CASE NO.:
Appeal (civil) 5466 of 2002

PETITIONER:
General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P.

RESPONDENT:
Satrughan Nishad and others

DATE OF JUDGMENT: 08/10/2003

BENCH:
Y.K.SABHARWAL & B.N.AGRAWAL.

JUDGMENT:
J U D G M E N T

WITH

Civil Appeal Nos. 5467 to 5473, 5475 to 5477, 5479 to 5480, 5482, 5485 to 5500, 5501 to 5512, 5514 to 5518, 5520 to 5525, 5528 to 5529, 5531, 5533 to 5541, 5545 to 5557, 5559, 5571 to 5586, 5590 to 5592 of 2002.

B.N.AGRAWAL, J.

Judgment impugned in these appeals has been rendered by a Division Bench of Lucknow Bench of Allahabad High Court in special appeals upholding that passed by a learned Single Judge of that Court in writ applications filed by the workmen of Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. (hereinafter referred to as 'the Mill') whereby the same have been allowed, orders of termination of services of the workmen (hereinafter referred to as 'the contesting respondents') quashed and directions have been given for regularisation of their services within a period of two years.

The short facts are that the Mill is a co-operative society registered as such under Uttar Pradesh Co-operative Societies Act, 1965. The contesting respondents filed various writ applications in the High Court alleging therein that they had worked on class III and IV posts in the Mill for a period ranging from 5 to 12 years. According to them, some of them were permanent workmen whereas others were seasonal. Uttar Pradesh Co-operative Sugar Factories Federation Limited (hereinafter referred to as 'the Federation') is the apex body of co-operative sugar mills in the State and its function is advisory in order to safeguard operational and financial interest of the sugar mills. On 22nd November, 1999, Chairman-cum-Managing Director of the Federation, who was also Secretary to the Government of Uttar Pradesh in the Department of Sugar Industry and Cane Development, had sent a letter to General Manager of the Mill in which it was mentioned that during the course of discussion the Managing Director had with the General Manager and other officers of the Mill, it transpired that out of 708 workmen working in the Mill, 401 were surplus whose services were required to be dispensed with in view of the deteriorating financial condition of the Mill. By the said letter the Mill was advised to consider the desirability of dispensing with services of its surplus workmen. Thereupon, services of surplus workmen were dispensed with without giving any notice and paying retrenchment compensation as required under Section 6N of Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') in spite of the fact that they had worked for more than 240 days which necessitated filing of the various writ applications in the High Court.

Writ applications were contested by the Mill on grounds, inter alia, that the Mill, which is a co-operative society, was neither State nor instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India, hence, the writ jurisdiction of the High Court could not be invoked. According to them, service conditions of the contesting respondents, who were the workmen,

were governed by standing orders of the Mill and the dispute raised by them related to enforcement of rights and obligations created under the Act, as such the remedy available to them was to raise an industrial dispute under the provisions of the Act. Further ground of contest was that although the workmen had claimed to have worked between the years 1983-84 to 2000-01 but in not a single year, the Mill was operational for a period of 240 days inasmuch as the period of operation of the Mill during the aforesaid period was from 45 days to 199 days. According to them, the contesting respondents were seasonal workers and as they did not work for a period of 240 days in any year, were not entitled to claim protection under Section 6N of the Act.

The learned Single Judge of the High Court overruled preliminary objection raised on behalf of the Mill, came to the conclusion that the Mill, which is a society, was State within the meaning of Article 12 of the Constitution as it was instrumentality of the State and there was infraction of the provisions of Section 6N of the Act. Accordingly, the writ applications were allowed, orders of termination of the contesting respondents were quashed and it was directed that their services shall be regularised in a phased manner within a period of two years. The said order has been affirmed by the Division Bench on appeals being preferred by the Mill. Hence, these appeals by special leave.

Shri Rakesh Dwivedi, learned Senior Advocate appearing in support of the appeals, submitted that the contesting respondents could not have been allowed to invoke writ jurisdiction of the High Court as the Mill, which is a registered co-operative society, was not State within the meaning of Article 12 of the Constitution as it was neither instrumentality nor agency of the Government of Uttar Pradesh. On the other hand, Shri Sunil Gupta, learned Senior Advocate appearing on behalf of the contesting respondents, submitted that the Mill was an instrumentality of the Government, as such it was an authority within the meaning of Article 12 of the Constitution.

The point raised is no longer res integra as the same is concluded by decisions of this Court. In the case of Ajay Hasia and others v. Khalid Mujib Sehravardi and Ors., (1981 ) 1 SCC 722, a Constitution Bench of this Court, while approving the tests laid down in the case of Ramana Dayaram Shetty v. International Airport Authority of India & Ors., (1979) 3 SCC 489, as to when a corporation can be said to be an instrumentality or agency of the government, observed at page 736 which runs thus:-

"The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government (SCC p.507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p.508, para 15)

(3) It may also be a relevant factor\005whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p.508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p.509, para 16)
(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)
If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

In the case of Pradeep Kumar Biswas v.Indian Institute of Chemical Biology and others (2002) 5 SCC 111, a Bench of seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case (supra) and approved in the case of Ajay Hasia (supra) for determining as to when a corporation can be said to be an instrumentality or agency of the government so as to come within the meaning of the expression 'authority' in Article 12 of the Constitution. There the Bench referred to the case of Chander Mohan Khanna v. NCERT (1991) 4 SCC 578 where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this Court in Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Association and another, (2002) 2 SCC 167, where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government.

From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or co-operative society or a company, is not decisive. The real status of the body with respect to the control of government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, Bye Laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has no where been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of Bye-Laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-Law 52, a committee of management consisting of 15 members is constituted, out of whom,

5 members are required to be elected by the representatives of individual members, 3 out of co-operative society and other institutions and 2 representatives of financial institutions besides 5 members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of State Government in the committee is only 1/3rd and the management of the committee is dominated by 2/3rd non-government members. Under the Bye-Laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by Managing Director of the Federation on 22nd November, 1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of Mill, as such the same being neither instrumentality nor agency of government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution.

Learned counsel appearing on behalf of the contesting respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. Learned counsel appearing on behalf of the appellant, on the other hand, submitted that mandamus can be issued against private person or body only if infraction alleged is in performance of public duty. Reference in this connection may be made to the decisions of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust and others v. V.R.Rudani and others (1989) 2 SCC 691 in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of K.Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another (1997) 3 SCC 571 and VST Industries Ltd. v.VST Industries Workers' Union and another, (2001) 1 SCC 298, the same principle has been reiterated. Further, in the case of VST Industries Ltd. (supra), it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked.

Learned counsel appearing on behalf of the appellant in the alternative submitted that in the present batch of appeals, there are disputed questions of facts as according to the contesting respondents, they had worked for more than 240 days whereas stand of the Mill was that from the day the contesting respondents joined, in not a single year, the Mill was functional for a period of 240 days and during the years in question, the functioning of the Mill was between 45 days to 199 days. Further, according to the contesting respondents, some of them were permanent and others seasonal but according to the Mill, all the employees were seasonal workmen. In our view, these are disputed questions of facts which cannot be decided in writ jurisdiction and the same can be decided by the courts constituted under the provisions of the Act. For the foregoing reasons, we are of the view that the High Court was not justified in entertaining the writ applications.

In the result, the appeals are allowed, the impugned judgments rendered

by the High Court are set aside and writ applications dismissed relegating the parties to raise an industrial dispute for adjudication by courts constituted under the provisions of Industrial Disputes Act, 1947. In the circumstances, the parties are directed to bear their own costs.