the Respondents were to have been declared as one, to confer upon it a monopoly status, as contended.

III. A similar argument was raised before the Full Bench of this Court in *Vassudev Madkaikar* (*supra*) which is dealt with in paras 25 and 26 of the judgment. Therein it is held that merely because a particular co-operative society has

been declared as an Apex Society or, as in that case a “State Co-operative Bank” and has received such recognition under the Act, it cannot be said that it enjoys a complete monopoly in the field. This Court has further noted that being declared an Apex Body, may confer certain benefits on it, but by merely projecting it on a higher pedestal that other societies registered under the Co-operative Societies Act, does not lead to the conclusion that it satisfies the test of it being a functionality of the State, attracting the expressing “Other Authorities”, within the meaning of Article 12. On the same reasoning, this Court has held that such a society, which enjoys apex status, does not confer upon it the character of being an instrumentality or agency of the State Government. For reasons stated above, we reject this contention.

IV. It was further argued that since the main object of the Respondent No.1-Union is to distribute milk to consumers within the State of Goa, milk being a product which is a necessity for human population and for their sustenance such a function partakes of a public function which would be performed by the State; that since such a public function is being performed by the Union on behalf of the Government of Goa, it is acting as an instrumentality of the State and is, therefore, amenable to the writ jurisdiction of this Court. The Petitioners rely upon a Judgment of this Court in *Dr. Ajit T. Kossambe* (*supra*) to buttress this contention.

At the outset, we note that the Court, whilst passing its order in that case, was only dealing with such a contention

raised at the interim stage and for the purpose of grant of an interim relief to the Petitioner and has not finally decided this issue. In fact, at para 18 of its order the question of whether a writ would lie against the Respondent-Union was specifically kept open to be decided at the stage of final hearing and the order specifically notes that the view taken was only a *prima facie* view. In that view of the matter, the question not having been finally decided, the judgment in *Dr. Ajit Kossambe* (supra) cannot be relied upon by the Petitioner to decide the maintainability of this Petition.

- V.** In dealing with the above submission, after having applied various tests as laid down in the judgments cited by us to the facts of the present case, we are quite clear that the Respondent-Union is a society, like any other, registered under the Societies Registration Act, but is not a statutory body; the Society is purely of a private one, managed by its members through its Board of Directors. The Petitioner is not claiming enforcement of any function or duty by the Union which it might have to perform under the statute governing its functioning. Keeping these facts in mind, we would have to examine whether the society performs any functions which are of public character.

In *Shree Anandi Mukta* (supra), the Supreme Court is has decreed that if the rights claimed by a petitioner are purely of private character no mandamus can issue; as in that case, if the management of the college was purely a private body with no public duty, mandamus will not lie. It further

held that the words “any person or Authority” used in Article 226 are not to be confined only to statutory authority and instrumentalities of State and they may cover any other person or body performing public duty. What is relevant is not the form of the body but the nature of the duty imposed on the body, which must be judged in the light of positive obligation owed by the person or authority, to the affected person.

VI. *Andi Mukta Sadguru* (supra) was further clarified in *K.K. Saksena vs International Commission on Irrigation and Drainage and ors.*, reported in (2015) 4 SCC 670, holding that even when a body is performing public duty, all its decisions are not subject to judicial review and it is only those decisions which have a public element that can be reviewed in exercise of writ jurisdiction. We quote from *K.K. Saksena* (supra) as under :

“49. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In *The Praga Tools Corporation v. Shri C.A. Imanual & Ors.* 11, as 11 (1969) 1 SCC 585 Page 3536 already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was

essentially of a private character. That was a case where the concerned employee was seeking reinstatement to an office.

50) We have also pointed out above that in Sata Venkata Subba Rao (*supra*) this Court had observed that administrative law in India has been shaped on the lines of English law. There are catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In Queen (on the application of Hopley) v . Liverpool Health Authority & Ors. (unreported) (30 July 2002), Justice Pithford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are: (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

51) Even in *Anadi Mukta Sadguru* (*supra*), which took a revolutionary turn and departure from the earlier views, this Court held that 'any other Page 3637 authority'

mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasized that if the rights are purely of a private character, no mandamus could issue.

52) It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely: (i) when the employee is a public servant working under the Union of India or State; (ii) when such an employee is employed by an authority/ body which is a State within the meaning of Article 12 of the Constitution of India; and (ii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act. In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.

53) In the present case, though we have held that ICID is not discharging any public duty, even otherwise, it is clear that the impugned action does not involve public

law element and no 'public law rights' have accrued in favour of the appellant which are infringed. The service Page 3738 conditions of the appellant are not governed in the same manner as was the position in *Anadi Mukta Sadguru* (supra)". (emphasis supplied)

VII. Merely claiming that supply and distribution of milk to the public within the State of Goa partakes of a public function or duty, the Petitioner cannot claim that the Union is a "State" for the purpose of Article 12. Distribution of milk per se is not a public function, more so in the light of the fact that the pleadings of the Respondents, which are otherwise not seriously controverted that there is no monopoly in this activity with the Union and there are multiple players in the market to compete. Applying the principles enunciated by the Supreme Court in *K.K. Saksena* (supra) to the facts of the present case, even if the Respondent-Society were discharging the duties of a public nature, a service dispute such as the one raised in the present Petition claiming a higher age of superannuation, does not permit the Petitioner to take recourse to filing a petition seeking to invoke Article 226 of the Constitution of India to address it.

VIII. *Vasudev Madkaikar* (supra), referring to the aforementioned line of judgments, has adopted a similar line of reasoning, which we believe is binding on us. It holds :

“40. ... Another important aspect which has to be borne in mind is that a writ can be issued for the discharge of only that public function if at all a body performs a public function and not any other function performed by it in the course of its business. Even if a body is performing public duty and amenable to writ jurisdiction, as a necessary sequel, all its decisions are not subject to judicial review but only those decisions which have public element therein can be judicially reviewed in exercise of writ jurisdiction. A fine line needs to be drawn between the contract of service by bearing its connection to the nature of contract and a contract of personnel service cannot be enforced with the exception when the employee is a public servant working under the Union of India or State, or an employee who is employed by any authority which is recognised as 'State' within the meaning of Article 12 and when such an employee fall within the ambit of “workman” within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. There cannot be any dispute that writ is maintainable under Article 226 of Constitution of India even against a private management for enforcing the 'public duty' cast upon them, but it cannot be said that the same is available also for enforcing the terms and conditions of service in every situation. With the said observations, the Accountant who had knocked the doors of the Court who was aggrieved by issuance of a chargesheet by the Socio-

Economic Unique Foundation, a private Society without any government control, and which was held to be not answering the description of a State, an agency or instrumentality of State or that of any other authority, it was held that though acting as a accredited agent to the Government it discharges duties of public nature, mere service dispute in terms of non-statutory service rules does not permit the petitioner to take recourse to Article 226 of the Constitution of India....”

In the light of these observations, we are clearly of the opinion that the Respondent-Society does not discharge or perform any public function.

21. In the light of what is held above, we conclude that the Respondent No.1, Goa State Co-operative Milk Producers' Union is not a “State” or an instrumentality of the State nor can it be considered “any other Authority” for the purpose of Article 12 of the Constitution of India and is, thus, not amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India to seek the reliefs sought by the Petitioner in this Petition. The Petition is dismissed as not maintainable. No costs.

VALMIKI SA MENEZES, J.

AVINASH G. GHAROTE, J.